

CITY OF GILLETTE RAIL SPUR
RAIL SPUR AGREEMENT

THIS AGREEMENT entered into this day by and between THE CITY OF GILLETTE, WY, hereinafter called "the City", and Mountain Mud Services & Supply, Inc., a Wyoming Corporation, hereafter called "User". The City and User may be referred to collectively as the "PARTIES".

WHEREAS, the City is the owner of a private rail spur line running through portions of Energy Park, an industrial park located at Gillette, Wyoming; and

WHEREAS, User owns Lot 15, 16 and 17 of Block 4 in the Energy Park industrial park which is immediately adjacent to the rail spur line owned by the City, and User desires availability and usage of the City's trackage to operate a load-out facility for the property described in this agreement only; and

WHEREAS, the City is willing to grant to User the right to use that portion of its private rail trackage immediately adjacent to Lot 15, 16 and 17 of Block 4 in the Energy Park upon the terms and conditions hereinafter set forth in this agreement.

NOW, THEREFORE, in consideration of the rental and usage fees to be paid to the City by User, and other good and valuable consideration hereinafter set forth, receipt of which is hereby acknowledged, it is mutually agreed by and between the parties as follows:

1.

The term of this agreement shall be from **July 15, 2019** to **July 14, 2020**, and except as specifically set forth hereafter, may not be terminated prior to the end of the term. At the end of the term, User shall have the option to renew the lease and usage agreement upon such terms as may be agreed between the parties. If User desires to renew, it shall give written notice at least sixty (60) days prior to the end of the term.

2.

User shall pay an annual lease and usage fee in the amount of Six Thousand Dollars (\$6,000.00), payable each year in advance of the anniversary date. All use payments shall be due and payable in advance on or before the first day of July.

3.

User agrees to use its best efforts to minimize the turn-around time for cars or trains serving its facilities. For purposes of this agreement it is understood that the usage by User of the trackage at its load-out facility will not exceed forty-eight (48) hours, excluding weekends and holidays. In addition, User agrees to provide, at its expense, personnel to receive and send all User's shipments and sufficient personnel to monitor all rail crossings in the park for safety during such deliveries or transmissions.

4.

User acknowledges, understands and agrees that there are other users of the rail spur track

in the park, and this agreement is specifically subject to the rights of all other users of the track. City is leasing to user the non-exclusive right to access the private rail track adjacent to User's property, Lots 15, 16 and 17 of Block 4 of Energy Park. The lease is non-exclusive in that User must conduct its operations to cooperate with and not hinder the use of the trackage by the owner(s) of other property adjacent to the same segment of trackage. User shall conduct its operation to not block access to other non-adjacent Users unreasonably by its operation, but in no case for more than 48 hours. The City does not have nor does it assume the control of the operation of trains or cars, nor does it regulate any deliveries to track users. The City will cooperate with User and exercise its best efforts to see that the trackage required by User is available as needed by User, but it assumes no liability or responsibility to User for any delays or losses whatsoever suffered by User as a result of delays or the actions of any third party who fails or refuses to remove any car or other obstacle on the track.

5.

The City agrees that in consideration of the payments being made hereunder that User may use the present spur track and adjacent land to construct, operate and maintain its load-out facility. All construction shall comply with applicable zoning, utility, and building code ordinances. However, the City reserves the right, at any time and in the exercise of its sole and absolute judgment and discretion, to require User to construct a private spur line off the City's main spur track to handle User's cars so that the main line is not obstructed by User. If the City makes a decision that User must construct a separate spur track, it shall give written notice to User. User shall immediately develop the plans and specifications for the spur track and submit them to the City for its approval. The City reserves the right to make whatever changes to the plans and specifications that it believes are reasonable and necessary. Construction of the spur track shall be completed by User at its sole expense within ninety (90) days after receipt of the written notice from the City. Nothing in this paragraph shall result in a reduction of the annual usage fee due from user to the City as provided in paragraph 2 above.

6.

The City shall provide general maintenance and repair of the track within the park (excluding side spurs constructed by third parties) and also excluding that portion used by User for its load-out facility on the main line, and shall pay all taxes and assessments against the general track. User shall be responsible for maintenance of its load-out facilities and any spur constructed by the User and shall pay for all taxes and assessments against User's separate property and facilities. User shall also be responsible and liable for any actual damages that may be caused to the track, the rail bed and area as a result of User's activities on the premises.

7.

User agrees to hold the City harmless and to indemnify the City from any and all injuries, damages, claims, and causes of action, of whatsoever nature, and including attorney's fees, which arise as a result of the use, operation or parking of any railroad cars in the industrial park, including any and all damages or injuries or claims for such damages or injuries to personal property or persons arising from any cause whatsoever arising from User's use and operations on or about the premises and its facilities, including the use and operation by User, its agents, employees or invitees. User further agrees to obtain and maintain throughout the term of this agreement liability insurance covering injury to persons or property from its operations on the

premises, including the use of the track by User equal to or in excess of Five Million Dollars (\$5,000,000.00) and shall name the City as an additional insured. User will provide evidence of such insurance and notice of any changes in insurance providers to the City. For purposes of this paragraph, premises includes the rail spur line from its point of departure from the main line, throughout Energy Park, any spur line used by User, and all of User's facilities.

8.

It is further understood and agreed that this Track Usage Agreement is entered into with the understanding that the continued operation of trains on the City's property within the park and the delivery of cars to User may become subject to requirements which are unacceptable to the City. By way of example, and not by way of limitation, rules and regulations may be adopted or enforced by local, state or federal governmental agency such as requiring automated crossing signals; or rules and regulations adopted by the railroad company providing service to the park governing the operation of trains within the park; or other unforeseen requirements which may cause the City to deem it unacceptable to continue under the terms of this agreement. In such event, the City shall give written notice to User specifying the event which has occurred and providing for sixty (60) days within which to renegotiate the terms and conditions of this agreement, taking into consideration the effect of such requirement or requirements. If the parties are unable to renegotiate the terms of this agreement, this agreement shall be terminated and from and after such termination date, User shall not be permitted to utilize the rail spur line for delivery of trains or cars to User's property, and User's obligations to pay rent shall cease and any rent due prorated to the date of termination.

9.

The City assumes no responsibility or liability whatsoever for the safety, care and maintenance of User's property or rail cars while they are in the park nor any of their contents, the responsibility therefore being entirely upon the User.

10.

Time is of the essence and if User fails to pay the rental for a period of ten (10) days after written notice, or defaults in the performance of any other term or condition of this agreement for a period of thirty (30) days after written notice, then the City may terminate this agreement and demand payment of the balance of the amounts due under this agreement for the entire term. Alternatively, the City may bring an action for specific performance, damages or any other remedy in law or equity. If legal action is brought to enforce the terms of this agreement or resolve any dispute over this agreement, the unsuccessful party shall pay all costs thereof, including reasonable attorney's fees.

11.

It is understood and agreed this Usage Agreement is personal to User and the City, is tied to the real property described on page 1 of this Agreement, and the rights to use the track for any purpose may not be assigned or subleased by User to any third party separate and apart from a transfer of the lands described on page 1. A transfer of the title to the land described in paragraph 1 shall include a transfer of the rights and obligations of this agreement. No other third party may use the track for any purpose without the express written consent of the City.

12.

This agreement is binding upon the successors and assigns of the parties; the names of transferees or assignees, and the specific terms and conditions of the assignment shall be provided to the City in writing; and further provided that no assignment or transfer shall expand or diminish the rights of either party under this Agreement.

13.

The City does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to Wyo. Stat. §§ 1-39-101-121 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.

14.

The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.

Dated this _____ day of _____ 2019

City of Gillette

Louise Carter-King, Mayor

(SEAL)

ATTEST:

Karlene Abelseth, City Clerk

STATE OF WYOMING)
) ss.
County of Campbell)

The above and foregoing instrument was acknowledged before me by Louise Carter-King,

Mayor, City of Gillette and Karlene Abelseth, City Clerk, City of Gillette this _____ day of _____
2019.

Witness my hand and official seal.

Notary Public

My Commission Expires:



Rick Eischeid, President
of Mountain Mud Services & Supply, Inc., a
Wyoming Corporation,

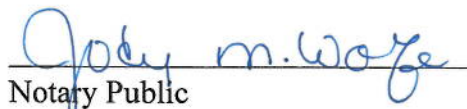
STATE OF Wyoming)
) ss.
County of Campbell)

The above and foregoing instrument was acknowledged before me by Rick Eischeid, the
President of Mountain Mud Services & Supply, Inc., a Wyoming Corporation, this 20th day of June,
day of ~~2019~~ 2019

Witness my hand and official seal.



My Commission Expires: 6/3/2023


Notary Public