

Introduced By: Mayor John Eberhart
Date: January 6, 2014

RESOLUTION NO. 4604

A RESOLUTION AUTHORIZING THE CITY TO ACCEPT A LAND USE PERMIT FROM THE ALASKA RAILROAD CORPORATION TO CONSTRUCT AND MAINTAIN A PEDESTRIAN/BICYCLE PATH ON RAILROAD PROPERTY

WHEREAS, Fairbanks General Code Section 70-134 states, "The City shall neither accept legal title to nor assume the maintenance or improvement obligation of any new street, public or private, or other thoroughfare in the City except upon the express approval of the City council by resolution"; and

WHEREAS, the City of Fairbanks ("City") applied for a Land Use Permit ("Permit") from the Alaska Railroad Corporation ("Railroad") to construct two segments of pedestrian/bicycle path ("Path") totaling 5,500 linear feet and associated improvements on the north bank of the Chena River on Railroad property; and


WHEREAS, the Permit requires the City to be ultimately responsible for maintenance of the Path once constructed, though the City may enter into separate agreements with other entities to perform the maintenance on the City's behalf; and

WHEREAS, the Permit additionally requires the City to take ownership of the existing pedestrian bridge over the Chena River at Pioneer Park, which is currently owned by the Railroad and will become part of the new Path; and

WHEREAS, four hundred thousand dollars (\$400,000) has already been secured from the Fairbanks Metropolitan Area Transportation System Policy Committee to design the Path.

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to accept and sign the Permit in accord with the terms stated herein.

PASSED AND APPROVED THIS 6TH DAY OF JANUARY 2014.



JOHN EBERHART, MAYOR

AYES: Anderson, Matherly, Staley, Eberhart
NAYS: Gatewood
ABSENT: Walley, Hilling
APPROVED: January 06, 2014

ATTEST:



Janey Howenden, CMC, City Clerk

APPROVED AS TO FORM:



Paul Ewers, City Attorney

REVISED

CITY OF FAIRBANKS FISCAL NOTE

I. REQUEST:

Ordinance or Resolution No: 4604

Abbreviated Title: PERMIT FROM THE ALASKA RAILROAD CORPORATION

Does the adoption of this ordinance or resolution authorize:

1) additional costs beyond the current adopted budget? Yes _____ No x

2) additional support or maintenance costs? Yes x No _____

If yes, what is the estimate? using existing resources, totaling \$5,400

3) additional positions beyond the current adopted budget? Yes _____ No x

If yes, how many positions? _____

If yes, type of positions? _____ (F - Full Time, P - Part Time, T - Temporary)

II. FINANCIAL DETAIL:

ESTIMATED EXPENDITURES	2014	2015	2016	Beyond	Total
Personnel Wages	\$3,000	\$3,000	\$3,000	\$3,000	\$12,000
Personnel Benefits	\$2,000	\$2,000	\$2,000	\$2,000	\$8,000
Supplies					\$0
Contractual	\$400	\$400	\$400	\$400	\$1,600
Equipment					\$0
Administration					\$0
Construction					\$0
TOTAL	\$5,400	\$5,400	\$5,400	\$5,400	\$21,600

ESTIMATED FUNDING SOURCES	2014	2015	2016	Beyond	Total
General Fund	\$5,400	\$5,400	\$5,400	\$5,400	\$21,600
Capital Fund					\$0
Federal Grant					\$0
State Grant					\$0
Local Contract					\$0
Cash Match					\$0
In-Kind Match					\$0
Other					\$0
TOTAL	\$5,400	\$5,400	\$5,400	\$5,400	\$21,600

Reviewed by Finance Department:

Initial mb

Date 1/2/2014

PERMIT

This permit ("Permit"), effective February 1, 2014, is made by and between the ALASKA RAILROAD CORPORATION, a public corporation of the State of Alaska formed pursuant to AS 42.40 ("ARRC"), whose mailing address is P.O. Box 107500, Anchorage, Alaska 99510-7500, and the City of Fairbanks ("Permittee"), whose mailing address is 800 Cushman Street, Fairbanks, Alaska 99701.

This Permit consists of this instrument and the following listed attachments, all of which constitute one and the same document:

- Exhibit "A" - Map/Legal Description
- Exhibit "B" - Standard Specifications (revised May 10, 2013)
- Exhibit "C" - Bill of Sale for Pedestrian Bridge

1. **GRANT OF PERMIT.** ARRC hereby grants to the Permittee a permit to construct, reconstruct, operate and maintain a pedestrian/bicycle trail known as the "Chena River Walk" consisting of two segments of pedestrian/bicycle trail measuring approximately 8 feet wide and totaling 5,500 feet in length and associated improvements (the "Facility") located along the north bank of the Chena River in the Chena Landings area of Fairbanks, Alaska, on land owned by ARRC (the "Site"). The first trail segment of the Facility will consist of approximately 2,000 linear feet, beginning at the point at which Peger Road intersects the north bank of the Chena River and continuing along the southern portion of Tracts 2 and 3 of the Chena Landings Subdivision, as filed under Plat Number 2000-31, located within the NW $\frac{1}{4}$ and SW $\frac{1}{4}$, Section 9 Township 1 South, Range 1 West, Fairbanks Meridian, Alaska, and according to the official plat thereof, filed under Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska ("Plat No. 2000-31"). This first trail segment will extend to the beginning of the northern approach span of the existing pedestrian/bicycle bridge across the Chena River located on the southwestern corner of Tract 4 of Plat No. 2000-31 ("Bridge"). The second trail segment will consist of approximately 3,500 linear feet, beginning just east of Tract 5 of Plat No 2000-31, and continuing along the north bank of the Chena River in Section 9 of the ARRC Fairbanks Terminal Reserve. The Facility will include both asphalt and elevated walkway segments. The two segments of the permitted Chena River Walk pedestrian/bicycle pathway described above are set forth on the drawing attached as Exhibit "A". The permission herein granted is subject to the terms and conditions set forth in this Permit.

2. **TERM.** This Permit shall remain in effect for the remaining useful life of the Facility or until it is reconstructed or relocated off of ARRC property, whichever

occurs first, or until it is otherwise terminated under the terms of this Permit; provided, however, that ARRC shall have the right to terminate this Permit on sixty (60) days' written notice to Permittee, if ARRC determines, in its sole discretion, that the use interferes with expansion or replacement of ARRC facilities or those of its tenants and/or permittees, creates a safety hazard, or interferes with ARRC operations. ARRC's right to terminate set forth in this paragraph is required by AS 42.40.420(3). Notwithstanding the foregoing, this Permit shall terminate on January 31, 2019, or such later date as may be agreed to in writing by the parties, if funding for construction of the Facility has not been obtained by Permittee as of said date.

Except as expressly provided otherwise herein, any continued use of the Site by Permittee after the termination of this Permit, absent prior ARRC written approval, shall be under the same terms and conditions as set forth in this Permit. Permittee may abandon the Site and give up all rights under this Permit at any time; provided, however, that Permittee's obligation to pay the annual Permit Fee set forth in paragraph 3 of this Permit, and all other affirmative obligations of Permittee under this Permit, will continue until all of the following have occurred: (i) Permittee has given ARRC written notice that Permittee is abandoning all rights under this Permit; (ii) Permittee has removed from the Site the Facility and all other property owned and/or controlled by Permittee pursuant to paragraph 7.3 of this Permit; and (iii) Permittee has restored the Site pursuant to paragraph 7.3.

3. PERMIT FEE. As consideration for this Permit, Permittee shall pay an annual administrative fee of Four Hundred and no/100 Dollars (\$400.00), which shall be paid by Permittee within thirty (30) days of execution of this Permit, and a like amount on every January 1 thereafter; provided, however, that the annual fee shall be subject to increase no more than once every five (5) years to the extent necessary to allow ARRC to recover its annual costs to administer the permit. The annual fee provided for in this paragraph 3 is in addition to any and all other fees and payments required under this Permit.

4. PLANS AND SPECIFICATIONS.

4.1 Permittee shall construct, reconstruct, operate and/or maintain the Facility in the location shown on Exhibit "A" attached.

4.2 Prior to advertising for bids, issuing amendments and/or issuing a change order(s) to its contractor for work on any part of the Facility covered by this Permit, or prior to commencing any such work itself, Permittee shall submit to ARRC's Chief Engineer for approval all plans and specifications, including final plans and specifications, and all amendments, additions or corrections thereto, for the original construction and all future modifications of the Facility. Permittee agrees not to commence any associated work until the aforesaid approval has been received.

4.3 Permittee shall submit its plans and specifications for Facility construction, along with the appropriate application-initial review fee, to ARRC for

review and consideration prior to engaging in any work on ARRC property related to the Facility. Permittee shall not undertake any such work unless and until ARRC approves the submitted plans and specifications or a modified version thereof. Permittee agrees that any Facility construction shall be substantially in accordance with Permittee's plans and specifications as first approved by ARRC.

4.4 Permittee must submit to ARRC for review and consideration any substantial change to Permittee's plans and specifications proposed by Permittee after ARRC's initial approval. Substantial changes subject to this paragraph include, but are not limited to, any substantial change to the plans and specifications for initial construction, reconstruction, alteration or removal of the Facility. Permittee shall not incorporate any such substantial changes into Facility construction, reconstruction, alteration or removal unless and until ARRC approves those changes. Permittee agrees that any Facility construction, reconstruction, alteration or removal approved pursuant to this paragraph 4.04 shall be substantially in accordance with the plans and specifications approved by ARRC. Permittee shall pay a fee for each substantial change submitted to ARRC for approval pursuant to this paragraph 4.4 based upon the ARRC fee schedule then in effect. The substantial change fee under this paragraph shall be additional to the annual Permit Fee provided for in paragraph 3 of this Permit.

4.5 Permittee agrees that if, at any time during the term of this Permit, ARRC deems it necessary to have additional safety equipment installed on or immediately adjacent to the Site for the protection of its passengers, personnel, or equipment from injury arising due to the use of the Facility or the Facility's existence on ARRC property, Permittee will, upon request from ARRC, install such equipment or safety devices as are prescribed by ARRC. Permittee agrees to comply with all ARRC standards for side and overhead clearances, which are available from ARRC.

4.6 The Standard Specifications for Work on Railroad Property (the "Standard Specifications") attached as Exhibit "B" are incorporated herein by reference. Permittee hereby agrees that all construction, reconstruction, operation and maintenance upon ARRC property shall be performed in accordance with (i) the Standard Specifications; and (ii) any supplemental conditions required by paragraph 22 of this Permit, including any supplements or revisions thereto in effect on the date any such activities are undertaken. Permittee agrees to make the Standard Specifications and any supplemental conditions under paragraph 22 part of all contractual bid specifications which the Permittee may publish for work associated with the Facility. If the Standard Specifications are revised by ARRC prior to termination of this Permit, Permittee agrees that any changes in or additions to the Facility shall be performed in accordance with such revised Standard Specifications, provided that ARRC has made such revisions reasonably available to the Permittee. Permittee shall be responsible for making itself aware of the attached Standard Specifications and any revisions thereof during the term of this Permit. If any term of this Permit conflicts with any provision in the Standard Specifications, the terms of this Permit shall control.

5. MAINTENANCE OF FACILITY. During the term of this Permit, the Permittee shall maintain the Facility to industry standards, or to those standards or levels of maintenance prescribed by federal, state or municipal laws and regulations. If no industry standards, laws or regulations exist, then the Permittee shall maintain its Facility to the reasonable satisfaction of ARRC. Safety features such as fences and signs shall be maintained by Permittee in their original functional condition. Permittee's obligations under this paragraph 5 may be fulfilled by Permittee contracting or otherwise agreeing with other entities to perform some or all of the required maintenance; provided, however, that Permittee shall nevertheless remain responsible for ensuring that the required maintenance is performed and meets the applicable standards, laws and regulations.

6. PAYMENT FOR WORK.

6.1 Permittee shall pay for all Facility construction, reconstruction, operation and/or maintenance, including the cost of ARRC inspectors and flagmen whose duties will be to protect the interests of ARRC and to ensure the completion of the work to the satisfaction of ARRC. In accordance with the attached Standard Specifications, flagmen are required whenever work is being performed within twenty (20) feet of centerline of any track.

6.2 Permittee shall reimburse ARRC for all costs in connection with the granting and operation of this Permit, including but not limited to, outside labor, materials, and equipment furnished by ARRC. Such reimbursement shall be at rates established by ARRC, and shall be due and payable within thirty (30) days following the date invoices are submitted by ARRC to the Permittee.

7. INTEREST IN RAILROAD PROPERTY.

7.1 It is understood that Permittee acquires no interest in or title to ARRC property by means of this Permit. Permittee shall have, at the discretion of ARRC and subject to Section 5 of Exhibit B (Standard Specifications), access to ARRC property for the purpose of construction, reconstruction, operation and/or maintenance of the Facility. This shall be done at times which will not in any way interfere with the operation of ARRC.

7.2 ARRC reserves the right of ingress to and egress from the Site and the right to enter any part of the Site, including buildings thereon, for the purpose of inspection at any reasonable time, and in time of emergency. All inspections will be coordinated with Permittee in order to minimize interference with Permittee's activities on the Site.

7.3 Prior to the termination of this Permit, Permittee will remove the Facility and all other property owned or controlled by Permittee and will restore the Site to natural drainage contour unless otherwise directed by ARRC. If Permittee fails to

comply with the preceding sentence, ARRC shall have the right, at its discretion, to remove the Facility and other property of Permittee from the Site and to restore the Site at Permittee's expense, which expense Permittee agrees to pay to ARRC upon demand.

8. NON-EXCLUSIVE USE/RAILROAD CONSTRUCTION.

8.1 ARRC and Permittee acknowledge that the Facility is designed and intended as a trail for the use of the general public. Nonetheless, ARRC reserves the right to grant permission to others to use and occupy the Site, provided that said use and occupancy will not, in the opinion of ARRC, unreasonably interfere with the Permittee's use of the Facility or impede the Facility's use by the general public or Permittee's maintenance, modification, construction or reconstruction of the Facility; provided, however, that ARRC may temporarily close or interfere with all or a portion of the Facility if such closure or interference, in the opinion of ARRC, is necessitated by ARRC's operations.

8.2 In the event ARRC finds it is necessary to alter or add to its facilities within or near the Site, Permittee shall make, at its own expense, any and all alterations to the Facility, including reasonable modification of the Site area, necessary to accommodate ARRC's activities related to such alterations or additions to its facilities.

9. INSURANCE.

9.1 The parties acknowledge that Permittee is a home rule city which has a program of self-insuring all risks of general liability and part or all of Permittee's risks of loss or damage to property. The insurance requirements of the attached Exhibit B (Standard Specifications) shall be applicable at all times to all activities of any contractor, subcontractor, or agent of Permittee performing work on the Site. Failure of ARRC to require insurance coverage of Permittee shall not be deemed to limit the liability of Permittee under this Permit in any manner. Permittee shall, however, require any contractor performing work for Permittee or on Permittee's behalf on or about the Site to 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 Site and the work being performed by Permittee or its contractors in the limits and otherwise in accordance with the requirements of Exhibit B (Standard Specifications) attached hereto or any revision of the Standard Specifications as described in paragraph 4.6 above. The policy or policies purchased pursuant to this subparagraph shall name both ARRC and Permittee as insureds with respect to the Facility and the Site and the work being performed for Permittee on the Site.

In addition to the foregoing and any provisions of the attached Exhibit B (Standard Specifications), Permittee shall ensure that, with respect to all personnel performing work on the Facility, Permittee or its contractors maintain in effect at all times during the term of this Permit, coverage or insurance in accordance with the applicable laws

relating to workers' compensation and employer's liability insurance.

9.2 Permittee shall deliver, or cause its contractors to deliver, to ARRC certificates of insurance for persons or entities required to have a policy of insurance under subparagraph 9.1 of this Permit prior to performing any work on the Site (or within such further time as ARRC may allow in writing), and such additional assurance certified by an authorized representative of the insurer as ARRC may from time to time reasonably request.

10. INDEMNIFICATION. Except as otherwise stated in this paragraph, Permittee shall defend, indemnify and hold harmless ARRC from and against all losses and all claims, demands, payments, suits, actions, recoveries, legal expenses and judgments of every nature and description made, brought or recovered against ARRC by reason of any act or omission of the Permittee, its bidders, contractors, subcontractors, agents or employees, in the execution of work or in guarding the same. Further, Permittee shall assume complete liability for and shall defend, indemnify and hold harmless ARRC from and against any and all claims resulting from the construction, reconstruction, maintenance, operation, use and existence of the Facility located on, under, or over the Site. The provisions contained in this paragraph shall not be given effect if the active negligence of ARRC or its employees or contractors is the sole proximate cause of any injury or damage done to the party asserting the claim.

Permittee shall give ARRC reasonable notice of any claims or actions subject to this paragraph 10. Permittee shall use counsel reasonably acceptable to ARRC in carrying out its defense obligations under this paragraph 10. Permittee's agreement to the release, indemnity and hold harmless obligations in this paragraph 10 is one of the considerations upon which this Permit is granted. The release, indemnity, hold harmless and defense obligations set forth in this paragraph 10 shall survive the expiration or other termination of this Permit.

All the foregoing obligations set forth in this paragraph 10 are subject to appropriations for the purposes stated herein, and are enforceable only to the extent permitted by law. Permittee shall exercise its best efforts to obtain such appropriations and ARRC shall assist Permittee in seeking funding from the appropriate agency or agencies or other governmental entity or entities.

11. DEFAULT AND REMEDIES.

11.1 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 twenty (20) days after written notice thereof from ARRC to Permittee;

(b) The failure by Permittee to observe or perform any covenant, condition or provision of this Permit to be observed or performed by Permittee, other than as described in subparagraph 11.1(a) of this 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 from ARRC to Permittee or does not complete the cure within such reasonable time period as is imposed by ARRC or any governmental body having jurisdiction in the matter;

(c) Except as otherwise provided in subparagraphs 11.1(a) and 11.1(b) above, 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 thirty (30) days after written notice thereof from ARRC to Permittee; or

(d) Vacation or abandonment of the Facility by Permittee except as specifically allowed under paragraph 2 of this Permit.

11.2 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 ARRC may pursue other 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.

11.3 Interest. Permittee shall pay to ARRC interest at the highest rate allowed by law on any payment due from Permittee which is not received by ARRC when such amount shall be due. This payment does not waive, excuse or cure any default.

12. LAWS AND TAXES.

12.1 This Permit is issued subject to all requirements of the laws of the State of Alaska and regulations of ARRC relating to the granting of privileges on ARRC lands and facilities.

12.2 Permittee shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect,

of any governmental authority including, but not limited to, matters of health, safety, sanitation and the environment. Permittee shall execute and deliver to ARRC copies of all documents as may be required to effect or to evidence such compliance. All laws, ordinances, rules, regulations, orders, licenses, and permits required to be incorporated in agreement of this character are incorporated herein by this reference. In furtherance of and not in limitation of the foregoing, Permittee shall obtain any approvals or non-objections from the Alaska Department of Transportation and Public Facilities required for the construction, maintenance, operation and use of the trail permitted hereunder.

12.3 Unless otherwise specified in this Permit, the attachments hereto or as directed by ARRC, Permittee shall obtain and pay for all permits, inspections, licenses and fees and shall furnish all bonds, security or deposits required to reconstruct, operate and/or maintain the Facility in accordance with this Permit. Permittee shall advise ARRC in writing and consult with ARRC prior to applying for any permit or other authorization from, or entering into any agreement with, any governmental authority with regard to the construction, reconstruction, operation and/or maintenance of the Facility.

12.4 Permittee agrees to notify ARRC of any claim, demand or lawsuit arising out of the Permittee's occupation or use of the Site. Upon ARRC's request, the Permittee will cooperate and assist in the investigation and litigation of any such claim, demand or lawsuit, notwithstanding whether such claim, demand or lawsuit is subject to Permittee's indemnity, defense and hold harmless obligations of paragraph 10.

12.5 ARRC makes no specific warranties, expressed or implied, concerning the title or condition of the Site, including survey, access or suitability for any use, including those uses authorized by this Permit. Permittee's use of the Site is subject to any and all of the covenants, terms and conditions affecting ARRC's title to the Site.

13. LIENS. Permittee shall keep the Site free of all liens and pay all costs for labor and materials arising out of any construction or improvements by the Permittee on the Site, and hold ARRC harmless from liability for any such liens, including costs and attorneys' fees. This provision shall not be interpreted to mean that ARRC in any way recognizes a liability on its part for any such liens. The hold harmless provision in this paragraph 13 is in furtherance of, and not in limitation of, Permittee's hold harmless obligations under paragraph 10.

14. ASSIGNMENT. This Permit shall not be assigned or in any manner transferred without the prior written consent of ARRC. This paragraph 14 shall not be construed to impair or prevent the carrying out by public agencies of responsibilities not inconsistent with the operation and policies of ARRC relative to construction, reconstruction, maintenance or control of the Facility.

15. NOTICES. Any notice permitted or required to be given hereunder shall be in writing and either delivered by hand or sent by certified mail, return receipt

requested:

- (a) If to ARRC, at
- ALASKA RAILROAD CORPORATION
P.O. Box 107500
Anchorage, Alaska 99510-7500
Attn: Real Estate Department
- (b) If to Permittee, at
- CITY OF FAIRBANKS
800 Cushman Street
Fairbanks, Alaska 99701
Attn: Engineering Division

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

16. NO WAIVER. The failure of ARRC to insist in any one or more instances upon the strict performance by the 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.

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

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

19. BINDING. Subject to the provisions of paragraph 14 above, this Permit shall be binding on the successors and assigns of Permittee and ARRC.

20. MODIFICATIONS. No modification of this Permit is effective unless made in writing and signed by both parties.

21. GOVERNING LAW. This Permit and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the applicable laws of the State of Alaska and of the United States of America. Permittee shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of this Permit, to recover damages for breach or default under this Permit, or otherwise arising under or by reason of this Permit, other than in the courts of the State of Alaska or the District Court of the United States for the District of Alaska. Permittee hereby irrevocably consents to the jurisdiction of the courts of the State of Alaska with venue laid in the Third Judicial District or the United States District Court for the District of Alaska.

22. SPECIAL CONDITIONS.

22.1 Permittee acknowledges that fencing shall be required in some places for safety reasons as a condition of plan approval under this Permit. Once appropriate locations and level, type or quality of fencing are determined by ARRC for trail segments, said locations and levels, types or quality of fencing shall be required during the term of this Permit unless the parties agree otherwise in writing. Permittee agrees to construct and maintain any such fencing at its expense during the term of this Permit.

22.2 The grant of this Permit is specifically conditioned upon ARRC conveying, and Permittee accepting conveyance of, the Bridge by executing a Bill of Sale substantially similar to the document attached to this Permit as Exhibit C. If this Permit is terminated pursuant to paragraph 2 because funding to construct the Facility has not been obtained by Permittee by January 31, 2019, or such later date as may be agreed to in writing by the parties, the Bill of Sale for the Bridge shall become null and void and the ownership of and responsibility for the Bridge shall revert to ARRC as of the date of said termination.

22.3 The grant of this Permit is also specifically conditioned upon Permittee obtaining any and all necessary permissions for the pedestrian/bicycle trail permitted hereunder from any lessees or permittees of ARRC whose leasehold or permit interests will be impacted by said trail. ARRC shall cooperate with Permittee and ARRC's lessees and permittees in this regard and shall make reasonable modifications to existing leases or permits that Permittee and ARRC's lessees or permittees mutually agree upon to facilitate the permitted trail; provided, however, that any such cooperation by ARRC and modifications to existing leases or permits shall conform to ARRC's legal obligations under AS 42.40 and all other applicable laws, regulations and other authorities.

22.4 If, and only if, the design phase and/or ARRC's review of the plans and specifications indicate that it is necessary for any or all portions of the permitted trail to exceed the 8-foot width authorized herein, the permission granted in paragraph 1 of this Permit shall authorize an upward increase of up to twenty-five percent (25%) in the overall width of such portion or portions of the trail. If the design phase indicates that it is necessary for any or all portions of the trail to exceed the 8-foot width authorized herein by more than twenty-five percent (25%), then the redesigned trail will be subject to public notice and further consideration and authorization by the ARRC Board of Directors.

22.5 The grant of this Permit is also specifically conditioned upon Permittee obtaining the necessary access to conduct construction, reconstruction, repair and maintenance activities at the Site. Permittee's access to the Site shall not interfere with the activities, operations, occupancy or use of any adjoining property by

ARRC or its employees, contractors, lessees, permittees or licensees. Permittee shall obtain all necessary permissions for any access to the Site, including but not limited to permissions of ARRC's lessees or permittees for access via land subject to the affected leases and permits. This provision is in furtherance of, and not in limitation of Permittee's obligations under paragraph 22.3 of this Permit.

22.6 Permittee acknowledges that seasonal and non-seasonal flooding of the Chena River is likely to occur in the vicinity of the Site and the Facility. The Facility shall be designed and constructed in a manner that will not in any way worsen or exacerbate existing flooding conditions or existing flooding effects on the Site or on any other ARRC land within the ARRC Fairbanks Reserve.

23. Acknowledgement of Industrial Use of Adjoining Land. Permittee recognizes and acknowledges that land owned by ARRC in the immediate vicinity of the Site and the proposed Chena River Walk Trail is dedicated to industrial uses by ARRC and its commercial and industrial customers. Permittee further recognizes and acknowledges that said industrial uses involve and give rise to typical conditions attendant to such uses, including but not limited to the use of heavy machinery, noise, dust and other conditions and effects associated with such uses. Permittee further recognizes and acknowledges that such uses will continue after the development of the proposed trail, and that such uses may not be compatible with the enjoyment of the proposed trail by trail users. Permittee agrees that it will not invoke the existence of the trail permitted herein, or any incompatibility between industrial uses and trail uses to argue for or otherwise support any proposed change in land use on adjoining property belonging to ARRC.

ALASKA RAILROAD CORPORATION

Dated: _____

By: _____

Bill O'Leary
President & Chief Executive Officer

CITY OF FAIRBANKS

Dated: _____

By: _____

John Eberhart
Mayor

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

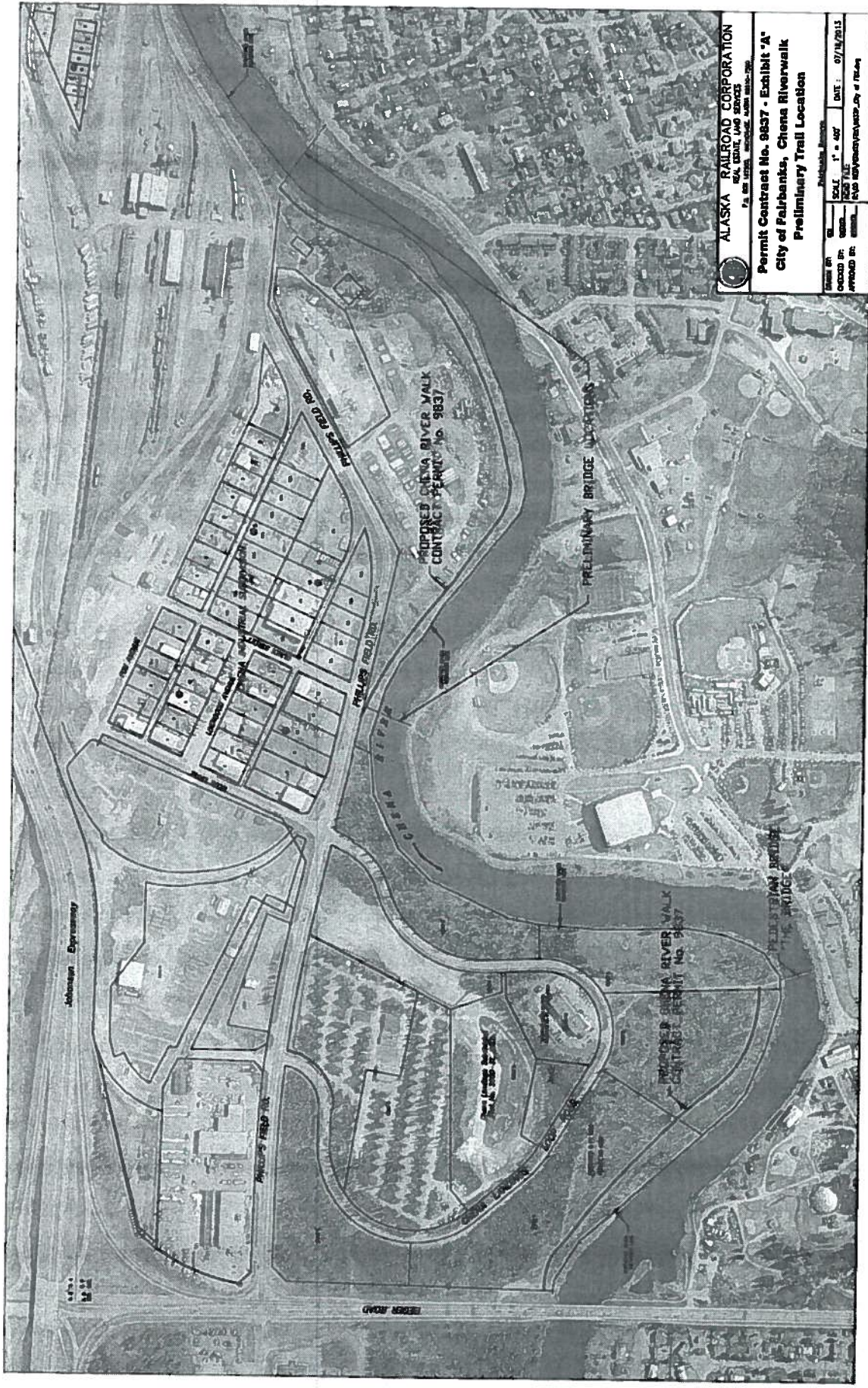
The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Bill O'Leary, the President & Chief Executive Officer of the Alaska Railroad Corporation, a public corporation created by A.S. 42.40, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by John Eberhart, the Mayor of the City of Fairbanks, on behalf of the City

Notary Public in and for Alaska
My Commission Expires: _____



ALASKA RAILROAD CORPORATION
 1250 EAST 14TH AVENUE, ANCHORAGE, ALASKA 99501-7000

Permit Contract No. 9837 - Exhibit 'A'
City of Fairbanks, Chena Riverwalk
Preliminary Trail Location

DATE:	07/14/2013
SCALE:	1" = 100'
CHECKED BY:	Public Information Services, City of Fairbanks
APPROVED BY:	

BILL OF SALE

The **ALASKA RAILROAD CORPORATION** ("ARRC" or "Seller"), a public corporation organized under AS 42.40, whose address is P. O. Box 107500, Anchorage, Alaska 99510-7500, for good and valuable consideration, receipt of which is hereby acknowledged, does grant, sell, transfer and deliver to the **CITY OF FAIRBANKS** ("Buyer"), whose mailing address is 800 Cushman Street, Fairbanks, Alaska 99701, that certain pedestrian bridge across the Chena River, measuring approximately 6 feet in width and 170 feet in length (consisting of a 120-foot main span and two 25-foot approach spans), and located on the southwestern corner of Tract 4 of the Chena Landings Subdivision, as filed under Plat Number 2000-31, located within the NW ¼ and SW ¼, Section 9 Township 1 South, Range 1 West, Fairbanks Meridian, Alaska, and according to the official plat thereof, filed under Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska ("the Bridge"), as depicted on the drawing attached hereto as Exhibit A and made a part of this Bill of Sale. Buyer plans to use the Bridge as a link in the proposed Chena River Walk pedestrian/bicycle trail. The grant, sale, transfer and delivery of the Bridge effected by this document are contingent upon execution by Buyer of a permit between Seller, as Permitter, and Buyer, as Permittee, to be administered as ARRC Permit No. 9837, which will permit Buyer to construct, operate and maintain the Chena River Walk Trail. Failure of Buyer to execute ARRC Permit No. 9837 shall render said grant, sale, transfer and delivery null and void from the outset. The Bridge is transferred to the Buyer at its current location. Consideration to Seller for the transfer of the Bridge to Buyer, includes, but is not limited to, Buyer's agreement in said Chena River Walk permit to immediately assume responsibility to inspect and maintain the Bridge and to accept liability for the Bridge and all conditions and uses thereof.

Seller and Buyer recognize that Golden Heart Utilities maintains a water line that is attached to the Bridge. The parties do not intend that the purchase and sale of the Bridge between the parties shall in any way affect said water line or Golden Heart Utilities' right to operate and maintain said water line except that all permitting authority for the portion of said water line attached to the Bridge shall henceforth reside in Buyer.

Buyer agrees to save harmless, defend and indemnify Seller from any and all claims, demands, actions, debts, liabilities, and judgments, costs, and attorney's fees, in any manner arising out of, caused by, claimed on account of, or predicated upon injuries to or the death of any and all persons whomsoever, in any manner related or connected, directly or indirectly, to the Bridge; and to save Seller harmless from and on account of damages of any kind which Seller may suffer as the result of the use or removal or demolition of the Bridge. Buyer's obligations to save harmless, defend and indemnify Seller under this paragraph shall survive the termination of this Bill of Sale based on Buyer's failure to obtain funding to construct the Chena River Walk Trail, as provided below.

Seller makes no representations of any kind as to the condition of the Bridge or as to any use or purpose for which the Bridge is intended by the Buyer. Seller hereby specifically disclaims all

warranties of every type whatsoever, both express and implied, and specifically including, but not limited to, warranties of merchantability and fitness for a particular purpose concerning the Bridge. The Bridge is being transferred "AS IS-WHERE IS," and Buyer agrees that it has had sufficient opportunity to inspect the Bridge, and accepts the Bridge in its present condition.

This Bill of Sale shall become null and void if ARRC Permit No. 9837 is terminated because Buyer fails to obtain funding to construct the Chena River Walk Trail by January 31, 2019, or such later date as may be agreed to in writing by the parties, as provided in paragraph 2 of Permit No. 9837. If this Bill of Sale becomes null and void as provided in the preceding sentence, the ownership of and responsibility for the Bridge shall revert to Seller as of the date of termination of Permit No. 9837; provided, however, that any such reversion shall not release Buyer from nor make Seller responsible for any liabilities Buyer has incurred during the period of its ownership of the Bridge.

IN WITNESS WHEREOF the parties hereto have executed this Bill of Sale on the dates written below.

SELLER

ALASKA RAILROAD CORPORATION

Dated: _____

By: _____

James W. Kubitz
Vice President, Corporate Planning & Real Estate

BUYER

CITY OF FAIRBANKS

Dated: _____

By: _____

John Eberhart
Mayor

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by James W. Kubitz, Vice President, Corporate Planning & Real Estate of the Alaska Railroad Corporation, a public corporation created by Alaska Statute 42.40, on behalf of the corporation.

Notary Public in and for Alaska
My Commission Expires _____

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014,
by John Eberhart, Mayor of the City of Fairbanks, Alaska, on behalf of the City.

Notary Public in and for Alaska
My Commission Expires _____