

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WHITTIER AND THE ALASKA RAILROAD CORPORATION REGARDING LAND PURCHASE/SALE, EXCHANGE, OR COMBINATION THEREOF AT FAIR MARKET VALUE AND MANAGEMENT WITHIN THE CITY OF WHITTIER

This Memorandum of Understanding (“MOU” or “Agreement”) is entered into on this 20 day of Nov, 2024 (“Execution Date”), by and between the City of Whittier, Alaska, a municipal corporation and political subdivision of the State of Alaska, hereinafter referred to as the “City” and the Alaska Railroad Corporation, a public corporation of the State of Alaska created pursuant to AS 42.40, hereinafter referred to as “ARRC”.

WHEREAS, ARRC owns approximately two hundred fifty (250) acres of land within the boundaries of the City of Whittier, including approximately one hundred five (105) acres in the City core and waterfront district.

WHEREAS, ARRC and City are parties to a Ground Lease and Management Agreement dated November 13, 1998 (the “Master Lease”) which established certain terms and recitals agreed upon by the parties in 1998 that provide context for this MOU, including;

- a. The City had (and still has) a relatively small tax base and operates under a limited annual budget due to its small population and few taxable business entities; and
- b. Within the City limits, but outside the city core and waterfront district, much of the land, including land owned by ARRC, was undeveloped and thus generated minimal property and sales taxes, and no payments-in-lieu-of-tax or other revenues on which to support critical City services and public infrastructure; and
- c. The City now believes that it can only be financially viable by acquiring ARRC’s unleased non-operating lands and managing land development activities for City-owned land in a manner that maximizes economic development and generates increased property and other taxes, and lease rent;

WHEREAS, the parties agree that an exchange of land parcels, either alone or combined with the purchase of additional parcels at fair market value and an associated termination of the Master Lease are desirable for each of them in order to allow each party to develop and control appropriate parcels in a manner consistent with their needs and best interests and that fee simple ownership of the exchanged parcels, or purchased parcels, will best serve the interests of both parties.

NOW, THEREFORE, the City and the ARRC agree as follows:

1. Purpose of the Agreement

The purpose of this MOU is to establish the framework and the necessary steps for the review and consideration of a land purchase, sale, exchange or combination thereof between the parties and the process and general timing for such review and considerations. All costs associated with the MOU shall be borne by the party commissioning the

associated work unless otherwise specifically stated in this Agreement or separately mutually agreed in writing.

2. **Areas of Interest**

A. The purpose of this section is to provide specific property descriptions and disclosures for accurate consideration, reference, and referral by both parties throughout negotiations. All property described in this section, taken collectively, shall be referred to as the "Areas of Interest". Individual parcels described in this section shall be identified as provided in this section. Each party shall have the right to propose additional Areas of Interest to be included in this section or to propose modifications to Areas of Interest already listed. Such proposed additions or modifications shall be subject to agreement by the other party. Notwithstanding the foregoing, this section in no way limits the parties' ability to add, remove or amend the Areas of Interest or the specific property description, conditions or limitations of an Area of Interest up to 30 days before a resolution of essential terms of purchase, sale and/or exchange is submitted to the governing body of either party.

B. The identification of an Area of Interest in no way obligates the identifying party to take any action regarding that Area of Interest or any other Area of Interest, including but not limited to a purchase, sale or exchange involving that Area of Interest. Notwithstanding the foregoing, the parties acknowledge that they have preliminarily agreed to include the Areas of Interest described below in negotiations toward a purchase, sale and/or exchange involving those Areas of Interest in good faith. Any modification to the Areas of Interest shall be subject to the process set forth in subsection 2.A, above, and will require a supplement to this Agreement to add, delete or otherwise modify the Areas of Interest, as mutually agreed.

C. This subsection contains the preliminary Areas of Interest currently owned by the City:

i. COW AOI 1 – Containing approximately 5.20 acres

Lots 2, 8, 9, a portion of lot 1 and a portion of lot 10 of Block 10 together with Lots 1 & 2 of Block 12 of City of Whittier Subdivision Phase 2, recorded as Plat 74-4 in the Whittier Recording District on August 14, 1974; located within Section 13 and 24 of Township 8 North, Range 4 East, Seward Meridian.

ii. COW AOI 2 – Containing approximately 2.70 acres of Tide and Submerged Lands

Tract G-3 and an approximately 1.7-acre portion of Tract D of Alaska Tideland Survey No. 1545, recorded as Plat 2003-49 in the Anchorage Recording District on May 1, 2003; located within Section 13 of Township 8 North, Range 4 East, Seward Meridian.

iii. COW AOI 3 – Containing approximately 56.3 acres

In 2022, the City obtained the hereinafter described federal land parcel at the head of Passage Canal. All of Lot 2 and a portion of Lot 1, U.S. Survey No. 8726,

according to the plat of survey in the records of the Bureau of Land Management and approved October 11, 1996; located within Section 15 of Township 8 North, Range 4 East, Seward Meridian.

Subject to the following:

Reservations in a Quitclaim Deed by and between the United States of America and the City of Whittier recorded as Document No. 2022-000460-0 on August 25, 2022, in the Valdez Recording District.

An Environmental Covenant by and between the United States of America and the City of Whittier recorded as Document No. 2022-031565-0 on August 25, 2022, in the Anchorage Recording District.

A Public Road Easement granted to the State of Alaska, Department of Transportation & Public Facilities, recorded as Document No. 1999-032940-0 on May 20, 1999, in the Anchorage Recording District.

A Public Road Easement to the State of Alaska, Department of Transportation & Public Facilities, recorded as Document No. 1999-036182-0, on June 3, 1999, in the Anchorage Recording District.

A Public Road Easement for to the State of Alaska, Department of Transportation & Public Facilities, recorded as Document number 1999-032940-0 on January 16, 2015, in the Anchorage Recording District.

A City of Whittier Right of Way Easement to the Enstar Natural Gas Company, LLC, recorded as Document No. 2024-004014-0 on February 16, 2024, in the Anchorage Recording District.

A City of Whittier Right of Way Easement to the Chugach Electric Association, recorded as Document 2024-024617-0 on September 10, 2024, in the Anchorage Recording District.

iv. COW AOI 4 – Containing approximately 14.2 acres

Government Lot 3, Section 15 of Township 8 North, Range 4 East, Seward Meridian, according to the plat of survey in the records of the Bureau of Land Management and approved October 11, 1996.

D. This subsection contains Areas of Interest currently owned by the Alaska Railroad Corporation:

i. ARRC AOI 1 – Containing approximately 0.8 acres

A portion of Parcel B of U.S. Survey No. 2559 according to the plat of survey officially filed December 14, 1994, together with a portion of Lot 8 of U.S Survey 9008 located within Section 23 of Township 8 North, Range 4 East, Seward Meridian.

ii. ARRC AOI 2 – Containing approximately 39.1 acres

A portion of Lot 8 of U.S. Survey No. 9008 according to the plat of survey officially filed October 12, 1995, together with a portion of Parcel A of U.S. Survey No. 2559 according to the plat of survey officially filed December 14, 1994; located within Section 23 of Township 8 North, Range 4 East, Seward Meridian.

iii. ARRC AOI 3 – Containing Approximately 9.78 acres.

Parcels I, J, and H together with Lot 11 and a portion of Lot 8 of U.S. Survey No. 9008 according to the plat of survey officially filed October 12, 1995; located within Sections 13, 14, 23 & 24 of Township 8 North, Range 4 East, Seward Meridian.

iv. ARRC AOI 4 – Containing approximately 21.94 acres

Lot 2, Lot 4 and a portion of Lot 8 of U.S. Survey No. 9008 according to the plat of survey officially filed October 12, 1995, located within Sections 14, 15, 22 & 23 of Township 8 North, Range 4 East, Seward Meridian. This includes the public general aviation airport property currently operated and leased by the State of Alaska Department of Transportation and Public Facilities.

v. ARRC AOI 5 - Containing approximately 16.27 acres

A portion of Lot 1, U.S. Survey No. 9008 according to the plat of survey officially filed October 12, 1995; located within Section 15 of Township 8 North, Range 4 East, Seward Meridian.

E. Final Areas of Interest List

The Parties shall mutually agree on a final list of Areas of Interest reflecting any Supplement to this Agreement no more than 60 days after the execution of this Agreement, or such later date as mutually agreed in writing. Said “Final Areas of Interest List” shall be used for securing appraisals and shall be the subject of future negotiations. Both parties agree that the “Final Areas of Interest List” shall include the following:

- i. Full and accurate legal descriptions of the Areas of Interest or, if a full description is not available, a description of the limitations of the descriptions and the reason for the limited description;
- ii. Identification of all or any known lease(s), permit(s) or any known property or contractual interest of any kind currently in effect within or impacting on the land included on the Final Areas of Interest List and provision of copies of such leases, permits or other agreements to the other party with respect to properties owned by the providing party that are included on the Final Areas of Interest List.
- iii. Both parties will establish during the final process that all Areas of Interest are free of encumbrances, liens, or other legal impediments to transfer or that any

encumbrances, liens or other legal impediments are known and identified by the party owning the Area of Interest or the separate deed or other instrument containing such encumbrance, lien or other legal impediment is directly identified in the Final Areas of Interest List.

3. Appraisal

A. Both parties agree to commission independent, licensed commercial appraisers with a minimum of 5 years continuing recent experience within Alaska to determine the fair market value of the Areas of Interest owned by each party, respectively. Both parties agree the Areas of Interest will be appraised as clean. Both parties shall agree in writing on a date certain for the exchange of appraisals and upon the appraisal instructions to be applied with respect to the appraisals. If the cumulative appraised values of each party's parcels differ, the parties will work together in good faith to create a procedure for agreeing upon the net market value delta to be used to set the consideration to be paid by the party whose parcels have been appraised at a lower cumulative value for purposes of any purchase/sale, exchange or combination thereof.

4. Environmental Assessments

A. Prior to any exchange, purchase/sale or combination thereof, each party shall, at its sole discretion and expense, conduct or commission a Phase I or 2 Environmental Site Assessment ("ESA") of each Area of Interest that party is acquiring. If an acquiring party elects not to conduct such a Phase I or 2 ESA for any particular parcel or parcels, any environmental baseline for such parcel(s) shall be limited to ones supported by previous relevant environmental investigations.

B. In support of the foregoing, each party shall provide to the other party true and complete copies of any environmental reports and other information regarding hazardous material contamination on the parcels being acquired by the other party.

5. Survey and Title Work

A. Where a land survey is necessary in order to subdivide one parcel into multiple parcels before conveyance or otherwise to confirm legal boundaries and descriptions, the parties agree to jointly develop a set of Survey Instructions ("SI") based on the information in the "Final Areas of Interest List". The SI should generally conform to the City of Whittier Title 16.04 - Subdivisions.

B. A party may submit a survey of an Area of Interest surveyed before the Execution Date of this MOU so long as that survey meets the requirements of this section, and the survey was completed by a registered land surveyor within the last 365 days before the prior survey is submitted by the party.

C. The parties understand that since many of the Areas of Interest are adjacent to one another, and that subdivision of one parcel of land is therefore related to adjoining parcels, there is a cost and time benefit to retaining one surveyor to perform all necessary work in the SI. The City of Whittier shall have first choice to retain a

registered land surveyor to perform the work as defined in the SI. The City of Whittier can alternatively elect to defer to the Alaska Railroad Corporation to retain a registered land surveyor. Regardless of which party retains the registered land surveyor, each party will in good faith coordinate with one another as to the choice of surveyor and shall share information during the survey process that may help expedite and lower the cost of the survey.

- D. The costs associated with survey and title work under this section shall be borne equally by both parties unless otherwise agreed upon in writing by both parties.

6. Execution of Exchange

- A. Proposals. No more than 90 days after completion of all required steps under this MOU, including appraisal, environmental assessment, and survey, the City agrees to either:
- i. Submit a proposal for the purchase/sale, exchange or combination thereof of property owned by ARRC within the City's boundaries that are included in the Areas of Interest under this MOU; or
 - ii. Adopt a resolution declining to submit a proposal, upon which action this MOU shall terminate, and the parties have no further obligations hereunder.
 - iii. Nothing in this provision prevents the City or ARRC from making a proposal for a purchase/sale, exchange or combination thereof at any time during the term of this MOU.
- B. Responses to Proposals. If the City submits a proposal to ARRC regarding the Areas of Interest, ARRC agrees to provide the City with a written response to its proposal within the longer of (i) 60 days after the date of the proposal or (ii) 15 days after the date on which ARRC's Board of Directors adopt a resolution either accepting or rejecting the proposal submitted by the City. Conversely, if ARRC submits a proposal to the City regarding the Areas of Interest, the City agrees to provide ARRC with a written response to its proposal within the longer of (i) 60 days after the date of the proposal or (ii) 15 days after the date on which the Whittier City Council adopts a resolution either accepting or rejecting the proposal submitted by ARRC.
- C. Agreement of Essential Terms. In the event a proposal is made and its essential terms agreed upon by the parties, or the parties are otherwise able to negotiate an agreement regarding the essential terms of a proposal, a resolution presenting the essential terms of the purchase/sale, exchange or combination thereof shall be presented to the governing bodies of both parties for consideration.
- D. Execution of Agreed Terms. The parties agree to seek legislative approval after both bodies have adopted resolutions with the agreed upon essential terms which may occur before final documents of purchase/sale, exchange, or a combination thereof have been drafted. ARRC and the City Council agree to work cooperatively and in good faith to approve the process and timing of any submission to the Alaska

legislature.

- E. Failure to Obtain Agreement of Governing Bodies. If one or both governing bodies fail to adopt resolutions agreeing to the essential terms of a proposal, then neither party shall be bound to proceed with the transaction contained within the proposal. In such event, the parties may either terminate the MOU as provided in Section 9 of this Agreement, or, alternatively, discuss whether a different proposal might be negotiated for resubmission to the governing bodies.
- F. Closing. The closing procedures shall be governed by the instrument(s) of purchase/sale, exchange or transfer agreed upon and executed by the parties. Such instruments shall include, but not be limited to, instruments terminating any leases (including the Master Lease), permits or other agreements between the parties respecting any of Areas of Interest included in the transaction, which such instruments will be executed at or before closing.

7. **Timelines and Deadlines**

Notwithstanding the specific provisions of this MOU, both parties agree to work diligently to complete the land purchase/sale, exchange, or combination thereof within eighteen (18) months of obtaining final authorization of the transaction by the legislature and signing of legislation by the Governor. Any extensions of such deadline, or any other deadlines or time periods set forth in this MOU must be mutually agreed upon in writing by both parties.

8. **Amendments**

This MOU may be amended only by mutual written agreement of both parties.

9. **Termination**

Either party may terminate this MOU by providing the other party with written notice. Lacking termination by written notice or termination due to either governing body's resolution not to submit a proposal per section 6, this MOU shall in any event terminate twelve (12) months after execution of this MOU unless such deadline is extended by the mutual written agreement of the parties.

10. **Governing Law**

This MOU shall be governed by and construed in accordance with the laws of the State of Alaska without regard to application of choice of law under said law.

11. **Signatures**

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the date first written above.

CITY OF WHITTIER


Jackie C. Wilde (Dec 12, 2024 19:58 AKST)

Jackie C. Wilde
City Manager
City of Whittier
Date:

ALASKA RAILROAD CORPORATION


Christeffal Z. Terry (Dec 13, 2024 12:57 AKST)

Christeffal Z. Terry
Vice President Real Estate
Date: