

**ARRC BOARD OF DIRECTORS MEETING
AGENDA**

Tuesday, March 31, 2020
9:00 a.m. - 2:00 p.m.

Telephonic Only - (Conference Meeting Dial-in or Link Provided Later)

- I. **CALL TO ORDER (9:00 a.m.)**
- II. **ESTABLISH QUORUM**
- III. **SAFETY BRIEFING**
- IV. **CHAIR COMMENTS**
- V. **ADOPTION OF AGENDA**
- VI. **CONFLICT OF INTEREST DISCLOSURES**
- VII. **ADOPTION OF MINUTES**
 - 1. Approval of Regular Meeting Minutes of February 4, 2020
- VIII. **OPPORTUNITY FOR PUBLIC COMMENT**
- IX. **BRIEFING ITEMS**
 - A. **Public Briefings (a portion may be held in Executive Session)**
 - 1. CEO Update
 - 2. 2019 Financial Audit
 - 3. Safety Update
 - 4. PTC Update
 - B. **Committee Reports**
 - 1. Real Estate Committee
 - 2. Audit Committee
 - 3. Executive Committee
 - 4. Safety Committee
- X. **NEW BUSINESS**
 - C. **Executive Session Briefings**
 - 1. Contracts, Claims, Litigation, Personnel and Financial Matters
 - 2. ROW Issues
 - 3. Legislative Strategy
 - 4. Seward Dock Port Project
 - D. **Adoption of Consent Agenda**
 - 1. Resolution No. 2020-04 – Relating to the Approval of the 2019 Financial Annual Report
 - 2. Resolution No. 2020-05 – Relating to the 2020 Restatement of the ARRC Flexible Benefit Plan
 - 3. Resolution No. 2020-06 – Relating to the Whittier Lower 1 and Lower 2 Track Rehabilitation (AFE No. 10868)
 - 4. Resolution No. 2020-07 – Relating to Bridge 86.6 Pony Truss Replacement (CRISI Grant Match) (AFE No. 10869)
 - 5. Resolution No. 2020-08 – Relating to Whittier Area 2 Drainage Replacement and Paving (AFE No. 10870)
 - 6. Resolution No. 2020-09 – Relating to Department of Natural Resources/ARRC Land Exchange for Seward Highway Windy Corner Project
 - 7. Resolution No. 2020-10 – Relating to The Odom Corporation (AFE No. 10867)
 - 8. Contract No. 20560 – The Odom Corporation - Fairbanks
- XI. **DIRECTOR/CEO/STAFF COMMENTS/OPPORTUNITY FOR PUBLIC COMMENT**
- XII. **ADJOURNMENT**

ALASKA RAILROAD CORPORATION MINUTES OF THE REGULAR BOARD OF DIRECTORS MEETING

Fairbanks, Alaska
Tuesday, February 4, 2020

I. CALL TO ORDER

The Acting Chair, John Binkley, called the meeting to order at 9:00 a.m. on Tuesday, February 4, 2020 in the Fireweed Room on the 2nd Floor of Pike's Waterfront Lodge located at 1850 Hoselton Road, Fairbanks, Alaska 99705.

II. ESTABLISH QUORUM

Acting Chair Binkley requested that Board Secretary Andy Behrend establish a quorum. Commissioner Julie Anderson, Commissioner John MacKinnon and Director Burton participated telephonically. Acting Chair Binkley, Director Campbell, Director Petry and Director Shively attended in person. A full Board quorum was established by Mr. Behrend. Acting Chair Binkley acknowledged that Commissioner MacKinnon would participate for only a portion of today's meeting.

Staff members present:

B. Amy, Chief Financial Officer	A. Behrend, Chief Counsel/Board Secretary
A. Donovan, Director Real Estate Permits & Leasing	P. Farnsworth, Director, Facilities/ Energy Management
J. Haldane, Chief Human Resources Officer	L. Hall, Executive & Corporate Administrator
C. Hopp, Chief Operating Officer	B. Lindamood, VP, Engineering
J. Kubitz, VP, Real Estate & Facilities	B. O'Leary, President & Chief Executive Officer
K. Mepsted, Special Agent	
T. Sullivan, Director External Affairs	
D. Wade, VP Marketing & Customer Service	

Members of the public present:

Snjez Arthur, Chambers, Conlon and Hartwell, LLC.
Bonne´ Therriault Wolstad

III. SAFETY BRIEFING

Acting Chair Binkley asked Tom Covington to present the safety briefing. Mr. Covington discussed what to do in case of an emergency, how to exit the building, and the importance of learning to operate Automated External Defibrillator (AED) life-saving equipment and being CPR trained. He also shared a lifesaving incident which occurred last year at the Fairbanks Round House amongst trained and quick responding railroad co-workers.

IV. ELECTION OF OFFICERS

Our newest Board Members, Judy Petry and John Shively, were both individually given the oath of office for their Board positions. Director Burton then moved that the Alaska Railroad Corporation Board of Directors elect the following slate of officers for 2020: Craig Campbell as Chair, Judy Petry as Vice Chair, Jennifer Haldane as Board Secretary and Andy Behrend as Assistant Board Secretary. Director Shively seconded the motion. There was no discussion or objection and the motion advanced as presented.

Acting Chair John Binkley welcomed Chair Craig Campbell as the seventh chairperson of the ARRC Board of Directors in its over 30 year history as a state entity.

V. CHAIR COMMENTS

Chair Campbell stated that he is pleased to take on the job of Board Chair and continue ARRC's mission of Safety, Service and Profitability. Chair Campbell enlisted the assistance of fellow Board members over the coming week to remit their Board committee assignment preferences for the following committees: Executive, Real Estate, Audit, and Safety.

VI. ADOPTION OF AGENDA

Chair Campbell asked for a motion to approve the meeting Agenda. Director Binkley moved to adopt the Agenda and Vice Chair Petry seconded the motion. During discussion, Director Shively moved to amend the Agenda in two respects. First, he moved to correct the meeting minutes date from November 18, 2019, to November 19, 2019. Second, he moved to add two additional items under New Business, Section C, Executive Session Briefings: Item 7, Right-of-Way Easement Discussion, and Item 8, ARRC Board Member Compensation. The motion to amend the Agenda was approved, and the date correction and the two added items under the executive session were duly noted.

VII. CONFLICT OF INTEREST DISCLOSURES

Director Binkley disclosed that he has a potential conflict of interest related to Item C in the Executive Session Briefings, namely Item C.6, consisting of a Seward Dock Update. He noted that he had discussed this potential conflict with the previous two Board Chairs, in addition to recusing himself from all previous non-public discussions and all participation regarding the project at both Executive Committee and Board meetings. Director Binkley further stated that although he does not have a direct conflict at this time, there is a potential that he might develop such a conflict later. Therefore, he requested to be excused from any non-public discussions regarding the Seward Passenger Dock Project. He said this recusal would include discussions during today's Executive Session, and that he would leave the room immediately prior to that discussion taking place. Chair Campbell concurred with the request.

VIII. ADOPTION OF MINUTES

Chair Campbell asked if there were any corrections to the Regular Board Meeting Minutes from the November 19, 2019 meeting. Hearing none, Vice Chair Petry moved to adopt the meeting minutes as presented, and Director Shively seconded the motion. The Regular Board Meeting Minutes for the November 19, 2019, meeting were approved by the Board.

IX. OPPORTUNITY FOR PUBLIC COMMENT

Bonné Therriault Wolstad presented public comment from a letter she addressed to the Board of Directors dated February 4, 2020. Ms. Wolstad said she attended today's Board meeting to meet the new Board and to continue, as she has done since 2005, requesting that the Therriault family's "valid existing claim" as addressed in section 1203 of the Alaska Railroad Transfer Act (ARTA) be acknowledged by ARRC. Ms. Wolstad stated that the Therriault family's subsurface rights were issued through US Patent No. 1127840 to the Finnell homestead, which included 160 acres and was never relinquished.

In response to a question from Chair Campbell, Ms. Wolstad stated that her property is in North Pole, Alaska, at Hector Welding, Inc. Director Shively asked how the land dispute and ARRC easement affected her family's ownership rights. Ms. Wolstad stated that ARRC closed the Ruby Crossing back in 2005, affecting access to the family's land. In 2003 or 2005, when ARRC petitioned Congress for the reversionary repeal of ARTA Sections 1208 and 1209, the approval of the action created an inverse take on their property. She said former Representative Tammy Wilson assisted her in seeking approval of House Bill 146, which returned reversionary subsurface rights back to the Eielson Spur. She also said ARRC is collecting about \$1400 per year in royalty fees for fiber optic lines running through the property. She submits that the surface and subsurface rights belong to the owner, and the owner should collect fees for usage. Lastly, Ms. Wolstad said the ARRC patent received from the federal government was flawed because the Therriault family patent was in place and received first.

X. BRIEFING ITEMS

A. Public Briefings

1. CEO Update

Mr. O'Leary thanked Board members and staff for attending last night's Customer Appreciation Party. He said the financial report will provide detailed updates from November for operational and financial year-end close. All three business lines, Real Estate, Passenger and Freight, experienced increased and promising growth. Real Estate growth was \$1 million year-over-year, primarily as a result of dock and leasing activities. From 2018 to 2019, freight cars moving pipe doubled, and volumes more than doubled for drilling muds and chemicals. Mr. O'Leary said ARRC 2020 Corporate Goals and Initiatives were finalized, and updates will be provided throughout the year. He informed the Board that during the first half of December, he and Mr. Hopp engaged with over 300 employees in 10 town hall meetings held from Whittier to Fairbanks to discuss

various employee and rail-related issues. Mr. O’Leary noted that the DC report was located behind Tab A in the Board book; however, Snjez Arthur is presenting the legislative update. Ms. Arthur is a partner at Chambers, Conlon & Hartwell, LLC, which is one of two Washington, DC firms that represent the corporation there, the other being Blank Rome, LLC. Those firms keep ARRC up to speed and represented on legislative and transportation related issues in Washington.

Ms. Arthur said her government relations firm has worked with ARRC since 1994, and noted that a snapshot of the 2020 Surface Transportation bill priorities was printed in the Board book behind the CEO briefings. Ms. Arthur began with the year-end news of the 45G tax credit approval, stating that the five-year extension of the credit, including the retroactive inclusion of 2018 and 2019, was a great result. Ms. Arthur commended Vice Chair Petry for her consistent efforts seeking approval of the tax credit as Chair of the American Shortline and Regional Railroad Association (ASLRRRA). Ms. Arthur said this means ARRC will have \$2 million annually in additional funding for infrastructure. Ms. Arthur said there is an ongoing effort to permanently extend the 45G tax credit as part of the next Surface Transportation Authorization Act, either under the revenue section of the Highway Trust Fund authorization or perhaps other tax vehicles.

Ms. Arthur discussed five 2020 Surface Transportation Authorization Bill priorities for ARRC. She said the 2015 FAST Act expires at the end of September 2020, which includes the FTA formula funds derived from minimum attributable miles and railroad historic preservation reform legislation. She noted that Representative Don Young is a member of the House Transportation & Infrastructure Committees, and Senator Dan Sullivan is a member of the Senate Commerce & Environment Committees. Ms. Arthur said the first two priorities, the FTA formula funds minimum attributable miles and the default allocation of FTA formula funds attributable to Anchorage, are challenging since no Alaska Congressional Delegate is a member of the Senate Banking Committee. The goal is to make the funds default to the relative amounts attributable to rail and bus activity if no agreement on a split in funds is reached by a set time. Ms. Arthur stated the reauthorization of FRA CRISI grants is expected by the end of February. She said the Association of American Railroads (AAR) has made reform of a reauthorization bill a priority. The final priority goal is to remove or raise the current \$500 million cap on the Repeal Infra (Discretionary) Grant Caps for Rail & Port Projects. The current proposal is for a 30 percent increase.

Director Binkley thanked Ms. Arthur and company for 25 years of dedicated service, great representation, direction, and for sharing quality information and knowledge with the ARRC.

Director Shively asked for an update on the ARRC Right-Of-Way easement issues as related to the GAO study. Ms. Arthur said a letter was sent to Representative Young and Senator Murkowski, which they had acknowledged receiving.

2. Safety Update

Mr. Hopp and Mr. Covington presented highlights from the year-end Safety Report. Mr. Covington said that peak months for employee injuries during 2019 differed from those

during 2018. The numbers for 2019 restricted work days were the only FRA reportable data that experienced an increase over 2018 reporting. The Safety Department has been diligently working in the field to keep safety awareness at the forefront. Mr. Covington noted a data input correction removing one grade crossing incident reported in 2019. During an FRA audit, it was discovered that the incident had occurred near, but not at, the grade crossing. He noted that FRA requires reporting of incidents involving over \$10,700 in damage, and a derailment at a bridge resulted in reporting during 2019. Mr. Hopp and Mr. Covington both agreed that slips, trips, and falls remain the primary contributors to soft tissue injuries, which is the most common reportable injury category, at about 70 percent of our reported injuries.

Mr. Covington noted that since the Incident Free Culture (IFC) Campaign began in early 2019, about 100 employees have successfully completed the workshop. Mr. Hopp said we owe a debt of gratitude to Conoco Phillips for sharing its knowledge and research. Mr. Covington invited the audience to join tomorrow's IFC workshop at 8:00 am at the Fairbanks Round House if schedules permit.

Mr. Hopp said for the past few years we have been on a steady trend toward safety improvements which are on par with industry standards. In the past five years under Mr. Covington's directorship, the Safety Department developed a process of incident tracking and investigation to determine the issues affecting safe operations, and we have safety training programs and videos in place. Mr. Hopp said that we need to apply the prescription of continued training and teaching of the IFC. The goal is moving our cultural lifestyle toward a discussion of team work, co-worker rapport and discussions of how consequences drive benefits and behavior. Mr. Hopp recalled that during former Director and Safety Committee Chair Linda Leary's tenure, she urged ARRC to seek a partnership with occupational doctors and to perform case management related to injuries. The Safety Committee also suggested creating videos of employees engaged in active work in order to increase understanding of potential railroad industry work-related injuries. Since ARRC is a state entity, employee-related injuries are covered by Workers' Compensation, instead of Federal Employers Liability Act (FELA), which covers private railroad workers. Mr. Covington said the Safety Department is working with Human Resources and Risk Management to further incorporate our safety culture and goals into the new employee orientation process. Also, the charter for the Employee Safety Committee is almost complete and in the final stage of committee election. Mr. Covington's expectation is that the committee members will act as liaisons between workers and management and will help promote IFC in the field.

Vice Chair Petry noted safety begins with a renewed mindset. She asked if ARRC had utilized an ASLRRA Safety Institute cultural safety audit. Mr. Covington stated the ARRC conducted a Safety Culture Assessment completed by ASLRRA in 2017 as part of the ARRC's annual Audit Performance topic, and during 2019 a re-evaluation with management was completed.

Chair Campbell asked about specific charter details of the Employee Safety Committee. Mr. Covington said research and review of the slips, trips and falls simulator would be a great initial discussion topic for the committee. He hopes it will meet quarterly with a focus on safety culture.

3. Business Report

Ms. Amy presented the year-to-date November 2019 business results located in the Board book behind Tab A. She noted that ARRC uses calendar year-end reporting. Her briefing detailed several key business highlights through January 2020.

Ms. Amy reported that net income was \$14.5 million, which was \$2.7 million higher than the original budget approved in November 2018. Operating expenses came in \$4.8 million above original budget. Contracts and rents expenses, which include barge expenses, were over budget by \$4.0 million. Ms Amy noted that we had more train starts in 2019 than in 2018; however, many of the additional trains were Whittier trains, and there are train length restraints in Whittier due to its geography. That means that many of the additional train starts involved shorter hauls and shorter trains. Ms. Amy said that overall operating expense was up 2 percent over original budget. As is typical, the largest expense category was salaries and wages, which constituted 36 percent of operating expenses.

Mr. Hopp said that the 2018 earthquake track repair issues heavily impacted track speed and decreased locomotive fuel economy in 2019. He explained that lowering speed for large areas of slow orders and then powering back up to regain track speed, which is necessary to make the Anchorage-Fairbanks run in 12 hours, affected planned and budgeted operations for the first half of 2019.

Ms. Amy noted that as of November 30, 2019, ARRC's cash balance was \$81.7 million and recourse debt was \$4.5 million. She said total debt is broken out into FTA bond debt, which will be fully repaid in 2023, and recourse debt. The FTA bond debt consists of bonds issued during 2006 and 2007 and refinanced in 2015, which are repaid with FTA grant funds. She said we run a very conservative balance sheet with low leverage and continue to maintain strong liquidity, which allows us to handle serious issues. Our working capital is \$108 million, and we generate 10 times as much cash flow as compared to our recourse debt.

Ms. Amy explained that freight revenue outperformed original budget by \$7.9 million. The top-performing business lines were interline, local miscellaneous and freight forwarding. With respect to freight revenue performance, Ms. Amy noted that coal, petroleum and gravel showed lower volumes on a year-over-year basis from 2018 to 2019. But freight revenue per carload was up 41 percent due to the interline business from the Alaska Rail Marine Services (ARMs) barge, primarily consisting of oilfield business and associated supplies. She said that year-over-year we are growing our revenue faster than our labor force. Overall, revenues for most freight lines were ahead of budget.

Ms. Amy noted that passenger revenue underperformed original budget by \$1.6 million, or 4 percent. The Coastal Classic and Glacier Discovery were top performing passenger routes. She provided details related to the total passenger revenue line, including passenger routes from North to South and ridership information. The Denali Star is the largest passenger revenue line, but in 2019 it did not have the volume of ridership planned for in the budget. However, the top two lines that experienced positive growth this year

were the Coastal Classic and Glacier Discovery, the passengers for which primarily come from cruise ships.

Ms. Amy said Real Estate revenue outperformed original budget by \$0.4 million, while Real Estate expenses came in under budget. Overall, Real Estate revenue performance is up 2 percent versus original budget. The largest revenue category is leases, which comprises more than half of ARRC's Real Estate revenue. Ms. Amy said that dock revenue, particularly related to the Seward passenger dock, exceeded budget and showed significant growth over the prior year.

Ms. Amy outlined several important issues arising during the first quarter of 2020. We expect three Section 45G tax credits this year, for tax years 2020, 2019, and 2018. That unusual circumstance makes a year-to-year comparison difficult. Ms. Amy stated that all trains running in the Central and Kenai subdivisions are actively operating PTC. ARRC had a successful transport of proppant to Fairbanks. Mr. Wade said proppant is a high-priced manufacturer-specific commodity from China. He said the move did not go entirely as planned due to cold weather challenges with the on-ship crane system. However, the challenges were ultimately overcome and lessons were learned that will improve future moves. That rail move will be reflected in January revenue. In response to Director Binkley's request for more details, Mr. Wade noted that Haliburton is the primary customer of proppant. He said the shipload generated 50 flatcar train loads of proppant going north from the Port of Seward to Fairbanks, to be transloaded to go to Prudhoe Bay. A lengthy dialogue ensued regarding the potential development of this new business. Ms. Amy said the outlook for oil field supply volumes continue to be strong on the ARMs barge, and we are expecting a late-February or early-March start on Petro Star's northbound transport of petroleum.

Ms. Amy explained that pension expenses could impact the forecast as we close the books on December 2019. Our actuaries value our liability and provide an annual report in June. We made two changes in key assumptions last year relating to mortality and reducing the long-term target return rate from 7.5 percent to 7.25 percent. Ms. Amy explained that expense adjustments are booked in December. The 2019 financial markets for pension trust assets finished up a little above 18 percent, which will be recognized over the next five years. Ms. Amy further stated that pension expense will be lower than recognized in the budget when the ARRC's liability is valued.

In summary, we should finish closer to 2019's original budget than we had anticipated earlier. Ms. Amy noted that the 2020 budget net income approved by the Board in November 2019 was \$22 million. She expects first quarter 2020 budget revisions will be ready by the March Board meeting, and will include the three tax credits and pension expense expectation.

4. Positive Train Control (PTC) Update

Mr. Hopp provided an update on PTC. He noted that the Rail Safety Transportation Act originally mandated that PTC was to be in place by the end of 2015; however, industry challenges eventually caused the mandated installation and go-live PTC deadlines to be pushed to December 2020. We have run about 350 trains in PTC service, with an

approximate 2 percent failure rate. We are on target to make the December 2020 deadline. With the assistance of the ARRC's consultant, we will submit the required PTC Safety Program documentation by mid-April. FRA will need at least 90 days to complete its review.

Mr. Hopp explained that the ARRC is split into three subdivisions: Kenai and Central, which are operating live PTC, and Mountain, which is in revenue service demonstration (RSD). The main focus is to mitigate any impacts to the operation of the Railroad. Currently a few hurdles remain, the biggest of which is getting our precision GPS program to access U.S. satellites. Another option is writing a proposal for FRA approval to use Russian satellites. Mr. Hopp said we continue collaborative work with Wabtec, using grant funding to work on vital solutions (e.g., an electronic delivery of authority to the trainmen) in an effort to bring additional proficiency to PTC. Currently, train personnel must perform comparisons of the digital bulletin to a paper copy for exactness. Also, radio blocking in after arrival authorities is an add-on piece, which will not be ready by December 2020. After arrival authority, radio-blocking is the authority to occupy a piece of track after a certain train has passed. Director Binkley said he is concerned about train personnel taking an additional 15 minutes prior to rolling the train to compare a paper copy to electronic copy. Mr. Hopp said the electronic authority, which is within the onboard computer system, controls the train to apply a penalty application of the brakes, so there is currently no way for the train crew to guarantee the information in the bulletins is an exact match to the computerized version other than a manual comparison. He said reviewing the bulletins prior to initial movement is a requirement for approved FRA vital systems.

In response to Vice Chair Petry's question, Mr. Hopp confirmed the ARRC is working with Wabtec. He noted there have been challenges since its merger with General Electric eighteen months ago. Mr. Hopp said he and Mr. O'Leary have met with Wabtec and have established a central point of contact and our project appears to be back on track.

B. Committee Reports

1. Real Estate Committee

Mr. Kubitz stated that the Real Estate Committee, which is a committee of the whole, met on January 23, 2020. The agenda for that meeting included three Board action items, including (i) Resolution 2020-01 Relating to an Increase in Depot Drive Access Improvement, AFE No. 10799 S-1; (ii) Lease Contract No. 20546, a 30-year lease; and (iii) Lease Contract No. 5611, to accommodate a current tenant needing more land. The meeting notes are located under Tab B in the Board book. The Committee reviewed several topics and the above described three items, which are included in the Consent Agenda for today's meeting. The lease summaries for the two lease action items are located behind Tab D in the Board books. Mr. Kubitz provided a quick briefing of all topics covered during the Committee meeting.

2. Executive Committee

Mr. O'Leary stated that the Executive Committee, consisting of Chair Campbell, Director Binkley and Commissioner Anderson, also met on January 23, 2020, and the confidential meeting notes can be found under Tab B in the Board book. At the Committee meeting, Mr. O'Leary provided a financial and A2A update, and covered two Plan amendments that are recommended for approval under today's Consent Agenda. Mr. O'Leary also provided a PTC update to the Committee. The Committee also was told that electronic Board books hosted by BoardVantage will be previewed at the March 31, 2020 Board meeting. Mr. O'Leary also noted that a private public partnership approach on the Seward Dock Project was discussed by the Committee.

XI. NEW BUSINESS

C. Executive Session Briefings

Director Shively moved to have the Board recess to Executive Session to discuss the Executive Session items listed on today's meeting Agenda. Vice Chair Petry seconded the motion. There was no further discussion or objection. The motion was approved and the Board convened to Executive Session at 11:20 a.m. The following items were discussed in Executive Session, as specified on the meeting Agenda, as modified upon the motion of Director Shively, as noted above:

1. Contracts, Claims, Litigation, Personnel and Financial Matters
2. Collective Bargaining Agreement Negotiations Update
3. A2A Update
4. Legislative Strategy
5. Business Development Report
6. Seward Dock Updates
7. Right-Of-Way Easement Discussion
8. ARRC Board of Directors Compensation

Chair Campbell called the Regular Board Meeting back to order at 1:51 p.m.

D. Adoption of Consent Agenda

Chair Campbell asked for a motion to adopt the Consent Agenda. Director Binkley made a motion to adopt the five items listed under the Consent Agenda. Director Shively seconded the motion. There was no further discussion or objections and the following items were all approved:

1. Resolution No. 2020-01 – Relating to Increase in Funding for 2020 Access Improvements to the Rail Complex (AFE No. 10799-S1)
2. Resolution No. 2020-02 – Relating to Approval of the Sixth Amendment to the Alaska Railroad Corporation Pension Plan (Eligible Employee/Board Member Definition)
3. Resolution No. 2020-03 – Relating to Approval of the Third Amendment to the 401(k) Tax Deferred Savings Plan for Non-Represented Employees (Eligible Employee/Board Member Definition)

4. Contract Lease No. 20546 – Medallion Building, LLC
5. Contract Lease No. 5611 – York Steel

XII. DIRECTOR/CEO/STAFF COMMENTS/ OPPORTUNITY FOR PUBLIC COMMENT

Commissioner Anderson apologized for missing the opportunity to have joined the meeting in Fairbanks due to illness, and said she is looking forward to the next meeting. Chair Campbell reiterated that he was happy to serve as Chair, and noted that the best way to reach him is by phone. He invited fellow Board Members to be in touch with him about any issues they want to address. He confirmed that Board Members should be present and ready to take pictures at the March 31, 2020, Board of Directors meeting.

XIII. ADJOURNMENT

Chair Campbell stated that if there was nothing further to discuss, he would entertain a motion to adjourn. Director Binkley moved to adjourn, and Vice Chair Petry seconded the motion. The meeting adjourned at 1:58 p.m.

ARRC BOARD OF DIRECTORS MEETING

Tuesday, February 4, 2020, 9:00 a.m. - 2:00 p.m.

Pike's Waterfront Lodge – Fireweed Room
1850 Hoselton Road, Fairbanks, Alaska 99705

AMENDED AGENDA

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- IV. SWEARING IN OF NEW BOARD MEMBERS
- V. ELECTION OF OFFICERS
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- XIII. DIRECTOR/CEO/STAFF COMMENTS/OPPORTUNITY FOR PUBLIC COMMENT
- XIV. ADJOURNMENT

IX. BRIEFING ITEMS

A. PUBLIC BRIEFINGS

ITEM 1: CEO Update

**Update will be verbally presented
at the Board Meeting**



2019 Annual Report

ARRC Board of Directors Meeting

March 31, 2020



2019 Annual Report Highlights

(in millions)	2019	2018	% change
Net income	\$ 21.6	\$ 18.0	20%
Total assets & deferred outflows	\$1,099.0	\$1,095.8	0.3%
Net position	\$ 378.3	\$ 356.7	6%

- **Unmodified audit opinion
(formerly unqualified)**



Earnings Comparison

(in millions)	2019	2018	% change
Net operating income	\$ 4.70	\$ 1.51	211%
Net real estate income	\$ 14.04	\$ 13.03	8%
Gain (Loss) on sale of assets	\$ 1.79	\$ 2.16	(17%)
Investment income	\$ 1.58	\$ 1.34	18%
Interest expense (net of grant revenue)	<u>\$(0.50)</u>	<u>\$(0.07)</u>	632%
Net earnings	\$ 21.62	\$ 17.98	20%
Operating ratio <small>-audited financials</small>	0.97	0.99	



Balance Sheet Comparison

<i>(In thousands)</i>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>
Assets:						
Current assets	163,545	147,956	133,967	115,727	120,599	126,289
Non-current assets & deferred outflows	935,493	947,881	936,843	967,333	993,535	943,151
Total assets and deferred outflows	1,099,038	1,095,837	1,070,810	1,083,060	1,114,134	1,069,440
Liabilities:						
Current liabilities	43,433	44,359	42,508	45,918	48,545	57,970
Non-current liabilities & deferred inflows	677,315	694,805	689,604	720,804	744,898	706,763
Total liabilities and deferred inflows	720,748	739,164	732,112	766,722	793,443	764,733
Net Position	378,290	356,673	338,698	316,338	320,691	304,707
Total liabilities and equity	1,099,038	1,095,837	1,070,810	1,083,060	1,114,134	1,069,440

- Overall growth in assets over last five years of 0.5% per annum
- Despite the continuing challenging state economic environment, strong balance sheet with excellent liquidity



Benefit Trust Funds Status

- **Returns came in well in excess of targets in 2019**
 - 18.4% 1-year return for Pension Plan Trust as compared to the long-term target annual return of 7.25%
 - 13.4% 1-year return for Health Care Trust as compared to the long-term target annual return of 6.75%
- **Estimated funded status very strong**
 - Pension: 87.5% funded on an actuarial basis and 87.6% funded on a market value basis
 - \$30.2 million net pension liability
 - Outsized returns on the investment portfolio drove the \$4.3 million decrease in the net pension liability since year end 2018
 - Health Care trust: 324.7% funded on an actuarial basis and 335.1% funded on a market value basis
 - The health care trust is over-funded on an actuarial basis by \$35.2 million
- **Actuarial valuation will be completed by mid-June 2020**

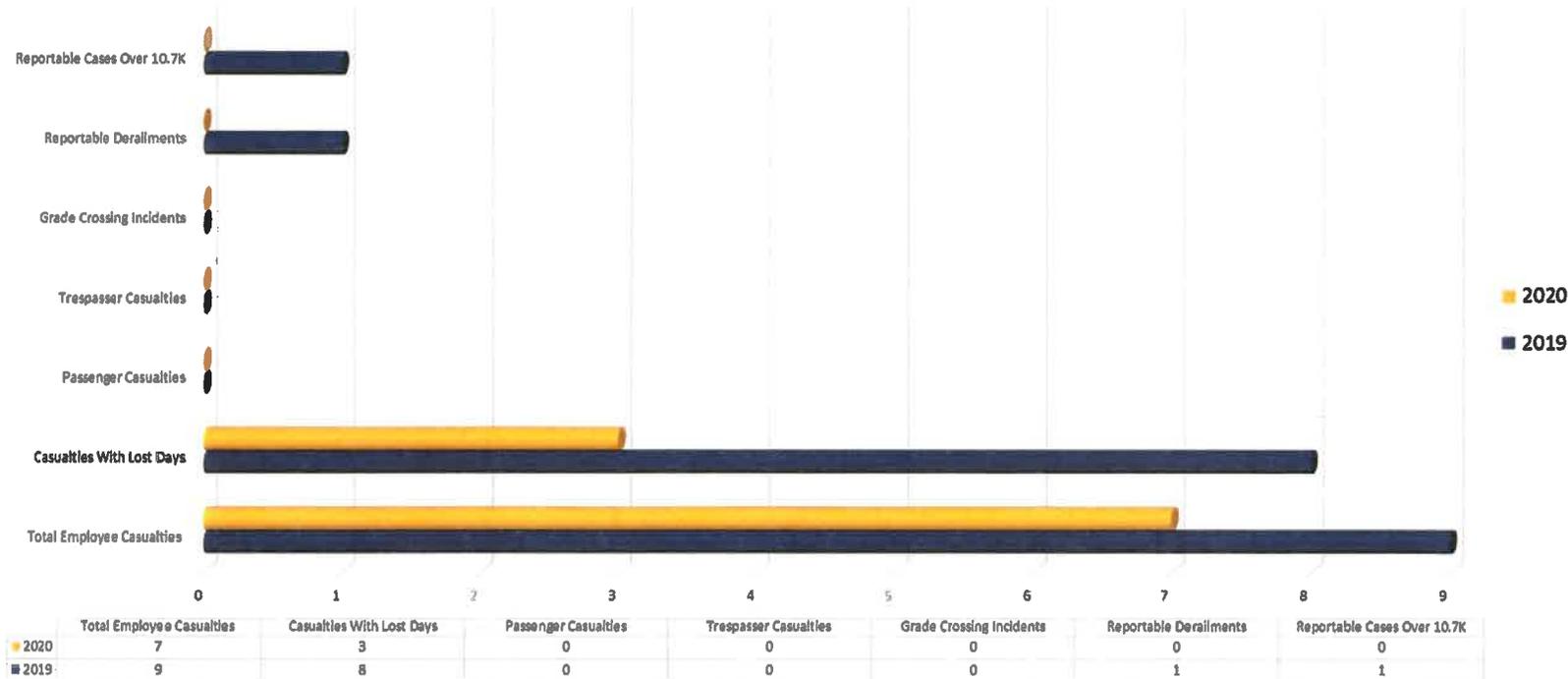




Safety Report

January – March YTD

FRA Safety Data
2019 vs. 2020



	Total Employee Casualties	Casualties With Lost Days	Passenger Casualties	Trespasser Casualties	Grade Crossing Incidents	Reportable Derailments	Reportable Cases Over 10.7K
2020	7	3	0	0	0	0	0
2019	9	8	0	0	0	1	1

2020
2019

FRA Casualty Rate

8.5
11.1

Lost Time Rate

3.6
9.8

Lost Work Days

109
139

Restricted Work Days

54
213

*FRA Casualty Rate = FRA Reportable Injuries (regardless of lost time) x 200,000 divided by total hours worked.

Lost Time Rate = Lost Time Cases x 200,000 divided by total hours worked

IX. BRIEFING ITEMS

A. PUBLIC BRIEFINGS

ITEM 4: PTC Update

**Update will be verbally presented
at the Board Meeting**



**Alaska Railroad Corporation
Board of Directors
Real Estate Committee Notes**

Date: March 19, 2020
Time: 9:00.m. - 10:30 a.m.
Location: Executive Conference Room

Board Members:

Craig Campbell, Committee Member – via teleconference
Judy Petry, Committee Member– via teleconference
Jack Burton, Committee Member –via teleconference
John Binkley, Committee Member – via teleconference
John Shively, Committee Member – via teleconference
Commissioner MacKinnon, Committee Member –via teleconference
Commissioner Anderson, Committee Member – excused

Staff Present:

Jim Kubitz, Andy Donovan, Paul Farnsworth, Clark Hopp, Bill O’Leary, Tim Sullivan,
Jennifer Haldane

Staff via teleconference:

Kristen Gratrix, Andy Behrend, LaFewt Knox, Barbara Amy, Brian Lindamood, Wendy Richerson

Outside Counsel: Michael Geraghty, Oles Morrison

Chairman Campbell started the meeting at 9:00 a.m. and welcomed everyone. Chair Campbell confirmed that currently no members of the public were on the telephone; however, if any member of the public did call in later, we may modify the Agenda to accommodate public comment as appropriate. With that, he requested Mr. O’Leary proceed with the meeting.

COVID-19

Mr. O’Leary started the meeting by giving an overview of the actions that ARRC has taken so far in response to COVID-19. A task force has been set up and senior management is meeting daily to deploy a phased approach to protect employees and still provide essential services to the state. Approximately 90-100 employees have been set up by the IT and Telecom Departments to work remotely and ground crews’ activities have been restructured to follow the social distancing protocol.

Mr. O’Leary shared that the winter passenger service has been severely curtailed and the next phase would be contingency planning depending on developments with the COVID-19 situation.

Board Action Items:

AFE’s / Resolutions to be presented to the Board for approval:

AFE No. 10867 Odom Corporation

Mr. Kubitz provided a history of the Odom land and building on 1st Avenue and a summary of the ownership, as well as the transaction that has been negotiated, subject to Board approval. Under that transaction, ARRC would acquire the 1st Avenue property, including both the land and buildings, as well as a building owned by Odom in Fairbanks on ARRC lease property. In exchange, ARRC would terminate existing ground leases, issue Odom a short-term lease on the existing leased property in Fairbanks, and issue a new long-term ground lease of property to Odom in Fairbanks for construction of a new facility, with a rent waiver for the first 10 lease years.

Resolution No. 2020-09 - Department of Natural Resources/ARRC Land Exchange for Seward Highway Windy Corner Project

Mr. Lindamood provided a history of a long-term project to upgrade the Seward Highway. In 2000, the Alaska legislature passed legislation that essentially directed ARRC, the Alaska Department of Transportation (DOT&PF) and the Alaska Department of Natural Resources (DNR) to straighten and improve the Seward Highway between Anchorage and Portage for safety purposes. Mr. Lindamood and Mr. Behrend provided detail on the history of the Windy Corner project and negotiations pertaining to the proposed exchange of land for rights-of-way and the legislative requirement that ARRC receives the same quality of title in the new right-of-way that it received when the existing right-of-way was transferred to ARRC that is necessary to ensure the continued use of that portion of right-of-way as a railroad transportation and communication corridor. The issue of section line easements was also discussed.

While the overall Seward Highway project has been going on for nearly 20 years, Federal Highway Administration has now given DOT until the end of April of this year to certify the project. The 2000 legislation provided ARRC with the necessary legislative approval to make the exchange; however, Board approval is still necessary to move forward.

Contracts to be presented to the Board for approval:

Contract No. 20560 The Odom Corporation - Fairbanks

Mr. Kubitz stated that this lease is directly related to the resolution presented earlier regarding the transaction with Odom. Odom has applied for a 55-year lease for the construction of a new facility in the Chena Landings Subdivision in Fairbanks.

Briefing / Update

Land Sale/Exchange Status

Eklutna, Inc.

Mr. Kubitz stated that the land exchange was moving forward with Eklutna, and there had been a Municipality of Anchorage Platting Board Meeting scheduled for April 1 to review this action, which he anticipates will now be rescheduled.

NeighborWorks

Mr. Kubitz updated the Committee that the Neighborworks sale is still moving forward; however, the sale was to be discussed at the Government Hill Community Council meeting tonight which has since been canceled.

A motion was made by Director Binkley to enter into executive session at 9:45 a.m., and the motion was seconded by Vice Chair Petry, after which the Committee retired into Executive Session. The Committee resumed in regular session at 10:28 a.m. Chair Campbell announced that he had selected Director Shively to chair the Real Estate Committee going forward, and Director Shively accepted that post. The Committee meeting adjourned at 10:30 a.m.

ARRC BOARD OF DIRECTORS MEETING EXECUTIVE SESSION AGENDA

**Tuesday, March 31, 2020
Telephonic Meeting**

Executive Session Briefings

1. Contracts, Claims, Litigation, Personnel and Financial Matters
2. ROW Issues
3. Legislative Strategy
4. Seward Dock Port Project

All Materials Are Confidential

Adopted:

Resolution No. 2020-04

**Relating to the Approval of the 2019
Financial Annual Report**

WHEREAS, pursuant to AS.42.40.260, the Alaska Railroad Corporation (ARRC) is required to publish an annual report within 90 days following the end of the fiscal year which describes the operations and financial condition of the corporation during the preceding fiscal year; and

WHEREAS, ARRC Management has prepared a draft of the annual report for 2019 which has been audited by KPMG, LLC, the corporation's independent external audit firm; and

WHEREAS, the ARRC Board of Directors has reviewed the draft 2019 annual report attached hereto.

NOW THEREFORE BE IT RESOLVED, that the ARRC Board of Directors hereby approves the annual report attached hereto and directs the President & CEO or his designee to publish said report which shall be titled the "2019 Annual Report for the Alaska Railroad Corporation."

Adopted

Resolution No. 2020-05

**Relating to Approval of the 2020 Restatement
of the Alaska Railroad Corporation Flexible
Benefit Plan**

WHEREAS, the Alaska Railroad Corporation (“ARRC”) adopted effective February 1, 1988, and currently sponsors the Alaska Railroad Corporation Flexible Benefit Plan (the “Plan”), which is a cafeteria plan under Internal Revenue Code Section 125; and

WHEREAS, the Plan was last restated in 2006 and subsequently amended; and

WHEREAS, it is now desirable to restate the Plan in order to comply with current law; and

WHEREAS, restatement of the Plan requires approval by the ARRC Board of Directors.

NOW, THEREFORE, BE IT RESOLVED that the ARRC Board of Directors has reviewed and approves the 2020 Restatement of the Plan substantially in the form of the Plan document attached to this resolution as Exhibit A.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the ARRC Board of Directors hereby directs and authorizes the President and Chief Executive Officer, or his designee, to take such actions as are reasonably necessary to:

- (a) Execute the 2020 Restatement of the Plan, substantially in the form of Exhibit A attached hereto;**
- (b) Execute any all other documents as he deems necessary or desirable to carry out the foregoing resolution;**
- (c) Take such actions as he deems necessary or desirable to effectuate the intent of this resolution and to meet statutory, regulatory or contractual requirements; and**
- (d) Certify this resolution to any necessary person, corporation or governmental entity.**

**ALASKA RAILROAD CORPORATION
FLEXIBLE BENEFIT PLAN**

2020 Restatement

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ALASKA RAILROAD CORPORATION FLEXIBLE BENEFIT PLAN

INTRODUCTION

Alaska Railroad Corporation (Employer) has restated this Flexible Benefit Plan effective January 1, 2020. Its purpose is to provide benefits for eligible Employees. The Plan allows Employees to choose among different types of pre-tax benefits based on their own particular goals, desires and needs, including the ability to pay certain contributions or premiums on a pre-tax basis. The Plan's name is the Alaska Railroad Corporation Flexible Benefit Plan (the "Plan").

The Employer intends that the Plan qualify as a "cafeteria plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

The Health Flexible Spending Account Plan (HFSA Plan), a Component Plan of the Plan, is intended to qualify as a "self-insured medical reimbursement plan" under Code Section 105, and the Qualifying Medical Care Expenses reimbursed by it are intended to be eligible for exclusion from participating employees' gross income under Code Section 105(b).

The Dependent Care Flexible Spending Account Plan (DCFSA Plan) a Component Plan of the Plan, is intended to qualify as a "dependent care assistance plan" under Code Section 129, and the Qualifying Dependent Care Expenses reimbursed by it are intended to be eligible for exclusion from participating employees' gross income under Code Section 129(a).

The Plan allows eligible employees to make voluntary contributions to their Health Savings Accounts through this Plan, but the Health Savings Accounts are individual accounts and not plans sponsored by the Employer. The Plan also provides Health Savings Account benefits under the Plan.

Although all are reprinted in this document, the HFSA Plan and the DCFSA Plan are separate plans for purposes of administration and all applicable reporting and nondiscrimination requirements imposed by Code Sections 105 and 129, and the HFSA Plan is a separate plan for purposes of complying with COBRA, HIPAA, and other applicable laws.

ARTICLE I DEFINITIONS

1.1. “Administrator” or “Plan Administrator” means the Employer unless another person or entity has been designated by the Employer pursuant to Section 10.1 to administer the Plan on behalf of the Employer. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.

“Annual Open Enrollment Period” means a period of time prior to the commencement of the Plan Year during which a Participant may elect coverage under the Plan or a Participant may change elections under the Plan for the following Plan Year. The Annual Open Enrollment Period is set by the Employer.

“Cause” means fraud or material misrepresentation on the Plan or Component Plan by a Participant, or by a member of a Participant’s family, or by another person acting for or on behalf of a Participant. This may include, but is not limited to, an act or omission committed by a person who, knowingly, and with intent to defraud, commits one or more of the following:

(a) presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to the Plan or Component Plan, false information as part of, in support of, or concerning a fact material relating to one or more of the following:

(i) a form or application to enroll in the Plan or Component Plan;

(ii) a claim for payment or benefit pursuant to the Plan or a Component Plan;

(iii) premiums or contributions paid for benefits or coverage under the Plan or a Component Plan;

(iv) payments made in accordance with the terms of the Plan or a Component Plan; or

(v) the reinstatement of coverage under the Plan or a Component Plan.

(b) concealing any material information from the Plan or a Component Plan;

(c) failure to provide proof to the Plan Administrator that a family member qualifies or continues to qualify as a Dependent under the Plan;

(d) enrolling a person in the Plan or a Component Plan who is not eligible for the Plan or a Component Plan or failing to disenroll a person who is not eligible for the Plan or a Component Plan; or

(e) willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of the Plan or a Component Plan; or

(f) attempting to commit or aiding or abetting in the commission of the acts or omissions specified herein.

“Change Event” means any of the events described in Treasury Regulation 26 C.F.R. § 1.125-4.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended, as applicable to this Plan and including all applicable COBRA regulations.

“COBRA Continuation Coverage” means continued health coverage which is available in certain situations where coverage would otherwise cease, in accordance with COBRA.

“Code” means the Internal Revenue Code of 1986, as amended or replaced from time to time, including all applicable Treasury regulations.

“Compensation” means the regular salary or wages paid to a Participant by the Employer for services rendered during the portion of the Plan Year that the Participant is eligible to participate in this Plan. However, Compensation shall not include amounts which are (1) received by any person in a capacity as a consultant, director or independent contractor; (2) paid to a Participant by the Employer as reimbursement for expenses incurred by the Participant or similar non-wage payments; (3) excluded from an Participant’s Compensation due to a Participant’s contribution to an employee benefit plan which is not a Component Plan under Section 4.1, including, but not limited to, the 457, 401(k) and pension plans sponsored by the Employer.

“Compensation Reduction Amounts” means amounts which the Participants elect to contribute to the Flexible Spending Accounts each Plan Year pursuant to Section 3.1, amounts which the Participants enrolled in the Medical and/or Dental Plans are required to contribute to the Premium Payment Plan; and premium amounts for the first \$50,000 of coverage under the Life Insurance Plan. For the FSA Plans, these contributions are allocated to the FSA Plan Accounts established under the DCFSA Plan or HFSA Plan, as directed by the Participants, pursuant to the Participants' elections made under Article V.

“Compensation Reduction Agreement” means an agreement between the Participant and the Employer under which the Participant agrees to reduce the Participant’s Compensation and to have such amounts credited to the FSA Plans or to the Participant’s HSA (for HSA-Eligible Individuals) on the Participant’s behalf. The Compensation Reduction Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant. This term also includes HSA Contribution Amounts elected by Participants who are HSA-Eligible Individuals.

“Component Plan” means one or more of the following component plans of this Plan:

- (a) the Premium Payment Plan;
- (b) the HFSA Plan; or
- (c) the DCFSA Plan.

“Dental Plan” means a dental plan sponsored by the Employer.

“Dependent” means Dependent Spouse or Dependent Child, subject to further limitations set forth in the Component Plans, with respect to coverage under each Component Plan. The Plan Administrator may require proof that a person qualifies as a Dependent under the Plan or any Component Plan, and may deny dependency status or eligibility if a Participant does not provide such proof. For example, a Participant may be requested to provide:

- (a) A copy of a marriage license;
- (b) A copy of a child’s birth certificate, adoption decree, or court order granting guardianship.

For purposes of a Health Savings Account, the term “Dependent” has the meaning given it by Code Section 223.

“Dependent Care Reimbursement Account” means the account described in Section 7.3.

“Dependent Care Flexible Spending Account Plan” or **“DCFSA Plan”** means the Component Plan set forth in Article VII.

“Dependent Child” means any child who is the dependent of the Participant as defined in Code Section 152 (determined without regard to Code Sections 152(b)(1), 152(b)(2) and 152(d)(1)(B)), subject to further limitations in any Component Plan. For purposes of Medical and Dental Plan coverage funded through the Premium Payment Plan, any child to whom Code Section 152(e) applies is treated as a dependent of both parents. Notwithstanding the foregoing, a child for whom the Participant is required by a judgment, decree or order issued by a court or through an administrative process established under state law to provide medical coverage shall be a Dependent Child for purposes of the Health Flexible Spending Account Plan and the Medical and Dental Plans funded through the Premium Payment Plan. For purposes of these same plans, Dependent Child also includes the following children through the end of the month in which they turn age 26: (1) a Participant’s son, daughter, stepson, or stepdaughter, including children legally adopted by the Participant or placed with the Participant for legal adoption; and (2) a foster child, a child placed with the Participant under legal guardianship, or a child otherwise placed with the Participant by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

For purposes of the Dependent Care Flexible Spending Account Plan, a Dependent Child means a Qualifying Dependent who is a child, and in the case of divorced parents, the Dependent Child shall, as provided in Code Section 21(e)(5), be treated as a Qualifying Dependent of the custodial parent (within the meaning of Code Section 152(e)(3)(A)) and shall not be treated as a Qualifying Dependent with respect to the non-custodial parent.

“Dependent Spouse” means an individual who is legally married to a Participant. Notwithstanding the foregoing, for purposes of the Dependent Care Flexible Spending Account Plan, the terms “Dependent Spouse” and “Qualifying Dependent” shall not include an individual who, although married to the Participant, files a separate federal income tax return, maintains a principal place of residence separate from the Participant during the last six months of the taxable year, and does not furnish more than half of the cost of maintaining the principal place of abode of the Participant.

“Eligible Employee” means any regular full-time or regular part-time Employee, other than a leased employee or Special Services Employee. Notwithstanding the foregoing, members of a

collective bargaining unit shall not be eligible to participate in the Plan unless provided pursuant to a collective bargaining agreement and subject to the terms in Appendix A. Other classes of Employees may be added or excluded by resolution of the Board of Directors of the Employer.

“Employee” means any person who is employed by the Employer. The term shall not include leased employees within the meaning of Code Section 414(n)(2). The term also does not include any individual who is not reported on the payroll records of the Employer as a common law employee. These persons are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

“Employer” means the Alaska Railroad Corporation.

“Flexible Spending Account Plans” or “FSA Plans” means the DCFSA Plan and the HFSA Plan.

“FMLA” means the Family and Medical Leave Act of 1993, as amended, and including all applicable FMLA regulations.

“Full Contribution Rule” means that a Participant who is an HSA-Eligible Individual on December 1 of any calendar year shall be treated as having been an HSA-Eligible Individual during each of the months in the calendar year, but only for purposes of calculating the amount of contributions that can be made to the Participant’s HSA for that calendar year and not for purposes of determining when the Participant’s HSA is established or the amount of the Employer HSA Benefits.

“Grace Period” means the two and one-half month period immediately following the end of each Plan Year, beginning on January 1 and ending on March 15. The Grace Period relates to the immediately preceding Plan Year. The Grace Period only applies to the Health Flexible Spending Account Plan and the Dependent Care Flexible Spending Account Plan.

“Health Savings Account” or “HSA” means an individual trust or custodial account separately established by a Participant with a qualified trustee or custodian under Code Section 223.

“High Deductible Health Plan” or “HDHP” means the high deductible health plan option(s) offered under the Medical Plan sponsored by the Employer that is intended to qualify as a high deductible health plan under Code Section 223(c)(2).

“Health Flexible Spending Account” means the account described in Section 6.4.

“Health Flexible Spending Account Plan” or “HFSA Plan” means the Component Plan set forth in Article VI.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, and the applicable HIPAA regulations.

“HSA Benefits” means the HSA Contributions that a Participant has elected to make through a Compensation Reduction Agreement, plus any contributions which the Employer may make to the HSA through this Plan from time-to-time (“Employer HSA Benefits”).

“HSA Contributions” means the contribution amount elected by the Participant to contribute to the Participant’s HSA under a Compensation Reduction Agreement. In no event shall the amount elected exceed the statutory maximum amount for HSA Contributions applicable to the

Participant's High Deductible Health Plan coverage for the calendar year in which the HSA Contribution is made. The maximum HSA Contribution shall be: (a) reduced by any Employer HSA Benefits; and (b) unless the Full Contribution Rule applies, prorated for the number of months in which a Participant is an HSA-Eligible Individual.

"HSA-Eligible Individual" means a Participant who elects the High Deductible Health Plan and who is otherwise eligible to contribute to an HSA under the Code, determined as of the 1st day of each month.

"Life Insurance Plan" means the life insurance plan sponsored by the Employer.

"Loss of Coverage" means a complete loss of coverage under, or elimination of, a Component Plan or a Medical or Dental Plan, including the elimination of a Component Plan. In addition, the Plan Administrator in its sole discretion, on a uniform and consistent basis, may treat the following as a loss of coverage:

- (a) a substantial decrease in the medical or dental care providers available under a Component Plan or Medical or Dental Plan;
- (b) a reduction in benefits for a specific type of medical or dental condition or treatment with respect to which the Participant or the Participant's Dependents are currently in a course of treatment; or
- (c) any other similar fundamental loss of coverage.

"Medical Plan" means the medical plan or plans sponsored by the Employer providing medical benefits.

"Participant" means any Employee who is a Participant pursuant to Section 2.1 and has not for any reason become ineligible to participate further in the Plan.

"Plan" means the Alaska Railroad Corporation Flexible Benefit Plan.

"Plan Year" means the 12-month period beginning January 1 and ending December 31.

"Premium Expenses" or "Premiums" mean the Participant's cost for Medical, Dental and/or Life Insurance Plan which is allowed to be paid through the Premium Payment Plan.

"Premium Payment Plan" means the Component Plan set forth in Article VIII, the sole benefit of which is to pay certain premiums for the Medical Plan, Dental Plan and/or Life Insurance Plan on a pre-tax basis.

"Protected Health Information" or "PHI" means any information created or received by the HFSA Plan that relates to:

- (a) a Participant's or Dependent's past, present, or future physical or mental health or past, present, or future physical or mental condition;
- (b) the provision of health care to a Participant or Dependent; or
- (c) the past, present, or future payment for health care.

“Special Services Employee” shall mean any employee hired for a specific length of time who is notified that the job will not be permanent at the beginning of employment. Special Services Employees may be hired part-time or full-time.

“Spouse” means the legally married spouse of a Participant.

ARTICLE II PARTICIPATION

2.1 INITIAL ELIGIBILITY

Any Employee shall automatically become a Participant in this Plan as of the first date of the Employee's payroll period after the Employee becomes an Eligible Employee. No Eligible Employee is allowed to elect not to participate in the Plan. However, a Participant may elect not to participate in a Component Plan or contribute to an HSA. A Participant's right to participate in a Component Plan or contribute to an HSA is dependent upon the Participant's satisfying the specific terms and conditions or participation applicable to the Component Plan or HSA.

2.2 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.3;
- (b) **Death.** The Participant's death, subject to the provisions of Section 2.3; or
- (c) **Cessation of Eligibility,** The day the Participant ceases to be an Eligible Employee.
- (d) **Termination of the Plan.** The termination of this Plan.
- (e) **Termination for Cause.** The termination of the Participant's participation by the Employer for Cause.

Any fees or other charges imposed by the HSA custodian or trustee regarding the individual's or Participant's HSA shall be the sole responsibility of the individual or Participant, and shall not be an expense of the Plan, the Plan Administrator or the Employer when: (1) imposed after the individual's or Participant's participation in the Plan has ceased; or (2) imposed after the Participant is no longer participating in the High Deductible Health Plan.

2.3 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason or the Participant dies, the Participant's participation in the Component Plans provided under Section 4.1 shall be governed in accordance with the following:

- (a) **Premium Payment Plan.** The Participant's right to pay the contributions on a pre-tax basis under the Premium Payment Plan shall cease after the final paycheck of the Employer to the Participant.
- (b) **Dependent Care FSA.** With regard to the Dependent Care Flexible Spending Account, the Participant's participation in the Plan shall cease and no further Compensation Reduction Amounts or other contributions to the DCFSA Plan shall be made or accepted after the final paycheck of the Employer to the Participant. However, to the extent that such Participant has a balance in the Participant's Dependent Care FSA Account as of the date of termination, such Participant may submit claims for eligible Employment-Related Dependent Care Expense reimbursements for claims incurred prior to termination or incurred through the

remainder of the Plan Year and applicable Grace Period in which such termination occurs, until the Participant's Dependent Care FSA Account is zero. These claims must be submitted within 120 days of the end of the Plan Year in which the termination of employment occurred.

(c) **Health FSA.** With regard to the Health Flexible Spending Account, the Participant's participation in the Plan shall cease and no further Compensation Reduction Amounts or other contributions to the Plan shall be made or accepted, except that (1) the Participant may submit claims for Qualifying Medical Expenses that were incurred during the portion of the Plan Year before termination; and (2) the Participant (and other Qualified Beneficiaries) may continue participation for the remainder of the Plan Year and applicable Grace Period if eligible to do so under the provisions of COBRA. A Participant has 90 days following the earliest of (a) the last day of the Plan Year, (b) the last day of the month in which the Participant terminates employment, or (c) the last day of the month in which the Participant ceases to be an Eligible Employee, to submit claims for reimbursement for health care expenses incurred during the Plan Year but prior to termination of employment. Any amounts still credited to the Participant's Health Flexible Spending Account(s) after that 90 day period expires shall be forfeited and remain the assets of the Employer.

(d) **Death.** If a Participant dies, the Participant's Dependents, or the legal representative of the Participant's estate may submit claims and otherwise act on behalf of the Participant and may receive benefit payments to the DCFSA and/or HFSA that would otherwise be payable to the Participant. However, such Participant's beneficiaries, or the representative of the Participant's estate, may only submit claims relating to the deceased Participant's participation in the DCFSA or the HFSA incurred prior to death if submitted within 120 days of the end of the Plan Year. Unless the Administrator has been informed to the contrary by the Participant prior to the Participant's death, the Administrator may designate the Participant's Spouse, one of the Participant's Dependents or a representative of the Participant's estate for this purpose.

(e) **Employer HSA Benefits.** The Participant shall receive no further Employer HSA Benefits.

2.4 TERMINATION OF HSA ELIGIBILITY

Once a Participant is no longer an HSA-Eligible Individual, no further HSA Benefits will be provided by this Plan.

**ARTICLE III
CONTRIBUTIONS TO THE PLAN**

3.1 CONTRIBUTIONS/COMPENSATION REDUCTION AMOUNTS

Benefits under the Flexible Spending Account Plans and the HSA Contributions shall be financed by Compensation Reduction Amounts elected by Participants for each FSA Plan and/or HSA. The Compensation Reduction Amounts shall be specified in the Compensation Reduction Agreement and shall be applicable for a Plan Year. The contributions to the Flexible Spending Account Plans shall be allocated to the Accounts established under the Flexible Spending Account Plans pursuant to the Participants' elections made under Article V.

3.2 APPLICATION OF CONTRIBUTIONS TO FSA PLANS

As soon as reasonably practical after each payroll period, the Employer shall apply the Compensation Reduction Amounts to provide benefits under to the Component Plans as elected by the affected Participants. Any contribution made or withheld for the Health Flexible Spending Account or Dependent Care Flexible Spending Account shall be credited to such Accounts.

3.3 SPECIAL RULES FOR CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS

Participants in this Plan who are also participating in the High Deductible Health Plan and who are otherwise HSA-Eligible Individuals may elect to reduce their Compensation and have such amounts contributed to their Health Savings Accounts in accordance with the following rules:

(a) Participants may not make contributions to their Health Savings Accounts under this Plan that together with the Employer HSA Benefits exceed the limits set forth in Code Section 223.

(b) Participants may change their elections regarding such contributions at any time during the Plan Year. However, such changes will not be effective until on the first day of the payroll period following the date the election change has been processed by the Plan Administrator.

ARTICLE IV COMPONENT PLANS

4.1 COMPONENT PLANS

Each Participant may elect to enroll one or both of the following optional Component Plans:

(1) Health Flexible Spending Account Plan. If enrolled, Article VI shall apply. Participants enrolled in a high deductible medical plan option under the Medical Plan are not eligible for this Plan.

(2) Dependent Care Flexible Spending Account Plan. If enrolled, Article VII shall apply.

A Participant in the High Deductible Plan who is an HSA-Eligible Individual (1) may elect to have a reduction in Compensation applied as a contribution to the Participant's HSA as provided in Article III of this Plan; and (2) is eligible for the Employer HSA Benefits, if any. Employer HSA Benefits, if any, are communicated to Participants prior to or during the annual Enrollment Period which precedes such Plan Year.

If a Participant elects to participate in the Medical, Dental and/or Life Insurance Plan, the Participant is required to participate in the Premium Payment Plan. Such Participant shall be deemed to have elected to have the Participant's Compensation reduced in the amount of the required contributions for the Participant for (1) the Medical and/or Dental Plan; and (2) the first \$50,000 in coverage under the Life Insurance Plan, and paid by the Premium Payment Plan on a pre-tax basis.

4.2 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of Employees which the U.S. Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 125, the Administrator may, but shall not be required to, reject any election or reduce contributions or non-taxable benefits in order to assure compliance with this Section, or take any other actions necessary to avoid any such discrimination. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any election or reduce contributions or non-taxable benefits, it may be done in the following manner. First, the non-taxable benefits of the affected Participant who has the highest amount of non-taxable benefits for the Plan Year shall have the Participant's non-taxable benefits reduced, until the discrimination tests set forth in this Section are satisfied or until the amount of the Participant's non-taxable benefits equals the non-taxable benefits of the affected Participant who has the second highest amount of non-taxable benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Flexible Spending Account Plan benefits and Dependent Care Flexible Spending Account Plan benefits, and once all these benefits are expended, to the contributions to the Medical Plan. Contributions which are not utilized to provide benefits to any

Participant by virtue of any administrative act under this paragraph shall be forfeited and used by the Plan like other forfeitures.

ARTICLE V PARTICIPANT ELECTIONS

5.1 INITIAL ELECTION

An Employee who meets the eligibility requirements of Section 2.1 automatically becomes a Participant in the Plan, as of the first day the Employee is eligible for coverage under the Plan. A Participant must make the initial election to participate in the Component Plans within 31 days of first being eligible to participate in the Plan, which election shall remain in effect until the end of the Plan Year and any applicable Grace Period unless the Participant is entitled to change the Participant's Benefit elections pursuant to Section 5.4 hereof.

However, no separate election is allowed or required for the Premium Payment Plan: if the Participant is enrolled in the Medical, Dental and/or Life Insurance Plan, the Participant automatically is enrolled in the Premium Payment Plan.

5.2 SUBSEQUENT ANNUAL ELECTIONS

A Participant wishing to receive Flexible Spending Account Plan benefits must complete an election form and a Compensation Reduction Agreement each year during the Annual Open Enrollment Period. The election made on such form shall be irrevocable until the end of the applicable Plan Year and applicable Grace Period unless the Participant is entitled to change the Participant's Benefit elections pursuant to Section 5.4 hereof.

5.3 FAILURE TO COMPLETE ELECTION FORMS DURING ANNUAL OPEN ENROLLMENT PERIOD

If a Participant fails to complete an election form and/or Compensation Reduction Agreement during the Annual Open Enrollment Period: the Participant (1) shall not receive any benefits under either FSA Plan during the following Plan Year, unless the Participant has a Change Event as described in Section 5.4; (2) shall be deemed to have elected to continue to make the same HSA contributions in the following Plan Year as in the current Plan Year, the Participant is no longer eligible to make HSA Contributions; and (3) shall be deemed to have elected to participate for the following Plan Year in the Medical, Dental and/or Life Insurance Plan in which the Participant was participating in the current Plan Year.

5.4 CHANGE EVENTS

Except for changes to HSA Contributions, which are governed by Section 3.3 of this Plan and not this Section 5.4, a Participant may not change the Participant's elections during a Plan Year except as provided in this Section 5.4. Participants wishing to change their elections must complete and submit a new election form within 30 days of the Change of Status event, except new election forms may be submitted within 60 days of certain HIPAA Special Enrollment Change Events to the extent permissible under HIPAA. However, no changes relating to the previous Plan Year may be made during the Grace Period.

A Participant may change an election as described below upon the occurrence of an event described below, so long as the elections are made in accordance with the election procedures of the Plan and the election changes meet the required consistency rules of Treasury Regulation 26 C.F.R. Section 1.125-4.

(a) **Change Events.** This provision applies to Premium Payment Plan and the Flexible Spending Account Plans, as limited below. A Participant may change the Participant's election or deemed election under the Plan upon the occurrence of a Change Event provided: (1) such Change Event affects eligibility for coverage under a plan of the Employer or a plan of the Dependent's employer (referred to as the "general consistency

requirement"); and (2) the election change is made on account of and corresponds with such Change Event. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, shall determine, based on applicable law, whether a requested change meets these requirements. In addition to satisfying the general consistency requirement, Change Event may have to meet certain specific consistency requirements set forth as set forth below or as provided in the Treasury regulations.

(1) **Loss of Dependent's Eligibility; Special COBRA Rule.** If the Change Event is the Participant's divorce or annulment from the Participant's Dependent Spouse, the death of a Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, a Participant may revoke or cancel coverage under the Premium Payment Plan relating to the coverage under the Medical and/or Dental Plans only for: (1) the Dependent Spouse involved in the divorce or annulment; (2) the deceased Dependent; or (3) the Dependent who ceased to satisfy the eligibility requirements.

(2) **New Coverage Eligibility Under Another Employer's Plan.** For a Change Event in which a Participant or the Participant's Dependent gains eligibility for coverage under a cafeteria plan or other benefit plan of the employer of the Participant's Dependent as a result of a change in marital status or employment status, a Participant may elect to cease or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the Dependent's employer's plan.

(3) **FMLA and Non-FMLA Leaves of Absence.** This provision applies to all Component Plans. A Participant may change the Participant's election under the Plan upon an unpaid or paid FMLA leave of absence in accordance with Section 5.7 and upon an unpaid non-FMLA leave of absence in accordance with Section 5.7.

(b) **HIPAA Special Enrollment Rights**

This provision applies only to coverage under the Medical and Dental Plans funded through the Premium Payment Plan. If a Participant or the Participant's Dependents are entitled to special enrollment rights, as required by HIPAA under Code Section 9801(f), then a Participant may revoke a prior election concerning the Medical and/or Dental Plan premiums under the Premium Payment Plan and make a new election, provided that the election change corresponds with the HIPAA special enrollment event. This rule does not apply to the Health Flexible Spending Account Plan or the Dependent Care Flexible Spending Account Plan.

(c) **Judgments, Decrees and Orders**

This provision applies only to the Premium Payment Plan and to the Health Flexible Spending Account Plan.

If a court judgment, decree, or order (an "Order") resulting from a divorce, legal separation, annulment or change in legal custody requires health coverage for a Participant's Dependent Child, a Participant may:

(1) change the Participant's election to provide health coverage for the Dependent Child, provided that the Order requires the Participant to provide health coverage; or

(2) change the Participant's election to revoke health coverage for the Dependent Child if the Order requires that another individual provide coverage under that individual's plan.

(d) Medicare and Medicaid

This provision applies only to the Premium Payment Plan and to the Health Flexible Spending Account Plan, as limited below.

A Participant or the Participant's Dependent Spouse or Dependent Child who receives Medical Plan coverage and who becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines) may prospectively reduce or cancel the Medical Plan coverage of the individual becoming entitled to Medicare or Medicaid.

Alternatively, if a Participant or the Dependent's Dependent Spouse or Dependent Child who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may prospectively elect to commence or increase Medical Plan coverage for such individual.

(e) Change in Cost

This provision applies only to Premium Payment and Dependent Care Flexible Spending Account Plans.

(1) Automatic Cost Changes

If the Premiums of a Component Plan increase or decrease insignificantly during a Plan Year, the Plan may, on a reasonable and consistent basis, automatically make a prospective increase or decrease in the affected Participant's elective contributions. The Employer, in its sole discretion and on a uniform and consistent basis, will determine whether an increase or decrease is insignificant based upon all of the surrounding facts and circumstances, including but not limited to, the dollar amount or percentage of the cost change.

(2) Significant Cost Increases

If the Employer determines that the cost of the Premiums for any Component Plan significantly increases during a Plan Year, the Participant may:

(i) make a corresponding increase in the Participant's elective contributions (by increasing reductions in Compensation);

(ii) revoke the Participant's election for that coverage, and in lieu thereof, receive on a prospective basis, coverage under another Component Plan offered by the Employer that provides similar coverage; or

(iii) drop coverage prospectively if there is no other Component Plan available that provides similar coverage.

The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether a cost increase is significant in accordance with applicable law.

(3) Significant Cost Decreases

If the Plan Administrator determines that the Premiums of any Component Plan significantly decrease during a Plan Year, the Participant may change the Participant's election on a prospective basis to elect the Component Plan that has decreased in cost.

The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether a cost decrease is significant in accordance with applicable law.

(4) Limitation on Change in Cost Provisions for Dependent Care Flexible Spending Account Plan

The above change in cost provisions apply to the Dependent Care Flexible Spending Account Plan only if the cost change is imposed by a dependent care provider who is not a "relative" of the Participant. For this purpose, a "relative" is an individual who is related as described in Code Sections 152(d)(2)(A) through (G), incorporating the rules of Code Sections 152(f)(1) through (4).

(f) Change in Coverage

This provision applies only to the Premium Payment Plan and the Dependent Care Flexible Spending Account Plan.

(1) Significant Curtailment

If coverage is significantly curtailed, a Participant may change elections to another plan option that provides similar coverage. In addition, as set forth in subsection (ii) below, if the coverage curtailment results in a Loss of Coverage, a Participant may drop coverage if no similar coverage is offered by the Employer.

(i) If the Plan Administrator determines that a Participant's coverage under a Component Plan (or the Participant's Dependent's coverage under the Dependent's employer's plan) is significantly curtailed without a Loss of Coverage during a Plan Year, the Participant may revoke the Participant's election for the affected coverage, and in lieu thereof, prospectively elect coverage under another plan option that provides similar coverage.

(ii) If the Plan Administrator determines that a Participant's benefit (such as the Participant's Dependent coverage under the Dependent's employer's plan) is significantly curtailed, and such curtailment results in a Loss of Coverage during a Plan Year, the Participant may revoke the Participant's election for the affected coverage, and may either prospectively elect coverage under another plan option that provides similar coverage, or drop coverage if no Component Plan providing similar coverage is offered by the Employer.

(2) Addition or Significant Improvement of a Component Plan

If during a Plan Year the Plan adds a new Component Plan or significantly improves an existing Component Plan, the Plan Administrator may permit a Participant who is enrolled in a Component Plan other than the newly-added or significantly improved Component Plan, to change the Participant's election on a prospective basis to elect the newly-added or significantly improved Component Plan.

The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether there has been the addition of, or a significant improvement in, a Component Plan in accordance with applicable law.

(3) Loss of Coverage Under Other Group Health Coverage

A Participant may prospectively change the Participant's election to add Medical Plan Coverage for the Participant or the Participant's Dependents if such individual(s) loses coverage under any group health coverage sponsored by a governmental or educational institution, including, but not limited to, the following: a state children's health insurance program (SCHIP) under Title XXI of the Social Security Act; a medical care program of an Indian Tribal government (as defined in Code Section 7701(a)(40)), the Indian Health Service, or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the applicable Component Plan.

(4) Change in Coverage Under Another Employer Plan

A Participant may make a prospective election change that is on account of and corresponds with a change made under an employer plan (including a plan of the Employer or a plan of the Dependent's employer), as long as:

- (i) the other employer plan permits its participants to make an election change that would be permitted under applicable law; or
- (ii) the Plan permits Participants to make an election for a Plan Year that is different from the Plan Year under the other employer plan.

The Plan Administrator in its sole discretion and on a uniform and consistent basis, will decide whether a requested change is on account of and corresponds with a change made under the other employer plan, in accordance with prevailing IRS guidance.

(5) Dependent Care Flexible Spending Account Plan Changes

A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care service provider.

(g) Enrollment in Marketplace Coverage

A Participant may revoke coverage under the Medical Plan in order to enroll in a qualified health plan at a health insurance marketplace during the marketplace's special enrollment periods or open enrollment period. Enrollment in such qualified health plan must be effective as of the date immediately following the effective date of the revocation of the coverage under this Plan.

(h) Other Changes

The Plan Administrator, in its sole discretion and on a uniform and consistent basis, may allow other changes in elections if the Plan Administrator determines that the change is authorized by the Code and corresponding regulations.

5.5 TERMINATION OF PARTICIPATION IN COMPONENT PLANS

A Participant's termination of participation in the Plan is governed by Article II. However Participant's termination of participation in the Medical, Dental and/or Life Insurance Plan or a Component Plan, however, is governed by the specific provisions governing termination under such plans. Termination of participation will automatically revoke the Participant's elections under this Plan.

5.6 PARTICIPATION FOLLOWING TERMINATION OF EMPLOYMENT

Notwithstanding anything in this Plan to the contrary, if a Participant loses eligibility for the Plan due to termination of employment and is then rehired or becomes eligible for the Plan within 30 days of the termination of employment, the elections made by the former Participant prior to the termination of employment or loss of eligibility will be reinstated. If the former Participant is rehired more than 30 days following a termination of employment, the newly-Eligible Employee may make new elections as described in Section 5.1

5.7 LEAVES OF ABSENCE

(a) Paid Leave

In the event a Participant takes a paid leave of absence, including paid leave pursuant to the FMLA or state law granting similar rights, but does not terminate employment, then participation in the Plan and the Component Plans shall continue during such leave of absence, unless the Participant elects to terminate participation in one or more Component Plans during a paid FMLA leave, in which case the Participant may change the Participant's election under the Plan to conform to the termination of participation and may reinstate the Participant's elections upon return to work after the paid FMLA leave.

(b) Unpaid Leave

(1) FMLA Leave – Medical and Dental Plan Coverage

Notwithstanding any provisions to the contrary in the Plan, if a Participant goes on a qualifying leave under the FMLA, then to the extent required by the FMLA, the Employer will continue to maintain the Participant's Plan Medical and Dental Plan Coverage elected under the Plan on the same terms and conditions as if the Participant was not on FMLA leave.

If the Participant elects to continue coverage while on unpaid FMLA leave, then the Participant may elect to pay the Participant's share of the cost of coverage of the Medical and/or Dental Plans and the Health Flexible Spending Account Plan in one of the following ways:

(i) with after-tax dollars, by sending monthly payments within 30 days of the date the payment is due;

(ii) to the extent allowed by applicable law, on a pre-tax basis out of pre-FMLA Compensation by pre-paying all or a portion of the Participant's cost of coverage for the expected duration of the leave. To pre-pay the Participant's cost of coverage, the Participant must make a special election to that effect prior to the date such Compensation would normally be made available; or

(iii) under another arrangement agreed upon by the Participant and the Employer, such as an agreement whereby the Employer funds coverage during the leave and then withholds catch-up amounts from the Participant's Compensation upon the Participant's return on a pre-tax or after-tax basis.

If a Participant's coverage under the Medical and/or Dental Plans funded through the Premium Payment Plan or coverage under the Health Flexible Spending Account Plan ceased while the Participant was on an unpaid FMLA leave, the Participant is entitled to re-enter the Medical and/or Dental Plans previously elected under the Premium Payment Plan and the

amount elected under the Health Flexible Spending Account Plan on the same basis as elected prior to the FMLA leave, or as required by the FMLA.

Notwithstanding the preceding paragraph, with respect to the Health Flexible Spending Account Plan, a Participant whose coverage ceased will be entitled to elect whether to be reinstated at the same coverage level as in effect before the unpaid FMLA leave, increase contributions for the remaining Plan Year (plus applicable Grace Period), or at a coverage level that is reduced pro-rata for the period of the unpaid FMLA leave during which the Participant did not make required contributions. If a Participant elects a coverage level that is reduced pro-rata for the period of unpaid FMLA leave, the amount will be withheld from a Participant's Compensation on a payroll-by-payroll basis for the purpose of paying for the reinstated benefits under the Health Flexible Spending Account Plan.

(2) FMLA Leave – Coverage for Other Benefits

If a Participant goes on a qualifying leave under the FMLA, entitlement to coverage other than the Medical and/or Dental Plan and HFSA Plan will be determined by the Employer's policy for providing such benefits while the Participant is on a non-FMLA leave, as described in (3) below. If such a policy allows a Participant to discontinue contributions while on leave, the Participant will, upon returning from leave be required to repay such contributions not paid by the Participant during the leave.

(3) Non-FMLA Leave of Absence

If a Participant goes on an unpaid leave of absence that does not affect eligibility for one or more of the Component Plans, then the Participant will continue to participate and the contributions due for the Participant will be paid by pre-payment before going on leave, by after-tax contributions while on leave, or with catch-up contributions after the leave ends, as may be determined by the Employer. If a Participant goes on an unpaid leave that affects eligibility for one or more of the Component Plans, the Change Event rules of Article V will apply. If a Participant is allowed to discontinue contributions while on leave, the Participant will, upon returning from leave be required to repay such contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as may be agreed upon by the Employer and the Participant or as the Employer deems otherwise appropriate.

ARTICLE VI
HEALTH FLEXIBLE SPENDING ACCOUNT PLAN

6.1 ESTABLISHMENT OF PLAN

This Health Flexible Spending Account Plan is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this HFSA Plan may submit claims for the reimbursement of Qualifying Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Participant's Health Flexible Spending Account. Periodic payments reimbursing Participants from the Health Flexible Spending Account shall in no event occur less frequently than monthly. Participants enrolled in the High Deductible Health Plan are not eligible to participate in the Health Flexible Spending Account Plan.

6.2 DEFINITIONS

For the purposes of this Article and the Flexible Benefit Plan, the terms below have the following meaning:

(a) **"Health Flexible Spending Account"** means the account established for each Participant who makes an election to participate in the HFSA Plan. The Plan, however, will not create a separate fund or otherwise segregate assets for this purpose. The account so established will merely be a recordkeeping account with the purpose of keeping track of contributions, reimbursements paid, and determining forfeitures under Section 6.5 below.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

(1) one of the 5 highest paid officers; or

(2) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Qualifying Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and as allowed under Code Section 105 and the rulings and Treasury regulations thereunder, and not otherwise reimbursed or paid to the Participant by the Medical Plan or any other group health plan, insurance, or otherwise. "Qualifying Medical Expenses" can be incurred by the Participant and the Participant's Dependents.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or the Participant's Dependents.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

A Participant may not be reimbursed for over-the-counter drugs or medications unless they are prescribed, with the exception of insulin.

(d) **Other Definitions.** The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Flexible Spending Account Plan.

6.3 BENEFITS UNDER THE HEALTH FSA PLAN

If a Participant elects to participate in the HFSA Plan, the Participant will receive benefits in the form of reimbursement for Qualifying Medical Expenses. Benefits will be funded by Participant contributions through reductions in Compensation, as provided in Section 3.1, or as otherwise provided by the Plan, and will be equal to the annual reduction in Compensation amount elected on the election form for the HFSA Plan. Unless an exception under Section 5.4 applies, such election is irrevocable for the duration of the Plan Year and applicable Grace Period to which it relates.

The maximum amount of benefits elected by the Participant shall be available to a Participant at all times during the Plan Year and Grace Period (reduced by prior reimbursements during the Plan Year and Grace Period), regardless of the actual amount in the Participant's HFSA Account, pursuant to Section 6.4. Notwithstanding the foregoing, no benefits will be available under the HFSA Plan for Qualifying Medical Care Expenses incurred after coverage under the HFSA Plan has terminated, unless a Participant has elected COBRA Continuation Coverage as described in Section 6.10. Payment shall be made to the Participant in cash as reimbursement for Qualifying Medical Care Expenses incurred during the Plan Year and Grace Period for which a Participant's election is effective, provided the other requirements of this HFSA Plan are satisfied.

6.4 CREDITING AND DEBITING OF HFSA PLAN ACCOUNT

As described in this Article, a Participant's HFSA Plan Account shall be credited periodically during the Plan Year with Compensation Reduction Amounts elected pursuant to a Participant's election form. A Participant's HFSA Plan Account shall have a zero balance at the beginning the Plan Year and the balance shall increase each pay period in which Compensation is reduced under Section 3.1 (or with each after-tax payment made during an approved leave of absence or during COBRA participation) and the balance shall decrease by the amount of any reimbursements made to the Participant under Section 6.3. The maximum amount of benefits elected by the Participant shall be available at all times during the Plan Year and Grace Period (reduced by prior reimbursements during the Plan Year and Grace Period), regardless of the actual amount in the Participant's HFSA Plan Account.

6.5 FORFEITURES

The amount in the Health Flexible Spending Account as of the end of any Plan Year and Grace Period (and after the processing of all claims for such Plan Year and Grace Period) shall be forfeited and (1) returned to the Employer or (2) used to reduce the cost, as determined by the Employer, of administering the HFSA Plan during the Plan Year or any subsequent Plan Year, or as otherwise permitted by applicable law. In addition, any benefits that have been paid and are unclaimed by the close of the Plan Year following the Plan Year in which the Qualifying Medical Care Expense was incurred shall be forfeited and applied as described in the previous sentence. In such event, the Participant shall have no further claim to such amount for any reason.

6.6 LIMITATION ON ALLOCATIONS

Notwithstanding any provision contained in this Health Flexible Spending Account to the contrary, no more than \$2,700 (or such higher amount as allowed by the Code based on index calculations for inflation for taxable years beginning after December 31, 2013) may be allocated to the Health Flexible Spending Account by a Participant in or on account of any Plan Year.

6.7 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Flexible Spending Account Plan not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this HFSA Plan, it may, but shall not be required to, reject any elections or reduce contributions or benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or benefits, it shall be done in the following manner. First, the benefits designated for the Health Flexible Spending Account Plan by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Flexible Spending Account Plan for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and used as set forth in Section 6.5.

6.8 COORDINATION WITH FLEXIBLE BENEFIT PLAN

Only Participants in the Plan are eligible to receive benefits under this Health Flexible Spending Account Plan. Matters concerning contributions, elections and the like shall be governed by the general provisions of the Plan.

6.9 HEALTH FLEXIBLE SPENDING ACCOUNT CLAIMS

(a) **Expenses must be incurred during Plan Year and Grace Period.** All Qualifying Medical Expenses incurred by a Participant and the Participant's Dependents shall be reimbursed if a timely claim is made, even if the submission of such a claim occurs after participation hereunder ceases; but provided that the Qualifying Medical Expenses were incurred during the applicable Plan Year and Grace Period and while the Participant was a Participant in the Plan. Qualifying Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year and Grace Period.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Qualifying Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Flexible Spending Account for the Plan Year.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Qualifying Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Qualifying Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage

and, if reimbursed from the Health Flexible Spending Account Plan, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Claims for reimbursement.** Claims for the reimbursement of Qualifying Medical Expenses incurred in any Plan Year and Grace Period shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 120 days after the end of the Plan Year, those Qualifying Medical Expense claims shall not be considered for reimbursement by the Administrator. All claims must be submitted in accordance with the directions of the Plan Administrator, and must be substantiated in a manner that complies with the applicable Code rules and federal regulations and guidance.

(e) **Ordering Rule.** If a request for reimbursement of a Qualifying Medical Expenses is submitted during the Grace Period and the Participant has a balance in the Participant's Health Flexible Spending Account from the immediately previous Plan Year, the benefits for such expenses shall be paid from the Health Flexible Spending Account for the previous Plan Year until such Account reaches a zero balance before any benefits will be paid from the Health Flexible Spending Account for the current Plan Year.

6.10 COBRA CONTINUATION COVERAGE

COBRA Continuation Coverage shall be offered to Participants who are the Health Flexible Spending Account Plan and their qualifying family members in accordance with COBRA and the terms of this Section 6.10.

The Plan Administrator or its designee is responsible for administering COBRA continuation coverage. The terms used in this Section 6.10, not otherwise defined in the Plan, shall have the meaning given them by COBRA.

A Participant has a qualifying event under COBRA if eligibility for the Health Flexible Spending Account Plan is lost due to termination of employment or reduction of hours of employment. Dependents may qualify for COBRA continuation coverage under these and other qualifying events as provided by COBRA. A Participant is only considered a qualified beneficiary with COBRA rights and benefits if the Participant was enrolled in the HFSA Plan on the day before the qualifying event which triggered the right to elect COBRA, and if the benefits the Participant could receive from the HFSA Plan during the remaining portion of the Plan Year and applicable Grace Period exceed the total of the contributions which the Participant will be required to pay for the remainder of the Plan Year in accordance with the Participant's enrollment election form. This occurs where a Participant has paid more in contributions to the HFSA Plan during the Plan Year up to the date of the qualifying event than the amount of benefits the Participant has received from the HFSA.

In order to receive COBRA Continuation Coverage, Participants are required to give the Employer notice of following qualifying events: divorce of the Participant and Spouse or a Dependent child's losing eligibility as a dependent child. The Participant must notify the Employer within 60 days after the qualifying event occurs. This notice must be in writing to Employer in accordance with the Notice Procedures in the next paragraph. If a Participant does not give written notice of these events to the Employer, the Participant and the Participant's Dependents lose their rights to COBRA coverage.

Any notice that a Participant is required to provide must be ***in writing***. Oral notice, including notice by telephone, is not acceptable. The Participant must mail, fax or hand-deliver notice to the person, department or firm listed below, at the following address:

Alaska Railroad Corporation
Human Resources
P.O. Box 107500
Anchorage, AK 99510-7500

Any notice the Participant must provide must state: (1) the name of the HFSA Plan; (2) the name and address of the Participant covered under the HFSA Plan; (3) the name(s) and address(es) of the qualified beneficiary(ies); and (4) the qualifying event and the date it happened. If the qualifying event is a divorce or legal separation, the notice must include a copy of the divorce decree or the legal separation agreement.

For an individual electing COBRA coverage, COBRA coverage will automatically terminate before the end of the Plan Year and applicable Grace Period if one of the following occurs: (1) the Employer terminates the HFSA Plan; (2) a COBRA premium, other than the first premium, is not paid within 30 days of its due date; (3) the individual first becomes covered after the date the individual elects COBRA continuation coverage under another medical reimbursement plan and/or other group health plan which does limit or exclude any of the individual's pre-existing conditions; or (4) the individual first becomes entitled to Medicare benefits after the date the individual elects COBRA coverage.

If a Participant or family member qualifies for COBRA continuation coverage under the HFSA Plan, the COBRA continuation coverage will last only until the end of Grace Period for the Plan Year.

The HFSA Plan charges a premium for COBRA Continuation Coverage, not to exceed 102% of the cost of providing the coverage for the period to similarly situated employees or dependents. Participants who qualify for and elect COBRA coverage before the receipt of their final paycheck may, but are not required to, pay their COBRA premiums for the HFSA Plan for all or part of the remainder of the Plan Year from their final paycheck on a pre-tax basis under the Flexible Benefit Plan. The COBRA premiums must be paid by the following due dates: (1) the first payment is due within 45 days of the date COBRA is elected; (2) the due date for the other premiums is the 1st of the month. COBRA continuation coverage will be terminated if the first payment is not made within 45 days of the date COBRA is elected or if the subsequent payments are not made within 30 days of the due dates. There are no COBRA premiums due for the Grace Period.

6.11 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Plan Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("Cards") provided by the HFSA Plan for payment of certain Qualifying Medical Expenses, subject to the following terms:

(a) **Card Only for Qualifying Medical Expenses.** Each Participant issued a Card shall certify that such Card shall only be used for Qualifying Medical Expenses. The Participant shall also certify that any Qualifying Medical Expense paid with the Card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits. In addition, until such time as allowed by applicable regulation or guidance of the Treasury Department or the Internal Revenue Service, the Card may not be used to purchase prescribed over-the-counter drugs or medications.

(b) **Card Issuance.** Such Card shall be issued upon the Participant's initial enrollment, and reissued periodically as determined by the Plan Administrator while the Participant remains a Participant in the HFSA Plan. Such Card shall be automatically cancelled at the end of the month (1) in which the Participant's death or termination of employment occurs, or (2) in which the Participant has a change in status that results in the Participant's withdrawal from the HFSA Plan.

(c) **Maximum Dollar Amount Available.** The dollar amount of coverage available on the Card shall be the amount elected by the Participant under the HFSA Plan for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.6. The Card is only available for use with certain service providers. The Cards shall only be accepted by such merchants and service providers as have been approved by the Plan Administrator.

(d) **Card Use.** The Cards shall only be used for Qualifying Medical Expense purchases at these providers, including, but not limited to, the following:

- (1) Co-payments for doctor and other medical care;
- (2) Purchase of prescription drugs;
- (3) Purchase of medical items such as eyeglasses, syringes, or crutches.

The HFSA Plan may charge a Participant's Health Flexible Spending Account a reasonable fee if the Participant requests a replacement Card from the HFSA Plan.

(e) **Substantiation.** Such purchases by the Cards shall be subject to substantiation by the Plan Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Plan Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43, Notice 2006-69, and any other applicable guidance by the Treasury Department or the Internal Revenue Service. All charges shall be conditional pending confirmation and substantiation.

(f) **Correction Methods.** If a Card purchase is later determined by the Plan Administrator to not qualify as a Qualifying Medical Expense, the Plan Administrator, in its discretion, shall use one of the following correction methods to make the HFSA Plan whole. Until the amount is repaid, the Plan Administrator shall take further action to ensure that further violations of the terms of the Card do not occur, up to and including denial of access to the Card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) If subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

**ARTICLE VII
DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT PLAN**

7.1 ESTABLISHMENT OF ACCOUNT

This Dependent Care Flexible Spending Account Plan is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this plan may submit claims for the reimbursement of Employment-Related Dependent Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Dependent Care Flexible Spending Account.

7.2 DEFINITIONS

For the purposes of this Article and the Flexible Benefit Plan the terms below shall have the following meaning:

(a) **"Dependent Care Flexible Spending Account"** means the account established for each Participant who makes an election to participate in the DCFSA Plan. The Plan, however, will not create a separate fund or otherwise segregate assets for this purpose. The account so established will merely be a recordkeeping account with the purpose of keeping track of contributions, reimbursements paid, and determining forfeitures under Section 7.8 below. Employment-Related Dependent Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants from the Participant's DCFSA Account.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for dependent care assistance to the Participant.

(c) **"Employment-Related Dependent Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any periods for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Dependent Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the dependent care that gives rise to the Employment-Related Dependent Care Expenses, not when the Participant is formally billed or charged for, or pays for the dependent care. The determination of whether an amount qualifies as an Employment-Related Dependent Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Dependent Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all

applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Dependent Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Dependent Care Flexible Spending Account purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Participant's Dependent Spouse or other Dependent of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) **Other Definitions.** The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Dependent Care Flexible Spending Account Plan.

7.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

The Administrator shall establish a Dependent Care Flexible Spending Account for each Participant who elects to contribute to the Dependent Care Flexible Spending Account Plan.

7.4 INCREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be increased each pay period by the portion of Compensation Reduction Amount that the Participant has elected to apply toward the Participant's Dependent Care Flexible Spending Account for such pay period pursuant to elections made under Article V hereof.

7.5 DECREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be reduced by the amount of any Employment-Related Dependent Care Expense reimbursements paid to the Participant pursuant to Section 7.12 hereof.

7.6 ALLOWABLE DEPENDENT CARE REIMBURSEMENT

Subject to limitations contained in Section 7.9 of this Plan, and to the extent of the amount contained in the Participant's Dependent Care Flexible Spending Account, a Participant who incurs Employment-Related Dependent Care Expenses shall be entitled to receive from the Plan full reimbursement for the entire amount of such expenses incurred during the Plan Year and Grace Period or portion thereof during which the person is a Participant.

7.7 ANNUAL STATEMENT OF BENEFITS

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year. This requirement may be satisfied by providing the required information on benefits in Box 10 of the Employee's Form W-2.

7.8 FORFEITURES

The amount in a Participant's Dependent Care Flexible Spending Account as of the end of any Plan Year and Grace Period (and after the processing of all claims for such Plan Year and Grace Period pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

7.9 LIMITATION ON PAYMENTS

Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Dependent Care Flexible Spending Account in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)). In addition, the minimum amount that can be contributed by a Participant in Plan Year to the Participant's Dependent Care Flexible Spending Account is \$100.

7.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Dependent Care Flexible Spending Account that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or benefits, it shall be done in the following manner. First, the benefits designated for the Dependent Care Flexible Spending Account by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected Participant who has elected the second highest contribution to the Dependent Care Flexible Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

7.11 COORDINATION WITH FLEXIBLE BENEFIT PLAN

All Participants under the Flexible Benefit Plan who have submitted timely election forms are eligible to receive benefits under this Dependent Care Flexible Spending Account Plan. The termination of participation under the Flexible Benefit Plan shall constitute

termination of participation under this Dependent Care Flexible Spending Account Plan. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Flexible Benefit Plan.

7.12 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT CLAIMS

The Administrator shall direct the payment of all such Employment-Related Dependent Care Expense claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred during the Plan Year and Grace Period and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Plan for Employment-Related Dependent Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which the Participant wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
 - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
 - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
 - (3) of the amount of fee paid to the provider.
- (h) If the Participant is married, a statement containing the following:
 - (1) the Spouse's salary or wages if the Spouse is employed, or
 - (2) if the Participant's Spouse is not employed, that
 - (i) the Spouse is incapacitated, or

(ii) the Spouse is a full-time student attending an educational institution and the months during the year which the Spouse attended such institution.

(i) **Claims for reimbursement.** If a Participant fails to submit a claim within 120 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator.

7.13 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Employment-Related Dependent Care Expenses, subject to the following terms:

(a) **Card only for dependent care expenses.** Each Participant issued a card shall certify that such card shall only be used for Employment-Related Dependent Care Expenses. The Participant shall also certify that any Employment-Related Dependent Care Expense paid with the card has not already been reimbursed by any other plan covering dependent care benefits and that the Participant will not seek reimbursement from any other plan covering dependent care benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Dependent Care Flexible Spending Account. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Dependent Care Flexible Spending Account.

(c) **Only available for use with certain service providers.** The cards shall only be accepted by such service providers as have been approved by the Administrator. The cards shall only be used for Employment-Related Dependent Care Expenses from these providers.

(d) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(e) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as an Employment-Related Dependent Care Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

(1) Repayment of the improper amount by the Participant;

(2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;

(3) Claims substitution or offset of future claims until the amount is repaid; and

(4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

**ARTICLE VIII
PREMIUM PAYMENT PLAN**

8.1 PREMIUM PAYMENT PLAN

All Participants of the Plan are eligible to participate in the Premium Payment Plan. If a Participant elects to enroll in the Medical and/or Dental Plan, the Participant is electing to pay the Participant's contributions or premiums for the Medical and/or Dental Plan through reductions in Compensation. If the Participant is enrolled in the Life Insurance Plan, the Participant is electing to pay for the \$50,000 of life insurance coverage on a pre-tax basis. The Premium Payment Plan only provides for payment of the premiums for the Medical, Dental, and /or Life Insurance Plans. Reimbursement of claims under the Medical, Dental and/or Life Insurance Plans is not provided by the Premium Payment Plan.

8.2 TERMINATION OF PARTICIPATION

A Participant will cease to be a Participant in the Premium Payment Plan upon the earlier of:

- (a) termination of the Premium Payment Plan;
- (b) the end of the payroll period in which the Participant ceases to be an Eligible Employee;
- (c) the end of the payroll period in which the Participant ceases to participate in the Medical, Dental and/or Life Insurance Plans; or
- (d) the end of the payroll period in which the Participant's coverage under the Premium Payment Plan is terminated for Cause.

**ARTICLE IX
CLAIMS REVIEW PROCEDURES**

9.1 CLAIM FOR BENEFITS

(a) Any claim for Benefits under this Plan shall be made to the Administrator or its representative. If the Administrator denies a claim, the Administrator shall provide notice to the claimant, in writing, within 30 days after the claim is filed unless special circumstances require an extension of time up to an additional 15 days for processing the claim. The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:

- (i) specific reason or reasons for the denial;
- (ii) specific references to the pertinent Plan provisions on which the denial is based;
- (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such material or information is necessary; and
- (iv) an explanation of the Plan's claim procedure.

(b) Within 180 days after receipt of the above material, the claimant shall have a reasonable opportunity to appeal the claim denial to the Administrator for a full and fair review. The claimant or the claimant's duly authorized representative may:

- (i) request a review upon written notice to the Administrator;
- (ii) review pertinent documents; and
- (iii) submit issues and comments in writing.

(c) A decision on the review by the Administrator will be made not later than 60 days after receipt of a request for review. The decision of the Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based, any internal rules relied upon in making the decision, and a statement of the Participant's right to review relevant documents.

9.2 FORFEITURES AND APPLICATION OF BENEFIT PLAN SURPLUS

Any balance remaining in the Participant's Dependent Care Flexible Spending Account or Health Flexible Spending Account as of the end of the time for claims reimbursement for each Plan Year shall be forfeited unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in the Participant's account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but

need not be, separately accounted for after the close of the Plan Year and applicable Grace Period (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year (other than during the Grace Period) for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations.

9.3 HSA TRUSTEE AND NO FIDUCIARY RESPONSIBILITIES FOR HSA INVESTMENTS

All HSA Benefits provided under this Plan will be deposited in an HSA established by the Participant with an HSA trustee or custodian selected by the Employer. The Participant participating in HSA Benefits is responsible for establishing and maintaining a Health Savings Account with such HSA trustee or custodian in a timely fashion as directed by the Employer. After funds have been deposited into the Participant's HSA with such HSA trustee or custodian, the Participant may transfer any amounts so deposited to another HSA trustee or custodian of the Participant's choice ("Alternative Trustee"). However, the Participant is responsible for any and all fees or charges imposed by an Alternative Trustee. Any HSA trustee or custodian, including one selected by the Employer may offer investment options for HSAs. Notwithstanding any other provision of this Plan, neither the Employer, the Plan Administrator, nor any other official or employee of them (1) has reviewed any investment options offered by an HSA trustee or custodian; (2) endorses or recommends any HSA trustee or custodian or any investment options offered by such HSA trustee or custodian; (3) is a Plan fiduciary with respect to the investment designation or direction of a Participant regarding an HSA. Participants are solely responsible for their actions concerning the establishment and maintenance of their Health Savings Account or Accounts and HSA investment decisions and should consult a tax advisor or financial consultant to determine what, if any, investments are appropriate for them.

9.4 NONASSIGNABILITY OF RIGHTS

The right of any Participant to receive any reimbursement under the Plan shall not be alienable by the Participant by assignment or any other method, and shall not be subject to the rights of creditors, and any attempt to cause such right to be so subjected shall not be recognized, except to such extent as may be required by law.

ARTICLE X ADMINISTRATION

10.1 PLAN ADMINISTRATION

The operation of the Plan (including all Component Plans) shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan and Component Plans are carried out in accordance with Plan terms and with applicable law. The Administrator shall have full power to administer the Plan and Component Plans in all details, subject, however, to the pertinent provisions of the Code. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan. All of the Administrator's decisions relating to the Plan are final and binding on all persons except to the extent found to be arbitrary and capricious. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this Plan and the Component Plans:

(a) To make and enforce such procedures, rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan and Component Plans, including procedures to be followed by Participants in obtaining benefits;

(b) To interpret the Plan and Component Plans, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming Plan benefits;

(c) To make factual determinations upon which decisions as to benefits are based, to decide all questions concerning the Plan and the Component Plans and the eligibility of any person to participate in the Plan and Component Plans and to receive benefits provided by operation of the Plan and Component Plans;

(d) To reject elections or to limit contributions or benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan or Component Plans in violation of applicable provisions of the Code;

(e) To provide Employees with a reasonable notification of their Plan benefits and to assist Participants regarding their rights, benefits or elections under the Plan;

(f) To review and settle all claims against the Plan, and to approve reimbursement requests and to authorize the payment of benefits; and

(g) To appoint such agents, counsel, accountants, consultants, actuaries and other persons or entities as may be required to assist in administering the Plan and the Component Plans.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

10.2 INSURANCE CONTROL CLAUSE

In the event of a conflict between the terms of this Plan and the terms of an insurance Contract of an independent third party insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

10.3 INDEMNIFICATION OF ADMINISTRATOR

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

10.4 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant or other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

10.5 PAYMENT OF EXPENSES

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any trust fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

10.6 ADMINISTRATIVE ERRORS REGARDING HSA BENEFITS

If the Employer makes an administrative or other error under which the Employer contributes funds to a Participant's HSA in excess of the HSA Benefits provided under this Plan ("Excess Contribution"), and the Employer is unable to obtain a refund of the Excess Contribution from the HSA custodian or trustee, the Participant is required to repay the Employer the Excess Contribution. As a condition of participating in this Plan, Participants receiving such excess HSA Benefits agree to repay the Employer any such Excess Contributions. The Employer may require the Participant to repay the Excess Contribution via payroll deduction or may allow the Participant to repay the Excess Contribution in another manner agreed to by the Employer and the Participant. If a Participant's employment is terminated before the Participant has repaid the Excess Contribution, the Employer may deduct the remaining repayment amount of the Excess Contribution from the Participant's last payroll check from the Employer.

**ARTICLE XI
AMENDMENT OR TERMINATION OF PLAN**

11.1 AMENDMENT

The Plan may at any time and from time to time be amended or modified, by written instrument executed by the Chief Executive Officer of the Employer or any individual(s) acting pursuant to written authorization of the Chief Executive Officer to amend or modify the Plan. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

11.2 TERMINATION

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate this Plan, in whole or in part, at any time, by resolution of the Board of Directors or by written action of an Employee of the Employer to whom the Board of Directors has delegated the right to terminate the Plan.

**ARTICLE XII
MISCELLANEOUS**

12.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 12.10.

12.2 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in any gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

12.3 WRITTEN DOCUMENT

This Plan is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

12.4 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

12.5 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

12.6 NO GUARANTEE OF TAX CONSEQUENCES

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

12.7 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any

penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

12.8 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

12.9 GOVERNING LAW

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of Alaska.

12.10 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

12.11 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

12.12 REFUNDS

If it is determined that the Plan has made a payment or overpayment of benefits to which a Participant is not entitled, the Administrator may deduct the amount of such payment or overpayment from future payments of claims otherwise payable under the Plan to the Participant. If the Plan for any reason is not able to make such a deduction, Participants must repay such payment or overpayment to the Plan. Participants not complying with this Section may, in the discretion of the Employer, lose eligibility to participate in the Plan.

12.13 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Notwithstanding anything in this Plan to the contrary, the HFSA Plan shall be operated in accordance with HIPAA and regulations thereunder.

12.14 UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Notwithstanding any provision of this Plan to the contrary, the Plan shall comply with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder, to the extent applicable.

12.15 COMPLIANCE WITH HIPAA PRIVACY AND SECURITY STANDARDS FOR HFSA PLAN

(a) **Application.** This Section 12.15 applies only to the HFSA Plan. To the extent any term used in this Section is not defined in the Plan, the term shall have the meaning as defined under HIPAA.

(b) **Disclosure of PHI.** The HFSA Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met.

(c) **Summary Health Information.** The HFSA Plan may disclose summary health information to the Employer if the Employer requests the summary information for the purpose of (1) obtaining premium bids for providing insurance coverage; or (2) modifying, amending, or terminating the HFSA Plan. The Employer may use summary information so received from the HFSA Plan only for these two listed purposes.

(d) **Enrollment Information.** The HFSA Plan may disclose to the Employer, and the Employer may use, information on whether an individual is participating in the HFSA Plan or is enrolling or disenrolling in the HFSA Plan.

(e) **Authorization.** The HFSA Plan may disclose PHI to the Employer and the Employer may use such PHI if the Participant or Dependent has specifically authorized in writing such disclosure and/or use.

(f) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of HFSA Plan administrative functions. The HFSA Plan's administrative functions shall include all HFSA Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill HFSA Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care. PHI that is genetic information will not be used or disclosed for underwriting purposes.

(g) **PHI disclosed to certain workforce members.** The HFSA Plan shall disclose Protected Health Information only to members of the Employer's workforce who are designated and authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform the person's duties with respect to the HFSA Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform the member's duties with respect to the HFSA Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the HFSA Plan's privacy officer. The privacy officer shall take appropriate action, including:

(i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;

(ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;

(iii) mitigation of any harm caused by the breach, to the extent practicable; and

(iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

(h) **Certification.** By adopting the HFSA Plan, the Employer hereby certifies to the HFSA Plan that it agrees to:

(1) Not use or further disclose the information other than as permitted or required by the HFSA Plan documents or as required by law;

(2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the HFSA Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information. Any agents or subcontractors of the Employer to whom the Employer provides electronic PHI must agree to implement reasonable and appropriate security measures to protect the information;

(3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

(4) Report to the HFSA Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law. The Employer will report to the HFSA Plan any security incident of which the Employer becomes aware.

(5) Make available Protected Health Information to individual HFSA Plan members in accordance with Section 164.524 of the Privacy Standards;

(6) Make available Protected Health Information for amendment by individual HFSA Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;

(7) Make available the Protected Health Information required to provide an accounting of disclosures to individual HFSA Plan members in accordance with Section 164.528 of the Privacy Standards;

(8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the HFSA Plan available to the Department of Health and Human Services for purposes of determining compliance by the HFSA Plan with the Privacy Standards;

(9) If feasible, return or destroy all Protected Health Information received from the HFSA Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible;

(10) Ensure the adequate separation between the HFSA Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above; and

(11) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that the Employer creates, receives, maintains or transmits on behalf of the HFSA Plan, except enrollment/disenrollment information and Summary Information, which are not subject to these restrictions.

APPENDIX A

PLAN PROVISIONS APPLICABLE TO EMPLOYEES COVERED UNDER A COLLECTIVE BARGAINING AGREEMENT

1. ALASKA RAILROAD WORKERS/AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES/UNITED TRANSPORTATION UNION EMPLOYEES

Required service period: 90 cumulative calendar days

Health FSA Limitations: Be employed in a year-round job. Have had 12 months of continuous employment prior to January 1 of the Plan Year, with no unpaid leaves or layoffs during those 12 months. Anticipate continuous employment for the next 12 months. If a non-paid leave or a layoff is expected in the upcoming year, the employee may not participate in the Plan.

2. INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Required service period: 90 cumulative calendar days

Health FSA Limitations: Same as other Plan Participants.

3. AMERICAN TRAIN DISPATCHERS ASSOCIATION

Required service period: 90 cumulative calendar days

Health FSA Limitations: Same as other Plan Participants

4. TRANSPORTATION COMMUNICATION INTERNATIONAL UNION

Required service period: 90 cumulative calendar days

Health FSA Limitations: Same as other Plan Participants

Adopted:

Resolution No. 2020-06

Relating to Whittier Lower 1 and 2 Track
Enhancements (AFE No. 10868)

WHEREAS, the Alaska Railroad Corporation (ARRC) maintains a railyard in the ARRC Whittier Reserve (Whittier Yard); and

WHEREAS, the Whittier Yard includes tracks designated as Lower 1 and Lower 2; and

WHEREAS, a permittee of ARRC moves cargo in and adjacent to the Whittier Yard in conjunction with rail barge operations; and

WHEREAS, ARRC's permittee drives on the Lower 1 and Lower 2 tracks in order to accommodate the turning radius of their heavy duty tractors, which typically pull double trailers; and

WHEREAS, because there is no crossing panel system in place on the Lower 1 and Lower 2 tracks, the force created by the permittee's heavy vehicles has the potential to adversely affect the rail geometry of the tracks, which could in turn cause a derailment, with the inherent risk of personal injury, property damage and/or death; and

WHEREAS, the grade adjacent to the Lower 1 and Lower 2 tracks causes water to pond within the railbed, which leads to ice build-up that also increases the risk of a derailment; and

WHEREAS, removing up to 1,500 linear feet of the Lower 1 and Lower 2 tracks and replacing them with pre-cast railroad crossing panels and associated paving and grading activities will allow for the turning of the permittee's vehicles without adverse effects on the rail, will address drainage and icing issues and will allow the Lower 1 and Lower 2 tracks to be utilized more efficiently by the permittee; and

WHEREAS, AFE No. 10868 authorizes the expenditure of \$2,068,500 to remove the Lower 1 and Lower 2 tracks and to replace them with pre-cast railroad crossing panels and associated activities; and

WHEREAS, the above-described project will be funded entirely with ARRC funds; and

WHEREAS, the approval to begin a capital project with an estimated cost of more than \$500,000 or an estimated completion time of more than one year requires specific Board approval pursuant to AS 42.40.120(c)(13).

NOW THEREFORE BE IT RESOLVED, that the ARRC Board of Directors has considered the proposal to remove up to 1,500 linear feet of the Lower 1 and Lower 2 tracks in the Whittier Yard and replace them with pre-cast railroad crossing panels as presented by ARRC Management and hereby approves AFE No. 10868 in the amount of \$2,068,500 for the purposes stated therein.

Alaska Railroad Corporation
Authorization for Expenditure Form

For Accounting Use Only

AFE# 10868

Page 1

General Information:	
AFE Title:	Whittier Yard: Lower 1 & 2 Track Enhancements
Prepared By:	Brian A. O'Dowd
Resp. Center (Name):	Projects
Resp. Center (#):	2500
Depreciation Center:	1318-Maintenance Depreciation
Line of Business:	Engineering
Spending Timetable:	
2020	\$ 2,068,500
2021	\$ -
2022	\$ -
2023	\$ -
2024	\$ -
Total	\$ 2,068,500
Other Information	
Useful Life (Years):	25
Annual Depreciation:	\$ 82,740
Estimated Annual Operating Costs	\$ -

Included in Capital Budget:		
Capital Budget	Year:	2020
Total Amount	\$	2,068,500
Source of Funding	ARRC	\$ 2,068,500
Source of Funding		\$ -
Source of Funding		\$ -
Grant Number		
Grant Name		
AFE History:		
	Amount	Date Prepared
Original AFE	\$ 2,068,500	03/03/20
Supplemental #1	\$ -	
Supplemental #2	\$ -	
Supplemental #3	\$ -	
Supplemental #4	\$ -	
Supplemental #5	\$ -	
Supplemental #6	\$ -	
Supplemental #7	\$ -	
Total	\$ 2,068,500	

Required Signatures for Approval:			
(if applicable)	Last Name(s) (Print)	Signature	Date
Project Manager:	Brian O'Dowd		
Responsible Owner:	Lloyd Tesch		
VP, Owner Department:	Brian Lindamood		
Functional User(s):	Lloyd Tesch		
Chief Operating Officer:	Clark Hopp		
Grant Administration:	Shawnessy Leon	N/A	
Chief Financial Officer:	Barbara Amy		
Accounting Department:	Wendy Richerson		
CEO & President:	Bill O'Leary		
Board of Directors:	Craig Campbell		

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Alaska Railroad Corporation
Authorization for Expenditure Form

For Accounting Use Only

AFE# 10868

Page 2

Is this project related to health and/or safety?	Yes	If yes describe:
<p>The tracks are currently being driven on by the lessee to accommodate the turning radius of their heavy duty tractors typically pulling doubles. As there is no crossing panel system in place, the forces created by these vehicles has the potential to affect the rail geometry and thus has the potential to be the root cause of a future derailment. Furthermore, the grade adjacent to the current tracks cause water to pond within the road bed which leads to ice buildup. Should a derailment occur in this area, the result could range from minor property damage to death.</p>		
Scope of Work:		
<p>Removal of up-to 1,500 linear feet of yard track in its entirety and replacement of said track with Oldcastle Precast® Star-Track™, or similar, pre-cast railroad crossing panels. Work subsidiary to the aforementioned includes the salvage and/or disposal of all removed materials, removal and replacement of asphaltic concrete (AC) pavement necessary for the installation of the panels, disposal of unclassified excavation for the same; and the procurement, placement, grading, and compaction of classified materials for the panel's subgrade; installation of transition ties (as required) and the surfacing and/or raising of the yard tracks leading up-to the improvements.</p>		
ARRC Business Justification:		
<p>The improvements to the segment of Lower 1 & 2 in the Whittier Yard are necessary to address drainage issue, and subsequently the grade issue, as well as to accommodate the turning radius of the equipment and vehicles used to support barge operations. Furthermore, improvements to the Lower 2 will allow Lower 1 to be utilized more efficiently by the lessee.</p>		
Alternatives Considered:		
<p>Removal of the track indicated herein and; - replacement with concrete ties, new rail, and placement of AC pavement over the replaced track; and - replacement with crossing ties, new rail, and placement of pre-cast concrete crossing panels.</p>		
Preliminary Budget:		
Line Description	Amount	
Equipment	\$	182,712
Labor (Fully Burdened)	\$	267,175.74
Materials	\$	1,197,576
Contracts	\$	322,504
Other Expenses	\$	98,500
	Total (rounded)	\$ 2,068,500

Note: All health and/or safety related project(s) should be the highest ranked project(s) in the department.

Adopted:

Resolution No. 2020-07

Relating to Replacement of Pony-Truss Style
Bridge at ARRC MP 86.6 (AFE No. 10869)

WHEREAS, the Alaska Railroad Corporation (ARRC) maintains a number of Pony-truss style truss bridges on the mainline of its rail system, including the bridge located at ARRC MP 86.6 (MP 86.6 Bridge); and

WHEREAS, the existing Pony-truss style bridges are repurposed structures from the World War II reconstruction era, which were never designed for railroad use in the US, and which were installed in the early 1950's; and

WHEREAS, the majority of the remaining Pony-truss style bridge structures currently in service, including the MP 86.6 Bridge, are approaching the end of their useful lives; and

WHEREAS, the MP 86.6 Bridge see some of the heaviest traffic on ARRC's rail system; and

WHEREAS, the MP 86.6 Bridge is among the heavily-used mainline bridges which were designated by ARRC for replacement between 2015 and 2020 to mitigate further structural fatigue and risk of structural failure, as well as the potential for personal injury, property damage and service interruptions that could result from those causes, and to reduce the costs of maintaining and repairing those bridges; and

WHEREAS, the project that is the subject of this resolution would remove and replace the existing superstructure at the MP 86.6 Bridge with a new 123-foot through-plate girder span and two approach spans; and

WHEREAS, AFE No. 10869 authorizes the expenditure of \$7,743,826 to remove and replace the MP 86.6 Bridge in 2020, with \$3,871,913 of that amount to consist of ARRC funds and a matching amount of \$3,871,913 to consist of federal CRISI grant funds, the receipt of which by ARRC shall be a condition of this authorization; and

WHEREAS, the approval to begin a capital project with an estimated cost of more than \$500,000 or an estimated completion time of more than one year requires specific Board approval pursuant to AS 42.40.120(c)(13).

NOW THEREFORE BE IT RESOLVED, that the ARRC Board of Directors has considered the proposal to remove and replace the MP 86.6 Bridge as presented by ARRC Management and hereby approves AFE No. 10869 in the amount of \$7,743,826 for the purposes stated therein.

**Alaska Railroad Corporation
Authorization for Expenditure Form**

For Accounting Use Only

AFE# 10869

Page 1

General Information:	
AFE Title:	MP 86.6 Bridge Replacement
Prepared By:	Brian A. O'Dowd
Resp. Center (Name):	Maintenance
Resp. Center (#):	1318
Depreciation Center:	1318-Maintenance Depreciation
Line of Business:	Corporate
Spending Timetable:	
2019	\$ 1,846,526
2020	\$ 5,897,300
2021	\$ -
2022	\$ -
2023	\$ -
Total	\$ 7,743,826
Other Information	
Useful Life (Years):	30
Annual Depreciation:	\$ 258,128
Estimated Annual Operating Costs	\$ -

Included in Capital Budget:		
Capital Budget	Year:	2020
Total Amount	\$	7,743,826
Source of Funding	FRA	\$ 3,871,913
Source of Funding	ARRC match	\$ 3,871,913
Source of Funding		\$ -
Grant Number	pending	
Grant Name	pending	
AFE History:		
	Amount	Date Prepared
Original AFE	\$ 7,743,826	03/18/20
Supplemental #1	\$ -	
Supplemental #2	\$ -	
Supplemental #3	\$ -	
Supplemental #4	\$ -	
Supplemental #5	\$ -	
Supplemental #6	\$ -	
Supplemental #7	\$ -	
Total	\$ 7,743,826	

Required Signatures for Approval:			
(if applicable)	Last Name(s) (Print)	Signature	Date
Project Manager:	Brian O'Dowd		
Responsible Owner:	Christian Ryll		
VP, Owner Department:	Brian Lindamood		
Functional User(s):	Jon Garner		
Chief Operating Officer:	Clark Hopp		
Grant Administration:	Shawnessy Leon		
Chief Financial Officer:	Barbara Amy		
Accounting Department:	Wendy Richerson		
CEO & President:	Bill O'Leary		
Board of Directors:	Craig Campbell		

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Alaska Railroad Corporation
Authorization for Expenditure Form

For Accounting Use Only

AFE# 10869

Page 2

Is this project related to health and/or safety?	Yes	If yes describe:
<p>The majority of the remaining Pratt style truss bridge structures currently in service are approaching the end of their useful life. Heavily used mainline structures are planned to be replaced between 2015 and 2020 to mitigate further structure fatigue or interruptions to service. MP 86.6 pony truss bridge sees some of the heaviest traffic on the system and needs to be replaced ASAP.</p>		
<p>Scope of Work:</p>		
<p>Removal and replacement of the existing superstructure at the Bridge MP 86.6 site to include the procurement of a new 123' through plate girder span and two (2) approach spans.</p>		
<p>Work completed under this scope includes the removal of the existing superstructures, demolition and disposal of the structures off-site, modifications to the existing piers to accept the new superstructures, construction of two (2) new abutments, assembly of the new spans, and placement of said spans. All necessary engineering and permitting for the replacement of the superstructures at Bridge MP 86.6 will be performed under this AFE.</p>		
<p>The cost estimate assumes federal funding and has been 50% funded by a pending FY2019 CRISI FRA grant.</p>		
<p>ARRC Business Justification:</p>		
<p>The existing Pratt truss style bridges (aka pony truss bridges) are re-purposed structures from the World War II re-construction era. Installation of these re-purposed structures occurred in the early 1950's.</p>		
<p>Beginning in the 1970's, the ARRC's Engineering group began monitoring these structures as freight cars in excess of 263,000 lbs. began transversing the structures. In the early 2000's the ARRC began performing structural analyses which confirmed that the structures were undersized for the increased loading they were experiencing and concluded that said structures were approaching the end of their useful life.</p>		
<p>In 2011, the ARRC began reinforcing the undersized structures to mitigate the affects of certain weld types cracking, potentially reducing the overall structure strength. The intent of this reinforcement program was to support continued rail operations through the year 2021.</p>		
<p>Alternatives Considered:</p>		
<p>Do nothing alternative exposes the ARRC mainline operations to unacceptable levels of risk of failure for these aging and undersized structures.</p>		
<p>Preliminary Budget:</p>		
Line Description	Amount	
Direct	\$ 4,314,933	
Materials	\$ 2,679,967	
ARRC Contracts	\$ 566,419	
Internal Project Administration	\$ 182,507	
Total	\$ 7,743,826	

Note: All health and/or safety related project(s) should be the highest ranked project(s) in the department.

Adopted:

Resolution No. 2020-08

Relating to Whittier Yard Subgrade Drainage
Improvements (AFE No. 10870)

WHEREAS, the Alaska Railroad Corporation (ARRC) maintains a railyard in the ARRC Whittier Reserve (Whittier Yard), part of which is depicted as “Area 2” on Exhibit A to this resolution (Area 2); and

WHEREAS, existing storm drain structures underlying Area 2 have exceeded their useful life, their foundations have corroded beyond repair and they have been undermined by the stormwater that enters them; and

WHEREAS, due to their deteriorated condition, the existing storm drain structures are at increased risk of structural failure when loaded by the constant heavy truck traffic and occasional heavy forklift traffic present on Area 2; and

WHEREAS, failure of one or more of the outdated storm drain structures located in Area 2 within the travel path of such vehicles could result in property damage, personal injury or death; and

WHEREAS, removing and replacing up to eleven corroded and failing storm drain structures in Area 2 will result in a safer and more functional storm drain system, thereby mitigating the risks posed by the current outdated, corroded and potentially dangerous storm drain structures; and

WHEREAS, AFE No. 10870 authorizes the expenditure of \$902,128 to remove and replace up to eleven of the current storm drain structures located on Area 2; and

WHEREAS, the above-described project will be funded entirely with ARRC funds; and

WHEREAS, the approval to begin a capital project with an estimated cost of more than \$500,000 or an estimated completion time of more than one year requires specific Board approval pursuant to AS 42.40.120(c)(13).

NOW THEREFORE BE IT RESOLVED, that the ARRC Board of Directors has considered the proposal to remove and replace up to eleven corroded and failing storm drain structures in Area 2 as presented by ARRC Management and hereby approves AFE No. 10870 in the amount of \$902,128 for the purposes stated therein.

F:\ODDWD FROM HOME\7 - Whittier\Whittier Paving\DWG\Whittier Drainage Site Map 3.22.20.dwg PPrint SITE Plot Style: 7500-Half.ctb

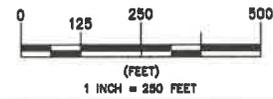


LEGEND

- LEGACY STRUCTURES
- STRUCTURES REPLACED IN 2019
- STRUCTURES REQUIRED PRIOR TO PAVING AREA 2

NOTES:

1. STRUCTURE LOCATIONS SHOWN ARE APPROXIMATE.
2. PAVEMENT EXTENTS SHOWN ARE APPROXIMATE.



ALASKA RAILROAD CORPORATION ENGINEERING SERVICES <small>P.O. BOX 107800, ANCHORAGE, ALASKA 99510-7800</small>		
PROJECT :		
Whittier Yard Drainage and Site Improvements		
TITLE:		
Site Plan Completed / Remaining Improvements		
DESIGNED BY: BAD	SCALE : AS NOTED	DATE: 2/11/2020
DRAWN BY: BAD	CHECKED BY: GKT	APPROVED BY: BJA
LIFE NO. / ASB FILE / DWG NO.		1 OF 1

Alaska Railroad Corporation
Authorization for Expenditure Form

For Accounting Use Only

AFE# 10870

Page 1

General Information:		Included in Capital Budget:		
AFE Title:	Whittier Yard: Subgrade Drainage Improvements - Area 2	Capital Budget	Year:	2020
Prepared By:	Brian A. O'Dowd	Total Amount	\$	902,128
Resp. Center (Name):	Projects	Source of Funding	ARRC	\$ 902,128
Resp. Center (#):	2500	Source of Funding		\$ -
Depreciation Center:	1318-Maintenance Depreciation	Source of Funding		\$ -
Line of Business:	Engineering	Grant Number		
		Grant Name		
Spending Timetable:		AFE History:		
2020	\$ 902,128		Amount	Date Prepared
2021	\$ -	Original AFE	\$ 902,128	03/03/20
2022	\$ -	Supplemental #1	\$ -	
2023	\$ -	Supplemental #2	\$ -	
2024	\$ -	Supplemental #3	\$ -	
Total	\$ 902,128	Supplemental #4	\$ -	
		Supplemental #5	\$ -	
		Supplemental #6	\$ -	
		Supplemental #7	\$ -	
		Total	\$ 902,128	
Other Information				
Useful Life (Years):	25			
Annual Depreciation:	\$ 36,085			
Estimated Annual Operating Costs	\$ -			
Required Signatures for Approval:				
(if applicable)	Last Name(s) (Print)	Signature	Date	
Project Manager:	Brian O'Dowd			
Responsible Owner:	Lloyd Tesch			
VP, Owner Department:	Brian Lindamood			
Functional User(s):	Lloyd Tesch			
Chief Operating Officer:	Clark Hopp			
Grant Administration:	Shawnessy Leon	N/A		
Chief Financial Officer:	Barbara Amy			
Accounting Department:	Wendy Richerson			
CEO & President:	Bill O'Leary			
Board of Directors:	Craig Campbell			

Original Form Must Be Returned to Accounting

Alaska Railroad Corporation
Authorization for Expenditure Form

For Accounting Use Only

AFE# 10870

Page 2

Is this project related to health and/or safety?	Yes	If yes describe:
<p>Existing structures within the area labeled "AREA 2" are beyond their useful life and have the potential to fail when loaded. These structures are constantly under heavy truck traffic and occasional heavy forklift lift traffic. Should one, or multiple structures fail within the travel path of any vehicles minor property damage or death could occur. The structures foundations have corroded beyond repair and become undermined by the storm waters that enter them.</p>		
Scope of Work:		
<p>Removal and replacement of up-to eleven (11) corroded (<i>failing</i>) storm drain structures between the "MOUNTAIN" and "BAY" tracks within the Whittier Yard. Subsidiary to the work is the removal of the existing corrugated metal pipe (CMP) connecting the structures to one another, replacement of the CMP with an aluminized coated CMP for galvanic protection, and tying into the existing storm drain system that is not scheduled for removal.</p>		
ARRC Business Justification:		
<p>Completion of the work reduces the companies exposure to potential damages and claims should the existing substructures fail. Furthermore, the subgrade improvements need to be in place prior to AML / KNIK Constructions placement of asphaltic concrete (AC) pavement within the area. At the conclusion of both the subgrade improvements and the placement of AC pavement, the maintenance costs to maintain the storm drain system will be greatly reduced.</p>		
Alternatives Considered:		
<p>Removing all drainage features within the area referenced herein and to leave the system in place until its imminent failure. Both alternatives are not preferable as the maintenance costs would greatly increase. Both alternatives pose their own safety hazards; ponding of water and ice build up in the winter would create hazards if the system were to be removed and not replaced; and the continual corrosion of the existing structures would increase the likelihood of the failure of a structure as it sits or as its loaded.</p>		
Preliminary Budget:		
Line Description	Amount	
Equipment	\$	167,104
Labor (Fully Burdened)	\$	247,920.56
Materials	\$	330,602
Contracts	\$	115,000
Other Expenses	\$	41,502
Total	\$	902,128

Note: All health and/or safety related project(s) should be the highest ranked project(s) in the department.

Adopted:

Resolution No. 2020-09

Relating to Exchange of Land between the Alaska Railroad Corporation, the Alaska Department of Natural Resources and the Alaska Department of Transportation and Public Facilities for the Windy Corner Seward Highway Project

WHEREAS, Alaska Railroad Corporation (ARRC) is a public corporation and instrumentality of the State of Alaska that controls land for the operation and maintenance of the Alaska Railroad pursuant to state and federal law; and

WHEREAS, the Alaska Department of Natural Resources (DNR) is an executive branch agency of the State of Alaska that controls state land for the operation and management of the Chugach State Park pursuant to state and federal law; and

WHEREAS, the Department of Transportation & Public Facilities (DOT&PF) is an executive branch agency of the State of Alaska that controls state land for the operation and management of the Seward Highway right-of-way pursuant to state and federal law; and

WHEREAS, the Alaska Legislature has enacted Chapter 116 SLA 2000, recognizing that

- The Seward Highway within Chugach State Park is the sole highway link between the Kenai Peninsula and the rest of the state, an interstate highway on the national highway system, and a national scenic byway;
- The Seward Highway within Chugach State Park is affected by avalanches and other potential operational problems;
- Relocation or widening of the Seward Highway to avoid some of the operational problems will require relocation of some adjacent railroad and utility facilities; and
- Relocation of railroad facilities within Chugach State Park will allow some areas of the railroad track to be straightened; and

WHEREAS, the Alaska Legislature, in enacting Chapter 116 SLA 2000 has declared that it is the policy of the state that relocation or widening of the Seward Highway and relocation of railroad facilities within Chugach State Park is appropriate and may be

accomplished without significantly adversely affecting the purposes for which the Chugach State Park was established; and

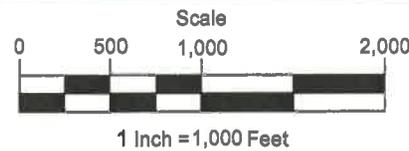
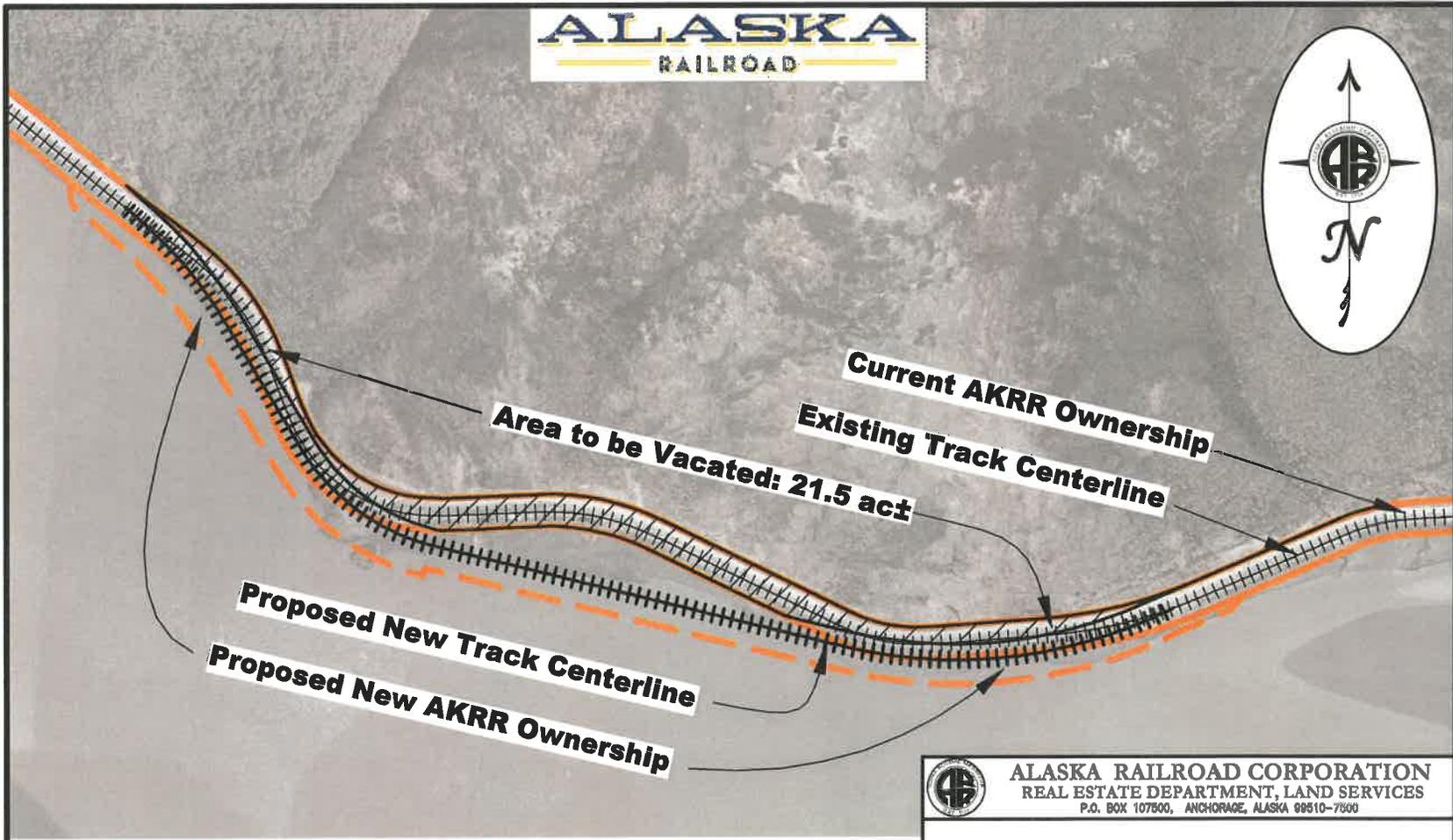
WHEREAS, the DNR Commissioner has issued a proposed official finding that there would be no significant adverse effect of the Seward Highway MP 105 to 107 Windy Corner Project (Windy Corner Project) on the Chugach State Park and stating that DNR would close any section line easement crossing the new railroad corridor for as long as the land is used for railroad or other transportation and utility corridor purposes listed in the Alaska Railroad Corporation Act, AS 42.40 (ARCA) and/or the federal Alaska Railroad Transfer Act, 45 U.S.C. §§1201 et seq. (ARTA); and

WHEREAS, Chapter 116 SLA 2000 authorizes DNR to grant a highway easement to DOT&PF, grant utility easements, convey a property interest in land to ARRC to allow relocation of the Alaska Railroad, and to receive land or interests in land in exchange for land or interests in land granted or conveyed under Chapter 116 SLA 2000; and

WHEREAS, ARRC, DNR and DOT&PF are in the process of negotiating an agreement, pursuant to Chapter 116 SLA 2000 and other applicable state and federal law, to exchange the land and interests in land described in Exhibit A to this resolution in order to advance the Windy Corner Project.

NOW THEREFORE, BE IT RESOLVED that the ARRC Board of Directors has considered the proposed land exchange transaction between ARRC, DNR and DOT&PF related to the Windy Corner Project and hereby approves that proposed exchange on the following conditions: (1) as required by Chapter 116 SLA 2000, ARRC shall receive at least the same quality of property interest in the land it receives from DNR and/or DOT&PF that ARRC received from the federal government when the Alaska Railroad was transferred to the State of Alaska under ARTA; and (2) the section line easements shall be closed by DNR for the duration of the use of the relocated ARRC right-of-way for the railroad, other transportation and utility corridor purposes allowed therein under ARTA and ARCA.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the ARRC Board of Directors hereby directs and authorizes the President and CEO, or his designee, to take such actions as are reasonably necessary to meet all obligations of ARRC relating to the land exchange transaction described above, including but not limited to negotiating, finalizing and executing all documents necessary to complete said transaction.



 **ALASKA RAILROAD CORPORATION**
REAL ESTATE DEPARTMENT, LAND SERVICES
P.O. BOX 107500, ANCHORAGE, ALASKA 99510-7500

Windy Corner
Exchange Overview

DRAWN BY: <u>AMB</u>	SCALE: 1" = 1,000'	DATE: 2020-03-16
CHECKED BY: <u>DAS</u>	Approx. ARRC MP 90.5 - 92.5	
APPROVED BY: <u>DAS</u>		

Adopted:

Resolution No. 2020-10

Relating to Real Estate Transaction
between the Alaska Railroad
Corporation and The Odom Corporation
Involving Land and Buildings in
Anchorage and Fairbanks (AFE No.
10867)

WHEREAS, The Odom Corporation (“Odom”) owns a parcel of land located at 240 West 1st Avenue in Anchorage, Alaska (“Odom Anchorage Parcel”) and leases two adjoining parcels from ARRC, as well as several buildings and associated appurtenances located on those parcels (“Anchorage Buildings”); and

WHEREAS, Odom leases a parcel of land located at 1991 Livengood Avenue in Fairbanks, Alaska (“Livengood Parcel”), upon which are located a building and appurtenances thereto owned by Odex Fairbanks, LLC, an affiliate of Odom (“Fairbanks Building”); and

WHEREAS, Odom proposes to construct new building facilities in Fairbanks on a parcel of ARRC-owned land located at the southeast corner of Peger Road and Phillips Field Road in the Chena Landings Subdivision within the Alaska Railroad Fairbanks Reserve (“Chena Landings Parcel”); and

WHEREAS, ARRC desires to obtain the Odom Anchorage Parcel, the Anchorage Buildings, and the Fairbanks Building, which will provide ARRC with valuable development opportunities in the Anchorage and Fairbanks Reserves; and

WHEREAS, Odom desires to continue to occupy the Livengood Parcel under a short-term commercial lease while it completes the development of its new building on the Chena Landings Parcel, which it desires to lease for a long term; and

WHEREAS, Odom is willing (i) to convey to ARRC the Odom Anchorage Parcel and the Anchorage Buildings in return for a payment equal to the appraised fair market value of the Odom Anchorage Parcel, and (ii) to convey to ARRC the Fairbanks Building in return for a payment of its appraised fair market value; and

WHEREAS, ARRC is willing, in exchange for the conveyances from Odom described above, (i) to terminate Odom’s three existing ground leases, (ii) to issue a new short-term commercial lease for the Livengood Parcel and the Fairbanks Building, (iii) to issue

a long-term ground lease for the Chena Landings Parcel that includes a ten (10)-year rent waiver, and (iv) to make to Odom a payment equal to \$1,605,000, which reflects the difference in value of the respective property and property rights being conveyed and/or terminated by the parties, as enumerated above; and

WHEREAS, the ARRC Board of Directors has considered the proposed transaction between ARRC and Odom described above and summarized on the attached Exhibit A and determined that said transaction would be in the best interest of ARRC; and

WHEREAS, in a separate action, taken simultaneously with the approval set forth herein, the ARRC Board of Directors is approving a long-term ground lease to Odom for the Chena Landings Parcel, which includes certain rent waiver is intended to be part of the consideration paid by ARRC to Odom in conjunction with the overall transaction described herein; and

WHEREAS, proposed AFE No. 10867 would provide \$1,605,000 to fund the cash payment to be made by ARRC to Odom in the proposed transaction, as described above; and

WHEREAS, funding for this transaction will be 100% ARRC internal funds; and

WHEREAS, the authority of ARRC's President & Chief Executive Officer to approve an unbudgeted capital expenditure is limited to matters with an estimated total cost of no more than \$300,000, with higher estimated cost matters requiring Board approval pursuant to ARRC's Approval Authority Guide.

NOW THEREFORE BE IT RESOLVED that the ARRC Board of Directors has considered the proposed transaction with Odom presented by ARRC Management and hereby approves AFE No. 10867 in the amount of \$1,605,000 and further approves, subject to the Board's approval of the proposed long-term lease for the Chena Landings Parcel, of ARRC taking the other actions necessary to enter into said transaction as described herein.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the ARRC Board of Directors hereby directs and authorizes the President and CEO, or his designee, to take such actions as are reasonably necessary to meet all obligations of ARRC relating to the transaction described above, including but not limited to negotiating, finalizing and executing all documents necessary to complete said transaction.

ARRC/ODOM TRANSACTION TERM SHEET

ANCHORAGE

1st Avenue Land & Building: The Odom Corporation (Odom) is the owner of approximately 78,000 square foot building improvements located at 128 and 240 West First Avenue, Anchorage, AK. A portion of the building improvements are located on Odom fee simple owned property measuring 60,700 square feet. The remaining portion of the buildings are located on ARRC owned land subject to ARRC Ground Lease No. 6506. ARRC agrees to compensate Odom the established appraised value of \$730,000 for the fee simple land and provide mutually agreed rent credits for a parcel of lease property located in Fairbanks, AK as consideration for transfer of the property to ARRC. Upon closing of the transaction ARRC would own the land and improvements of the First Avenue location. Odom's obligation under ARRC Ground Lease 6506 and the adjacent Ground Lease 8364 would terminate.

FAIRBANKS

Livengood Avenue Building: Odom is the owner of approximately 12,900 square foot building improvements located at 1991 Livengood Avenue, Fairbanks, AK. The building improvements are located on ARRC owned land subject to ARRC Ground Lease No. 20488. ARRC agrees to acquire the building improvements at the established appraised market value of \$875,000 and upon closing of the transaction, lease the improvements back to Odom until a new facility is completed.

Peger Road Property: ARRC is the owner of an approximate 7.3-acre parcel on the southeast corner of the intersection of Peger Road and Phillips Field Road in Fairbanks, AK. Odom is interested in the construction of a new facility at this location which will eliminate/replace their current two locations; one on Peger Road near Van Horn, and the one on Livengood Avenue. In exchange for Odom transferring the building improvements at the Anchorage 1st Avenue location; ARRC agrees to waive ground lease rent for a period of ten years for the 7-acre Peger Road location which at the current appraised value reflects approximately \$1,024,000 over the 10-year period. Upon completion and occupancy of the new facility the lease-back of the Livengood facility would terminate.

The transaction is subject to ARRC Board of Director's approval.

Alaska Railroad Corporation
Authorization for Expenditure Form

For Accounting Use Only

AFE# 10867

Page 1 of 2

General Information:		Included in Capital Budget:		
AFE Title:	Purchase Odom Corporation Properties	Capital Budget	Year:	2020
Prepared By:	Shane Maloney	Total Amount	\$	1,605,000
Resp. Center (Name):	Facilities/Real Estate	Source of Funding	ARRC	\$ 1,605,000
Resp. Center (#):	8900	Source of Funding		\$ -
Depreciation Center:	8900-Real Estate	Source of Funding		\$ -
Line of Business:	Real Estate/Facilities	Grant Number		
		Grant Name		
Spending Timetable:		AFE History:		
2020	\$ 1,605,000		Amount	Date Prepared
2021	\$ -	Original AFE	\$ 1,605,000	03/16/20
2022	\$ -	Supplemental #1	\$ -	
2023	\$ -	Supplemental #2	\$ -	
2024	\$ -	Supplemental #3	\$ -	
Total	\$ 1,605,000	Supplemental #4	\$ -	
		Supplemental #5	\$ -	
		Supplemental #6	\$ -	
		Supplemental #7	\$ -	
		Total	\$ 1,605,000	
Other Information				
Useful Life (Years):	50			
Annual Depreciation:	\$ 32,100			
Estimated Annual Operating Costs	\$ -			
Required Signatures for Approval:				
(if applicable)	Last Name(s) (Print)	Signature	Date	
Project Manager:	Andrew Donovan			
Responsible Owner:	Andrew Donovan			
VP, Owner Department:	James Kubitz			
Functional User(s):	James Kubitz			
Chief Operating Officer:	Clark Hopp			
Grant Administration:	Shawnessy Leon	N/A		
Chief Financial Officer:	Barbara Amy			
Accounting Department:	Wendy Richerson			
CEO & President:	Bill O'Leary			
Board of Directors:	Craig Campbell			

Original Form Must Be Returned to Accounting

Alaska Railroad Corporation
Authorization for Expenditure Form

For Accounting Use Only

AFE# 10867

Page 2 of 2

Is this project related to health and/or safety?	No	If yes describe:
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Scope of Work:

ARRC will purchase parcels of land currently owned by Odom Corporation at 240 West 1st Ave in Anchorage, Alaska for fair market value of \$730,000, where all buildings on the parcel will be conveyed to ARRC ownership as well. In addition, ARRC will purchase a building located 1991 Livengood Ave in Fairbanks, Alaska for fair market value of \$875,000, where Odom Corporation will lease back the building during construction of a new facility. Odom Corporation will enter a long-term ground lease on 7.3 acre parcel located in Chena Landing with a 10-year lease fee waiver. The appraised value of the Anchorage parcels are \$730,000 and Fairbanks asset is \$875,000 for a combined appraised value of \$1,605,000.

ARRC Business Justification:

This agreement between Odom Corporation and ARRC allows ARRC to own and control the properties in Anchorage. Owning these properties allows for future development of the Ship Creek District as reflected in the Ship Creek Master Development Plan, as well as generate additional revenue. The Fairbanks property will be leased back to Odom Corporation at a rate of 4% of the appraised value (\$35,000) annually while they are constructing their new facility on the Chena Landing Parcel. Odom Corporation will enter a long-term ground lease on the Chena Landing parcel where ARRC agrees to waive lease fees for the first 10 years. In the remaining years (11-55), ARRC will receive standard annual market rent currently valued at \$100,000.

Alternatives Considered:

Continue status quo of below market rent and underutilized site with deteriorating improvements. Detrimental impact to the adjacent property if the 1st Ave property continue as an industrial use facility.

Preliminary Budget:

Line Description	Amount
Equipment	\$ -
Labor (Fully Burdened)	\$ -
Materials	\$ -
Contracts	\$ -
Other Expenses	\$ 1,605,000
Total	\$ 1,605,000

Note: All health and/or safety related project(s) should be the highest ranked project(s) in the department.

LEASE SUMMARY

LESSEE: The Odom Corporation

CONTRACT NO: 20560

LEASE DESCRIPTION: Tract 1, Chena Landings Subdivision situated within the ARRC Fairbanks Reserve, containing approximately 7.3 acres, more or less.

KEY CONTRACT PROVISIONS:

Estimated Effective Date: Upon completion of the exchange of property interests between ARRC and the prospective lessee described in the summary below, estimated to close by August 1, 2020.

Lease Term: Not to exceed Fifty-Five (55) years.

Option to Extend: N/A

Lease Area: Approximately 7.3 acres.

Base Annual Rent: Rent will be assessed at an annual rate of 8% of appraised fair market value. Rent will be waived for lease years 1-10 as part of the consideration for the exchange of property interests described in the summary below, with remaining term @ 8% of appraised fair market value.

Prior Annual Rent: N/A

Rental Rate: 8% (subject to partial waiver as described below)

Rent Adjustment: Rent will be waived for lease years 1-10 as partial consideration for the exchange of property interests noted in the summary below. Rent for lease years 11-15 will be at fair market value based on appraisal. During lease years 15-34, rent will be adjusted every 5 years with adjusted annual rent not to exceed 135% of the prior year's annual rent or to decrease to less than 65% of the prior year's annual rent. Rent for lease years 36-40 will be adjusted to full fair market value regardless of caps. Rent for subsequent lease years will be adjusted every 5 years with adjusted annual rent not to exceed 135% of the prior year's annual rent or to decrease less than 65% of the prior year's annual rent.

PUBLIC NOTICE: Yes, public comment period expires March 30, 2020.

LEGAL REVIEW: Yes

INTENDED USE: New development of office and warehouse use related to prospective lessee's business.

SUMMARY AND RECOMMENDATIONS: ARRC and The Odom Corporation will be performing a exchange of property interests that will include conveyance to ARRC of land and improvements owned by The Odom Corporation in Anchorage, the termination of two Anchorage ground leases, the purchase by ARRC of a building owned by Odom in Fairbanks, the termination of an existing Fairbanks ground lease and issuance by ARRC of a short-term commercial lease back to Odom

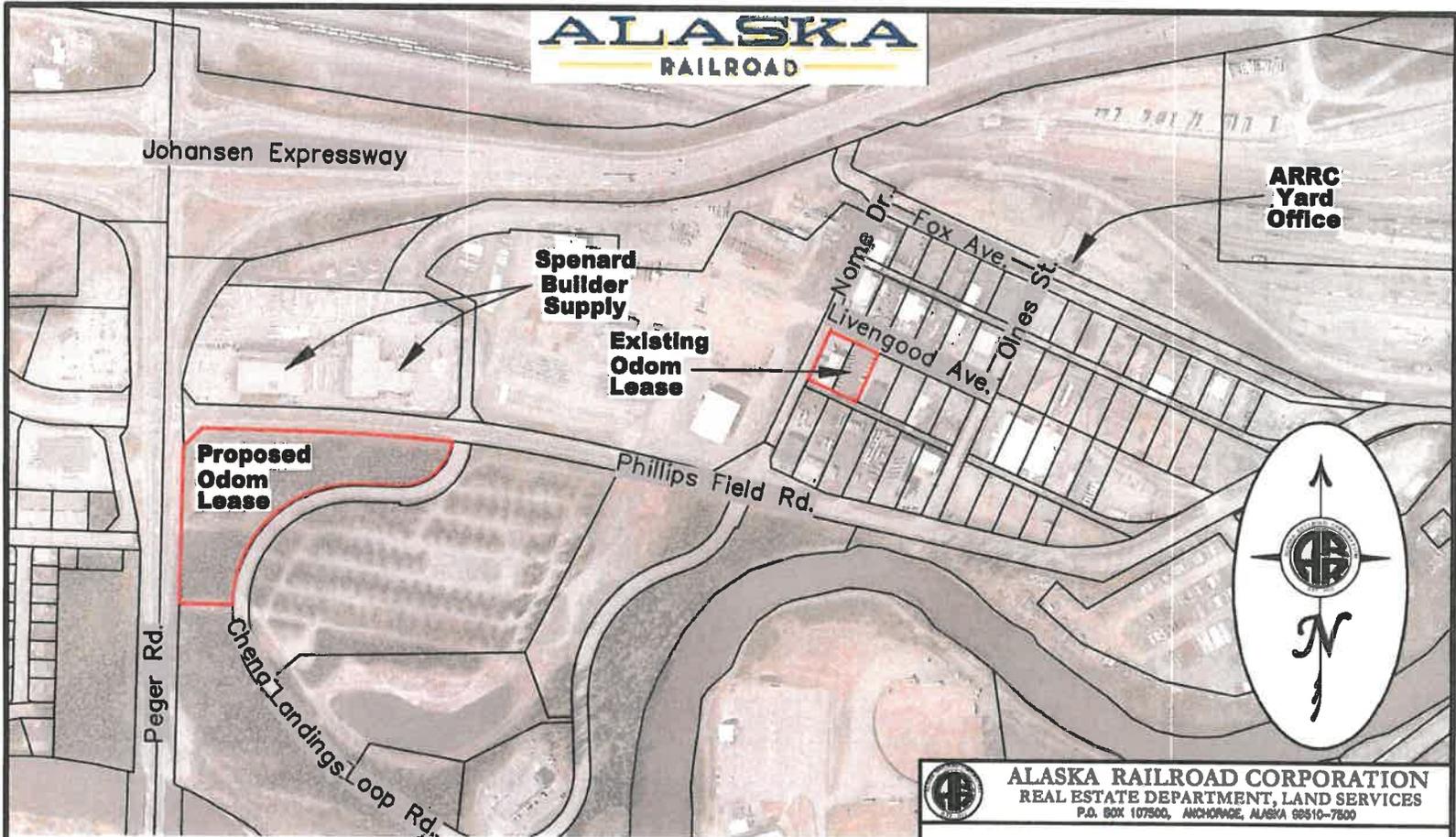
of the existing Fairbanks building and lease parcel, and the issuance of the new long-term lease that is the subject of this summary. The Odom Corporation intends to develop a new office and warehouse on the parcel that would be subject to the new long-term lease discussed herein. The intent of that planned development will be for The Odom Corporation to consolidate its Fairbanks operations. Because ARRC will realize the full value of the proposed temporary waiver of rent under this lease as consideration for other components of the exchange of property interests, the rent waiver would not conflict with the statutory requirement that ARRC obtain fair market value for a lease of its land. Also, because ARRC will not be conveying its entire interest in any parcel of land under the proposed exchange of property interests, legislative approval is not required for the overall exchange transaction. Approval of a new lease on the terms set forth above is recommended.

APPROVED: _____ **Board Meeting Date:** _____

Jennifer Haldane
ARRC Board Secretary

DRAFT

ALASKA RAILROAD



**ARRC
Yard
Office**



ALASKA RAILROAD CORPORATION
 REAL ESTATE DEPARTMENT, LAND SERVICES
 P.O. BOX 107500, ANCHORAGE, ALASKA 99510-7500

Odom Lease Overview



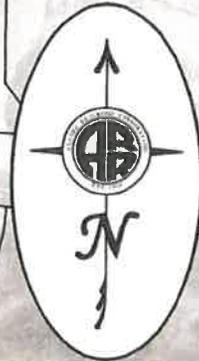
1 Inch = 200 Feet

For indexing purposes this property is located in the NW1/4 Sec. 9, T1S, R1W, F.M.

AlaskaRailroad.com

DRAWN BY: <u>AMB</u>	SCALE: 1" = 200'	DATE: 2020-03-11
CHECKED BY: <u>---</u>	Fairbanks Terminal Reserve	
APPROVED BY: <u>---</u>		
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ALASKA
RAILROAD



Phillips Field Rd.

Lease 20560
Chena Landings Tract 1
Plat 2000-31
320,210 sq ft± (7.351 ac±)

Chena Landings Loop Rd.

Peger Rd.

Tract 6

Tract 2



ALASKA RAILROAD CORPORATION
REAL ESTATE DEPARTMENT, LAND SERVICES
P.O. BOX 107800, ANCHORAGE, ALASKA 99510-7800

Contract No. 20560 - Exhibit A
The Odom Corporation
Area = 320,210 sq ft± (7.351 ac±)

ARRC title - Patent 50-2006-0464
USRS T1S, R1W, F.M., Sec. 9, Lots 1-5

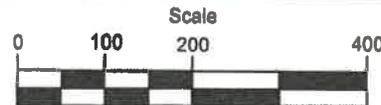
DRAWN BY: AMB
CHECKED BY: DAS
APPROVED BY: DAS

SCALE: 1" = 200'

DATE: 2020-03-11

Fairbanks Terminal Reserve

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1 Inch = 200 Feet

The meridian of this exhibit is based on Plat 2000-31.

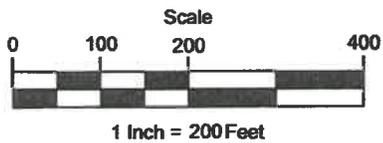
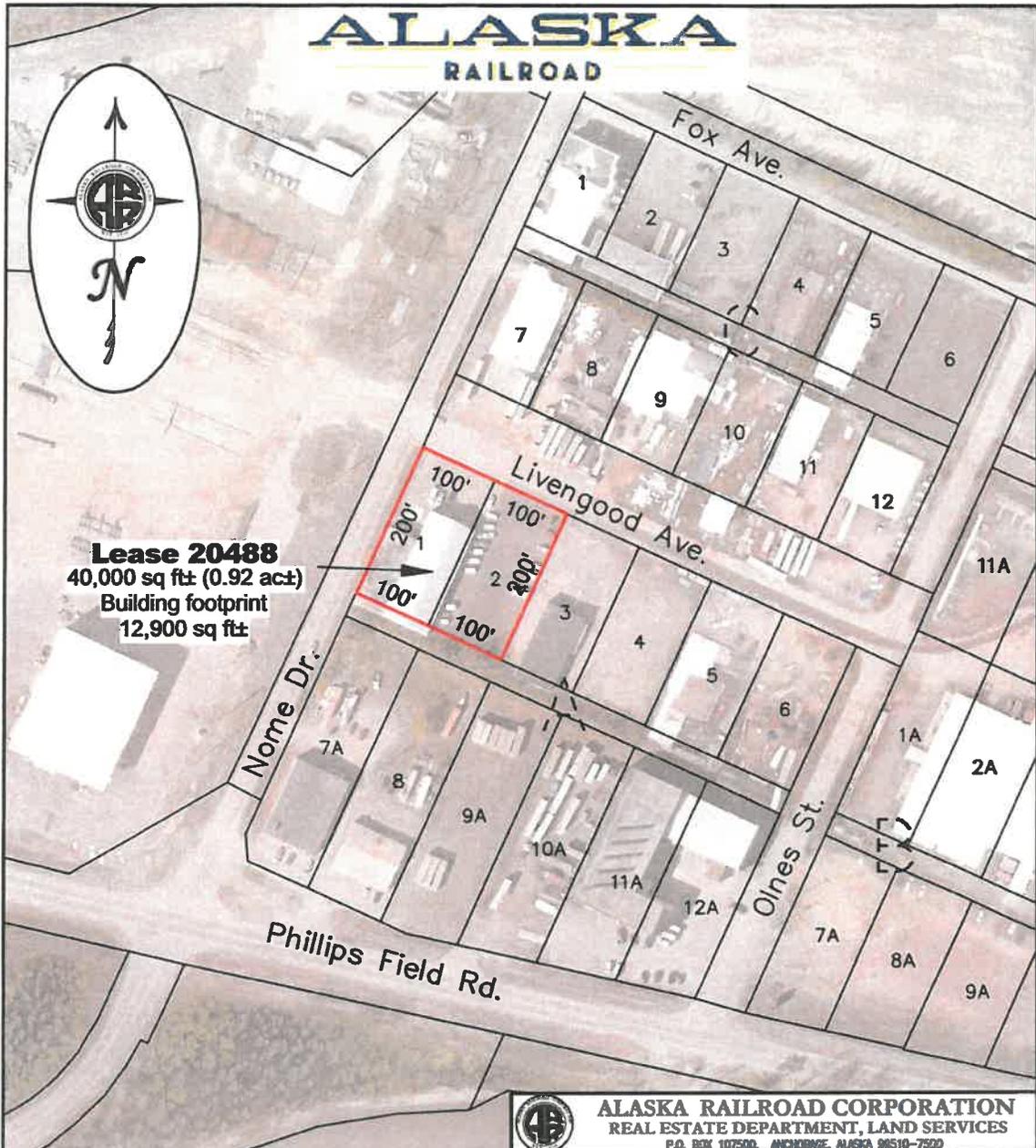
For indexing purposes this property is located in the NW1/4 Sec. 9, T1S, R1W, F.M.

AlaskaRailroad.com

ALASKA RAILROAD



Lease 20488
 40,000 sq ft± (0.92 act)
 Building footprint
 12,900 sq ft



For indexing purposes this property is located in
 the NE1/4 Sec. 9, T1S, R1W, F.M.



ALASKA RAILROAD CORPORATION
 REAL ESTATE DEPARTMENT, LAND SERVICES
 P.O. BOX 107500, ANCHORAGE, ALASKA 99510-7500

Contract No. 20488 - Exhibit A
The Odom Corporation
Area = 40,000 sq ft± (0.92 act)

ARRC title - Patent 50-2006-0464
 USRS T1S R1W, F.M., Lots 1-5, Sec. 9

DRAWN BY:	AMB	SCALE:	1" = 200'	DATE:	2019-05-07
CHECKED BY:	DAS	Fairbanks Terminal Reserve			
APPROVED BY:	DAS				
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