

PUBLIC FACILITIES MASTER AGREEMENT

between

Alaska Railroad Corporation

and

Alaska Department of Transportation & Public Facilities

ARRC Contract No. 9670

This Public Facilities Master Agreement ("Agreement"), effective on the date executed by the last signatory hereto, is made by and between the Alaska Railroad Corporation, a public corporation and instrumentality of the State of Alaska formed pursuant to AS 42.40 ("ARRC"), and the State of Alaska, Department of Transportation & Public Facilities ("DOTPF") (individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, DOTPF has a number of existing roadways, grade crossings, automatic crossing signals, bridges and other facilities (hereinafter collectively referred to as "Facility" or "Facilities" as appropriate) located on property owned by ARRC, including but not limited to property designated by AS 42.40.350 as a "railroad utility corridor" (hereinafter collectively referred to as "Railroad Property"), many of which were previously constructed under separate contracts between the Parties or their predecessors in interest; and

WHEREAS, in 1989, ARRC entered into a Blanket Permit (ARRC Contract No. 6012) with the DOTPF Central Region and a Blanket Permit (ARRC Contract No. 6013) with the DOTPF Northern Region. Each Blanket Permit consolidated all of the existing Facilities in each region into one document which greatly facilitated the Parties' administration and management of the Facilities regarding construction, maintenance and operations of such public facilities within the confines of Railroad Property; and

WHEREAS, said Blanket Permits expired on December 31, 2008, but the Facilities will continue to exist, and DOTPF will likely desire to construct others on Railroad Property in the future; and

WHEREAS, the Parties are entering into this Agreement to replace the expired Blanket Permits, provide a mechanism by which DOTPF can acquire an interest in Railroad Property that is adequate to meet applicable federal funding requirements for the construction, reconstruction or repair of the Facilities, and set forth each Party's rights and obligations that will henceforth apply to the Facilities; and

WHEREAS, the Parties acknowledge that good public policy requires that each Party recognize the unique multijurisdictional nature of the Facilities and the security, safety and operational needs of the other Party; and

WHEREAS, the primary purpose of this Agreement is to structure a relationship that provides for the protection of both railroad and highway assets through mutual

coordination of planning, construction and maintenance activities with regard to the Facilities.

NOW, THEREFORE, for and in consideration of the mutual covenants herein recited and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Covered Facilities.** At the outset, this Agreement applies to the existing Facilities set forth on the list attached hereto as Appendix A. Other facilities may be added to this Agreement upon ARRC's approval in accordance with the requirements of Section 7.02A below.
2. **Term.** This Agreement shall be effective as of the date of its execution by both Parties and shall continue in full force and effect with regard to each Facility as long as such Facility remains on Railroad Property.
3. **Right to Use Railroad Property for Facilities.** Upon DOTPF's request, ARRC agrees to grant DOTPF an easement in a form substantially equivalent to the form attached hereto as Appendix B giving it the nonexclusive right to construct, use, operate, maintain, repair, reconstruct and renew each of the Facilities listed in Appendix A over and across the Railroad Property upon which said Facilities are currently constructed (the "Easement Area"), subject to the terms and conditions of this Agreement. Upon making an easement request, DOTPF shall furnish to ARRC a mutually agreeable legal description, plat plan, drawing or other document suitable for recording that establishes the boundaries of the Easement Area for each easement to be granted by ARRC for the Facilities listed in Appendix A. Until such time as an easement is executed for each Facility, ARRC hereby grants DOTPF a nonexclusive license to construct, use, operate, maintain, repair, reconstruct and renew each of the Facilities listed in Appendix A over and across the Railroad Property upon which said Facilities are currently constructed (which current locations are also referred to herein as an "Easement Area"), subject to the terms and conditions of this Agreement.

Upon the mutual agreement of the Parties, a similar easement will be granted for each new highway facility constructed on Railroad Property under this Agreement, which facility will then be added to the list in Appendix A. Any easement or license granted by ARRC to DOTPF for the use of Railroad Property pursuant to this Section 3 shall be subject to the following terms and conditions:

3.01 ARRC makes no covenant or warranty of title for quiet possession or against encumbrances. DOTPF shall not use or permit use of the Easement Area for any non-highway related purposes. Without prior written agreement from ARRC, DOTPF shall not use or permit use of an Easement Area for gas, oil or gasoline pipe lines. Any lines constructed on the Easement Area by or under authority of DOTPF for the purpose of conveying electric power or communications incidental to DOTPF's use of the property for highway purposes shall be constructed in accordance with

specifications and requirements of ARRC, and in such manner that will not adversely affect the communication or signal lines of ARRC or its permittees now or hereafter located upon said property. No third party shall be admitted by DOTPF to place facilities on any part of the Easement Area without ARRC's prior written consent. ARRC may not unreasonably withhold its consent.

3.02 ARRC reserves the right to construct new track, to alter grades, to align tracks, or otherwise alter its facilities within any Easement Area and shall bear the cost of such changes to its own facilities. Such changes shall not unreasonably interfere with the use of DOTPF's Facilities except as may be temporarily necessary for construction purposes. The provisions of Section 8 below shall apply to any changes ARRC makes to its facilities within any Easement Area.

3.03 The easement or license granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. DOTPF shall not damage, destroy or interfere with the property or rights of third parties in, upon or relating to the Easement Area, unless DOTPF at its own expense settles with and obtains releases from such third parties.

3.04 ARRC reserves and excepts unto itself the right to use and to grant to others the right to use the Easement Area for any purpose, including, but not by way of limitation, any transportation, communication and/or transmission purposes and support functions associated with those purposes, and for commercial and other uses authorized under AS 42.40, provided that such uses do not unreasonably interfere with DOTPF's use of the Easement Area. ARRC shall confer with DOTPF prior to planning any such additional use and shall, to the extent reasonably possible, assure that any concerns DOTPF may have concerning the proposed additional use are adequately addressed prior to implementation of the additional use of the Easement Area.

4. Waiver of License/Easement Fees. In consideration of DOTPF's agreement to defend, indemnify and hold ARRC harmless from claims arising from its use of Railroad Property and its agreement to pay for the costs to construct, use, operate, maintain, repair and/or reconstruct the Facilities located on Railroad Property as set forth in this Agreement, ARRC agrees to waive any fee or compensation it may be entitled to for the license or easements granted to DOTPF hereunder.

5. Annual Meeting Between the Parties. To adequately administer the terms and conditions of this Agreement, and to facilitate the planning of the Maintenance/Repair and the Construction/Reconstruction of both Parties' respective facilities, an Annual Meeting will be scheduled on or about the month of October each and every year this Agreement is in place. This meeting will be attended by the designees of the Commissioner of DOTPF and the President/CEO of ARRC, and those designees will be tasked with the following duties:

5.01 General. The meeting will provide a forum for the exchange of information on the past year's accomplishments, problem areas, and items of concern

for future transportation needs affecting both Parties. Unless otherwise agreed, ARRC will plan and host each Annual Meeting, providing DOTPF with adequate notice to allow for the appropriate staff to attend. It is the obligation of both Parties that the respective staff attending the Annual Meeting will have a reasonable amount of authority to make decisions and commit the Parties to the decisions jointly agreed to at this meeting.

5.02 Corridor Planning. The advancement of planning for transportation corridors that include both rail and highways is beneficial to the future success of both modes of transportation. The Annual Meeting will identify corridors that are currently congested due to the proximity of both rail and highways, then develop and fund long range corridor planning that suggests solutions acceptable to both Parties.

5.03 Maintenance and Repair of Facilities. The attendees will review the current List of Facilities in Appendix A, and agree on additions and/or deletions as appropriate. The yearly updated Appendix A will be incorporated into the Agreement and will be the basis for calculation of the amount to be paid to ARRC by DOTPF under Section 6.03 as the annual signal maintenance fee.

5.04 Crossing Maintenance/Rebuild. The attendees will review the ARRC recommended capital improvement repair and replacement of each crossing anticipated for the coming year, in addition to the estimated costs of those improvements. ARRC will also provide a listing of the anticipated crossing repairs for the upcoming three (3) calendar years (if available), including the estimated costs, as outlined in Section 6.06 of this Agreement.

5.05 DOTPF Capital Improvement Projects. DOTPF will present the Projects anticipated for the next calendar year that will potentially impact ARRC, and identify opportunities in those projects to include any work identified in both Section 6.03 and Section 6.06 of this agreement. Likewise, DOTPF will present the Projects that are anticipated in the next three (3) calendar years and identify the potential to include the same ARRC work as discussed in Section 5.04 above.

5.06 Calculation of Payments to ARRC. After the identification of the crossing work to be performed by ARRC under Sections 5.03 and 5.04 above, and after the removal of any crossings that will be part of a Project under Section 5.05 above, the Parties will calculate and agree to the amount owed by DOTPF to ARRC for the upcoming calendar year. It will be the responsibility of DOTPF to secure the funding and transmit payment of fees attributable under Section 6.03 to ARRC by January 15th of the next calendar year after each Annual Meeting. It will be the responsibility of DOTPF to secure funding and transmit payment of fees attributable under Section 6.06 to ARRC within sixty (60) days of receipt of ARRC's invoice for such work. Upon receipt of these payments, the financial obligations of both parties will have been met under this Agreement for that calendar year.

6. Maintenance and Repair of Facilities.

6.01 General. Except as otherwise provided herein, DOTPF, at its sole cost and expense, shall maintain and repair its existing Facilities and any new DOTPF facilities that may be subsequently constructed on Railroad Property. Such maintenance shall include the removal of graffiti from DOTPF owned bridge structures (both railroad over and highway over) located on Railroad Property. DOTPF shall perform or cause all such maintenance and repair to be performed in a prudent and workmanlike manner, in conformity with any applicable statutes, orders, rules, regulations and specifications of any public authority having jurisdiction over the Facilities and under conditions satisfactory to and approved by ARRC. Said maintenance shall be performed at such times and in such manner as not to interfere with the movement of ARRC's trains. DOTPF shall not at any time impair or interfere with the lateral or subjacent support of ARRC's properties, structures, tracks or improvements on or adjacent to the Easement Area or otherwise damage the same in any way. DOTPF shall also ensure that all Facility maintenance and repair work is performed in accordance with the provisions of ARRC's Standard Specifications for Work on Railroad Property attached hereto as Appendix C and by this reference incorporated herein. Appendix C may be revised by ARRC from time to time consistent with railroad operational safety concerns, provided that ARRC has given notice of the change to DOTPF. In the event DOTPF contracts for the performance of any Facility maintenance or repair work, DOTPF shall require its contractor(s) and/or subcontractor(s) to comply with all the terms of this Agreement and the provisions of Appendix C.

6.02 Prior Notice of Work Within the Safety Zone. If DOTPF or its contractors need to enter an Easement Area or other Railroad Property for the purpose of inspection of a DOTPF owned bridge structure (both railroad over and highway over) or major maintenance or repair of another type of Facility, DOTPF agrees to notify ARRC in writing at least ten (10) working days in advance of the proposed performance of any work in which any person or equipment will be within twenty (20) feet of the centerline of any track (the "Safety Zone"), or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach into the Safety Zone; provided, however, that in any instance of sudden emergency requiring prompt and immediate action to protect the public safety, notification may be in the form of a telephone call to the ARRC Chief Dispatcher at 907-265-2421. Upon receipt of notice, ARRC will determine and inform DOTPF whether a flagman need be present and whether DOTPF needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by ARRC, ARRC will bill DOTPF for such expenses incurred by ARRC and DOTPF agrees to pay the same within sixty (60) days of its receipt of ARRC's invoice therefore. ARRC will submit its bills to DOTPF within a reasonable time, recognizing that delays in billing may render it difficult and unnecessarily cumbersome for DOT to pay those delayed bills. The notice requirement in this Section 6.02 shall not apply to routine maintenance and repair work performed by DOTPF employees such as snow removal and such other work that does not pose a safety hazard to railroad operations.

6.03 Routine Signal Maintenance. ARRC shall, at DOTPF's expense, operate, inspect and perform routine maintenance and repair work for all DOTPF

automated grade crossing signals installed on Railroad Property in accordance with applicable federal regulations. DOTPF shall pay an annual signal maintenance fee to ARRC for each such signal in the amount of \$9,000.00. Said amount shall be reviewed and adjusted every five (5) years. The amount of each such adjustment shall be determined by multiplying the annual maintenance fee in effect for the previous five year period by the increase in the Consumer Price Index for all Urban Consumers, U.S. Cities (1982-84=100) as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI-U") during the five years preceding the adjustment date, provided, however, that in no event shall the annual maintenance fee for any five year period be less than the fee for the previous five year period.

The number of crossings subject to the annual maintenance fee and the total amount of such fee for the next calendar year shall be determined at the Parties' Annual Meeting referenced in Section 5 above. DOTPF agrees to pay said annual maintenance fee to ARRC on or before January 15th of each calendar year during the term of this Agreement.

In addition to said annual signal maintenance fee, DOTPF shall reimburse ARRC, within sixty (60) days after receipt of itemized bill from ARRC for the cost of upgrading said signals to prevent obsolescence. ARRC agrees to submit its bills or invoices to DOTPF in a timely manner.

6.04 Signal Relocation/Replacement. The Parties agree that any future relocation or replacement of DOTPF automated grade crossing signals shall be performed by ARRC after coordination with DOTPF, but at the expense of DOTPF.

6.05 Sight Triangles. DOTPF, at its sole cost and expense, shall maintain all at-grade crossing Sight Triangles free of vegetation and other obstructions to vision in accordance with the table entitled "Sight Triangle Distance" attached to the Alaska Policy on Road/Highway Crossings as the same may be revised from time to time. Sight Triangle maintenance will be limited to those areas subject to land interests under the control of DOTPF or ARRC.

6.06 Crossing Maintenance/Rebuild. ARRC, at DOTPF's sole cost and expense, shall maintain, repair and replace the crossing area between the track tie ends when such work is necessary to maintain the safe movement of trains and vehicles over the crossing. The Parties acknowledge and agree that the useful life of an at-grade crossing is approximately fifteen (15) to twenty (20) years after which period the rail, ties, and ballast (collectively "Track Materials") must be replaced to assure the safe movement of trains and rail equipment over the crossing. ARRC will give DOTPF at least two (2) years' prior notice of any DOTPF crossings that require rebuilding along with an estimate of ARRC's costs to perform such work and ARRC will consult with DOTPF in planning such crossing rebuild projects. DOTPF will include said cost estimate in its annual budget request and shall in good faith exercise its best efforts to obtain such an appropriation and ARRC will assist DOTPF in seeking funding from the legislature.

DOTPF shall reimburse ARRC the full cost stated in the estimate for each crossing rebuild project, provided, however, that ARRC will grant DOTPF a credit against such cost in the amount of the standard cost of any Track Materials used in the crossing rebuild project. DOTPF agrees to pay the crossing rebuild cost to ARRC within sixty (60) days of its receipt of ARRC's invoice therefore. ARRC agrees to submit these bills to DOTPF in a timely manner.

6.07 Passive Warning Devices. DOTPF, at its sole cost and expense, shall be responsible for installing and maintaining in good condition all railroad crossbucks, advance warning signs and pavement markings at each crossing in accordance with the requirements of the U.S. DOT Manual on Uniform Traffic Control Devices.

6.08 ARRC Costs. All costs for labor, equipment, materials and supplies billed to DOTPF for work performed by ARRC under this Section 6 shall not exceed the rates for such items that are established by DOTPF's annual audit of ARRC's costs.

6.09 Emergencies/Service Restoration. In the event that an earthquake or other catastrophic event destroys or otherwise causes significant damage to a highway or railroad facility located on an Easement Area, the Parties agree that they will cooperate in taking all actions necessary to promptly restore highway or railroad service over said facility. The Parties acknowledge that the restoration of railroad and/or highway service in such situations may require the temporary relocation of each Party's facilities and hereby consent to such relocation.

7. Facility Construction; Reconstruction; Major Alterations.

7.01 Notice. DOTPF shall provide ARRC with reasonable advance written notice of any proposed construction of a new Facility on Railroad Property, or the reconstruction or major alteration of an existing Facility (collectively a "Project").

7.02 DOTPF Work.

A. Project Plans and Specifications. Prior to advertising for bids, issuing amendments and/or issuing a change order(s) to its contractor for work on any Project, or prior to commencing any such work itself, DOTPF shall submit to ARRC's Chief Engineer, or his authorized representative, for review and approval all plans and specifications pertaining to work on Railroad Property and all amendments, additions or corrections thereto (collectively the "Plans") for the construction of the Project and shall engage in similar pre-project coordination for all future modifications thereof. ARRC's review of the Plans shall include, but not be limited to aspects affecting the safety of railroad operations, the adverse impacts, if any, on the future development or expansion of railroad operations or Railroad Property and the adverse impacts, if any, on ARRC's existing customers, tenants and permittees; provided, however, that with respect to wholly new Facilities, ARRC may decline to authorize such Facilities based on these factors.

DOTPF agrees not to commence any associated work on a Project until ARRC's review of the Plans has been completed and ARRC's approval has been received. ARRC will complete its review of the Plans and respond thereto in a reasonably expeditious manner. DOTPF agrees that any Project construction or operation shall be substantially in accordance with DOTPF's Plans as first reviewed and approved by ARRC, unless subsequently approved otherwise by ARRC and DOTPF. Upon completion of the Project, DOTPF, at its expense, shall furnish to ARRC one set of "as built" Plans of the Project located on Railroad Property in electronic or digital format.

By its review and approval of Plans pursuant to this Agreement, ARRC signifies only that such Plans and improvements constructed in accordance with such Plans satisfy ARRC's requirements. ARRC expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of DOTPF or any other persons of the Plans or improvements constructed in accordance with the Plans.

B. Supplemental Conditions. DOTPF understands and agrees that supplemental conditions specific to work on a particular Project may be imposed by ARRC as a result of ARRC's Plan review and as a condition of ARRC approval of any construction by DOTPF. ARRC hereby agrees, however, that DOTPF's ability to comply with its public funding obligations, to maintain highways, and to protect the traveling public must be reasonably accommodated.

C. Safety Improvements. If at any time ARRC deems it necessary to have additional safety improvements, including but not limited to automatic crossing signal devices, installed for the protection of its passengers, personnel, or equipment, DOTPF will install such equipment or safety devices as are prescribed by ARRC and maintain the same at DOTPF's own expense. The need for crossing protection will be assessed under the guidelines of the Alaska Policy on Railroad/Highway Crossings, as it may be amended from time to time. ARRC will give DOTPF at least one (1) year's advance notice of any such devices being required.

D. Permits. DOTPF, at its expense, will apply for and obtain all permits required by law, ordinance, rule or regulation for the Project, and will furnish ARRC upon request with satisfactory evidence that such permits have been obtained.

E. Construction. Except as may be otherwise specifically provided herein, DOTPF, at its expense, will furnish all necessary labor, materials and equipment, and shall construct and complete the Project and all appurtenances thereof. In the case of grade crossings, appurtenances shall include, without limitation, all necessary and proper highway warning devices and all necessary drainage facilities, guard rails or barriers, and right of way fences between the roadway and the railroad tracks. Upon completion of the Project, DOTPF shall remove from ARRC's property all temporary structures and false work, and will leave the Project area in a condition satisfactory to ARRC.

All construction work of DOTPF upon ARRC's property shall be performed in accordance with the applicable provisions of the Standard Specifications for Work on Railroad Property attached hereto as Appendix C and completed in a manner satisfactory to ARRC's Chief Engineer or his authorized representative and in compliance with the Plans, and other guidelines furnished by ARRC. DOTPF agrees to make Appendix C as it may be modified and any supplemental conditions part of all contractual bid specifications which DOTPF may publish for work associated with any Project covered under this Agreement.

All construction work of DOTPF shall be performed diligently and completed within a reasonable time. DOTPF shall notify ARRC in writing in the event that a Project is suspended, discontinued or unduly delayed. Upon receipt of such notice, ARRC may impose reasonable conditions on DOTPF that are necessary to protect the safety, security and integrity of ARRC's rail operations and infrastructure. It is understood that ARRC's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of DOTPF. DOTPF hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against ARRC by DOTPF and/or its Contractor.

F. No Project Expenses to be Borne by ARRC. Unless otherwise agreed in writing, no Project costs and expenses are to be borne by ARRC and ARRC is not required to contribute any funding for a Project.

7.03 DOTPF's Contractors Insurance. For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by DOTPF to perform any Project work on any portion of ARRC's property and shall also include the Contractor's subcontractors. Prior to Contractor performing any work on ARRC's property and any subsequent maintenance and repair work, DOTPF shall require the Contractor to obtain the then current insurance required in the Standard Specifications for Work on Railroad Property attached hereto as Appendix C and provide copies of such insurance policies, certificates, binders and/or endorsements to ARRC. Under no circumstances will the Contractor be allowed on ARRC's property without first obtaining the required insurance. The insurance requirements stated in Appendix C are subject to modification on a case-by-case basis by mutual agreement of the Parties.

If DOTPF's own employees will be performing any of the Project work, DOTPF may self-insure all or a portion of the insurance coverage and Section 18 of Appendix C will not apply to such self-performed work.

7.04 Contractor's Temporary Construction Permit. DOTPF acknowledges receipt of a copy of ARRC's standard form Temporary Construction Permit ("TCP") and understands its terms, provisions and requirements, and will inform its Contractor of the need to execute the TCP. Under no circumstances will DOTPF's Contractor be allowed onto ARRC's property without first executing the then current TCP.

7.05 Third Party Improvements.

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Third Party Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 7.02A above. The Third Party Facilities plans and specifications shall comply with ARRC's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. ARRC has no obligation to supply additional land for any Third Party Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Third Party Facilities plans and specifications comply with ARRC's standard specifications and requirements. ARRC has no obligation to permit any Third Party Facilities to be abandoned in place or relocated on ARRC's property. Any such decisions by ARRC are subject to the terms of Sections 17 and 18 of this Agreement.

B. Upon ARRC's approval of submitted Third Party Facilities plans and specifications, ARRC will attempt to incorporate them into new agreements or supplements of existing agreements with Third Party Facilities owners or operators. ARRC may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Third Party Facilities. Third Party Facilities work shall not commence before a supplement or new agreement has been fully executed by ARRC and the Third Party Facilities owner or operator, or before ARRC and DOTPF mutually agree in writing to (i) deem the approved Third Party Facilities plans and specifications to be Plans pursuant to Section 7.02A, and (ii) deem the Third Party Facilities to be part of the Project.

7.06 ARRC Project Work.

A. Agreement. In the event ARRC is required to perform work or supply materials and equipment associated with a Project, the Parties shall enter into a mutually agreeable Utility Reimbursable Services Agreement or similar agreement that specifies the scope of work, equipment and materials to be provided by ARRC and the rates ARRC is to be paid therefore. Unless otherwise agreed, payment for said work, equipment and materials will be on a force account basis.

B. Payment. DOTPF agrees to reimburse ARRC within sixty (60) days of its receipt of billing from ARRC for one hundred percent (100%) of all actual costs incurred by ARRC in connection with the Project including, but not limited to, all actual costs of engineering review, construction inspection, flagging, procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including ARRC's standard additive rates as provided in the Parties' Utility Reimbursable Services Agreement or other agreement. All costs

for labor, equipment, materials and supplies billed to DOTPF for work performed by ARRC under this Section 7.06 shall not exceed the rates for such items that are established by DOTPF's annual audit of ARRC's costs. ARRC agrees to submit its bills or invoices to DOTPF in a timely manner.

C. Federal Aid Policy Guide. If DOTPF will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

8. Railroad Construction. ARRC shall provide DOTPF with at least two (2) years' prior notice and opportunity to comment on any planned construction, reconstruction or alteration of ARRC's tracks and other facilities within an Easement Area that will affect any DOTPF Facility. DOTPF shall make all alterations to any affected Facility necessary to accommodate ARRC's construction without cost to ARRC, subject to DOTPF's prior approval. ARRC hereby agrees that it will undertake efforts to minimize costs to DOTPF generated by ARRC construction. ARRC further agrees that DOTPF's ability to comply with its public funding obligations, along with its duty to maintain highways and to protect the traveling public, must be reasonably accommodated by ARRC's design of alterations or additions to its existing track or facilities.

9. Termination and Removal of Individual Facilities. When DOTPF no longer requires a Facility, or upon the failure of DOTPF to use or provide for public use of any Facility for a period of one (1) year without satisfactory explanation provided to ARRC of intended future use, and upon request by ARRC, DOTPF will commence appropriate administrative proceedings to vacate the pertinent easement and return the property to ARRC's sole and exclusive control. In such event, DOTPF will remove the Facility and other property of DOTPF and restore the property to a natural drainage contour unless otherwise agreed by the Parties. Failure of DOTPF to do so within a reasonable time will result in ARRC removing the Facility and other property of DOTPF and restoring the property at DOTPF's expense, which reasonable expense DOTPF agrees to pay ARRC upon demand.

10. Injury and Damage to Property. DOTPF assumes liability for any and all direct damages to ARRC's property, or to the property of any other person lawfully occupying or using ARRC's property, arising out of the construction, maintenance, repair, use or operation of DOTPF's Facilities, whether such damages are caused by the negligence or willful acts of DOTPF, its employees, contractors, subcontractors, agents, or licensees, or otherwise arises out of DOTPF's activities under this Agreement. Such damaged property shall be replaced or repaired by DOTPF at its own expense, or by ARRC at the expense of DOTPF, and to the satisfaction of the ARRC's Chief Engineer or his authorized representative.

11. Indemnification. Subject to a specific appropriation by the legislature for this purpose, DOTPF agrees to indemnify and defend ARRC and its officers, agents and employees from any and all claims, suits, liabilities, damages and expenses in

connection with loss of life, bodily injury or property damage which is claimed to have been occasioned wholly or in part by any act or omission of DOTPF and which is claimed to have arisen either (1) from or out of an occurrence in, upon or direct proximity to the Easement Area, or (2) from the occupancy or use by DOTPF of the Easement Area or any part thereof under the terms of this Agreement. If the loss, injury or damage is caused in part by ARRC or results from the concurrent negligence of ARRC, such indemnity shall be valid and enforceable only to the extent of DOTPF's proportion of fault. If ARRC is found to be solely responsible for the loss, injury or damage, ARRC agrees to reimburse the State of Alaska for the costs incurred in ARRC's defense.

The Parties recognize and agree that DOTPF has no appropriation currently available to it to indemnify ARRC under this provision; that enactment of an appropriation in the future to fund a payment under this provision remains in the sole discretion of the legislature; and that the legislature's failure to make such an appropriation creates no further liability or obligation of DOTPF.

12. Remedies for Breach.

A. In the event DOTPF shall materially fail, refuse or neglect to perform and abide by the terms of this Agreement, where such failure shall continue for a period of thirty (30) days after written notice thereof, ARRC, in addition to any other rights and remedies, may perform any work which in the reasonable judgment of ARRC is necessary to place the Facilities in such condition as will not menace, endanger or interfere with ARRC's facilities or operations or jeopardize ARRC's employees or third parties; and DOTPF will reimburse ARRC for the expenses thereof.

B. In the event ARRC shall materially fail, refuse or neglect to perform and abide by the terms of this Agreement, where such failure shall continue for a period of thirty (30) days after written notice thereof, DOTPF may enforce its rights under this Agreement and pursue any other remedy now or hereafter available to DOTPF under the laws or judicial decisions of the State of Alaska.

13. Modification; Entire Agreement. No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the DOTPF and ARRC and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by a Party of any default by the other Party shall not affect or impair any right arising from any subsequent default. This Agreement and Appendices attached hereto and made a part hereof constitute the entire understanding between the Parties and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the Facilities or any part thereof.

14. Compliance with Applicable Laws.

14.01 DOTPF shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority including, but not limited to, matters of health, safety, sanitation and the environment. DOTPF shall deliver copies of all documents required to effect or to evidence such compliance when requested by ARRC.

14.02 Unless otherwise specified in this Agreement, the appendices hereto or as directed by ARRC, DOTPF shall obtain and pay for all permits, inspections, licenses and fees and shall furnish all bonds, security or deposits required to construct, reconstruct, operate and/or maintain DOTPF's Facilities in accordance with this Agreement.

15. No Warranties. ARRC makes no specific warranties, expressed or implied, concerning the title or condition of the Easement Areas, including survey, access or suitability for any use, including those uses authorized by this Agreement. DOTPF's use of the Easement Areas is subject to any and all of the covenants, terms and conditions affecting ARRC's title to the Easement Areas.

16. Notices. Any notice permitted or required to be given hereunder shall be in writing and either delivered by hand, sent by certified mail, return receipt requested, or sent by telefax with confirmed delivery, to the following:

A. If to ARRC, at ALASKA RAILROAD CORPORATION
P.O. Box 107500
Anchorage, Alaska 99510-7500
Attention: Director, Real Estate

B. If to DOTPF, at _____

Attention:

Notice shall be deemed to have been given on the date delivered to the recipient, regardless of any other date indicated thereon.

17. Approvals and Other Decisions. The Parties acknowledge and agree that the implied covenant of good faith and fair dealing shall govern their activities, rights and obligations hereunder. Accordingly, neither Party shall unreasonably, capriciously, or arbitrarily withhold any approval required to be obtained from the other Party hereunder; nor shall either Party unreasonably, capriciously, or arbitrarily impose supplemental conditions or obligations on the other Party hereunder. ARRC hereby agrees that DOTPF's ability to comply with its public funding obligations, to maintain highways, and to protect the traveling public must be accommodated to the extent that the same are compatible with ARRC's obligation to provide safe, efficient and economical rail transportation services to meet the overall needs of the state.

18. Disputes.

18.01 Dispute Resolution. The dispute resolution procedures set forth in this Section 18 shall govern the resolution of any dispute, claim, or controversy (including alleged failure to provide approvals, consents, or to mutually agree with respect to a proposed course of conduct) arising out of, under, or relating to this Agreement and any right or obligation thereunder, or the alleged breach, validity, or termination thereof ("Dispute"), unless otherwise provided in this Agreement or mutually agreed to by the parties. Resolution of any Dispute shall be by senior executives of the parties or, upon failure to timely reach a resolution in such manner, by ARRC's President & CEO and DOTPF's Commissioner as provided in Section 18.03 below. The specific mention of this section in any part of this Agreement does not diminish the application of this section to all other parts of this Agreement.

18.02 Negotiation by Senior Executives.

A. Upon a party's receipt of written notification to the other party of a Dispute, each party shall, not later than seven (7) days thereafter, select and appoint as its representative a person not concerned with the day-to-day performance of that party's obligations under this Agreement and who has general decision-making authority to resolve and settle the subject Dispute on behalf of such party. Not later than fourteen days after receipt of written notification of said Dispute, each party shall provide to the other a written explanation of the material particulars of its position as to the Dispute. Not later than twenty-one (21) days after receipt of written notification of a Dispute, as provided above (the "First Meeting Deadline"), the representatives selected by the parties to resolve the same shall meet to attempt in good faith to settle the Dispute and to produce written terms of settlement. Such written terms of settlement, if any, when signed by each party's representative, shall serve as conclusive evidence of the resolution of such Dispute. If such written terms of settlement are not produced and signed by each party's representative (i) not later than fourteen (14) days after the date of such representatives' first meeting or (ii) within twenty-one (21) days after the First Meeting Deadline (in the event the representatives fail to meet by the First Meeting Deadline), or (iii) within such longer period as may be mutually agreed to by the parties in writing, then, a party may refer the Dispute to ARRC's President & CEO and DOTPF's Commissioner in accordance with Section 18.03 below.

B. All discussions and deliberations pursuant to this Section 18.02 shall be considered settlement negotiations and may not be offered as evidence in any arbitration, litigation or other proceedings between the parties.

18.03 Final Resolution. If the parties fail to settle the Dispute in accordance with Section 18.02 above, the Dispute shall be submitted by either party to ARRC's President & CEO and DOTPF's Commissioner for resolution. The parties hereby agree that the ultimate decision reached by said individuals shall represent the final and legally binding resolution of the Dispute.

19. Miscellaneous.

19.01 Easements conveyed by ARRC to DOTPF under this Agreement shall not be assigned or in any manner transferred without the prior written consent of ARRC, and shall be subject to the terms of this Agreement absent ARRC's written approval of modification of those terms.

19.02 If any provision or covenant of this Agreement is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

19.03 The heading and captions used in this Agreement have been inserted solely for convenience of reference and shall not affect, or be deemed to affect, the meaning of any provision of this Agreement.

19.04 Subject to the provisions of Section 19.01 above, this Agreement shall be binding on the successors and assigns of DOTPF and ARRC.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the dates stated below.

ALASKA RAILROAD CORPORATION

Dated: 16 March 2012

By: Christopher Aadnesen
Christopher Aadnesen
President & CEO

**STATE OF ALASKA, DEPARTMENT OF
TRANSPORTATION & PUBLIC FACILITIES**

Dated: 16 March 2012

By: Mau Smith
Its: Commissioner

- Attachments:
Appendix A – List of Facilities
Appendix B – Easement Form
Appendix C – Standard Specifications

APPENDIX A

DOTPF CENTRAL REGION FACILITIES ON ARRC PROPOERTY (Updated March 6, 2012)

MAINLINE GRADE CROSSINGS

ARRC MP	DOT ID No.	Prior ARRC Contract No.	Description	Signals	Grade Status
2.90	868 228A	6012	Airport Road	N	at-grade
3.44	868 229G	6012	Nash Road	Y	at-grade
6.70	868 232P	6012	Bear Lake Road	Y	at-grade
12.30	868 233W	6012	Seward Highway – Divide	--	Hwy over
14.30	868 234D	6012	Seward Highway – Snow River	--	Hwy over
18.30	868 357P	6012	Seward Highway – Primrose	--	Hwy over
23.25	910 213X	6012	Gun Site (No public access)	N	at-grade
23.80	868 236S	6012	Seward Highway – Lawing	Y	at-grade
62.90	868 242V	6012	Portage Glacier Road	Y	at-grade
74.73	868 245R	6012	Alyeska Highway	--	Hwy over
74.97	868 246X	6012	DOT Maintenance Road – Toadstool Turnpike	N	at-grade
77.80	910 346P	5933	Seward Highway – Utility Maintenance access road	N	at-grade
80.90	910 324P		Seward Highway – Bird Point	--	Hwy over
82.40	910 216T	6012	Gun Site (No public access)	N	at-grade
105.73	868 252B	6012	Klatt Road	Y	at-grade
106.20	910 219N	6012	Minnesota Drive / O'Malley Road	--	RR over
107.70	868 255W	6012	Dimond Boulevard	--	RR over
108.90	868 258S	6012	C Street	Y	at-grade
110.05	868 260T	6012	International Airport Road	--	Hwy over
110.45	868 261A	6012	Minnesota Drive	--	Hwy over
111	868 263N	6012	Spenard Road	Y	at-grade
114.45	868 268X	6012	A-C Couplet (formerly Port Access Highway – also in the Anchorage Reserve)	--	Hwy over
136.30	868 305X	6012	Birchwood Spur Road	Y	at-grade
141.97	868 308T	6012	Eklutna Village Road	N	at-grade

ARRC MP	DOT ID No.	Prior ARRC Contract No.	Description	Signals	Grade Status
142.40	868 309A	6012	Glenn Highway – Eklutna	--	Hwy over
145.50	868 310U	6012	Old Glenn Highway	--	Hwy over
151.50	868 311B	6012	Glenn Highway – Glenn / Parks	--	Hwy over
151.60	910 360K	6012	Fireweed Road	Y	at-grade
156.20	868 315D	6012	Fairview Loop	Y	at-grade
158.80	910 350E	6012	Palmer-Wasilla Highway	--	Hwy over
158.90	868 317S	6012	Kenai Supply Road / Matanuska Road	Y	at-grade
159.90	868 318Y	6012	Knik-Goose Bay Road	Y	at-grade
164.28	868 321G	6012	Parks Highway	--	Hwy over
164.40		6012	Parks Bike Path (Path Underpass)	--	RR over
166.30	868 322N	6012	Pittman Road	Y	at-grade
172.97	868 326R	5068	Parks Highway – Houston	--	RR over
182.60	868 329L	6012	Parks Highway – White's Crossing	--	Hwy over
186.90	868 332U	6012	Willow Fishhook Road	Y	at-grade
206.25	868 335P	6012	Parks Highway – Montana	Y	at-grade
214.30	868 338K	6012	Parks Highway – Sunshine	Y	at-grade
225.70	868 341T	6012	Talkeetna Highway	Y	at-grade
226.40	868 342A	6012	FAA Road	Y	at-grade

PALMER BRANCH GRADE CROSSINGS

A-0.20	868 508C	6012	E. Matanuska Spur Road	N	at-grade
A-3.28	868 512S	6012	Springer Loop Outer	N	at-grade
A-3.70	868 513Y	6012	Springer Loop Inner	N	at-grade
A-4.94	868 516U	6012	Springer Loop Inner	N	at-grade
A-5.94	868 519P	6012	E. Fireweed Avenue	N	at-grade

ANCHORAGE INTERNATIONAL AIRPORT SPUR GRADE CROSSINGS

J-0.12	910 352T	3012	Minnesota Drive	--	Hwy over
J-1.23	868 528N	6012	Jewel Lake Road	Y	at-grade
J-1.42	910 249F	6012	International Bike Trail	N	at-grade
J-1.43	910 250A	6012	International Airport Road	Y	at-grade
J-1.55	910 351G	6012	West 50 th Avenue	N	at-grade

J-2.05	868 526A	6012	Aircraft Drive	--	RR over
J-2.25	910 54G		International Airport Road	--	RR over

MISCELLANEOUS SPUR TRACK CROSSINGS-ANCHORAGE

SA23-2	868 538U	6012	Ocean Dock Road / tail of wye	Y	at-grade
SA23-3	868 539B	6012	Ocean Dock Road	Y	at-grade
SA24-1	868 543R	6012	Ocean Dock Road Cement Plant	Y	at-grade
SA31-8	868 549G	6012	Post Road and First Avenue		at-grade

MAINLINE ROADWAYS AND TRAILS

From ARRC MP	To ARRC MP	Prior ARRC Contract No.	Description
1.80	3.40	6012	Seward Highway, Seward to Nash Road
2	2		Port Road
2.80	2.90		Airport Road
5.20	6.80	6012	Seward Highway, Salmon Creek to Bear Creek
14.30	14.40	6012	Access road to material source at Snow River
18.20	26	6012	Seward Highway, Snow River to Trail River (intermittent)
62.90	103	6012	Seward Highway, Portage to Potter Hill (intermittent)
116.70	117.20		Post Road, Reeve Boulevard to the security gate for Joint Base Elmendorf-Richardson
154.80	156.20	6012	Fairview Loop
156.20	158.60		Old Matanuska Road, Loop Road to Glenwood Avenue (intermittent)
158.90	166.50	6012	Parks Highway – Wasilla to Pittman (intermittent)
226.60	226.70	6012	Talkeetna Spur Road

PALMER BRANCH ROADWAYS AND TRAILS

A-0.20	A-0.60	6012	Matanuska Road
A-2.40	A-6.30	6012	Glenn Highway

WHITTIER BRANCH ROADWAYS AND TRAILS

F-1.20	F-5.50	6012	Whittier Access Road, Whittier Creek to Bear Valley, except as otherwise covered by separate agreement on the Whittier Tunnel.
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ANCHORAGE INTERNATIONAL AIRPORT SPUR ROADWAYS AND TRAILS

J-0	J-1.40		International Airport Road
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J-070	J-1.40		Frontage Road, Northwood to Jewel Lake Road
J-1.20	J-1.40	7871	Bike trail within the ARRC Anchorage International Airport Spur right-of-way, International Airport Road to Jewel Lake Road

ANCHORAGE RESERVE ROADWAYS AND TRAILS

Anchorage	7625		Ocean Dock Road, Whitney Road to Port of Anchorage
Anchorage	--		A-C Couplet, 3 rd Avenue to Ocean Dock Road
Anchorage			East Loop Road
Anchorage			Post Road, Ship Creek to Reeve Boulevard
Anchorage	4845		Reeve Boulevard

WHITTIER RESERVE ROADWAYS AND TRAILS

Whittier			Whittier Access Road, Ferry Terminal to Whittier Creek
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NENANA RESERVE ROADWAYS AND TRAILS

Nenana	6012		Parks Highway, Nenana
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JONESVILLE/ESKA MOOSE CREEK BRANCHS ROADWAYS AND TRAIL

		4087	Public highway (Jonesville Mine Road) within the ARRC Jonesville Branch near Eska Creek
			Glenn Highway over the ARRC Moose Creek Branch near Moose Creek

MAINLINE RELATED FACILITIES

ARRC MP	Prior ARRC Contract No.	Description
23.25	5933	An avalanche control gun mount site occupying a 40' x 40' portion of the ARRC right-of-way
65.70	2928	Two dikes on either side of Twenty Mile River each occupying a 125-foot wide portion of the ARRC right-of-way
83.61	5933	An avalanche control gun mount site occupying a 40' x 40' portion of the ARRC right-of-way
103.10	3484	Drainpipe crossing under the ARRC tracks for the Seward Highway
105.05	9208	Retaining wall and Furrow Creek storm drain channels within the ARRC right-of-way for Huffman Road
105.73	8503	A sump and swale occupying approximately 12'x12' (x 9' deep) area within the ARRC right-of-way
156.60	8239	A drainage ditch within the ARRC right-of-way occupying a 6.56' x 360.91' area
156.60	8239	Cut and fill slopes for a driveway together with a drainage culvert within the ARRC right-of-way occupying a 16.4' x 360.91' area

PALMER BRANCH RELATED FACILITIES

A-2.90	1252	Drainage ditch and culvert under the ARRC tracks and right-of-way
A-5.94	3149	Storm sewer line crossing under the ARRC tracks and right-of-way from E. Fireweed Avenue to W. Elmwood Avenue, Palmer

JONESVILLE AND ESKA BRANCHS RELATED FACILITIES

B-2.10	2084	Dikes and drainage channels for the Eska Creek Drainage
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ANCHORAGE INTERNATIONAL AIRPORT SPUR RELATED FACILITIES

J-0.50	3503	A storm sewer crossing under the ARRC tracks and a catch basin occupying a 20' x 45' portion of the right-of-way
J-1.55	8522	A storm drain system within the ARRC Anchorage International Airport Spur right-of-way on the northerly side of the tracks in the vicinity of W. 50 th Avenue
J-1.50		approximately 140 linear feet 36" pipe bore with 16" storm sewer conduit crossing under the ARRC tracks and right-of-way between W 50th Avenue and International Airport Road, Anchorage

DOTPF NORTHERN REGION FACILITIES ON ARRC PROPOERTY
(Updated March 6, 2012)

MAINLINE GRADE CROSSINGS

ARRC MP	DOT ID No.	Prior ARRC Contract No.	Description	Signals	Grade Status
279.65	868 343G	2379/2387, 6013	Parks Highway (Hurricane)	Y	at-grade
305.50	868 345V	2381/2388, 6013	Parks Highway (Broad Pass)	Y	at-grade
313.96	868 346C	2385/2389, 5120, 6013	Parks Highway (Summit)	--	Hwy over
345.10	868 348R	3137, 6013	Parks Highway (Denali Park)	Y	at-grade
346.60	868 349X	3137, 6013	Parks Highway	--	RR over
353.56	868 353M	3070, 6013	Parks Highway	--	Hwy over
360.25	868 356H	3485, 6013	Usibelli Spur Road	--	Hwy over
371.10	868 348W	6013	Ferry Road	N	at-grade
386.18	868 359D	1952, 6013	Parks Highway (Rex)	--	Hwy over
395.13	868 361E	2788, 6013	Anderson Road	Y	at-grade
411.35	868 364A	2907, 6013	Parks Highway	--	Hwy over
417.40	868 370D	2872, 6013	Parks Highway (Monderosa)	--	Hwy over
461.30	868 372S	2506/2508, 6013	Sheep Creek Road (Goldstream)	Y	at-grade
462.80	868 373Y	2507, 6013	Sheep Creek Road (Happy)	Y	at-grade
465.47	868 374F	5959, 6013	Sheep Creek Connector	Y	at-grade
467.60	868 402G	2550/2251, 6013	University Avenue	Y	at-grade
470.20	868 395Y	4256, 6013	Phillips Field Road	N	at-grade

EIELSON BRANCH GRADE CROSSINGS

G-1.11	868 405C	3212, 6013	College Road	Y	at-grade
G-1.35	910 372E		Helmericks Road	Y	at-grade
G-1.88	868 406J	4381, 6013	Old Steese Highway	Y	at-grade
G-1.92	868 296B	4381, 6013	New Steese Highway	Y	at-grade
G-1.92	910 244W	6013	Pedestrian Crossing	Y	at-grade
G-2.69	868 410Y	4381, 6013	Farewell Street (F Street)	Y	at-grade
G-8.28	868 434M	2123, 6013	Badger Road	Y	at-grade

G-9.31	868 441X	5296, 6013	Dennis Road	Y	at-grade
G-14.73	868 453S	3546, 6013	Richardson Highway	Y	at-grade
G-16.30	868 461J	2129, 6013	5 th Avenue	Y	at-grade
G-17.55	868 480N	5022, 6013	Laurence Road	Y	at-grade
G-19.03	868 484R	1089, 6013	Dyke Road	N	at-grade
G-20.68	868 477F	3546, 6013	Richardson Highway (Moose Creek)	Y	at-grade

FAIRBANKS INTERNATIONAL AIRPORT SPUR GRADE CROSSINGS

H-3.05	868 432Y		South Cushman Street	N	at-grade
H-4.99	868 475S		Peger Road	N	at-grade
H-7.40	910 316X	6252	Airport Perimeter Road – private road	N	at-grade
H-7.50	910 345H	6252	South University Avenue	N	at-grade
H-8.40	868 464E	6252	Airport Perimeter Road / Gate 41 – private road	N	at-grade
H-9.15	868 465L	6252	Airport Perimeter Road	N	at-grade
H-9.30	868 466T	6252	Gravel Pit Road	N	at-grade
H-9.55	868 467A	6252	Dale Road / Gate 33	N	at-grade
H-9.80	868 469N	6252	Perimeter Road / Gate 32 / Mark Air	N	at-grade
H-9.85	910 247S	6252	Perimeter Road / Gate 30 / Northern Air Cargo – private road	N	at-grade
H-9.90	868 470H	6252	Perimeter Road / Gate 29 / Falcon Properties	N	at-grade

MISCELLANEOUS SPUR TRACK CROSSINGS-FAIRBANKS

SF-21-2	910 287P	6013	Van Horn Extension	N	at-grade
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MAINLINE ROADWAYS AND TRAILS

From ARRC MP	To ARRC MP	Prior ARRC Contract No.	Description
307.10	307.80	2382, 6013	Parks Highway
313		2383, 6013	Parks Highway
345.70	346	3137, 6013	Parks Highway (Denali Park)
370.1 370.75	370.65 371.1		Ferry Access Road
414	416	6013	Parks Highway North of Nenana
462.88		6013	Recreational trail connecting to existing Equinox Marathon Trail within the outer 30' of the ARRC right-of-way

From ARRC MP	To ARRC MP	Prior ARRC Contract No.	Description
463.20	465.47	6013	Goldstream / Sheep Creek

SUNTRANA BRANCH ROADWAYS AND TRAILS

D-0.95	D4.8	6013	Nenana River to Suntrana Access Road, Healy area
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EIELSON BRANCH ROADWAYS AND TRAILS

G-1.88	G-2.65	4381, 6013	Trainor Gate Road
		8872; 6013	Richardson Highway Trail
G-8.28	G-19.10	6013	Old Richardson Highway (intermittently)
G-15.0	G17.55	6013	Old Richardson Highway Trail – North Pole
G-21.20	G-23.50	6013	Richardson Highway

FAIRBANKS RESERVE ROADWAYS AND TRAILS

Fairbanks Reserve		4256	Phillips Field Road, Peger to Illinois
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HEALY RESERVE ROADWAYS AND TRAILS

Healy Reserve		5268, 6013	Otto Lake-Healy Small Tracts Road
Healy Reserve		5268, 6013	Parks Highway
Healy Reserve			Healy Spur Road, Parks Highway to Nenana River
Healy Reserve		4279, 6013	Lignite Access Road

CLEAR RESERVE ROADWAYS AND TRAILS

Clear Reserve		6013	Public use corridor for two trails connecting to the Rex Trail
Clear Reserve			Parks Highway

HURRICANE RESERVE ROADWAYS AND TRAILS

Hurricane Reserve			Parks Highway
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VALDEZ RESERVE ROADWAYS AND TRAILS

Valdez Reserve			Richardson Highway
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MAINLINE RELATED FACILITIES

From ARRC MP	To ARRC MP	Prior ARRC Contract No.	Description
304.65		2380	Drainage easement within the ARRC right-of-way for the Parks Highway

FAIRBANKS INTERNATIONAL AIRPORT SPUR RELATED FACILITIES

H-7.40	H-8.50	6252	Drainage culvert within the ARRC right-of-way on the east side of the tracks with culverts crossing under the tracks at Mileposts H-7.79, H-8.08, H-8.36 and H-8.22
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APPENDIX B

GRANT OF EASEMENT	PROJECT NAME: _____
	STATE PROJECT #: _____
	FEDERAL-AID PROJECT #: _____
	PARCEL #: _____ UNIT #: _____
	ARRC MP _____ EASEMENT#: _____

THIS GRANT OF EASEMENT, effective on the date executed by the last signatory hereto, is made between the **ALASKA RAILROAD CORPORATION**, a public corporation of the State of Alaska formed pursuant to AS 42.40 ("Grantor"), whose mailing address is P.O. Box 107500, Anchorage, Alaska 99510-7500 and the **STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES** ("Grantee"), whose mailing address is _____.

Grantor, for and in consideration of the sum of Five Dollars (\$5.00) and in consideration of the mutual covenants contained herein, does hereby grant and convey a perpetual, nonexclusive easement to the Grantee, its agents, successors and assigns, subject to the conditions herein contained, for the purpose of construction, operation, and maintenance of a _____ (the "Facility or Facilities") belonging to Grantee along, over, and across the below-described portion of Grantor's property and/or trackage with such property being hereinafter referred to as the "Easement Area." The Easement granted herein pertains to all that part of the following described land:

which lies within the easement or right-of-way lines of Alaska Project No. _____, delineated as to said tract of land on the plat attached hereto and made a part hereof as page _____ of this instrument and designated as Parcel No. _____. Said parcel, containing _____ (square feet/acres) more or less.

If, after 20 consecutive years from the grant of this Easement, the Easement Area is no longer used for a public transportation facility, all right, title and interest conveyed in this Easement shall revert back to the Grantor and, if so requested by Grantor, Grantee shall execute and deliver to Grantor a quitclaim and release document in recordable form that releases the grant of rights contained herein.

Both Grantor and Grantee are the prime Agencies responsible for providing for the transportation of goods and services to the State of Alaska and its residents. It is acknowledged that both parties have responsibility for the ongoing construction,

operation and maintenance of their respective facilities, and each party agrees that they will work diligently and in good faith with the other to minimize any disruption to the transportation network necessary to the residents of the State of Alaska.

IN WITNESS WHEREOF, the Grantor has executed this Grant of Easement and Grantee has accepted this Grant of Easement and made the covenants herein expressed, on the respective execution dates indicated below.

ALASKA RAILROAD CORPORATION

Dated: _____

By: _____

Title: _____

**STATE OF ALASKA, DEPARTMENT OF
TRANSPORTATION & PUBLIC FACILITIES**

Dated: _____

By: _____

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF ALASKA)
) ss
_____ JUDICIAL DISTRICT)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____, the _____ of the Alaska Railroad Corporation, a public corporation of the State of Alaska, known to me to be the identical individual who executed the foregoing instrument, and who acknowledged to me that he executed the same as the free and voluntary act of said corporation, with full authority to do so and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]

Notary Public in and for the State of Alaska
My Commission Expires: _____

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, Grantee herein, acting by and through its Commissioner, hereby accepts for public purposes the Easement described in this instrument and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20__.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

By: _____
For the Commissioner

APPENDIX C

Standard Specifications for Work on Railroad Property

- Section 1. Definition of Terms
- Section 2. General Requirements
- Section 3. Safety Requirements
- Section 4. Insurance Requirements
- Section 5. Notice
- Section 6. Flag Protection and Protection of ARRC Traffic
- Section 7. Train Delays
- Section 8. Protection of ARRC Communication Lines
- Section 9. Road Crossings
- Section 10. Power and Communication Lines
- Section 11. Underground Utilities
- Section 12. Open Trenching
- Section 13. Excavations
- Section 14. ARRC Inspectors
- Section 15. Use of Explosives
- Section 16. Snow Removal
- Section 17. Clean-up
- Section 18. Indemnity

SECTION 1. DEFINITION OF TERMS

<u>ARRC</u>	Alaska Railroad Corporation, P.O. Box 107500, Anchorage, AK 99510-7500.
<u>ARRC Property</u>	all lands owned or withdrawn for the use of the ARRC, including the ARRC's track right-of-way and communications pole line right-of-way.
<u>Chief Engineer</u>	the person employed by the ARRC as head of its Engineering Department or Branch, or his/her authorized representative.
<u>Contractor</u>	any agent of the Permittee, including Contractors or subcontractors employed to construct, reconstruct, operate and/or maintain the Facility. The term "Contractor" shall be synonymous with the term "Permittee" when the Permittee performs the construction, reconstruction, operation and/or maintenance of the Facility with its own personnel.
<u>Director, Real Estate</u>	the person authorized by the ARRC to execute contractual real estate agreements on behalf of the ARRC.
<u>Facility</u>	any improvements owned by the Permittee/Contractor which are to be placed on ARRC property in accordance with written permission executed by ARRC and Permittee.
<u>Telecommunications Supervisor</u>	the person employed by the ARRC as head of its Signals and Telecommunications Department or Branch, or his/her authorized representative.
<u>Permittee/Contractor</u>	the person, company or governmental agency to whom the right to enter upon ARRC Property was given in the form of written permit, easement or contract executed by the ARRC and Permittee/Contractor.
<u>Track Work</u>	all work on the line from the top of subgrade to the top of rail, including geotextile, when required.
<u>Track Materials</u>	all hardware, excluding signals and controllers, associated with the running of a railroad.

SECTION 2. GENERAL REQUIREMENTS

- 2.1 All construction, reconstruction, operation, and maintenance on ARRC Property shall be performed in compliance with these Standard Specifications for Work on Railroad Property, including all revisions thereto.
- 2.2 Failure to comply with these Standard Specifications for Work on Railroad Property shall result in the demand of ARRC to suspend all work on ARRC Property.
- 2.3 All work on or about ARRC Property shall be performed by experienced personnel in a safe and workmanlike manner in keeping with approved ARRC practices, and as specified herein. ARRC traffic and property shall be protected at all times.
- 2.4 The safety and continuity of the operation of the traffic of ARRC shall be of first importance and shall be at all times protected and safeguarded. The Permittee/Contractor and its subcontractors shall be required to perform and arrange their work accordingly. Whenever, in the opinion of the Chief Engineer or his or her representatives, the work or its performance may affect or involve the safety of ARRC's facilities and/or operation of its railroad, the method of doing such work shall first be submitted by the Permittee/Contractor to the Chief Engineer for his/her approval, without which it shall not be commenced or prosecuted. The approval of the Chief Engineer, when given, shall not be considered as a release from responsibility or liability for any damage which ARRC may suffer, or for which it may be liable, as a result of the acts or omissions of the Permittee/Contractor, its subcontractors or employees.
- 2.5 Whenever, in the opinion of the Chief Engineer, the construction may cause a hazard to the safe operation of ARRC, ARRC may, in its discretion, place at the site of the work the required number of qualified employees to protect its operations. The providing of such employees and such other precautions as may be taken shall not relieve the Permittee/Contractor and its subcontractors from liability for the payment of damages caused by their operations. ARRC shall be the sole judge of the necessity for, and as to the number and classification of employees required. The Permittee/Contractor shall reimburse ARRC for the cost and expense incurred in providing such employees.

SECTION 3. SAFETY REQUIREMENTS

- 3.1 The safety of personnel, property, rail operations, and the public is of paramount importance in the prosecution of any work on ARRC Property. The Permittee/Contractor shall comply with all Federal, State and local governmental regulations (e.g. OSHA, NESC, etc.) applicable to the construction, installation, or maintenance of any Facility. As reinforcement and in furtherance of overall safety measures to be observed by Permittee/Contractor (and not by way of limitation), the following special safety rules shall be followed while working on ARRC Property. Further railroad safety information may be obtained from the ARRC Safety Office at 907-265-2440. Safety information is also available on the ARRC website at www.akrr.com.

- 3.2 ARRC flag protection is required before any activity can occur on or near a railroad operating facility such as a track, yard, bridge or shop building. For incidental work, such as surveying or inspection, an ARRC furnished flagman will provide a safety briefing prior to the commencement of the work. For any activity involving a disturbance or potential disturbance to the track, track embankment, or any railroad facility, ARRC may require the Permittee/Contractor to submit a specific Railroad Safety Plan prior to startup. Projects which involve activities which cross the tracks or are longitudinal to the tracks will require a specific Railroad Safety Plan and a one hour ARRC provided training course for Permittee/Contractor's project supervisors prior to the initiation of work on ARRC Property. Specific information on Railroad Safety Plans may be obtained from the ARRC Safety Office at 907-265-2440.
- 3.3 The Permittee/Contractor shall arrange for ARRC flag protection when performing any work within 20 feet of any track. All work within 20 feet of the track shall cease when a train passes and all Permittee/Contractor employees shall maintain a distance of at least 20 feet from the track until the train has safely passed. In addition, any work that could come within 20 feet of the track will cease when a train passes. For example, crane or pile driving activities shall stop when trains pass when the maximum boom and suspended load radius can come within 20 feet of the tracks. Pile driving shall not be done when trains are passing the work site. Vehicles and other construction equipment shall not be operated or parked closer than 20 feet from any track without ARRC flag protection.
- 3.4 In the event Permittee/Contractor will be performing construction or other activities on or in close proximity to a railroad track, the Permittee/Contractor shall be responsible for compliance with applicable Federal Railroad Administration's Roadway Worker Protection ("RWP") regulations (49 CFR 214, Subpart C) if its employees qualify as "Roadway Workers"¹. Under 49 CFR 214, Subpart C, railroad contractors are responsible for the training of their employees on these regulations. All RWP related Work shall be conducted in strict compliance with the RWP safety standards set forth in 49 CFR 214, Subpart C and the Permittee/Contractor will be required to submit a Railroad Safety Plan to ARRC to demonstrate compliance with said safety standards prior to beginning any RWP related Work.
- 3.5 In the event Permittee/Contractor will be performing construction or other activities on a railroad bridge, the provisions of 49 CFR 214 regarding bridge worker safety shall apply. All bridge related work shall be conducted in strict compliance with the bridge worker safety standards set forth in 49 CFR 214 and the Permittee/Contractor will be required to submit a Railroad Safety Plan to ARRC to demonstrate compliance with said safety standards prior to beginning any bridge related work.

SECTION 4. INSURANCE REQUIREMENTS

¹ A Roadway Worker is any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities, or roadway machinery on or near track or with the potential of fouling a track.

- 4.1 The Permittee/Contractor shall procure and maintain at all times while performing work on ARRC Property, and be covered by the types of insurance with the minimum limits as specified in Section 4.4.
- 4.2 Each policy specified in Section 4.4 shall be: (1) endorsed to include ARRC as an additional insured with respect to the performance of the work; (2) endorsed whereby the insurance company will notify ARRC of any material change, cancellation, non-renewal or expiration of the insurance policy in writing not less than thirty (30) days prior to the effective date; (3) endorsed with a waiver of subrogation rights in favor of ARRC; and (4) endorsed with the Alaska Suit Endorsement.
- 4.3 Prior to commencement of any work on ARRC Property, the Permittee/Contractor, shall deliver to ARRC certificate(s) of insurance showing evidence of the insurance required in Section 4.4.
- 4.4 Alaska Railroad Corporation Minimum Insurance Requirements.
- a. Commercial General Liability insurance with limits not less than \$5,000,000 per occurrence and \$10,000,000 aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, and Broad Form Property Damage Liability. Coverage shall not contain any exclusions of Explosion, Collapse, Underground, or Rail Operations.
 - b. Automobile Liability insurance on all owned, non-owned, hired and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.
 - c. Worker's Compensation insurance in accordance with the statutory coverages required by the State of Alaska and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the Work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, and the Federal Employers Liability Act.
 - d. If any part of the work to be performed on ARRC Property is located within one hundred feet (100') of a railroad track, then the Permittee/Contractor shall also obtain Railroad Protective Liability insurance (Alaska Railroad Corporation as named insured) with limits of liability of not less than \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.

SECTION 5. NOTICE

- 5.1 A pre-construction meeting shall be held with ARRC's Chief Engineer and representatives of the Permittee/Contractor and subcontractors prior to the commencement of any work on ARRC Property by the Permittee/Contractor or its subcontractors.

- 5.2 The Permittee/Contractor shall give written notice to the Chief Engineer not less than ten (10) days in advance of the commencement of any construction, reconstruction or major maintenance activity on ARRC Property, in order that the necessary arrangements may be made for the protection of ARRC's operations. This notice shall include a description of the proposed work on ARRC Property, schedule of work, and the names of any Permittee/Contractor's subcontractor who may also be working on ARRC Property.

SECTION 6. FLAG PROTECTION AND PROTECTION OF ARRC TRAFFIC

- 6.1 Whenever ARRC flag protection is required, it will be provided by ARRC at Permittee/Contractor's expense. ARRC flag protection is to insure the safe movement of trains and other rail traffic and shall be done in strict accordance with the ARRC rules on flagging. All flag protection must be scheduled prior to any work commencing within the ARRC right-of-way.
- 6.2 ARRC will, during the progress of the work, utilize as many qualified flag people as in the opinion of the ARRC may be required for the adequate protection of ARRC traffic. All expense for providing such flagpersons shall be paid by the Permittee/Contractor to ARRC.
- 6.3 The Permittee/Contractor shall arrange with ARRC to keep itself informed on the time of arrival of all trains and shall stop any of Permittee/Contractor's operations which might be or cause a hazard to the safe passage of the train past the site of the work from ten (10) minutes before the expected arrival of the train until it has safely passed.
- 6.4 Track outages will only be approved in exceptional cases for limited durations. Prior to a proposed track outage, the Permittee/Contractor shall submit a closure plan to ARRC. The plan will describe the work to be accomplished, the equipment, manpower and other resources required, and the work schedule. Once approved by ARRC, the Permittee/Contractor shall follow the plan. ARRC reserves the right to assume control of the work to reestablish rail service if the schedule is not met. Permittee/Contractor shall bear all costs and damages which may result from failure to meet the closure schedule, in addition to the train delay charges provided for herein.

SECTION 7. TRAIN DELAYS

- 7.1 All work on ARRC Property shall be conducted in such a manner as to prevent delays to trains or other rail traffic operated by ARRC.
- 7.2 Should any of the Permittee/Contractor's or its subcontractor's actions or activities cause delays to trains or other rail or water traffic, the agreed amount of liquidated damages shall be at the following rates and shall be collected from the Permittee/Contractor by ARRC.

Passenger trains each: \$50 per minute of delay, 60-minute minimum charge.

All other rail traffic: 50 per minute for each delay over five minutes, 30-minute minimum charge.

Rail barges, or other	No charge for delays of one hour or less; \$1,000 per hour
Connecting Carrier Vessels:	for each hour or any part of an hour thereafter with a minimum charge of \$6,000.

7.3 Delay time will be taken from the train sheet in ARRC's Dispatcher's Office, Anchorage (907-265-2504) for all delays and such train sheet shall be the official document by which the length of time a train is delayed will be determined. If another crew is needed to relieve the original crew, the charge shall also apply to the second crew. If such delay causes a water carrier to miss a sailing, the liquidated damage computation of time covering the period of time to the next possible sailing time shall be in addition to the length of time determined by said train sheet.

SECTION 8. PROTECTION OF COMMUNICATION LINES & FIBER OPTIC CABLE

8.1 All work on ARRC Property shall be conducted in such a manner as to protect ARRC's communication facilities at all times from outages resulting directly or indirectly from the Permittee/Contractor's or its subcontractor's operations.

8.2 Should any of the Permittee/Contractor or its subcontractor's operations cause outages to said communications facilities, the agreed amount of liquidated damages shall be at the following rates and shall be collected from the Permittee/Contractor:

Open wire communication circuits:	\$1.00 per minute per circuit
Communication cable:	\$1.00 per minute per cable

8.3 A minimum charge of \$250.00 will be made for each outage plus the total repair costs. The outage time shall be that as established by ARRC's Test Board, Anchorage.

8.4 There shall be no equipment operated or excavation made within fifteen (15) feet of any ARRC communication pole guy, anchor, or other communications apparatus unless authorized in advance by the Telecommunications Supervisor.

8.5 Fiber optic cable systems are buried on ARRC's ROW Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on ARRC's Property.

SECTION 9. ROAD CROSSINGS

9.1 Whenever automatic railroad crossing signals are in the work area, these signals must remain in operating condition at all times. If, as a result of the Permittee/Contractor's or subcontractor's activities the signals become

inoperable, the crossing shall be continuously flag protected until the signals are again operable. See Section 6 for flagging specifications.

- 9.2 When regular railroad crossings are used as haul routes inside or outside the work area, flagpersons shall be provided by the Permittee/Contractor for said crossings in all situations at the discretion of the ARRC.
- 9.3 Temporary road crossings may be installed provided the Permittee/Contractor has acquired from ARRC a temporary road crossing permit for said crossing. If the crossing is not shown on the project plans as approved by ARRC, then it will be at ARRC's sole discretion whether to allow a later-requested crossing.
- 9.4 The temporary road crossing shall be constructed to the length and the standards specified in the temporary road crossing permit. All protective signs required by ARRC shall be provided and properly maintained by the Permittee/Contractor. The temporary road crossing shall be installed under ARRC flag protection in accordance with Section 6 of these specifications.
- 9.5 The flange ways of all road crossings used by the Permittee/Contractor or its subcontractor as haul routes or temporary road crossings shall be kept clean and free of gravel at all times and shall otherwise be maintained to the satisfaction of the Chief Engineer.
- 9.6 When a temporary road crossing is in use, ARRC flag protection shall be provided at all times. See Section 6 for specifications.
- 9.7 When a temporary or private road crossing is not in use, the Permittee/Contractor shall provide suitable barricades (gates with padlocks, posts driven into the ground, etc.) to prevent vehicular access to the crossing.
- 9.8 When not in use during the winter season, the temporary road crossing shall be removed. Upon completion of the work or termination of the crossing permit, the temporary crossing shall be removed and the area restored to its original condition.
- 9.9 The Permittee/Contractor agrees that all others using the private road crossing, except ARRC and its employees, shall be considered agents of the Permittee/Contractor.
- 9.10 Sight Triangles at road crossings shall be maintained by Permittee/Contractor free of vegetation and other obstructions to vision in accordance with the table entitled "Sight Triangle Distance" attached and as otherwise established and revised from time to time by ARRC.
- 9.11 Temporary public road crossings must be included in a traffic control plan submitted by the Permittee/Contractor to Alaska Department of Transportation (ADOT) for review and approval prior to constructing the crossing.

SECTION 10. POWER AND COMMUNICATION LINES

- 10.1 All power and communication lines shall be designed and constructed in accordance with the current edition of the National Electric Safety Code (NESC).

- 10.2 Underground power and communication lines shall be installed in accordance with Section 11 of these specifications. Whenever an underground power or communication line crosses underneath a track, a casing pipe shall be installed for carrying such lines.
- 10.3 The minimum clearance above the top of rail of ARRC track shall be in accordance with the handbook referenced in Section 11.1, plus six (6) inches to allow for future grade raises.
- 10.4 The minimum clearance above ARRC communication lines shall be in accordance with the handbook referenced in Section 11.1.
- 10.5 Additional lines may not be added, or the characteristics of the line(s) changed without the prior written approval of ARRC's Director, Real Estate or Chief Engineer.
- 10.6 Wires shall be strung across ARRC tracks only when ARRC flag protection is provided in accordance with Section 6 of these specifications.
- 10.7 No wires shall be strung across ARRC's communications lines without first receiving prior written approval from ARRC's Telecommunication Supervisor, and such work must be accomplished only at a time and in a manner prescribed by said Telecommunication Supervisor.

SECTION 11. UNDERGROUND UTILITIES

- 11.1 All underground utilities, including culverts, pipelines, and underground power and communication lines, on ARRC Property shall conform to the current American Railway Engineering and Maintenance-of-way Association (AREMA) Manual for Railway Engineering.
- 11.2 Unless another method is authorized in advance and in writing by the Chief Engineer, all underground utilities shall be installed under tracks and roads by boring, jacking or tunneling.
- 11.3 Boring, jacking or tunneling shall be done under ARRC tracks only when ARRC flag protection is provided in accordance with Section 6 of these specifications.
- 11.4 The proposed plan for boring, jacking or tunneling shall be approved by the Chief Engineer prior to commencing the operation.
- 11.5 All boring, jacking or tunneling headings shall be continuously protected against any loss of ground material by shoring and/or cribbing as necessary.

SECTION 12. OPEN TRENCHING

- 12.1 Only when authorized in advance and in writing by ARRC shall any portion of the track be removed to allow trenching for installation of the Facility.
- 12.2 If allowed to open trench, the track may be removed from service only at the time authorized by the Chief Engineer and shall be restored to service within the time period specified by the Chief Engineer. Should the track not be restored to service within the time period specified, the agreed amount of liquidated

damages shall be at the rate specified in the written authorization allowing the open trenching or the liquidated damages in accordance with Section 7 of these specifications, whichever is greater, and shall be collected from the Permittee/Contractor.

- 12.3 All track work shall be accomplished by qualified track persons.
- 12.4 Only that portion of the track structure necessary to excavate, stockpile and install the Facility shall be removed. All track material removed shall be handled, stockpiled and relayed in a manner to avoid damage. Any material which may be damaged shall be replaced by the Permittee/Contractor at its own expense.
- 12.5 The backfill of the trench under the track and in the road bed prism shall be of the same type of material as taken out, except the top 2 feet shall be clean pit run gravel. Backfilling and compaction shall be in one-foot lifts with a compaction of 95% of maximum density in the area affecting the roadbed prism.
- 12.6 The ballast used in replacing the track shall be equal in depth and quality as that which was removed. The track shall be relayed and brought to original grade in accordance with standard ARRC practices. The track shall be resurfaced as often as necessary for a period of 12 months after completion of construction to remove any settlement that may have occurred.

SECTION 13. EXCAVATIONS

- 13.1 Unless authorized in advance and in writing by ARRC, the top of any excavation shall not be within 20 feet of the centerline of any track; nor shall any excavation exceed ten (10) feet in depth regardless of its proximity to track.
- 13.2 No water shall be allowed to stand in open excavations in the track area.
- 13.3 Bridging and shoring shall be adequate to safely carry ARRC traffic and the decision of the Chief Engineer pertaining to same shall be final.
- 13.4 All open excavations shall be continuously protected by flags, flares, barricades or watchpersons, as directed by ARRC.
- 13.5 No excavation shall be left open more than three days, unless authorized by the Chief Engineer.
- 13.6 ARRC embankments and cut slopes shall not be disturbed any more than necessary to accommodate the construction and shall be left in a stabilized condition.
- 13.7 ARRC ditches, culverts and roadways shall be kept clean and free of rock, gravel, construction debris and equipment at all times.

SECTION 14. ARRC INSPECTIONS

- 14.1 ARRC may furnish an inspector during the periods of construction on ARRC Property. The ARRC inspector will inspect the removal and replacement of tracks, excavation, backfill, necessary bridging for tracks, shoring, flagging, lighting, clearances, etc., when necessary. The ARRC inspector will work

directly with the representative of the Permittee /Contractor and the decision of the ARRC inspector in matters pertaining to ARRC operations and safety shall be final. In the event more than one shift is worked, an ARRC inspector will be required for each shift. Presence or absence of an ARRC inspector shall not relieve the Permittee /Contractor of liability for damage done to property of ARRC, or the property of ARRC lessees or permittees having installations on ARRC Property. All ARRC cost and expense for furnishing said inspector(s) shall be collected from the Permittee /Contractor.

SECTION 15. USE OF EXPLOSIVES

- 15.1 The use of explosives shall be done in compliance with all applicable Federal, State and local laws and ordinances regarding same.
- 15.2 No blasting of any kind will be permitted unless the Permittee/Contractor thoroughly safeguards the movement of trains and other rail traffic and personnel in the area where such blasting is being conducted. Before blasting, ARRC flag protection in accordance with Section 6 of these specifications shall be provided on each side of the blast area by the Permittee/Contractor. This flag protection shall not be removed until the track is inspected for damage from the blast.

SECTION 16. SNOW REMOVAL

- 16.1 Snow removal operations shall be conducted in such a manner as to not place snow (1) upon the tracks of ARRC; (2) where it interferes with the normal operation of the automatic crossing signals; or (3) where it impairs the visibility of either highway or rail traffic at the crossing.
- 16.2 Snow removal operations shall be conducted in accordance with Section 3 of these specifications.

SECTION 17. CLEAN-UP

- 17.1 At all times, all work and activities on ARRC Property shall be accomplished in such a manner as to keep the ARRC Property in a neat, orderly and safe condition satisfactory to ARRC.
- 17.2 Upon completion of Permittee/Contractor's work, all equipment and unused materials shall be removed and the ARRC Property shall be left in a neat and clean condition satisfactory to ARRC.
- 17.3 Should the Permittee/Contractor or its subcontractor fail to comply with Section 17.1 and 17.2 above, ARRC may perform the required clean-up. All ARRC costs and expenses for performing this work shall be collected from the Permittee /Contractor.

SECTION 18. INDEMNITY

- 18.1 To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless ARRC, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, death, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's

and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

- 18.2 The right to indemnity under this Section 18 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- 18.3 Contractor expressly and specifically assumes potential liability under this Section 18 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 18.
- 18.4 No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against Contractor may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- 18.5 The provisions of this Section 18 shall survive the completion of any work performed by Contractor. In no event shall this Section 18 or any other provision herein be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.