



Alaska Railroad Corporation  
327 W. Ship Creek Ave.  
Anchorage, AK 99501

December 19, 2019

Addendum 1  
Invitation to Bid # 19-56-308340  
Seward: Armor Rock and Ballast Production

**Addendum number 1 is issued for Questions, Terminal Use Permit Application and Stockpile location (see SWD Material Stockpiles.pdf attachment).**

The Closing Date for this ITB has not changed.

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**CHANGES:** Addendum number 1 has been issued for clarification to the following questions.

1. The Rock Quality test results may take in excess of three (3) months to obtain after the date of sampling? Is there a provision to waive the results?
  - a. As noted in the ITB package, tests not completed within the allotted time frame shall be submitted with a memorandum from the Professional Engineer registered in the State of Alaska who completed testing confirming, upon visual inspection and subsequent report, that the material in the active face of the quarry is similar to that which was originally tested.
  - b. Additionally, material that has been commercially utilized for marine and erosion protection projects, may be utilized if their results are submitted along with a statement from the provider with a minimum of three (3) past projects that successfully utilized said material.
  - c. Material sources with no history of production or rock quality testing may be utilized at the Contractor's risk if the minimum limits are met for Bulk Specific Gravity (SSD) AAHSTO T85, Absorption ASTM C 97, and L.A. Abrasion AASHTO T 96. The remaining Rock Quality Tests, as outlined in the Contract Documents, are to be completed as outlined therein.
  
2. Does the Owner intend for the responsive low bidder to utilize the City of Seward's Quarry?
  - a. No. Contractors may utilize any rock source available to it to produce the material specified in the Contract Documents. The Owner has no vested interest in any particular rock source.

3. Is there currently material within the City of Seward's Quarry that may be processed?
- a. Questions referencing the City of Seward's Quarry should be directed to Mr. Doug Schoessler, City of Seward Public Works Director at 907.224.4058 or via e-mail at [doug@cityofseward.net](mailto:doug@cityofseward.net).
4. Will the bonding requirements be waived?
- a. As the delivery location is on the road system, the bonding requirements set forth in the Contract Documents will not be waived for this solicitation.
5. If the Contractor intends to use the Owner's marine facilities in Seward for material offloading, will the Owner waive the mooring and wharfage fees?
- a. Mooring and wharfage fees will not be levied on the Contractor to pay while actively unloading materials in support of this contract. The Contractor will however be required to obtain a Terminal Use Permit prior to berthing at the Owner's facilities, hold insurance with the minimum referenced therein, and accommodate vessels at the Seward Freight Dock. Furthermore, the Contractor shall comply with the instructions of the Seward Dock Manager regarding availability of berthing, in addition to the TUP. See attached TUP application.
6. Would the Owner entertain receiving materials at locations other than Seward such as Moose Pass or the Birchwood Yard?
- a. No
7. Will the Owner be obtaining any permits?
- a. The Contractor shall obtain any and all permits necessary to source, produce, transport, and stockpile the materials within the areas indicated.
8. Can the Owner supply the Contractor with the location(s) that the material is to be stockpiled under this Contract?
- a. Yes, see attached drawings.
9. Is the completion date established in the ITB flexible? If not, will liquidated damages be assessed?
- a. If the Contractor and the Owner cannot agree upon an acceptable delivery date or an extension in accordance with the Contract documents, liquidated damages will be levied on the Contractor as outlined in the same. The Contractor is to provide their "Anticipated Final (Deliver) Date" along with their completed Cost Schedule.

# *SAMPLE*

ARRC Contract No. XXXX

REVOCABLE TERMINAL USE PERMIT  
SEWARD TERMINAL  
ALASKA RAILROAD CORPORATION

[USE FOR CARGO, FREIGHT, FISH HANDLING, STEVEDORING OF BAGGAGE AND SHIP'S STORES AND SUPPLIES, AND MULTIPLE SERVICES; DO NOT USE FOR PASSENGER SERVICES NOT INVOLVING STEVEDORING OF BAGGAGE OR SHIP'S STORES AND SUPPLIES; DO NOT USE FOR FUELING SERVICES ONLY]

This REVOCABLE TERMINAL USE PERMIT ("Permit") is made and entered into on the date executed by the last signatory hereto by and between the ALASKA RAILROAD CORPORATION ("ARRC"), a public corporation and instrumentality of the State of Alaska created pursuant to AS 42.40, whose mailing address is P.O. Box 107500, Anchorage, Alaska 99510-7500, and COMPANY ("Permittee"), whose address is [COMPANY ADDRESS].

## RECITALS

- A. ARRC is the owner and operator of land and facilities in Seward, Alaska, and provides certain marine terminals suitable for performing marine-related passenger and cargo services at the Port of Seward (the "Seward Terminal Facilities").
- B. Permittee desires to utilize the Seward Terminal Facilities to perform certain services as identified in Section 3.01 of this Permit.
- C. ARRC is agreeable to allowing Permittee to utilize the Seward Terminal Facilities to perform said services subject to the terms and conditions set forth in this Permit.

## AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Definitions.

1.01 "Stevedore Services" means all acts related to the loading, unloading, or handling of freight, cargo, ship's stores or supplies or large volumes of baggage to or from vessels moored at the ARRC Dock. Stevedore Services shall include the handling of containers of frozen fish, but shall not include the handling of loose fish, which falls within the definition of "Fish Handling" in subsection 1.08 of this Permit. Stevedore Services shall include the handling of containers of fuel being transported by vessel, but shall not include the fueling of vessels, which falls within the definition of "Vessel Servicing" in subsection 1.05 of this Permit.

1.02 "Check" or "Checking" means the inspection of cargo to determine its quantity, condition, or destination, the consignee's identity, and the accuracy of billing.

1.03 "ARRC Dock" means ARRC's operating wharves, paved areas, Intermodal Terminal and any equipment that is permanently affixed thereto, but does not include the dock located at ARRC's Seward Coal Loading Facility ("SCLF") or any other part of the SCLF.

1.04 "Terminal Reserve" means ARRC's Seward Terminal Reserve, including but not limited to the ARRC Dock, as defined above, and storage and parking areas and other facilities that may occasionally be used for activities associated with this Permit; provided, however, that for purposes of this Permit, "Terminal Reserve" does not refer to or include any portion of the SCLF.

1.05 "Vessel Servicing" means all acts related to providing miscellaneous services to vessels, e.g. repairs, maintenance, fueling, watering, garbage removal and related Stevedore Services and/or Longshore Services.

1.06 "Longshore Services" means vessel tie-up and discharge.

1.07 "Non-Vessel Cargo Services" means all acts related to the transfer of cargo or freight between a vehicle, truck, trailer, container or railcar and the ground within the Terminal Reserve.

1.08 "Fish Handling Services" means the loading, unloading or handling of loose fish from vessels moored at the ARRC Dock. For purposes of this definition, the handling of loose fish shall not include the handling of containers of frozen fish, which instead falls within the coverage of "Stevedore Services" in subsection 1.01 of this Permit.

2. Grant of Rights.

ARRC hereby grants to Permittee a non-exclusive revocable Permit to use the ARRC Dock and, as necessary and approved by ARRC, other portions of the Terminal Reserve, for the limited purposes described in Section 3 of this Permit and upon the terms and conditions set forth herein. ARRC reserves for itself, its successors, assigns, permittees and licensees, the right to use the ARRC Dock and the Terminal Reserve for any purpose whatsoever, including without limitation transportation, communication and transmission purposes, which shall be deemed to include but not be limited to the construction, maintenance and operation of existing and additional tracks, dock-related facilities, pipes, communication and power transmission lines, drainage ditches or any other facilities located upon, over and beneath the Terminal Reserve.

3. Rights and Responsibilities of Permittee.

3.01 Use by Permittee: During the term of this Permit, Permittee may provide only the services expressly indicated below on and about the ARRC Dock and vessels docking at the ARRC Dock.

**[PLACE AN "X" ON THE APPROPRIATE LINE(S)]**

- Stevedore Services
- Fish Handling Services
- Vessel Servicing
- Non-Vessel Cargo Services

Permittee shall furnish all labor, equipment, material, supplies and dunnage necessary to provide the indicated services under this Permit. In furtherance and not in limitation of the foregoing, Permittee shall be responsible for providing the proper equipment (such as gangways, ladders, safety nets, etc.) necessary for its employees, agents and contractors to safely embark onto or disembark from vessels being serviced under this Permit.

3.02 Storage of Equipment: Permittee may temporarily store cargo and equipment only in those areas of the ARRC Dock or Terminal Reserve designated by ARRC for that purpose and in a manner approved by ARRC. At all times other than those when Permittee is actually providing services authorized in subsection 3.01 of this Permit for a vessel then docked at the ARRC Dock, Permittee shall keep all ARRC facilities it uses pursuant to this Permit clean and clear of Permittee's personnel, equipment, cargo, debris, dunnage and other material. If ARRC determines, in its discretion, that Permittee has failed to comply with this subsection 3.02, Permittee shall, at ARRC's request, immediately comply with its obligations under this subsection. If Permittee fails to comply with a request by ARRC for compliance with this subsection, ARRC may directly arrange, at Permittee's expense, for ARRC's facilities to be made and kept clear of Permittee's equipment, cargo, debris, dunnage and other material at times when Permittee is not actually providing services under this Permit. If Permittee subsequently demonstrates to ARRC's satisfaction that Permittee can and will perform its obligations under this subsection 3.02 and pays ARRC for any expense ARRC has incurred pursuant to this subsection, Permittee may continue to perform its obligations as required under this subsection.

3.03 Equipment and Vehicle Parking: Permittee and its employees may leave or park equipment or vehicles only in those areas of the Terminal Reserve designated by ARRC for such purposes. As more specifically provided in Section 14 of this Permit, Permittee assumes the risk for any damage that may be sustained by such equipment or vehicles at the Terminal Reserve.

3.04 Securing ARRC Facilities. Upon completion of any work performed under this Permit, Permittee shall secure and lock all ARRC facilities it has entered.

3.05 Service Rates. If Permittee offers services for public hire, Permittee shall supply ARRC with a copy of its current Longshore/Stevedore rates and other rates and charges for said services upon execution of this Permit. Permittee shall give written notice to ARRC of any changes to such rates and charges within a reasonable time before the effective date of such change.

3.06 No ARRC Employees. Permittee may not, under any circumstances, enlist the service of any employee of ARRC in Permittee's performance under this Permit. Permittee shall have absolute control of and responsibility for the actions of its employees, agents and contractors.

3.07 Coordination and Provision of Information. When providing services for a vessel at the Terminal Reserve, Permittee shall coordinate activity on the ARRC Dock with other ARRC Dock users and with ARRC's Real Estate Office as requested by ARRC. At a minimum, Permittee shall provide ARRC with the following information as soon as reasonably possible, but no later than the end of the day following Permittee's provision of said services:

1. Vessel name and owner
2. Vessel length
3. Tie up date and time
4. Cast off date and time
5. Description of cargo handled over dock (type, weight, volume, etc.)
6. Other services provided to the vessel

3.08 Compliance With Terminal Security Plan. Whenever Permittee is providing services to a vessel at berth at the ARRC Dock, Permittee shall comply with any established Terminal Security Plan to protect passengers, vessels and ARRC's marine facilities as required by the United States Coast Guard, Title 33 Code of Federal Regulations, Subparts 120 and 128 and Subchapter H—Maritime Security, Parts 101, 104, and 105, as they may be amended. In furtherance of Permittee's obligations under this subsection 3.08, Permittee shall do the following:

- A. Provide to ARRC advance notice of and receive prior approval from ARRC for any movement of dangerous or hazardous cargo.
- B. Provide to ARRC a copy of the material manifest, including dangerous cargo, for inbound and outbound cargo prior to mooring.
- C. Provide to ARRC a copy of the crew manifest for authorizing dock access.

3.09 Fire Lanes and Fire Control. Permittee shall keep fire lanes clear and maintain fire control equipment in a readily accessible location.

3.10 Permittee Service Charges. Permittee shall not participate in the distribution of or have any right to or interest in any tariff or other revenue ARRC derives from the ARRC Dock, the Terminal Reserve or any associated facilities. Permittee shall, however, be allowed to assess a reasonable service charge on users of the ARRC Dock for services rendered by Permittee. Said service charges shall be retained by Permittee as full consideration for services provided by Permittee under this Permit and ARRC shall have no right to or interest in any such service charges or any portion thereof.

3.11 Checking Services. In conjunction with any services provided by Permittee under this permit that involve the loading, unloading or handling of cargo, Permittee shall provide the following cargo checking services.

A. Permittee shall check all cargo which it loads, unloads, or handles and shall prepare all over reports, short reports, damage reports or unloading reports as may be required by a shipper, carrier, or consignee of said cargo.

B. Permittee shall be solely responsible for all apparent damage or pilferage suffered by cargo checked by the Permittee and not recited in a shipside, exception or in final over reports, short reports, damage reports, or unloading reports; provided, however, that Permittee shall not be responsible for such damage as may be caused solely by the negligent act of an ARRC employee.

C. Permittee shall be solely liable for all errors in its delivery of cargo as a result of improper checking or completion of any report listed in subsection 3.11.A of this Permit.

3.12. Petroleum Provisions. Before Permittee engages in any petroleum transfer operations as part of Vessel Servicing provided under this Permit, Permittee shall:

A. Provide to ARRC a petroleum operations manual covering the proposed petroleum transfer operations. Said operations manual must be approved by both ARRC and the U.S. Coast Guard before any petroleum transfer operations are conducted.

B. Provide to ARRC a Certificate of Adequacy issued by the U.S. Coast Guard.

C. Provide to ARRC an oil spill contingency plan.

D. Comply with minimum oil spill containment equipment requirements as specified by U.S. Coast Guard regulations. (33 CFR 154.545). All such required equipment shall be maintained on site by Permittee during all petroleum transfer operations.

E. Provide ARRC and the U.S. Coast Guard with a current written list of designated, qualified operators to act as person(s)-in-charge of petroleum transfer operations at the ARRC Dock made by or on behalf of Permittee under this Permit.

#### 4. Responsibilities of ARRC.

4.01 Best Efforts. ARRC shall use its best efforts to provide dock facilities at the Terminal Reserve upon which Permittee may provide the services identified in Section 3.01 of this Permit.

4.02 Parking and Equipment Location. ARRC shall designate areas within the Terminal Reserve consistent with ARRC operations in which Permittee may park and locate vehicles and equipment related to its activities under this Permit.

4.03 Utilities. ARRC shall maintain within the Terminal Reserve existing utility connections, or replacement utility connections with similar or greater capabilities, available for use in conjunction with Permittee's provision of the services identified in Section 3.01 of this Permit.

4.04 Equipment Provided by ARRC. ARRC shall provide, upon Permittee's request, such equipment for use by Permittee as ARRC may deem to be available at the time requested by Permittee. Such equipment shall be provided at the tariff rates established in the applicable tariff or by other agreement.

4.05 Snow Removal. ARRC shall provide for the reasonable removal of snow from the ARRC Dock.

5. Term and Termination.

5.01 Permit Term: This Permit shall be for a term of **number ( )** year(s), commencing on \_\_\_\_\_, and ending on \_\_\_\_\_. Any continued use by Permittee of the ARRC Dock after the expiration of the original term of this Permit, absent prior ARRC approval, shall be at ARRC's discretion and under the same terms and conditions as those contained in this Permit until such time as a new Revocable Terminal Use Permit is executed by the parties. The parties may renew this Permit for one or more additional terms upon mutual agreement by either executing written supplements to this Permit providing for such additional terms or entering into a new Revocable Terminal Use Permit.

5.02 Termination. ARRC shall have the right to terminate this Permit at any time for cause, including but not limited to non-payment of permit fees or other non-compliance with the terms of the Permit, by notifying Permittee of said termination in writing at least ten (10) days before the date upon which termination is to be effective; provided, however, that if, in the reasonable opinion of ARRC, the event constituting cause substantially endangers either the person or property of ARRC or a third party, or human health or the environment, ARRC shall have the right to terminate this Permit immediately upon verbal notice to Permittee, which notice shall be followed by written notice as soon as reasonably possible. Both ARRC and Permittee shall have the right to terminate this Permit without cause by notifying the other party of said termination in writing at least thirty (30) days before the date upon which the termination is to be effective. In the event ARRC terminates this Permit without cause before the end of the Permit Term, the Permittee shall be entitled to a refund of a pro-rated portion of the previous annual fee based on the portion of the permit-year remaining following termination of the Permit, less any other amounts due and owing by Permittee under this Permit.

6. Permit Fee:

As consideration for the use of the ARRC Dock and associated facilities under this Permit, Permittee shall pay annual fees in the amounts identified below for each category of services Permittee is authorized to provide in Section 3.01 of the Permit ("Permit Fees"). If Permittee is authorized to provide services in more than one category of services, it shall pay the cumulative annual Permit Fees for all such categories; provided, however that if the total of such annual Permit Fees exceeds Five Thousand and no/100 (\$5,000.00), the total annual Permit Fee shall be Five Thousand and no/100 (\$5,000.00).

	<u>Service Provided</u>	<u>One Time</u>	<u>Annual</u>
A.	Stevedore Services	\$2,000.00	\$4,000.00
B.	Fish Handling Services	\$500.00	\$1,000.00
C.	Vessel Servicing	\$1,000.00	\$2,000.00
D.	Non-Vessel Cargo Services	1,000.00	\$2,000.00

[NOTE: Due to the nature of some Permittee's services under this TUP, different or additional rates may apply and this table revised accordingly]

The Permit Fees for a given permit year shall be paid in full before Permittee conducts any activities under this Permit during that permit year. ARRC reserves the right to adjust the annual Permit Fees upon reasonable notice to Permittee. In addition to the annual Permit Fees set forth above, Permittee shall also pay to ARRC any applicable dockage and wharfage fees at the rate specified in the applicable ARRC Seward Terminal Tariff or by separate agreement. Neither the annual Permit Fees nor the other fees and charges referred to above include the use of ARRC's utilities. Existing utilities may be made available to Permittee by a separate written agreement.

7. Cooperation.

This Permit is a nonexclusive license for Permittee to perform the services set forth in subsection 3.01 of this Permit and Permittee understands that others may hold similar authority. Permittee shall cooperate with all other persons authorized to work at the ARRC Dock. In the event of any conflict between the obligations of Permittee hereunder and any other person authorized to use of the ARRC Dock that cannot be addressed through cooperation, Permittee shall inform ARRC of the conflict as soon as reasonably possible. Both Permittee and ARRC shall attempt to resolve the conflict by negotiating in good faith with each other and with the other person whose obligations conflict with Permittee's obligations under the Permit.

8. Assignment.

This Permit is personal to Permittee and may not be assigned or transferred in any manner, including by operation of law, without prior written consent of ARRC. If Permittee attempts to assign any part of its interest in this Permit or to delegate duties under this Permit without such prior written consent, ARRC may, at its discretion, immediately terminate this Permit without any liability.

9. Facility Damage.

9.01 Facility Damage and Duty to Repair. Permittee shall not deface, damage, destroy, or alter any portion of any facility or equipment located in or upon the ARRC Dock or the Terminal Reserve. In the event damage, destruction or alteration of any such facility or equipment occurs as a result of Permittee's activities, Permittee may repair or replace such damaged, destroyed or altered facility or equipment at its own expense and by means of its own work force if, within twenty-four (24) hours of the occurrence, Permittee agrees to do so and proposes a schedule of performance satisfactory to ARRC. Notwithstanding the foregoing, if ARRC determines, in its sole discretion, that repair or replacement of a damaged, destroyed or altered facility or equipment caused by Permittee's activities must be made on an emergency basis to protect health, safety or the environment, or to preserve or protect critical ARRC facilities, equipment or systems, then ARRC shall have the right to make such repairs at Permittee's expense regardless of Permittee's willingness to effect the repair. If Permittee fails to give timely notice of the occurrence to ARRC as required by subsection 9.02 of this Permit, Permittee shall have no right to repair or replace such damage, destruction, or alteration and ARRC may proceed to perform the necessary repairs or replacements at Permittee's expense. If ARRC performs a repair or replacement pursuant to this subsection 9.01, Permittee shall pay ARRC for the cost of repair or replacement, including twenty-five percent (25%) administrative overhead costs, within fifteen (15) days after presentation of a bill by ARRC. Permittee shall pay any bill submitted in accordance with this subsection 9.01 before providing further services or other activities under this Permit.

9.02 Notice of Facility Damage. Permittee shall give immediate verbal notice to ARRC when Permittee becomes aware of defacement, damage, alteration, or destruction to any part of ARRC's facilities or equipment subject to the provisions of subsection 9.01 of this Permit. Permittee also shall submit written notice of any such occurrence to ARRC as soon as reasonably possible, but no later than twenty-four (24) hours after Permittee becomes aware of the occurrence. If Permittee intends to repair or replace the damaged, destroyed or altered facility or equipment, written notice under this subsection 9.02 must include a proposed list and schedule of corrective actions.

10. Compliance with Laws; Permits and Taxes.

10.01 Compliance with Laws. In performing its services under this Permit, Permittee shall comply with all statutes, ordinances, rules, and regulations applicable to Permittee's rights, obligations or actions under this Permit. Permittee shall observe all rules and signs posted at the Seward Cruise Terminal and at the Terminal Reserve and with all applicable U.S. Coast Guard Safety Requirements, whether or not they are posted.

10.02 Permits and Taxes. Permittee shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its provision of services under this Permit. Permittee shall pay all taxes pertaining to its provision of services under this Permit.

11. Work Conditions; Labor Contracts.

11.01. Labor Agreements. Permittee shall provide ARRC with one (1) copy of all labor agreements applicable to Permittee's provision of services under this Permit.

11.02 Work Conditions. Permittee shall use its best efforts to achieve work conditions and labor gang size at the ARRC Dock which are better than or equal to those prevailing at other ports in Southcentral Alaska. The Permittee shall use its best efforts to provide services at the lowest possible price.



12. Insurance:

12.01 Liability Insurance. During the entire Permit Term, and during any holdover thereafter, whether or not authorized by ARRC, Permittee shall keep in full force and effect a policy or policies of general liability insurance which includes bodily injury, property damage, and personal injury acceptable to ARRC with respect to the Terminal Reserve, including but not limited to the ARRC Dock, and the operations of Permittee thereon or elsewhere on ARRC property, in which the single limit shall be not less than Five Million Dollars (\$5,000,000) per occurrence or such higher limits as ARRC may specify from time to time consistent with prudent business practice then prevailing in the State of Alaska; provided, however, that no such limit shall in any way limit Permittee's liability or be construed as a representation of sufficiency to fully protect ARRC or Permittee. The policy or policies purchased pursuant to this subsection 12.01 shall name ARRC as an additional insured in addition to covering the Permittee with respect to the Terminal Reserve, including but not limited to the ARRC Dock, and the operations of Permittee on any ARRC property.

12.02 Policy Provisions. Each policy of comprehensive general liability insurance described in subsection 12.01 of this Permit shall:

A. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim, any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for ARRC, Permittee, or any person claiming by, through, or under any of them.

B. Provide that such policy requires thirty (30) days' prior notice to ARRC of any proposed cancellation, expiration, or change in material terms thereof and that such policy may not be canceled, whether or not requested by Permittee, unless the insurer first gives not less than thirty (30) days' prior written notice thereof to ARRC.

C. Contain a waiver by the insurer of any right of subrogation to proceed against ARRC or against any person claiming by, through, or under ARRC.

D. Be endorsed with an Alaska Suit Endorsement.

12.03 Proof of Insurance. Permittee shall deliver to ARRC certificates of insurance on or before the effective date of this Permit or at another date as agreed to in writing by ARRC. Additionally, Permittee shall deliver to ARRC photocopies of the policy or policies of insurance, certificates of insurance, or copies of endorsements as requested by the ARRC from time to time.

13. Indemnification.

Except as otherwise stated in this Section 13, Permittee shall be liable for and agrees to release, indemnify, defend and hold harmless ARRC, its employees, officers and representatives from and against any and all losses and any and all claims, demands, payments, suits, actions, liabilities, judgments, damages, recoveries, fines, penalties, costs, legal expenses (including, but not limited to, reasonable attorney's fees), of whatever kind, including sums paid in settlements of claims, attorney fees, consultant fees, expert fees, or costs incurred, made, brought or recovered against ARRC by any person or entity, including but not limited to Permittee, its agents, employees, contractors, subcontractors, invitees, customers or guests, arising directly or indirectly from, or connected with (a) this Permit; (b) Permittee's use or presence in or upon the Terminal Reserve, the ARRC Dock or any adjacent premises; (c) Permittee's use of or operations on other ARRC property; (d) any act or omission by Permittee, its agents, employees, contractors, subcontractors, invitees, customers or guests related in any way to the Permit; or (e) any failure of Permittee to comply with applicable laws, ordinances, rules, regulations, guidelines, or other requirements imposed by any government entity now or hereafter in effect, in connection with the performance of this Permit by Permittee. Permittee shall give ARRC reasonable notice of any such claims or actions. Permittee shall use counsel reasonably acceptable to ARRC in carrying out its defense obligations under this Section 13. The provisions contained in this Section 13 shall not be given effect if the active negligence of ARRC or its employees is the sole proximate cause of any injury or damage done to the party asserting the claim. Permittee's agreement to the release, indemnity, defense and hold harmless obligations in this Section 13 is one of the considerations upon which this Permit is granted. The release, indemnity, defense and hold harmless obligations set forth in this Section 13 shall survive the expiration or earlier termination of this Permit.

14. Risk of Loss.

In furtherance of, and not in limitation of, the obligations set forth in Section 13 of this Permit, Permittee agrees that any equipment, cargo, vehicle, or other material of any kind, which is authorized to be stored or placed at the Terminal Reserve, is so stored or placed at the sole risk of Permittee. In the event that any such equipment, cargo, vehicle, or other material is lost, stolen, damaged or destroyed by any cause other than the intentional misconduct of ARRC or its employees or agents, Permittee shall not seek compensation or restitution of any kind from ARRC.

15. Default and Remedies.

15.01 Default. The occurrence of any one or more of the following events shall constitute a material default by Permittee.

A. The failure by Permittee to make any payments required to be made by Permittee hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice thereof from ARRC to Permittee;

B. The failure by Permittee to observe or perform any covenant, condition or provision of the Permit which, in the reasonable opinion of ARRC, substantially endangers either the person or property of ARRC or a third party, or human health or the environment, where Permittee does not commence curing the default immediately upon written notice thereof from ARRC to Permittee or does not continue to complete the cure within such reasonable time period thereafter as is imposed by ARRC or any governmental body having jurisdiction in the matter;

C. Except as otherwise provided in subsections 15.01.A and 15.01.B of this Permit, the failure by Permittee to observe or perform any of the covenants, conditions or provisions of this Permit to be observed or performed by Permittee, where such failure shall continue for a period of ten (10) days after written notice thereof from ARRC to Permittee;

D. The occurrence of any of the following: (i) Permittee makes any general arrangement or general assignment for the benefit of creditors; (ii) Permittee becomes a debtor in bankruptcy; (iii) a trustee or receiver is appointed to take possession of substantially all of Permittee's assets; or (iv) substantially all of Permittee's assets are attached, executed upon or otherwise judicially seized;

E. The discovery by ARRC that any financial statement given to ARRC by Permittee, any assignee of Permittee, any successor in interest of Permittee or any guarantor of Permittee's obligation hereunder, was materially false at the time given; or

F. Vacation or abandonment of the Permit Area by Permittee.

15.02 Remedies. In the event of any material default by Permittee, ARRC may at any time thereafter, without notice or demand and without limiting ARRC in the exercise of any right or remedy which ARRC may have by reason of such default:

A. Terminate Permittee's rights under this Permit and pursue any other available remedies.

B. Maintain Permittee's rights under this Permit in which case this Permit shall continue in effect. In such event ARRC shall be entitled to enforce all of ARRC's rights and remedies under this Permit, including the right to recover the payments due hereunder.

C. Pursue any other remedy now or hereafter available to ARRC under the laws or judicial decisions of the State of Alaska.

15.03 Interest on Late Payments. Beginning the day after a payment is due, all unpaid charges and fees required by this Permit shall accrue interest at the highest lawful contract rate in the State of Alaska as defined by AS 45.45.010(a) or any successor or replacement statute in effect at that time and as then amended. The accrual of such an interest charge shall not waive, excuse or cure any default.

16. Force Majeure; Limit on Damages.

16.01 Definition of Force Majeure. Force Majeure is an act or event of substantial magnitude, beyond the control of Permittee and/or ARRC, which delays or hinders Permittee's activity at the ARRC Dock or the Terminal Reserve under this Permit, including without limitation:

- A. Strike or work stoppages.
- B. Any interruption, suspension, or interference with Permittee's activities caused by acts of God, or acts of the public enemy, wars, blockades, insurrections, riots, arrests, or restraints of governments and people, civil disturbances, or similar occurrences.
- C. Order of a court, administrative agency, or governmental officer other than Municipal officers.
- D. Suspension, termination, or interruption of governmental licenses, consents, authorizations, or approvals.

16.02 Limit on Damages. Permittee shall have no right to claim or recover costs or damages arising from delay or hindrance of its activities under this Permit caused by a Force Majeure, by third parties not under the control of ARRC or due to any other cause beyond the control of ARRC.

17. Hazardous Materials.

17.01 Use and Storage of Hazardous Materials. Except for normal fuel and fluids in motorized vehicles, Permittee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Terminal Reserve, including but not limited to the ARRC Dock, by Permittee, its agents, employees, contractors, subcontractors, invitees, customers or guests without the prior written consent of ARRC. ARRC shall not unreasonably withhold such consent as long as Permittee demonstrates to ARRC's reasonable satisfaction that such Hazardous Material is necessary for or useful to Permittee's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material.

17.02 Environmental Indemnity. Permittee agrees to indemnify, hold harmless and defend ARRC against all liability, cost and expense (including, without limitation, any fines, penalties, diminution in value of the ARRC Dock or the Terminal Reserve, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against ARRC as a result of Permittee's breach of this Section 17 or as a result of any discharge, leakage, spillage, emission, contamination or pollution by Hazardous Materials on or from the ARRC Dock or the Terminal Reserve arising from or caused by Hazardous Materials caused or permitted to be brought upon, kept or used at the ARRC Dock and/or the Terminal Reserve by Permittee or its agents, employees, contractors, subcontractors, invitees, customers or guests, without regard to whether such liability, cost or expense arises during or after the term of this Permit. Permittee shall not be required to indemnify ARRC under this Section 17 if the parties agree or a court of competent jurisdiction determines that such liability, cost or expense was caused directly and solely by the active negligence of ARRC. The foregoing indemnity shall survive the expiration or earlier termination of this Permit. This indemnification of ARRC by Permittee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the ARRC Dock and/or the Terminal Reserve. The indemnity, hold harmless and defense obligations set forth in this subsection 17.02 are in furtherance of and in addition to, and do not serve to limit in any way, the release, indemnity, hold harmless and defense obligations set forth arising under Section 13 of this Permit.

17.03 Corrective Action. Without limiting the foregoing, if the presence of any Hazardous Material on or under the ARRC Dock and/or the Terminal Reserve caused or permitted by Permittee results in any contamination of the ARRC Dock and/or the Terminal Reserve, Permittee shall promptly take all actions at its sole expense as are necessary to return the ARRC Dock and/or the Terminal Reserve to the condition existing prior to the introduction of any such Hazardous Material; provided, however, that ARRC 's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the ARRC Dock and/or the Terminal Reserve.

17.04 Definition of "Hazardous Material." For purposes of this Permit, the term "Hazardous Material" means any hazardous or toxic substances, material or waste, including but not limited to those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302) or as hazardous wastes (40 CFR Part 261.3), and amendments thereto, or such substances, materials and wastes that are or become similarly regulated under any applicable local, state or federal law.

18. Non-Waiver.

The failure of ARRC to insist in any one or more instances upon the strict performance by Permittee of any provision or covenant in this Permit shall not be considered as a waiver or relinquishment for the future, and any such provision or covenant will continue in full force unless ARRC issues an authorized written waiver therefrom.

19. Notices.

Any notice permitted or required to be given hereunder shall be in writing and either delivered by hand or sent by registered or certified mail to the parties at the following addresses:

If to ARRC, at:	Real Estate Department Alaska Railroad Corporation P.O. Box 107500 Anchorage, Alaska 99510
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If to Permittee, at:	Company Name Address City, State Zip
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Notice shall be deemed to have been given on the date delivered to the recipient, regardless of any other date indicated thereon.

20. Jurisdiction; Choice of Law.

Any civil action rising from this Permit shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The law of the State of Alaska shall govern the rights and obligations of the parties under this Permit.

21. Severability.

If a court of competent jurisdiction decrees that any provision of this Permit is invalid or unenforceable, such decree shall not invalidate or render unenforceable any of the remaining provisions of the Permit.

22. Integration and Merger; Modification.

This Permit sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the subject matter of this Permit whether oral or written. No modification of this Permit is effective unless made in writing and signed by both parties.

23. No Partnership.

This Permit shall not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligations or liability upon either party.

24. Miscellaneous:

24.01 The captions of sections and subsections in this Permit are for convenience of reference only and shall not be used in the construction of any term hereof.

24.02 The terms of this Permit shall inure to the benefit of any successors and assigns of ARRC, and, subject to the provisions of Section 8 of this Permit, to the successors and assigns of Permittee.

24.03 Time is of the essence with respect to any obligations to be performed under this Permit.

24.04 Special Conditions. ***[Insert any special conditions. If none, omit this subsection]***

ALASKA RAILROAD CORPORATION

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Andrew Donovan  
Director, Real Estate

PERMITTEE

Dated: \_\_\_\_\_

By: \_\_\_\_\_

(Please SIGN Here)

\_\_\_\_\_

(Please PRINT Name)

\_\_\_\_\_

(Please PRINT Title)

All other terms and conditions remain unchanged.  
Regards,

*Rob Walker*  
Contract Administrator