



**CITY COUNCIL  
WORK SESSION AGENDA  
July 27, 2020, at 7:00 p.m.**

City Hall Council Chambers, 201 First Avenue East

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**A. CALL TO ORDER**

**B. DISCUSSION ITEMS**

1. Tunnel Art Proposal from Rails to Trails

**C. PUBLIC COMMENT**

Persons wishing to address the council are asked to do so at this time. Those addressing the council are requested to give their name and address for the record. Please limit comments to three minutes.

**D. CITY MANAGER, COUNCIL, AND MAYOR REPORTS**

**E. ADJOURNMENT**

**UPCOMING SCHEDULE / FOR YOUR INFORMATION**

**Next Regular Meeting** – August 3, 2020, at 7:00 p.m. – Council Chambers

**Next Work Session Cancelled** – ~~August 10, 2020~~, at 7:00 p.m. – Council Chambers

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify the City Clerk at 758-7756.



Kalispell Parks & Recreation  
306 1<sup>st</sup> Ave E. P.O. Box 1997  
Kalispell, Montana 59903-1997  
(406) 758-7715 Fax (406) 758-7719

## MEMORANDUM

**REPORT TO:** Doug Russell, City Manager  
**FROM:** Chad Fincher, Parks and Recreation Director  
**MEETING DATE:** July 27, 2020  
**SUBJECT:** Rails to Trails of Northwest Montana Use Agreement

**BACKGROUND:** Rails to Trails of Northwest Montana has approached the City of Kalispell requesting a use agreement be entered into to allow for them to undertake the facilitation of painting both the east and west facing pedestrian tunnel wall entries at Flathead Valley Community College. The proposed agreement with Rails to Trails outlines and identifies approvals, warranties, copyrights, insurance and indemnification, entities ownerships and responsibilities, and agreement termination.

**RECOMMENDATION:** It is recommended that council review and discuss the effects of an agreement with Rails to Trails for art on the tunnel walls.

**FISCAL EFFECTS:** There will be no fiscal effects in FY21 or within the first year of the date of final acceptance of the artwork. The use agreement identifies Rails to Trails as the responsible party in this time frame to repair or replace any defective component of the work at no cost to the City. Additionally, the use agreement identifies Rails to Trails as the responsible party for maintaining the art, including the timely removal of graffiti.

**ALTERNATIVES:** As suggested by the City Council.

**ATTACHMENT:** Rails to Trails of Northwest Montana Use Agreement

c: Aimee Brunckhorst, Kalispell City Clerk

## USE AGREEMENT

This Use Agreement is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the **CITY OF KALISPELL**, a municipal corporation organized and existing under the laws of the State of Montana, of 201 First Avenue East, (PO Box 1997, 59903) Kalispell, Montana 59901 ("**City**"), and the **RAILS TO TRAILS OF NORTHWEST MONTANA**, a Montana nonprofit corporation, of P.O. Box 1103, Kalispell, Montana 59903 ("**Rails to Trails**").

NOW, THEREFORE, City and Rails to Trails, in consideration of the mutual covenants and agreements, herein agree as follows:

### **1. COMMISSION**

Rails to Trails is commissioned to render in paint or other City approved medium of the Artist, on the east and west facing pedestrian tunnel wall entries at the Flathead Valley Community College and Kidsport connection in Kalispell, substantially as described in Exhibit A, hereby incorporated into this agreement by reference.

### **2. SITE COMPATIBILITY**

Rails to Trails will submit renderings and proposed materials list to be used to Montana Department of Transportation (MDOT) and Kalispell Parks and Recreation. MDOT and Kalispell Parks and Recreation will need to approve renderings and materials prior to work beginning.

### **3. TIME**

Rails to Trails and the Artist will begin work on or after **INSERT DATE**, and shall have completed and installed the work by **INSERT DATE**.

### **4. WARRANTIES**

- a. Rails to Trails, based on representations and warranties of the Artist, represents and warrants that the work is solely the result of the artistic effort of Artist and is original and unique, does not infringe upon any copyright, has not been sold elsewhere and is free from any liens.
- b. Rails to Trails represents and warrants that the work will be durable, executed and fabricated in a workmanlike manner and will be free from defects in material and workmanship including defects known as "inherent vice" or qualities which cause or accelerate deterioration of the work.
- c. If within one year of the date of final acceptance, the work exhibits any structural or cosmetic defect or flaw, Rails to Trails will repair the work or replace any defective component of the work at no cost to City. All repairs or cures to defects shall be consistent with professional conservation standards.

- d. Rails to Trails will comply with City policies and procedures with respect to working in the public right of way and will attend any work session that may be required by the Department of Public Works or MDOT for those installing art projects in the public right of way. Rails to Trails will use commercially reasonable efforts to ensure that Artist likewise complies with the foregoing City policies and procedures.
- e. Rails to Trails shall maintain the art so that the attractiveness of the art does not become substantially diminished by weather, normal wear and tear or vandalism. Rails to Trails shall abide by City ordinances regarding the timely removal of graffiti from the tunnel entrance murals.
- f. Rails to Trails warrants, based on representations of the Artist, that the Artist can replicate the imagery depicted in Exhibit A accurately in design, color, saturation, and hue as well as translate the size and proportion of the artwork to the size and proportion of the actual tunnel entrance.

## **5. FINAL ACCEPTANCE AND TITLE**

- a. Upon the work being installed and completed to Rails to Trails satisfaction, the City and MDOT shall inspect the work and present Rails to Trails with a detailed listing of any observed flaws. When the City and MDOT are satisfied with the work, City shall notify Rails to Trails of its final acceptance of the work.
- b. Upon final acceptance, title to the work shall pass to City. Thereafter, City shall retain all written documentation regarding the work and shall have the right to a copy of all drawings, sketches and designs of the work for maintenance and historical documentation purposes only.

## **6. COPYRIGHT**

- a. Rails to Trails will cause the Artist to take necessary steps that will enable the City to own the original work of art substantially as described in Exhibit A. Copies of the work can be made by Rails to Trails and the Artist for the purposes of display or applications for further commissions provided City is credited with commissioning the original work.
- b. Rails to Trails will cause the Artist to take the necessary steps to grant City an irrevocable license to make two-dimensional reproductions of the work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media, publicity and catalogues.

## **7. INSURANCE AND INDEMNIFICATION**

- a. Rails to Trails will execute an agreement with the Artist that acknowledges that as an independent contractor, they are not personally covered by the City's general liability insurance.
- b. Rails to Trails shall at all times hereafter defend, indemnify and hold harmless City, its officers, agents, employees, against any and all claims, costs, losses and liabilities of any kind, caused by acts or omissions of Artist, its employees or agents, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property.

## **8. NONDISCRIMINATION**

In performing their duties under this Agreement, the City and Rails to Trails each agree that they shall not violate federal or state law by any act of discrimination against any person in a class protected under federal or state law.

## **9. ENTIRE AGREEMENT AND TERMINATION**

- a. The permission for the placement of any art may be revoked by the City upon giving 30 days written notice to Rails to Trails by regular mail, at the address given below. The City may revoke this permission without notice during an emergency. If the Rails to Trails fails to remove the permitted art and restore said right-of-way to its previous condition within said 30-day period, or in an emergency, in a reasonable time, the City at its option may remove the art and restore said right-of-way to its previous condition.
- b. The parties agree that obligations under sections 4, 5 and 8 shall survive the completion or termination of this Agreement.

## **10. Notice**

- a. Notice: Any notices required by this agreement shall be sent by regular US Mail to the following addresses:

City of Kalispell  
City Manager  
P.O. Box 1997  
Kalispell, MT 59903

Rails to Trails  
President  
P.O. Box 1103  
Kalispell, MT 59903

- b. All notices shall allow 10 days for response from date of sending.

**11. GOVERNING LAW**

This agreement shall be governed by and construed in accordance with the laws of Montana State.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

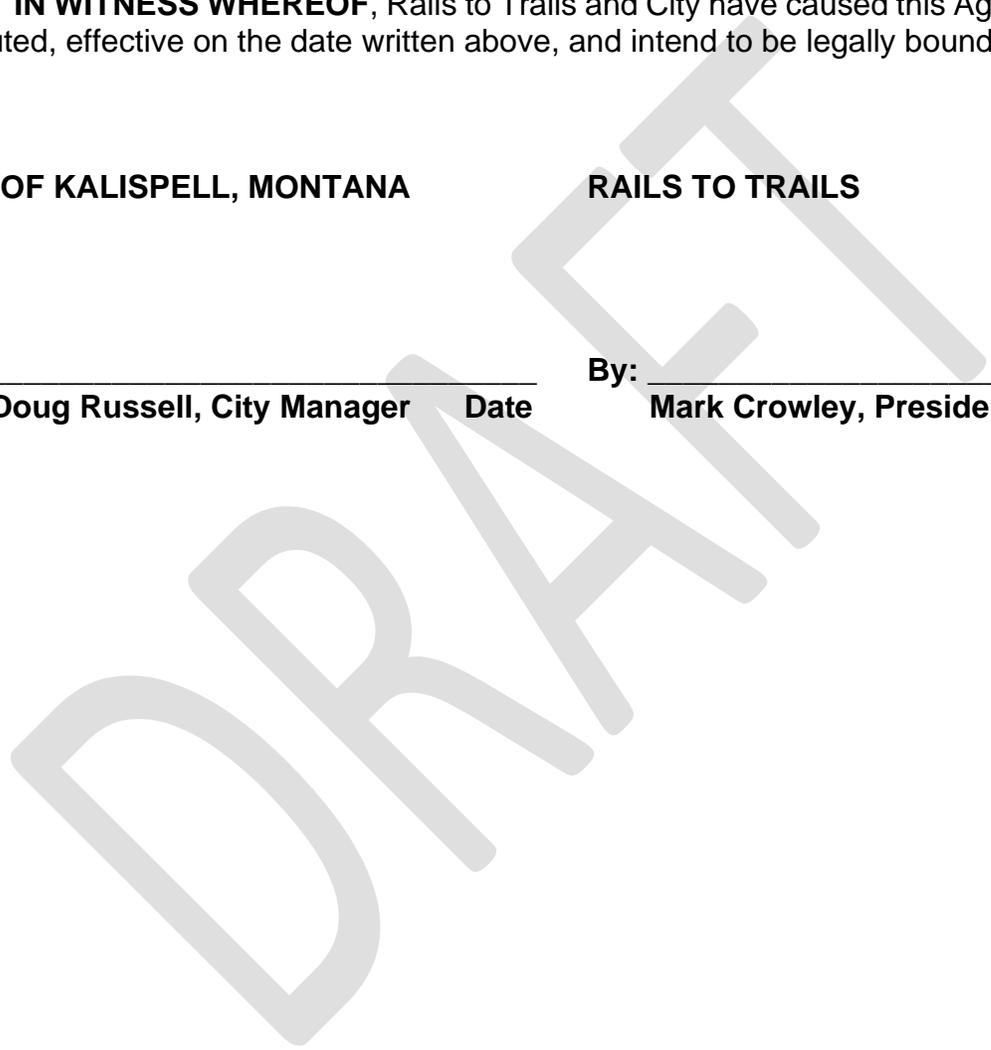
**IN WITNESS WHEREOF**, Rails to Trails and City have caused this Agreement to be executed, effective on the date written above, and intend to be legally bound thereby.

**CITY OF KALISPELL, MONTANA**

**RAILS TO TRAILS**

By: \_\_\_\_\_  
Doug Russell, City Manager      Date

By: \_\_\_\_\_  
Mark Crowley, President      Date



STATE OF MONTANA )

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County of Flathead )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public for the State of Montana, personally appeared **Mark Crowley**, in their capacity as President of the Rails to Trails of Northwest Montana, a Montana nonprofit corporation, that executed the within instrument, and acknowledged as such subscribed, sealed and delivered said instrument as the free and voluntary act of said corporation, for the uses and purposes therein set forth, and that he was duly authorized to execute the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF MONTANA )

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County of Flathead )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for the State of Montana, personally appeared **Doug Russell**, known to me to be the City Manager of the City of Kalispell, a municipality, that executed the within instrument, and acknowledged that such City Manager subscribed, sealed and delivered said instrument as the free and voluntary act of said municipality, for the uses and purposes therein set forth, and that he was duly authorized to execute the same on behalf of said municipality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

EXHIBIT "A"

DRAFT