

## **Anton Anderson Memorial Tunnel Cooperative Operating Agreement**

This Anton Anderson Memorial Tunnel Cooperative Operating Agreement (hereinafter referred to as this "Agreement"), effective on the date of the last signatory hereto, is entered into by and between the ALASKA RAILROAD CORPORATION (hereinafter referred to as "ARRC") and the ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (hereinafter referred to as "DOT&PF") (individually a "Party" and collectively the "Parties").

### **RECITALS**

WHEREAS, the ARRC is a public corporation and instrumentality of the State of Alaska with its board of directors appointed by the Governor; and

WHEREAS, the DOT&PF is an Department of the State of Alaska with its Commissioner appointed by the Governor; and

WHEREAS, ARRC owns a rail tunnel commonly known as the Anton Anderson Memorial Tunnel (hereinafter referred to as the "Tunnel") that provides rail access to Whittier, Alaska; and

WHEREAS, ARRC previously granted DOT&PF the right to improve access to Whittier by constructing a new road and making the Tunnel a dual-use rail and road facility in accordance with the terms and conditions of that certain Whittier Access Project Agreement and Right of Entry that was executed by the Parties on or about January 20, 1998; and

WHEREAS, on or about June 7, 2000, the Parties entered into an Interim Operating Agreement that set forth each parties rights and obligations with respect to the operation and maintenance of the Tunnel; and

WHEREAS, DOT&PF owns the improvements necessary for highway operations; and

WHEREAS, the Interim Operating Agreement expired in 2002; and

WHEREAS, parties have worked together cooperatively and in good faith since 2002 to operate the Tunnel in a manner that meets the needs of ARRC's railroad operations and the needs of DOT&PF's highway operations; and

WHEREAS, the Parties acknowledge that good public policy requires that each Party recognize the unique dual-use nature of the Tunnel and the security, safety and operational needs of the other Party; and

WHEREAS, the primary purpose of this Agreement is to structure an equitable, cooperative agreement with the goal of optimizing the combined use of the Tunnel by rail and highway traffic.

NOW, THEREFORE, for and in consideration of the foregoing Recitals and the terms, conditions and covenants stated below, it is mutually agreed as follows:

### **AGREEMENT**

1. **Right of Entry.** ARRC hereby grants the DOT&PF the right to utilize all of the ARRC property occupied by the Tunnel and its related facilities for the purpose of providing highway access through the Tunnel in service of the public, businesses and other interests that may have a need for such access in accordance with the terms and conditions of this Agreement. ARRC reserves and excepts unto itself the right to grant others the right to use the Tunnel, excluding DOT&PF owned and controlled portions of the facility or fees collected therein, for any purpose, including, but not by way of limitation, any transportation, communication and/or transmission purposes and support functions associated with those purposes, and for commercial and other uses, provided that such uses do not unreasonably interfere with DOT&PF's use of the Tunnel. ARRC shall consult and coordinate with DOT&PF prior to planning any such additional use and shall, to the extent reasonably possible, assure that any concerns DOT&PF may have concerning the proposed additional use are adequately addressed prior to implementation of the additional use of the Tunnel.
2. **Term.** This Agreement shall be effective as of the date of its execution by both Parties and shall continue in full force and effect as long as the Tunnel is used for highway access.
3. **General Responsibilities.** DOT&PF shall have sole responsibility for operation, maintenance and repair of the roadway and other facilities within the Tunnel related to highway usage. As used in this Agreement, the term "DOT&PF" shall include any contractor acting as an agent or extension of DOT&PF to operate, maintain or repair the highway related facilities in the Tunnel (the "Tunnel Operator") as the context requires. ARRC shall have sole responsibility for rail operations.
4. **Waiver of Usage Fees.** In consideration of DOT&PF's agreement to pay for the costs to use, operate, maintain, repair and/or reconstruct the Tunnel highway and related improvements located on ARRC property as set forth in this Agreement, ARRC agrees to waive any fee or compensation it may be entitled to for the Right of Entry granted to DOT&PF hereunder.
5. **Annual Tunnel Operation Schedule.** Except as otherwise provided herein, the Tunnel shall be operated in accordance with a schedule established by the Parties in an operation planning meeting that will be held twice each year. At a mutually agreeable time in April of each year, the Parties shall meet to review the Tunnel operating schedule for the winter season that usually commences October 1<sup>st</sup> of each year and

lasts until April 30<sup>th</sup> of the following year. At a mutually agreeable time in October of each year, the Parties shall meet to review the Tunnel operating schedule for the following summer season which usually commences on May 1<sup>st</sup> of each year and lasts until September 30<sup>th</sup>. The agreed upon schedules shall be in a format similar to that in Appendix C attached hereto and shall show the times that the Tunnel will be available for highway vehicles and the times that the Tunnel will be available for trains, with the understanding that said times may not be exact and are subject to change in order to accommodate train traffic. The Parties can change the schedule if a compelling need arises. Except as provided below, ARRC may operate trains through the Tunnel at any time before the DOT&PF's hours of operation start and after they cease each day.

The Parties agree that the annual summer and winter highway/train Tunnel use schedules developed in accordance with the preceding paragraph shall be subject to the following conditions:

**A. Emergency Access.** "Emergency access" is defined as access made necessary due to a medical, law enforcement, environmental, or other event or extraordinary circumstance requiring immediate usage of the Tunnel to respond to a life threatening problem, environmental catastrophe, or similar serious event. Emergency access traffic shall supersede all other traffic. In the event emergency access is required during DOT&PF's scheduled hours of highway operation or maintenance, the Parties will hold both rail and highway traffic until the emergency access has concluded. Emergencies that occur after DOT&PF's normal Tunnel operations have ended or after DOT&PF tunnel maintenance has ended shall be coordinated with the ARRC train dispatcher.

**B. First and Last Openings. Safety Inspections.** In establishing the summer and winter Tunnel operating schedules, ARRC agrees that it will not operate any train through the Tunnel during the thirty (30) minute period prior to the first highway opening each day in order to allow DOT&PF to perform its mandated safety inspection of the Tunnel. ARRC further agrees that it will not operate any freight trains through the Tunnel that conflict with the first two fifteen (15) minute and the last two fifteen (15) minute highway openings of any day. DOT&PF agrees that passenger and Whittier bound freight trains do not have the same effect on the Tunnel and may be scheduled during these times by mutual agreement.

**C. Tunnel Maintenance Time.** ARRC understands and agrees that DOT&PF will need to periodically enter the Tunnel for routine maintenance and repair of those items for which it is responsible for under the terms of this Agreement. ARRC agrees to allow the DOT&PF no less than a single block of two (2) to four (4) hours daily, after the last highway opening of the day to perform said maintenance. The specific time blocks for routine Tunnel maintenance shall be mutually agreed to by the Parties and set forth in the annual summer and winter operation schedules. Larger time blocks required for major Tunnel maintenance or repair shall also be subject to mutual agreement. Rail traffic may use those times reserved for DOT&PF Tunnel maintenance

subject to coordination and agreement between the Parties. Maintenance not considered routine shall be coordinated in advance when possible.

**D. Train Operations.** Trains will use the scheduled windows set forth in the Annual Tunnel Operations Schedules. Trains arriving prior to a scheduled train window will be accommodated as soon as highway traffic has cleared from a scheduled highway opening. Trains arriving during a scheduled train window will be operated through the Tunnel. Trains arriving late for their window will be operated through the Tunnel as follows:

- a. During periods of high highway usage, the train will hold for the next scheduled train window, unless a different accommodation is agreed to by both Parties.
- b. It is recognized that freight train operations may delay subsequent highway openings. ARRC will attempt to avoid Whittier to Bear Valley freight operations during peak hours on days with cruise ship operations. When ARRC must operate a Whittier to Bear Valley freight train during those peak hours, the following will apply:
  - i. During the seasonal planning meeting, dates with potential cruise/freight train conflicts will be identified.
  - ii. ARRC will notify DOT&PF that a barge movement may coincide with a peak period about 48 hours in advance. This will allow DOT&PF to communicate the potential for delays to the public.
  - iii. ARRC will update DOT&PF periodically. Both Parties will work to plan the freight train movement to meet ARRC needs and to minimize highway delays. When the best way to meet this goal is to combine an ARRC passenger and an ARRC freight into one rail opening, ARRC will:
    1. Minimize freight train length to less than 6,500 feet.
    2. Not include freight with restrictions requiring slow speeds in the Tunnel.
- c. ARRC will support DOT&PF in efforts to communicate the need for freight movements to the public.
- d. Both Parties will exercise every effort to minimize delays to either Party where practical, and shall under no circumstances hold the Tunnel unnecessarily for their sole benefit.

**E. Cooperation.** Both Parties agree to communicate, consult and cooperate to optimize Tunnel use for all users in the spirit of good faith and partnership. To this end, both parties are encouraged to regularly communicate and discuss the day to day operation of the Tunnel to reduce respective impacts to either mode and to operate the Tunnel cooperatively and optimally for the combined use.

**6. Tunnel Maintenance.** Except as otherwise provided herein, DOT&PF agrees to maintain the facilities installed to accommodate highway users. DOT&PF, at its sole cost and expense, shall maintain and repair the Tunnel highway and related facilities in a manner that will prevent service outages and optimize the useful life of said facilities. Such maintenance work shall include keeping all rail flange-ways clear of ice and debris. DOT&PF shall perform or cause all such maintenance and repair work to be performed in a prudent and workmanlike manner, in conformity with any applicable statutes, orders, rules, regulations and specifications of any public authority having jurisdiction over the Tunnel. DOT&PF agrees to use its best efforts to assure that Tunnel maintenance and repair is performed at such times and in such manner as not to interfere with the movement of ARRC's trains. ARRC will use its best efforts to support DOT&PF's Tunnel maintenance activities. If ARRC personnel and/or equipment need entry into the Tunnel during DOT&PF maintenance times, such access shall be coordinated between the ARRC train dispatch office and the Tunnel Operator to ensure that such entry can be made safely.

Tunnel maintenance/repair issues will be addressed in the Parties' annual spring and fall Tunnel Operation Schedule meetings referenced in Section 5 above. The Parties agree to make every reasonable effort to schedule maintenance/repair work in a manner that minimizes impacts on railroad and vehicle use of the Tunnel. Additionally, the Parties shall establish written safety procedures designed to protect workers performing mutual maintenance and repair work in the Tunnel. Repairs that fall solely under DOT&PF shall be governed solely by DOT&PF and its contractor.

**7. Rail Maintenance.** ARRC shall be responsible for major maintenance of the rail and other items, if any, that were present in the Tunnel prior to the introduction of the highway facilities. ARRC shall perform or cause all such maintenance and repair work to be performed in a prudent and workmanlike manner, in conformity with any applicable statutes, orders, rules, regulations and specifications of any public authority having jurisdiction over the Tunnel. For purposes of this Agreement, "major maintenance of the rail" shall mean the replacement or renewal in whole or in part of the rail itself.

DOT&PF understands and agrees that ARRC will need to periodically enter the Tunnel for maintenance/repair of those items for which ARRC is responsible. The scheduling of this work will be done in consultation with the Tunnel Operator. ARRC will make every reasonable effort to schedule this work to minimize impact on highway use of the Tunnel, including where reasonable, scheduling such work to occur after the last highway opening of the day. If ARRC conducts its work so as to preserve the highway facilities to the extent reasonably possible, DOT&PF will be responsible for the cost of

removing non-railroad components of its facility beyond that normally required for railroad maintenance.

Both ARRC and DOT&PF recognize the unique application of "Star Trak" panels to support both highway and rail traffic throughout the Tunnel. ARRC agrees to maintain the line and grade of the highway/railroad surface by adjusting the panels with grout or other means as long as practical. Extensive maintenance or replacement of Star Trak panels is recognized as requiring a capital budget program. Such a program will be handled by the Tunnel Maintenance Committee pursuant to the provisions of Section 9 below.

**8. Signal System Maintenance.** Adapting the Tunnel for highway use required the installation of a Tunnel Control Signal System ("Signal System") for train traffic that is designed to prevent trains and vehicles from occupying the Tunnel at the same time. DOT&PF agrees to have the Signal System inspected, tested and maintained by qualified ARRC personnel and ARRC agrees to perform such work in accordance with the following terms and conditions.

**A. Scope of Work.** The ARRC shall, at its sole cost and expense, operate, inspect, test and perform routine maintenance and repair work for the Signal System in accordance with the Federal Railroad Administration's ("FRA") Rules and Regulations Governing Railroad Signal and Train Control Systems, 49 C.F.R. Part 236. This work shall include Signal System needs between the insulated joints at the signal hut in Whittier and the insulated joints at the signal hut at F.5.2 in Bear Valley including the interconnecting cables between the Tunnel doors, the signal control buildings and Tunnel Control Office or appliances or devices within the Tunnel Control Office, and the approach circuits for the signals at F2.5 and F5.2. ARRC's maintenance and repair obligations shall include FRA required inspections and testing and routine maintenance, repair and upgrade of the Tunnel's wayside signals, power operated switch machines, switch heaters, track circuits, signal interlocking control buildings, track wires and cables between the signal control buildings and the individual railroad appliances, and adjustment of the door open limit switches on the Tunnel doors used for the signal interlocking system. Not included in this scope of work is the capital replacement of components valued over \$2,500. Capital replacement will be addressed per Section 9 below.

**B. Personnel and Equipment.** Except as otherwise provided herein, ARRC shall obtain and furnish any and all labor, supervision, permits, licenses, machinery, equipment, tools, fuel, parts, supplies, materials, facilities, transportation and all other things necessary for the performance and completion of the inspection, testing, maintenance, repair and other services referenced in subsection A above. ARRC shall document all inspection, testing, maintenance and repair work performed on the Signal System, as required by the FRA.

**C. Service Outages.** ARRC will utilize its best efforts to minimize service outages and to respond when a service outage occurs. When possible, DOT&PF will

assist ARRC with funding needed improvements or replacements of components necessary to prevent outages. These include, but are not limited to, providing standby power to signal and communications systems and upgrades to train detection circuits as they degrade with use.

**9. Major Tunnel Upgrades or Repairs.** The Parties agree to develop a capital budget program to address future major upgrades and/or repairs of Tunnel components that are required to keep the highway use of the Tunnel fully operational or that may be needed to meet new regulatory or safety requirements. The need for major upgrades/repairs shall be addressed at the Parties' annual spring and fall Tunnel Operation Schedule meetings referenced in Section 5 above. ARRC will give DOT&PF at least one (1) years' prior notice of any required major upgrade/repair work along with an estimate of ARRC's costs to perform such work and ARRC will consult with DOT&PF in planning such major upgrade/repair projects. DOT&PF will include said cost estimate in its annual budget request and shall in good faith exercise its best efforts to obtain such an appropriation and ARRC will assist DOT&PF in seeking funding from the legislature. In the event ARRC performs the major upgrade/repair work, DOT&PF agrees to pay the cost thereof to ARRC within sixty (60) days of its receipt of ARRC's invoice therefore. ARRC agrees to submit these bills to DOT&PF in a timely manner.

**A. Major Repairs Currently Needed.** The Parties agree that the Tunnel repairs/improvements listed in Appendix B attached hereto are currently needed and agree to work together to obtain funding for said projects. The projects listed in Appendix B shall be updated and prioritized annually at the Parties' spring and fall Tunnel Operation Schedule meetings referenced in Section 5 above.

**10. Radio Communications System.** ARRC owns and maintains an RF (radio frequency) communication system with a leaky coaxial cable running the entire length of the Tunnel. DOT&PF may use the Tunnel RF communications system for DOT&PF's own purposes, without charge, subject to the following conditions:

1. DOT&PF may not modify the infrastructure of the system (hardware or software) in any way without prior written approval from ARRC;
2. DOT&PF may not change the frequencies used for its purposes without prior consultation with ARRC so as to avoid overlapping frequencies or causing other difficulties for ARRC use;
3. At least four (4) frequencies are reserved for ARRC use at all times; and
4. ARRC will maintain two (2) frequencies for DOT&PF use with a demarcation point at the leaky coaxial head-end equipment.
5. DOT&PF has requested funding to convert all DOT&PF Tunnel communications to ALMR, except for communications to ARRC trains and dispatchers.

6. ARRC will cooperatively maintain a radio and telephone in the Tunnel Control Center for the purpose of coordination and expediting train passage with ARRC dispatch.

**10. Portal Doors Operation and Maintenance.** DOT&PF is responsible for the operation and maintenance of the portal doors of the Tunnel and agrees that the doors will be available for operation on a twenty-four (24) hour-a-day, seven (7) days per week basis. During the hours in which the Tunnel is staffed by the Tunnel Operator, the portal doors will be operated in accordance with the Tunnel Operation Schedule referenced in Section 5 above. During those hours in which the Tunnel is not staffed by the Tunnel Operator, an automated door operation system shall be provided to accomplish the requirements specified in the Tunnel Operations Schedule.

ARRC acknowledges and understands that the portal doors are critical to the control of ice, and to safety and security inside the Tunnel. ARRC will make every reasonable effort to assist the Tunnel Operator in its maintenance of the portal doors. ARRC will not unnecessarily open the portal doors when the Tunnel is not staffed by the Tunnel Operator until just prior to train or other vehicle entry, and will close the portal doors within fifteen (15) minutes after trains or other vehicles exit the Tunnel. If ice forms in the tunnel due to ARRC unnecessarily opening or leaving the portal doors open, ARRC shall remove the ice at its expense.

ARRC understands that both doors **MUST** be open before a train enters the Tunnel and cannot be closed until after a train clears the Tunnel. Any damage resulting from a door being in the closed position with a train inside the Tunnel shall be repaired by the ARRC at its expense.

**11. Tunnel Damage without Fault of Any Party.** The Parties recognize that responsibility for damage to the Tunnel resulting from unforeseen acts of God or other significant occurrences not due to the negligence of any Party or their agents cannot fairly be imposed on either Party. In general, the Parties recognize the critical nature of the transportation systems that co-exist in the Tunnel and agree to cooperate to repair any damage in accordance with other provisions of this Agreement and, lacking sufficient funds, to exert their best efforts to obtain funding to repair or replace either or both of their facilities. The Parties further agree that emergency service to the City of Whittier would be restored first in such an event.

**12. Clearances.** Maintenance of the train clearance dimensions attached hereto as Appendix A is essential to safe rail operations. The clearance dimensions shall be maintained by all Parties at all times. If the Tunnel Operator becomes aware of an intrusion into the clearance dimensions, it shall immediately notify ARRC. Efforts by both Parties shall be exercised to restore clearance for safe operations.

**13. Safety, Security & Emergency Issues.** The Parties agree that train and roadway safety is of paramount importance and that both Parties' use of the Tunnel must occur in a safe and secure manner. Accordingly, the Parties agree to cooperate in



developing a Tunnel Emergency Plan that addresses safety, security and procedures for emergency operation in the event of a train or vehicle emergency in the Tunnel. The Plan will include a process for notifying the City of Whittier of emergency events and the interim availability of emergency access to and from the City. The Plan shall also address safety and security during highway closure periods, the prohibition of pedestrian traffic in the Tunnel and other matters that that could jeopardize the safety of the Tunnel, its operation or its users. If any event occurs in the Tunnel that may affect train operations, the ARRC must be notified so proper inspection of the track can be made.

**A. Jet Exhaust Fans when in Train mode.** The ARRC has requested to control and use the Tunnel's jet exhaust fans for train operations. This request comes both as an occupational health and safety issue for ARRC employees and emergency management issue for both employees and passengers of the ARRC. DOT&PF agrees to work cooperatively with the ARRC to allow jet fan operations and let the ARRC have control during rail operations. Any cost to/for this modification will be the sole responsibility of the ARRC.

**B. Safe House Air Supply when in Rail Mode.** The ARRC has requested and DOT/PF agrees that Safe Houses shall remain operational while rail operations take place in the Tunnel. This request comes both as an occupational health and safety issue for ARRC employees and emergency management issue for both employees and passengers of the ARRC. This operation is currently performed manually, and programming is required making this an automatic process for all trains. The cost of this automation shall be at the expense of the ARRC.

**C. Emergency Response during Rail Operations.** The ARRC has requested that emergency responders be available during train operations through the Tunnel. The request is to, by separate contract; pay the Tunnel Operator to provide emergency response during rail operations. This request comes both as an occupational health and safety issue for ARRC employees and emergency management issue for both employees and passengers of the ARRC.

DOT&PF hereby authorizes the ARRC to enter into a contract with the DOT&PF Tunnel Operator for emergency response services so long as their agreement agrees to indemnify, defend and hold DOT&PF, its employees, and directors harmless against any and all claims, costs, suits, and damages, including attorney's fees arising out of the performance of their agreement, including claims, damages, and liabilities for injuries suffered, or occurrences of death or property damage relating to the services provided, excluding any claims or liabilities arising out of the sole negligence or willful misconduct of DOT&PF or its employees. All costs for such emergency response services are the sole responsibility of the ARRC. ARRC shall work with the Tunnel Operator to develop an appropriate response plan, and delegation of command.

**D. Standby Power.** DOT&PF hereby allows ARRC to connect to the Tunnel's standby power for Signal System operations related to the Tunnel.

**14. Insurance.** DOT&PF is unable to sign a new agreement containing an indemnity clause due to an Alaska Attorney General's opinion dated August 23, 2005 (A.G. File No. 661-05-0132), which deems such a commitment to be contrary to the Alaska Constitution. ARRC requires that potential liability arising from or related to vehicle use of the Tunnel must be addressed in some manner. Accordingly, the Parties agree that the Tunnel Operator shall secure the following liability insurance to protect ARRC from and against any and all claims and liabilities arising out of bodily harm (including death) or property damage that may result from its Tunnel operation and/or maintenance or any reconstruction. All such insurance shall be placed with such insurers and under such forms of policies as may be acceptable to ARRC and shall be kept in force at all times during the term of this Agreement.

**A.** Commercial General Liability Insurance, listing ARRC as a named insured, for bodily harm (including death) and property damage (including, but not limited to, contractual liability, premises-operations, products, completed projects, broad-form property and independent contractors) with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence. Said insurance policy shall not contain any exclusion for railroad operations or work on railroad property. This insurance is required during the entire term of this Agreement and shall be placed with no more than a \$50,000 deductible.

**B.** During any period in which construction or reconstruction work is actually being performed in or about the Tunnel, and only during such a period, Railroad Protective Liability Insurance for bodily injury (including death) and property damage, naming the Alaska Railroad Corporation as insured, of not less than Five Million Dollars (\$5,000,000) per occurrence.

**C.** Automobile Liability Insurance (including owned, hired, and non-owned), naming ARRC as an additional insured, with a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000) for bodily harm (including death) and property damage. This insurance is required during the entire term of this Agreement and shall be placed with no more than a \$50,000 deductible.

**D. Evidence of Insurance.** Each year during the term of this Agreement, DOT&PF shall deliver to ARRC certificates evidencing that the above required insurance is in effect.

**E.** In the event that the Tunnel Operator fails to provide the insurance required by this Agreement, ARRC shall have the right to acquire such insurance and bill the cost thereof to DOT&PF. DOT&PF shall pay such cost within sixty (60) days of its receipt of ARRC's invoice for the same.

**15. Modification; Entire Agreement.** No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the DOT&PF and ARRC and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by a Party of any default by the other

Party shall not affect or impair any right arising from any subsequent default. This Agreement and the Appendices attached hereto and made a part hereof constitute the entire understanding between the Parties and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the Tunnel or any part thereof.

**16. Compliance with Applicable Laws.** Each Party shall comply with all laws, ordinances, rules, regulations, orders, licenses, permits and other requirements of any governmental authority that are applicable to their respective operations, now or hereafter in effect, including, but not limited to, matters of health, safety, sanitation and the environment.

**17. No Warranties.** ARRC makes no specific warranties, expressed or implied, concerning the condition of the Tunnel, including access or suitability for any use, including those uses authorized by this Agreement. DOT&PF makes no specific warranties, expressed or implied, concerning the condition of the improvements, including access or suitability for any use, including those uses authorized by this Agreement.

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

If to ARRC, at  
ALASKA RAILROAD CORPORATION  
P.O. Box 107500  
Anchorage, Alaska 99510-7500  
Attention: Vice President, Transportation

If to DOT&PF, at  
Alaska Department of Transportation & Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801-7898  
Attention: AAMT Manager

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

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

## 20. Disputes.

**20.01 Dispute Resolution.** The dispute resolution procedures set forth in this Section 20 shall govern the resolution of any dispute, claim, or controversy (including alleged failure to provide approvals, consents, or to mutually agree with respect to a proposed course of conduct) arising out of, under, or relating to this Agreement and any right or obligation thereunder, or the alleged breach, validity, or termination thereof ("Dispute"), unless otherwise provided in this Agreement or mutually agreed to by the parties. Resolution of any Dispute shall be by senior executives of the Parties or, upon failure to timely reach a resolution in such manner, by ARRC's President & CEO and DOT&PF's Commissioner as provided in subsection 20.03 below.

### **20.02 Negotiation by Senior Executives.**

A. Upon a Party's receipt of written notification to the other Party of a Dispute, each Party shall, not later than seven (7) days thereafter, select and appoint as its representative a person not concerned with the day-to-day performance of that Party's obligations under this Agreement and who has general decision-making authority to resolve and settle the subject Dispute on behalf of such Party. Not later than fourteen days after receipt of written notification of said Dispute, each party shall provide to the other a written explanation of the material particulars of its position as to the Dispute. Not later than twenty-one (21) days after receipt of written notification of a Dispute, as provided above (the "First Meeting Deadline"), the representatives selected by the parties to resolve the same shall meet to attempt in good faith to settle the Dispute and to produce written terms of settlement. Such written terms of settlement, if any, when signed by each party's representative, shall serve as conclusive evidence of the resolution of such Dispute. If such written terms of settlement are not produced and signed by each party's representative (i) not later than fourteen (14) days after the date of such representatives' first meeting or (ii) within twenty-one (21) days after the First Meeting Deadline (in the event the representatives fail to meet by the First Meeting Deadline), or (iii) within such longer period as may be mutually agreed to by the parties in writing, then, a party may refer the Dispute to ARRC's President & CEO and DOT&PF's Commissioner in accordance with subsection 20.03 below.

B. All discussions and deliberations pursuant to this subparagraph 20.02 shall be considered settlement negotiations and may not be offered as evidence in any arbitration, litigation or other proceedings between the Parties.

**20.03 Final Resolution.** If the Parties fail to settle the Dispute in accordance with subsection 20.02 above, the Dispute shall be submitted by either Party to ARRC's President & CEO and DOT&PF's Commissioner for resolution. The Parties hereby agree that the ultimate decision reached by said individuals shall represent the final and legally binding resolution of the Dispute. As the senior officer for the State of Alaska, and holding authority over the Board of Directors of the ARRC and the Commissioner of the Department of Transportation, the Governor or his designee shall have the final say.

21. **Official Railroad Use of Roadway.** ARRC shall be allowed use of the Tunnel roadway without charge for official ARRC purposes. However, use without charge shall be limited to ARRC vehicles and ARRC employees, contractors or agents on official ARRC business when the Tunnel is subject to the management of the ARRC or at other times when traveling on ARRC official business. Any ARRC contract or other arrangement for highway transport of freight or passengers shall be subject to the standard toll rate applicable to vehicle use of the Tunnel. ARRC recognizes that only ARRC owned or leased vehicles on official business will pass without charge. It is ARRC's responsibility to manage its employees and contractors, and that it is ARRC's responsibility to keep DOT&PF informed regarding whom or who is not an authorized contractor. Unauthorized vehicles will be charged a toll.

22. **Best Efforts to Mitigate.** The Parties each agree to use their best efforts to, and shall reasonably accommodate the efforts of the other Party to, mitigate any delays, costs or damages to railroad operations or to Tunnel operations so as to minimize costs, including costs payable to ARRC under this Agreement, and to avoid economic waste.

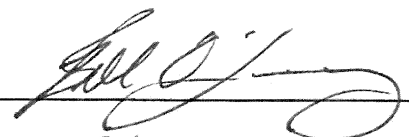
23. **Assignment.** DOT&PF may not assign, transfer or otherwise encumber its interest under this Agreement without the prior written consent of ARRC, which consent may not be unreasonably withheld. ARRC may not assign, transfer or otherwise encumber its interest under this Agreement without the prior written consent of DOT&PF, which consent may not be unreasonably withheld.

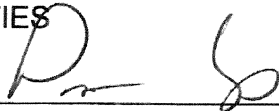
24. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of ARRC and DOT&PF and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set out below.

ALASKA RAILROAD CORPORATION

ALASKA DEPARTMENT OF  
TRANSPORTATION AND PUBLIC  
FACILITIES

By: 

By: 

Its: CEO

Its: COMMISSIONER

Dated: 9/25/14

Dated: 9/25/14

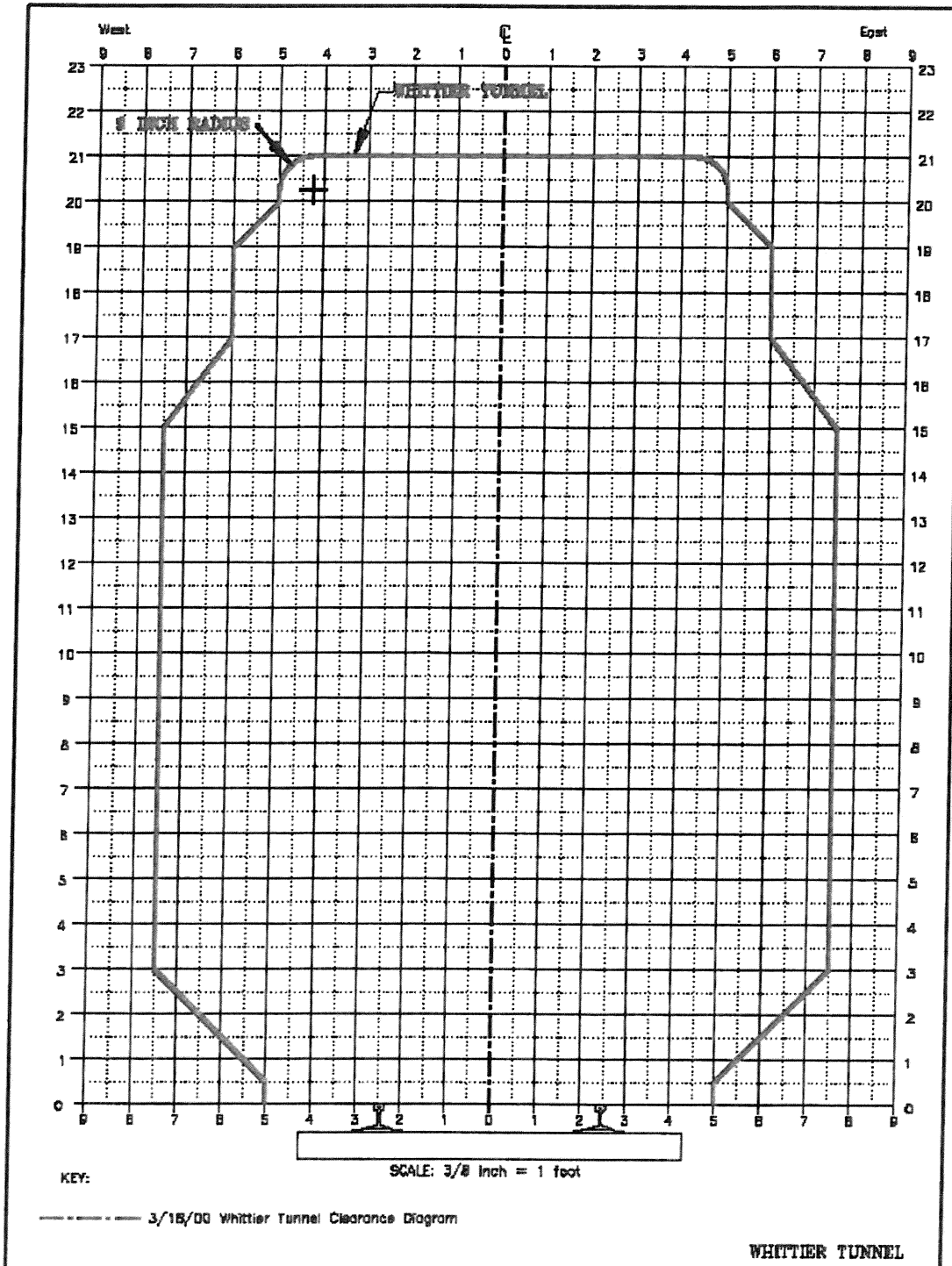
Attachments:

Appendix A: Tunnel Clearance Diagram

Appendix B: Major repairs currently needed with funding requested.

Appendix C: Tunnel Use Schedule

## Appendix A-Tunnel Clearance Diagram



## **Appendix B**

### **Major Repairs Currently Needed**

#### **1. Replace Track Circuit System for the Whittier Tunnel**

STIP Need ID: 28329 Name: Replace Track Circuit System for the Whittier Tunnel

**Background** – The Track Circuit System (TCS) detects when a train is in the tunnel and closes the tunnel to highway traffic. The TCS is an electrical circuit which uses the track rails as the conductors. If a train is present in the tunnel, the electrical circuit is shunted by the wheel/axle system of the train and the tunnel is closed to highway traffic.

Over the past few years, the TCS has experienced a progressive failure. During the past year the TCS has failed 40 times by falsely detecting a train in the tunnel when there wasn't one. The most likely cause of the failure is that water in the tunnel shunts the track circuit causing a "false occupancy" failure of the TCS. If the "false occupancy" failure occurs when the tunnel is in railroad mode (TCS fails to detect that the train has left the tunnel), it may take up to several hours for the Alaska Railroad (ARRC) to override the TCS and reopen the tunnel up to highway tunnel.

The report prepared by Burns Engineering as part of the AK DOT&PF "*Evaluation of the Train Signal and Rail systems for the Whittier Tunnel*" research project recommends that the existing TCS be replaced with an axle counter system. The axle counter system is a more reliable system for detecting the presence of a train in the wet tunnel environment.

**Description** – This project will replace the existing Track Circuit System with an axle counter system for train detection in the Whittier Tunnel. This would prevent future shutdowns of the Whittier Tunnel from "false occupancy" failures of the TCS. This project will also perform an as-built survey to determine the location of the key components (telephones, fire alarms, etc.) and install DOT/PF furnished reflectors in the curb to establish location control for future work in the tunnel.

**Cost Estimate** – The Burns Engineering research report estimated the cost to replace the existing TCS with an axle counter system to be \$144k. However, the ARRC estimates the cost to be approximately \$431k which includes \$38k for contingency and \$146k for "reimbursable total". Since the axle counter system will be integrated into the train signal system, the ARRC will insist on selecting the vendor for the axle counter system and installing the system themselves. An additional \$69k should be budgeted for vendor selection and project administration.

The cost of as-built survey and installing the reflectors on the curb for location control is an additional \$100k. The as-built survey work may possibly be added by contract amendment to an existing survey contract or by DOT/PF crews. The installation of the reflectors can be done by the Whittier Tunnel Operations staff. The DOT/PF has already purchased the reflectors. **The total cost of this STIP project is \$600k.**

## **2. Drainage Improvements for the Whittier Tunnel**

STIP Need ID: 28330 Name: Drainage Improvements for the Whittier Tunnel

**Background** – A significant amount of water drains from the tunnel crown and sidewalls. This water saturates the underlying ballast which causes: 1) the precast concrete panel inverts to settle; 2) accelerates the corrosion of the rail; and 3) corrosion of the rebar in the precast concrete panels that form the driving surface of the tunnel invert.

The precast concrete panel system that forms the driving surface of the Whittier Tunnel has a 20 year design life. Since the tunnel provides the only highway and rail access, the replacement of the panels will have a significant impact for access to and from Whittier. Constructing additional drainage systems will extend the performance life of the driving surface and delay the difficult reconstruction and replacement of the precast concrete panel tunnel invert.

The 2000 construction project installed water control systems in the wetter sections of the tunnel. An additional 2,000 to 2,500 lineal feet of water control systems needs to be installed in wet areas not covered in the 2000 construction project. Additional rock may have to be excavated from the tunnel crown to create enough room for the additional water control systems. In addition, some of the existing water control systems need to be modified in some areas where water drips from the edge of the pan onto the tunnel walls and splashes on to the panel surface. The water from these areas can be controlled by installing a gutter with drain pipes that collects the water from the pan and drains it into the storm drain system.

Installation of the additional water control system will reduce the amount of water draining to the tunnel invert and underlying ballast. This will reduce the risk of panel settlement, corrosion of the rail and extend the performance life of the precast concrete invert system.

**Description** – This project will install additional water control systems to extend the performance life of the concrete panel driving surface of the Whittier Tunnel. This work will also include a LIDAR survey to determine where additional rock needs to be removed from the tunnel crown to make enough room for the additional water control systems.

**Cost Estimate** - The cost of this project is dependent on the amount of rock in the tunnel crown that has to be excavated to make enough room for the water control systems. Excavating the rock will be extremely expensive. **The total cost for this STIP project is \$3 million.** This includes design and construction contract administration.



### **3. Whittier Tunnel Precast Concrete Panel Invert Preservation**

STIP Need ID: 28331 Name: Whittier Tunnel Precast Concrete Panel Invert Preservation

**Background** – Asphalt pavement was placed in the rail insert of the precast concrete panels to protect the rail from corrosion and provide a smooth driving surface for highway traffic. The asphalt pavement has started to degrade which results in a rough driving surface and allows water to corrode the rail which reduces the performance life of the rail.

Approximately 15% of the concrete panel invert has cracks that need to be sealed to prevent water from intruding into the panels and corrode the rebar.

**Description** – This project replaces the asphalt in the rail insert that protects it from water and reduces corrosion. This will extend the life of the rail and extend the time that it will need to be replaced. Sealing the cracks will prevent corrosion of the rebar and extend the performance life of the concrete panel invert.

**Cost Estimate** – The total cost estimate for this STIP project is \$1 million. This includes design and construction contract administration.

### **4. Back-up generation for normal operations of the AAMT**

STIP Need ID: 28332 Name: Back-up generation for normal operations of the AAMT

**Description:** This project will upgrade the current emergency power capabilities and establish full backup power for sustained normal tunnel operations during emergencies and prolonged power outages.

**Background:**

There is currently enough standby power to operate most cameras, some lighting, and the ventilation fans for the safe-houses; but not to sustain normal tunnel operations. In the event of an emergency or prolonged power outage tunnel operations are hampered and traffic backs up very quickly. The tunnel is an important link to an ice free port, if the ports on the eastside of Cook Inlet were to become inoperable, Whittier with the rail/highway would become a critical feature of importance to sustain the supply chain for south-central Alaska. **The total cost for this STIP project is \$2 million.** This includes design and construction contract administration.

### **5. Rehabilitation Train Signal Power Systems**

**Description:** This project will rehabilitate the power systems that support the train signal system, a necessary component for highway operations. Existing power systems are all original equipment and are reaching the end of their reliable service life. This includes rehabilitation/replacement of:

- C-can 110V to DC Capacitors
- Batteries
- Voltage Regulators
- Transfer Switches
- Other aging components

Cost Estimate: Total estimated costs are still being developed. It is expected to be in the \$100,000 range.

### Appendix C: Whittier Highway/Rail Schedule

May 1 through September 30				October 1 through April 30			
Beginning Time	Highway Activity	Rail Activity	Ending Time	Beginning Time	Highway Activity	Rail Activity	Ending Time
4:45 AM		Available	5:00 AM	4:45 AM		Available	5:00 AM
5:00 AM			5:15 AM	5:00 AM		Available	5:15 AM
5:15 AM			5:30 AM	5:15 AM		Available	5:30 AM
5:30 AM			5:45 AM	5:30 AM		Available	5:45 AM
5:45 AM		Px Only	6:00 AM	5:45 AM		Available	6:00 AM
6:00 AM	Whittier to Bear Valley		6:15 AM	6:00 AM		Available	6:15 AM
6:15 AM		Available	6:30 AM	6:15 AM		Available	6:30 AM
6:30 AM			6:45 AM	6:30 AM			6:45 AM
6:45 AM		Available	7:00 AM	6:45 AM			7:00 AM
7:00 AM	Whittier to Bear Valley		7:15 AM	7:00 AM	Whittier to Bear Valley		7:15 AM
7:15 AM		Available	7:30 AM	7:15 AM		Px Only	7:30 AM
7:30 AM			7:45 AM	7:30 AM			7:45 AM
7:45 AM		Available	8:00 AM	7:45 AM		Available	8:00 AM
8:00 AM	Whittier to Bear Valley		8:15 AM	8:00 AM	Whittier to Bear Valley		8:15 AM
8:15 AM		Available	8:30 AM	8:15 AM		Available	8:30 AM
8:30 AM			8:45 AM	8:30 AM			8:45 AM
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9:00 AM	Whittier to Bear Valley		9:15 AM	9:00 AM	Whittier to Bear Valley		9:15 AM
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10:30 PM			10:45 PM	10:30 PM		Px Only	10:45 PM
10:45 PM			10:30 PM	10:45 PM			10:30 PM
11:00 PM	Whittier to Bear Valley		11:15 PM	11:00 PM		Coordinate	11:15 PM
11:15 PM		Coordinate	11:30 PM	11:15 PM		Coordinate	11:30 PM
11:30 PM		Coordinate	11:45 PM	11:30 PM		Coordinate	11:45 PM
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12:15 AM		Coordinate	12:30 AM	12:15 AM		Coordinate	12:30 AM
12:45 AM		Coordinate	1:00 AM	12:45 AM		Coordinate	1:00 AM
1:00 AM		Coordinate	1:15 AM	1:00 AM		Available	1:15 AM
1:15 AM		Coordinate	1:30 AM	1:15 AM		Available	1:30 AM
1:30 AM		Available		1:30 AM		Available	
4:30 AM		Available		4:30 AM		Available	

**Notes:**

- Trains using the tunnel may cause 15 to 30 minute delays to highway traffic.
- ARRC "Available" train openings will be at "22" and "52" minutes in the hour.
- ARRC coordinate Whittier to Bear Valley freights to avoid peak highway use periods.
- DOT will coordinate with ARRC to allow trains into their Maintenance windows when possible.