



Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: Bob Murray, Project Engineer
Shawn Kohtz, City Engineer

SUBJECT: Davis Lane Lift Station and Norton East Ranch Outfall Sewer Project –
MRL Temporary Occupancy Permit

MEETING DATE: June 17th, 2019

AGENDA ITEM TYPE: Consent

RECOMMENDATION: Approve and authorize City Manager to sign the Temporary Occupancy Permit with Montana Rail Link.

BACKGROUND: Attached is a copy of the Temporary Occupancy Permit with Montana Rail Link for the Davis Lane Lift Station and Norton East Ranch Outfall Sewer Project. The City Attorney's office has reviewed the permit and found it to be acceptable.

The design is ongoing for the project. In order to complete the design of the bore underneath the railroad tracks, the consultants need to do surveying, a geotechnical investigation, and pothole existing utilities within the railroad right of way. Montana Rail Link requires that you get a temporary occupancy permit to perform those activities. This is the first of a few temporary and permanent permits that will be required for the project.

UNRESOLVED ISSUES: None

ALTERNATIVES: As suggested by the City Commission

FISCAL EFFECTS: \$500.00 from the Wastewater Impact Fee Fund.

Attachments: *Licenses*

Report compiled on: 6/6/19

TEMPORARY OCCUPANCY PERMIT **300,573**
MONTANA RAIL LINK, INC.
REAL ESTATE DEPARTMENT
101 INTERNATIONAL WAY
PO BOX 16624
MISSOULA, MONTANA 59808-6624
02BOZEMAN

Subject to the terms and conditions hereinafter set forth, permission is hereby granted to City of Bozeman whose mailing address is 20 East Olive Street, Bozeman, MT 59715 hereinafter called "Permittee", to enter upon the premises of MONTANA RAIL LINK, INC., hereinafter called "Railroad", located in the City of Bozeman, County of Gallatin, State of Montana, Milepost 140+0800+/-, as shown on the attached plat marked Exhibit "A," dated June 5, 2019 and made a part hereof, for the purpose of a topographic survey and a vacuum truck utility locate.

The permission hereby granted is subject to:

1. Existing leases, licenses and permits heretofore granted by Railroad or its predecessors in interest affecting the said premises.
2. There is a Seven Hundred Fifty Dollars (\$750.00) fee for this permit. Permittee shall have a copy of this Agreement at the job site.
3. Billing or acceptance by Railroad of any rental shall not imply a definite term or otherwise restrict either party from canceling this Permit as provided herein. Either party hereto may assign any receivables due it under this Permit; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Permit. All Rent and other monetary payments under this Permit from Permittee to Railroad shall be delivered solely to the following address:

Montana Rail Link, Inc.
PO Box 16624
Missoula, MT 59808

Railroad shall have the right to designate at any time and from time to time a different address for delivery of such payments. No fee or other payment sent to any other address shall be deemed received by Railroad unless and until Railroad has actually posted such payment as received on the account of Permittee, and Permittee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Permittee had failed or delayed in making any payment. Permittee shall reimburse Railroad for all reasonable costs (including court costs, attorneys' fees and other collection fees) expended in the collection of Rent, the eviction of Permittee from the premises or other amounts which become due hereunder. All amounts due hereunder which are not paid within thirty (30) days of the invoice date shall accrue interest at a rate of one and one-half percent (1 ½%) per month or the maximum rate allowable by law whichever is less. The obligation to pay amounts which become due shall survive the termination of this Permit.

4. Permittee acknowledges that Railroad utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Railroad, which precludes Railroad's ability to exercise rejection of a payment before Permittee's check is cashed. Permittee agrees that as a condition of Railroad granting this permit, Permittee hereby waives any rights it may have under law to force continuation of this Permit due to Railroad having accepted and cashed Permittee's remittance. Railroad shall have the option of rejecting Permittee's payment by refunding to Permittee the rental amount paid by Permittee, adjusted as set forth in this Permit, and enforcing the termination provisions of this Permit.
5. Cancellation effective July 16, 2019, or at any time prior thereto on five (5) days' written notice by either party hereto given one to the other. Failure to execute this agreement within sixty (60) days of the effective date shall terminate any rights Permittee may have under this agreement. However, such failure shall not operate to relieve Permittee of any liabilities assumed hereunder.
6. All work performed on the premises shall be done in a good and workmanlike manner so as not to interfere with the tracks, operation of trains, communications and other facilities of Railroad.
7. If Railroad's Roadmaster, Chris Seymour, 406.223.3237 determines that it will be necessary to furnish a flagman during the work, Permittee agrees to reimburse Railroad for the expense of flagging incurred by Railroad.

8. No holes are to be drilled within 25 feet of any trackage without the written approval of the Railroad's Chief Engineer.
9. All holes or depressions resulting from the activities of the Permittee on the said premises shall be filled and leveled by Permittee in a manner satisfactory to the Railroad's Chief Engineer.
10. No right of way fences shall be removed or altered without the written approval of the Railroad's Chief Engineer.
11. As a material consideration of this Permit, without which it would not be granted, Permittee agrees, to the fullest extent provided by law, to release Railroad and to defend, indemnify and hold Railroad harmless from and against any liability, claim, cost or damage, including attorney fees, on account of personal injury to or death of any persons whomsoever, or damage to or destruction of property to whomsoever belonging, without regard to whether it was caused in part by Railroad or by defective trackage, equipment, or track structures. Nothing herein obligates Permittee to indemnify Railroad for Railroad's negligent acts or willful misconduct.
12. Five (5) days' advance notice of intention to enter upon Railroad's premises for the performance of activities permitted hereunder shall be given by Permittee to said Chief Engineer.
13. The location and log of any borings or survey made on said property shall be kept by Permittee or its contractor and a copy thereof furnished to Railroad.
14. In addition to, and not in exclusion of, other provisions of this Permit, Permittee holds Railroad harmless from any actions or omission of Permittee causing liability.
15. **INSURANCE COVERAGE** must be provided as follows:

Permittee agrees to obtain and to keep in force and effect during the entire term of this Agreement, at Permittee's own expense, the following insurance coverage:

- a. Commercial General Liability Insurance with limits as provided for under Montana Law Section 2-9-108, MCA.
- b. Automobile Liability Insurance with limits as provided for under Montana Law Section 2-9-108, MCA.
- c. Worker's Compensation Insurance for those of its employees who are concerned in any way with Permittee's performance under this Agreement.
- d. In the event Permittee desires to engage in any construction or demolition activity on Railroad property and within 50 feet of Railroad's rail line, Permittee shall procure a Railroad Protective Liability insurance policy naming only the Railroad as the Insured with coverage of at least the following:
 - Limits of \$2,000,000 per occurrence and \$6,000,000 general aggregate;
 - Endorsed to include the Pollution Exclusion Amendment;
 - Endorsed to include Evacuation Expense Coverage;
 - If coverage is not purchased under Railroad's policy the original policy must be provided to the Railroad prior to performing any work or services under this Agreement.
- e. Permittee, as an option to the above referenced insurance coverages, excluding Railroad Protective Liability Insurance, may provide Railroad with a letter from Permittee's Risk Management Division, or its respective Insurance Department, evidencing the necessary insurance coverages satisfactory to Railroad. If Permittee is a qualified self insurer, Permittee agrees to treat Railroad as an additional insured as if there was insurance and to be responsible for payment of any self insured retention or deductible.
- f. Railroad may require Permittee to obtain a surety bond guaranteeing all or part of the Agreement. The surety bond shall be issued by a surety licensed to do business in the state where the property is located and in a form and amount acceptable to Railroad. The surety shall also hold Certificates of Authority as an Acceptable Surety listed in the US Department of Treasury's Federal Register.
- g. Any Party performing any work related to this Agreement shall have a copy of the Agreement at the designated job site.

Other requirements: All of the above except for Workers Compensation Liability Insurance shall contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property;
- Shall release Railroad as to the payment of any earned premium;

The furnishing of insurance required by this Agreement shall in no way limit or diminish the liability or responsibility of Permittee as provided under any section of the Agreement. The insurance certificate provided by Permittee must be satisfactory to the Railroad as to insurance carriers covering the risk.

16. It is understood and agreed that this Permit shall not be placed on public record.

IN WITNESS WHEREOF, the parties have executed this agreement this 17th day of June, 2019.

The above terms and conditions are hereby accepted and agreed to.

Montana Rail Link, Inc., a Montana corporation

By: _____
Joe Gentri, Manager Real Estate Administration

PERMITTEE
City of Bozeman

By: _____

Printed Name: _____

Title: _____

MRL TEMPORARY OCCUPANCY APPLICATION FOR SURVEY AND VACUUM EXCAVATION OF UTILITIES FOR WATER AND SEWER CROSSINGS IN BOZEMAN, MT



Mile Post 140+0800+/-

APPROXIMATE SURVEY AREA

EXISTING UTILITIES TO BE VACUUM EXCAVATED AT PROPOSED WATER AND SEWER CROSSING

PROPOSED WATER AND SEWER MAIN CROSSINGS

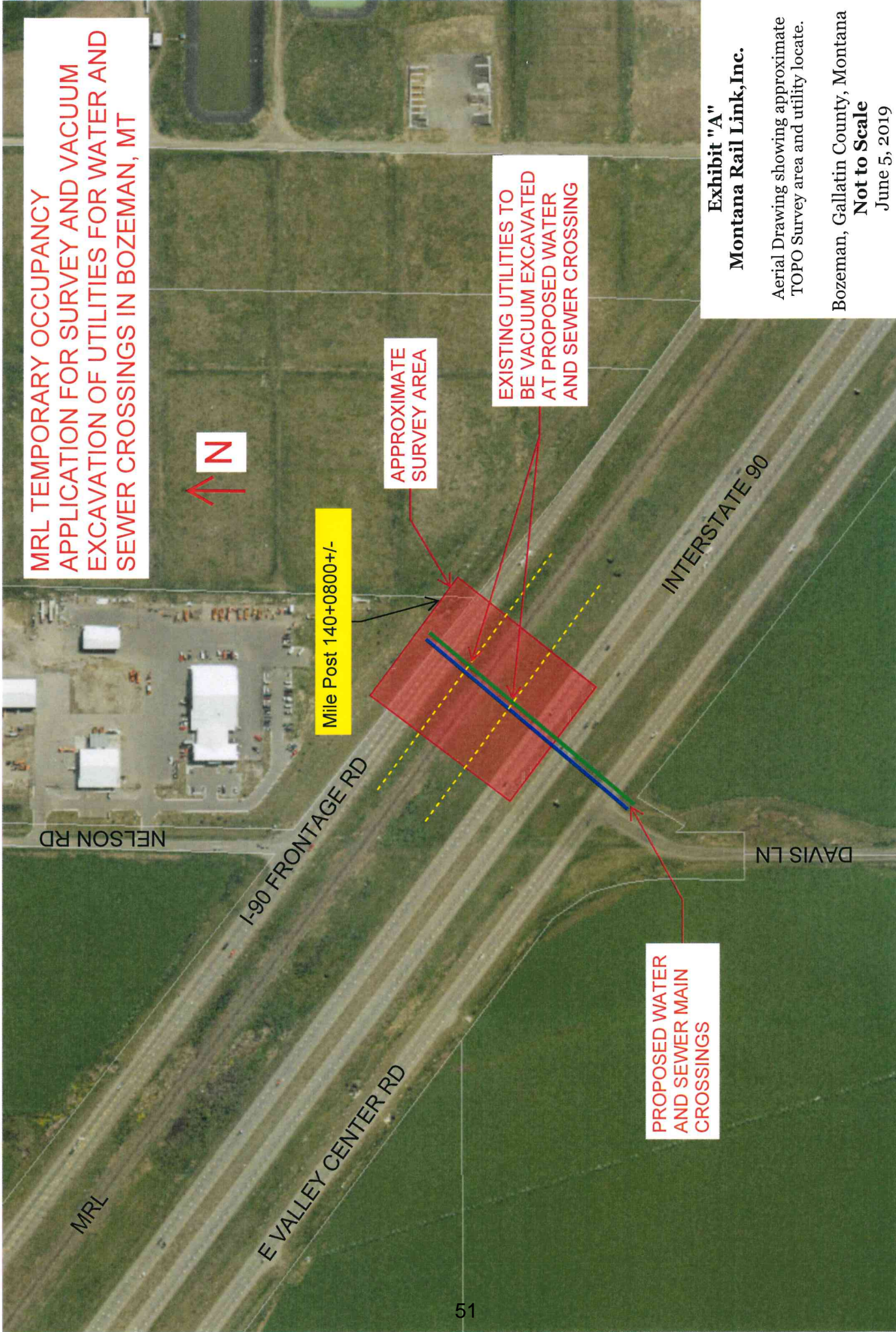


Exhibit "A"
Montana Rail Link, Inc.

Aerial Drawing showing approximate TOPO Survey area and utility locate.

Bozeman, Gallatin County, Montana
Not to Scale
June 5, 2019