

SUBJECT: INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF A SPECIAL LAND USE PERMIT TO CONSTRUCT, RECONSTRUCT, OPERATE AND/OR MAINTAIN TALKEETNA RIVER BANK PROTECTION FACILITIES WITH THE ALASKA RAILROAD FOR A PARCEL OF LAND AT ALASKA RAILROAD MILEPOST 227.13, NEAR TALKEETNA AT THE BANK OF THE TALKEETNA RIVER.

AGENDA OF: May 19, 2020

ASSEMBLY ACTION:

presented to the Assembly 5-19-20

MANAGER RECOMMENDATION: For information only.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: John Moosey

Digitally signed by John Moosey
Date: 2020.05.07 11:44:31
-08'00'

Route To:	Department/Individual	Signature	Remarks
	Originator /Division Manager	James D Jenson <small>Digitally signed by James D Jenson Date: 2020.05.06 16:39:50 -08'00'</small>	
	Public Works Director	Terry Dolan <small>Digitally signed by Terry Dolan Date: 2020.05.06 17:30:01 -08'00'</small>	
	Finance Director	Cheyenne Heindel <small>Digitally signed by Cheyenne Heindel Date: 2020.05.07 10:00:51 -08'00'</small>	
	Borough Attorney	Nicholas Spiropoulos <small>Digitally signed by Nicholas Spiropoulos Date: 2020.05.07 10:25:06 -08'00'</small>	
	Borough Clerk	<i>[Signature]</i> 5/11/20 <i>[Signature]</i>	

ATTACHMENT(S) : Fiscal Note X Yes No
Copy of ARRC Contract No. 7679A (20pp)

SUMMARY STATEMENT:

Attached is a special land use permit for Assembly information and review as directed by Borough administration and the Assembly. The purpose of this permit is to construct, reconstruct, operate and/or maintain Talkeetna River bank protection facilities on a parcel of Alaska Railroad land located approximately at Alaska Railroad milepost 227.13, near Talkeetna at the bank of the Talkeetna River. This Special Land Use Permit, also known as ARRC Contract no. 7679A, replaces previous contract no. 7679, dated June 2, 1999. Upon execution of permit, the Alaska Railroad Contract no. 7679A term will commence May 19, 2019 and end April 30, 2039 with an annual permit fee of \$500, upon annual budget appropriation.

**MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE**

Agenda Date: May 19, 2020

SUBJECT: INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF A SPECIAL LAND USE PERMIT TO CONSTRUCT, RECONSTRUCT, OPERATE AND/OR MAINTAIN TALKEETNA RIVER BANK PROTECTION FACILITIES WITH THE ALASKA RAILROAD FOR A PARCEL OF LAND AT ALASKA RAILROAD MILEPOST 227.13, NEAR TALKEETNA AT THE BANK OF THE TALKEETNA RIVER.

ORIGINATOR: J. Ballinger

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT YES NO YES
AMOUNT REQUESTED \$500	FUNDING SOURCE 290.000.000.426.300 Talkeetna Flood SA #7 Fund
FROM ACCOUNT #290.000.000.4XX.XXX	PROJECT
TO ACCOUNT :	PROJECT #
VERIFIED BY: Liesel Weiland <small>Digitally signed by Liesel Weiland Date: 2020.05.07 09:25:02 -08'00'</small>	CERTIFIED BY:
DATE: 05/07/2020	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous	.5	-----	-----	-----	-----	----->
TOTAL OPERATING						

CAPITAL	.5	-----	-----	-----	-----	----->
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REVENUE						
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FUNDING:

(Thousands of Dollars)

General Fund						
State/Federal Funds						
Other	.5	-----	-----	-----	-----	----->
TOTAL	.5	-----	-----	-----	-----	----->

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

PREPARED BY: _____ PHONE: _____

DEPARTMENT: _____ DATE: _____

APPROVED BY: Cheyenne Heindel Digitally signed by Cheyenne Heindel
Date: 2020.05.07 10:01:52 -08'00' DATE: _____

ALASKA
RAILROAD

ARRC Contract No. 7679A
Replaces ARRC Contract No. 7679

SPECIAL LAND USE PERMIT

COPY

PERMITTEE: MATANUSKA-SUSITNA BOROUGH

ADDRESS: 350 East Dahlia Avenue, Palmer, Alaska 99645-6488

PERMIT AREA/DESCRIPTION: a parcel of land, at approximate ARRC Milepost 227.13, near Talkeetna, Alaska, at the bank of the Talkeetna River.

The Alaska Railroad Corporation (ARRC) hereby grants to Permittee a non-exclusive revocable Permit to occupy and use the above-described Permit Area for the limited purposes and upon the terms and conditions set forth herein.

RECITALS

- A. ARRC, as permittor under that certain permit, ARRC Contract No. 7679 (the "Permit") dated June 2 1999, granted a permit to enter upon ARRC lands, located at approximate ARRC Milepost 227.13, (the "Premises"), to construct, reconstruct, operate and/or maintain a Talkeetna River bank protection facilities.
- B. Permittee is the permittee under the Original Permit, or the successor in interest to such permittee.
- C. The permit expires on April 30, 2019, and it is the desire of both parties to amend the permit, but only on the terms and conditions hereafter set forth. New permit to be administered as ARRC Contract No. 7679A

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree that the Permit, is hereby amended as follows:

1. Use by Permittee: The Permittee may use the Permit Area only for the following limited purposes: to construct, reconstruct, operate and/or maintain a Talkeetna River bank protection. In the event Permittee desires to conduct activity within twenty (20) feet of the centerline of the ARRC tracks, it shall arrange with the ARRC for flag protection and otherwise comply with the requirements of the Standard Specifications referred to in Section 8 below.

2. ARRC Use: ARRC reserves for itself, its successors, assigns, permittees and licensees, the right to use the Permit Area 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 and of existing and additional pipes, communication and power transmission lines, drainage ditches or any other facilities located upon, over and beneath the Permit Area.

3. Specific Restrictions in Permit Area:

3.01 Permittee acknowledges that safety is a primary consideration and that in any area marked "clear zone" on the drawing of the Permit Area attached to this Permit, no structure will be allowed that would restrict the visibility from the track, or if in the vicinity of road crossings, would restrict the visibility of motor vehicles. The opinion of ARRC's Chief Engineer will be final regarding any disagreement regarding safety issues. No improvement or facility, including temporary structures and fences, may be constructed in the Permit Area without prior written approval of ARRC. If the Permit Area is within an area governed by local building or land use regulations, any construction must comply with such regulations.

3.02 The general contour of the Permit Area shall not be altered without prior written approval from ARRC. No excavation work shall be performed upon the Permit Area. Permittee's use of the Permit Area shall not interfere with the construction, maintenance, repair, use or operation of any railroad facility, drainage ditch, or related facilities, which may be located upon, over or under the Permit Area. Watering and irrigation shall be done in such a manner that there will be no flooding or fouling of ARRC's roadbed.

3.03 Vehicles will be allowed on the Permit Area only, and not on other property of ARRC or on ARRC's right-of-way, subject to the restrictions of this paragraph. Vehicle access to the Permit Area shall be from the Permittee's property and not from the ARRC right-of-way. Except for normal transit across the tracks within a public roadway, no vehicle will be allowed to operate within 20 feet of the centerline of ARRC's tracks except with ARRC flag protection and otherwise in compliance with the Standard Specifications referred to in Sections 1 and 8. ARRC flag protection must be arranged in advance through the ARRC Maintenance of Way Department at 265-2490.

4. Term: This Permit shall be for a term of twenty (20) year commencing May 1 2019, and ending April 30, 2039, provided that each party shall have the absolute right to terminate this Permit at any time upon one hundred eighty (180) days written notice to the other party. Any continued use of the Permit Area by Permittee after the expiration of the original term, absent prior ARRC approval, shall be under the same terms and conditions as this Permit. Permittee's obligation to pay the annual Permit Fee set forth in Section 6, and all other affirmative obligations of Permittee under this Permit, will continue until all of the following have occurred: (i) the Permit has either expired or notice of termination has been given by one of the parties; (ii) Permittee has removed any personal property from the Permit Area; and (iii) Permittee has restored the Permit Area pursuant to Section 12 of this Permit.

5. 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. Any attempt to assign or transfer this Permit shall cause immediate termination of the Permit.

6. Permit Fee: As consideration for the use of the Permit Area, Permittee shall pay an annual fee of **Five Hundred and no/100 Dollars (\$500.00)** (Permit Fee), due in advance. However, at each subsequent extension of the permit term, the annual fee shall be adjusted to ARRC's then-current fee for similar permits. If the Permit is terminated by either party pursuant to Section 4 before the due date for any payment of the annual fee, 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.

7. Liability; Indemnification: To the maximum extent allowed by law, and except as otherwise stated in this section, 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 attorneys' 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, contractors, subcontractors, employees, invitees or customers, arising directly or indirectly from, or connected with this Permit and Permittee's performance thereunder, including but not limited to: (1) Permittee's use or occupation of the Permit Area; (2) Permittee's operations on other ARRC property; (3) any act or omission by Permittee, its agents, contractors, employees, invitees, or customers; or (4) any failure of Permittee to comply with all applicable laws, ordinances, rules, regulations, guidelines, or other requirements imposed by any government entity now or hereafter in effect. The provisions contained in this Section 7 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. In addition, with respect to claims of Permittee itself, the provisions of this Section 7 shall not apply to any claim by Permittee to the extent such claim alleges that ARRC has breached its obligations under this Permit. 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 7. Permittee's agreement to the release, indemnity and hold harmless obligations in this Section 7 is one of the considerations upon which this Permit is granted. The release, indemnity, hold harmless and defense obligations set forth in this Section 7 shall survive the expiration or earlier termination of this Permit. If Permittee lacks authority to expend funds necessary to perform its indemnity, defense and hold harmless obligations under this paragraph, Permittee agrees to use reasonable good faith efforts to secure appropriation of such funds and ARRC agrees to provide reasonable cooperation to Permittee in any such efforts upon request.

8. Compliance With Standard Specifications: Except as otherwise provided in Section 9 below, Permittee will comply with all of the provisions of the Standard Specifications for Work on Railroad Property in effect on the date any work is

undertaken, and shall make itself aware of such provisions and any revisions thereof during the term of this Permit. A copy of such Standard Specifications is attached hereto as "Exhibit B". If any term of this Permit conflicts with any provision in the Standard Specifications, the terms of this Permit shall control.

9. Insurance: The parties acknowledge that Permittee is a governmental entity which has a program of self-insuring all risks of general liability and part or all of Permittee's risks of loss or damage. Accordingly, Section 4 of the Standard Specifications, attached hereto as Exhibit B, which relates to insurance coverage, does not apply to Permittee except as expressly stated in this Section 9. 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 Permit Area 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 Permit Area and the work being performed by Permittee or its contractors in which the limits for each shall be not less than TWO MILLION DOLLARS 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 section shall name both ARRC and Permittee as insureds, with respect to the Permit Area and the work being performed by Permittee on the Permit Area, and shall in all other respects comply with the requirements set forth in Section 4 of the Standard Specifications.

10. Default and Remedies.

10.01 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 subparagraphs A and 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 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.

10.02 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.

10.03 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.

11. Observance of Laws; Environmental Provisions.

11.01 General Compliance. Permittee, at all times during the Permit Term, at its own expense, and with all due diligence, shall observe and comply with all laws, ordinances, rules, and regulations which are now in effect or may later be adopted by any governmental authority, including ARRC, and which may be applicable to this Permit, the Permit Area or any use of the Permit Area by Permittee.

11.02 Environmental Laws. In furtherance and not in limitation of the foregoing paragraph, Permittee must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality related to Permittee's use of the Permit Area. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Permit Area during the Permit Term or any holdover thereafter, Permittee shall immediately notify ARRC and shall, at Permittee's own expense, clean and restore the Permit Area to the

satisfaction of ARRC and any governmental body or court having jurisdiction of the matter.

11.03 Hazardous Materials on the Permit Area. Permittee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Permit Area by Permittee, its agents, employees, contractors or invitees without the prior written consent of ARRC, which ARRC shall not unreasonably withhold as long as Permittee demonstrates to ARRC's reasonable satisfaction that such Hazardous Material is necessary 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 Materials so brought upon or used or kept in or about the Permit Area.

11.04 Environmental Indemnity. To the maximum extent allowed by law, 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 Permit Area, 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 or as a result of any discharge, leakage, spillage, emission or pollution of or by a Hazardous Material by Permittee, its agents, invitees or employees, on, about, or from the Permit Area, without regard to whether such liability, cost or expense arises during or after the Permit Term. The indemnity, hold harmless and defense obligations set forth in this paragraph 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 7 of this Permit. The indemnity, hold harmless and defense obligations set forth in this paragraph shall survive the expiration or earlier termination of this Permit. If Permittee lacks authority to expend funds necessary to perform its indemnity, defense and hold harmless obligations under this paragraph, Permittee agrees to use reasonable good faith efforts to secure appropriation of such funds and ARRC agrees to provide reasonable cooperation to Permittee in any such efforts upon request.

11.05 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.

11.06 Environmental Testing. ARRC may, upon the expiration or termination of this Permit, conduct environmental testing of the Permit Area to determine if any environmental impairment exists. Permittee shall be responsible for all costs and expenses associated with such tests if such impairment is discovered and the parties agree or a court of competent jurisdiction determines that the impairment resulted from a breach by Permittee of its obligations under this Permit. Payments from Permittee under this subparagraph shall be due within ten (10) days of the rendering of a bill to Permittee therefor, and shall bear 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.

12. Restoration of Permit Area on Termination: Upon the expiration or termination of this Permit, the Permittee shall remove from and off the Permit Area, all property owned or controlled by Permittee and shall restore the Permit Area to a condition satisfactory to ARRC. If Permittee fails to meet its obligations under the preceding sentence, ARRC may perform such work at Permittee's expense. Until said property is removed and the Permit Area restored, either by Permittee or by ARRC at Permittee's expense, this Permit, with all terms contained herein, including the payment of the Permit Fee under Section 6, shall, at ARRC's option, remain in effect until said property is removed and the Permit Area is restored. The requirements of this paragraph are in furtherance of and not in limitation of any provision of the Standard Specifications referred to in Section 8.

13. No Warranties: ARRC does not warrant or represent that the Permit Area is safe, healthful or suitable for the purpose for which it is to be used under this Permit. The absence of markers does not constitute a warranty by ARRC that subsurface installations do not exist on, in or under the Permit Area or any part thereof.

14. Taxes, Assessments and Charges: If at any time during the Permit Term any new or additional taxes (other than federal or state income taxes or any other taxes existing on the effective date hereof) are assessed against the Permit Area, or any improvement thereon, or any rents payable to ARRC under this Permit, or against ARRC with respect thereto, Permittee shall pay to the taxing authority or ARRC, not less than ten (10) days before they become delinquent and as additional rents, all of such new or additional taxes.

15. Miscellaneous:

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

15.02 The terms of this Permit shall inure to the benefit of any successors and assigns of ARRC, and, subject to the provisions of Section 5, to the successors and assigns of Permittee.

15.03 This Permit represents the entire agreement of the parties with respect to the subject matter hereof, and it may not be modified except by an agreement in writing signed by both parties.

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

15.05 Special Conditions.

A. Permittee will provide as-built drawings of current improvements, and for any future improvements.

B. Access must be coordinated with all occupants.

ALASKA RAILROAD CORPORATION

Dated: _____

By: _____
Andrew Donovan
Director, Real Estate

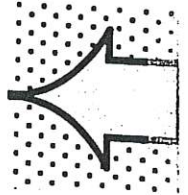
MATANUSKA-SUSITNA BOROUGH

Dated: _____

By: _____
(Please SIGN Here)

(Please PRINT Name)

(Please PRINT Title)

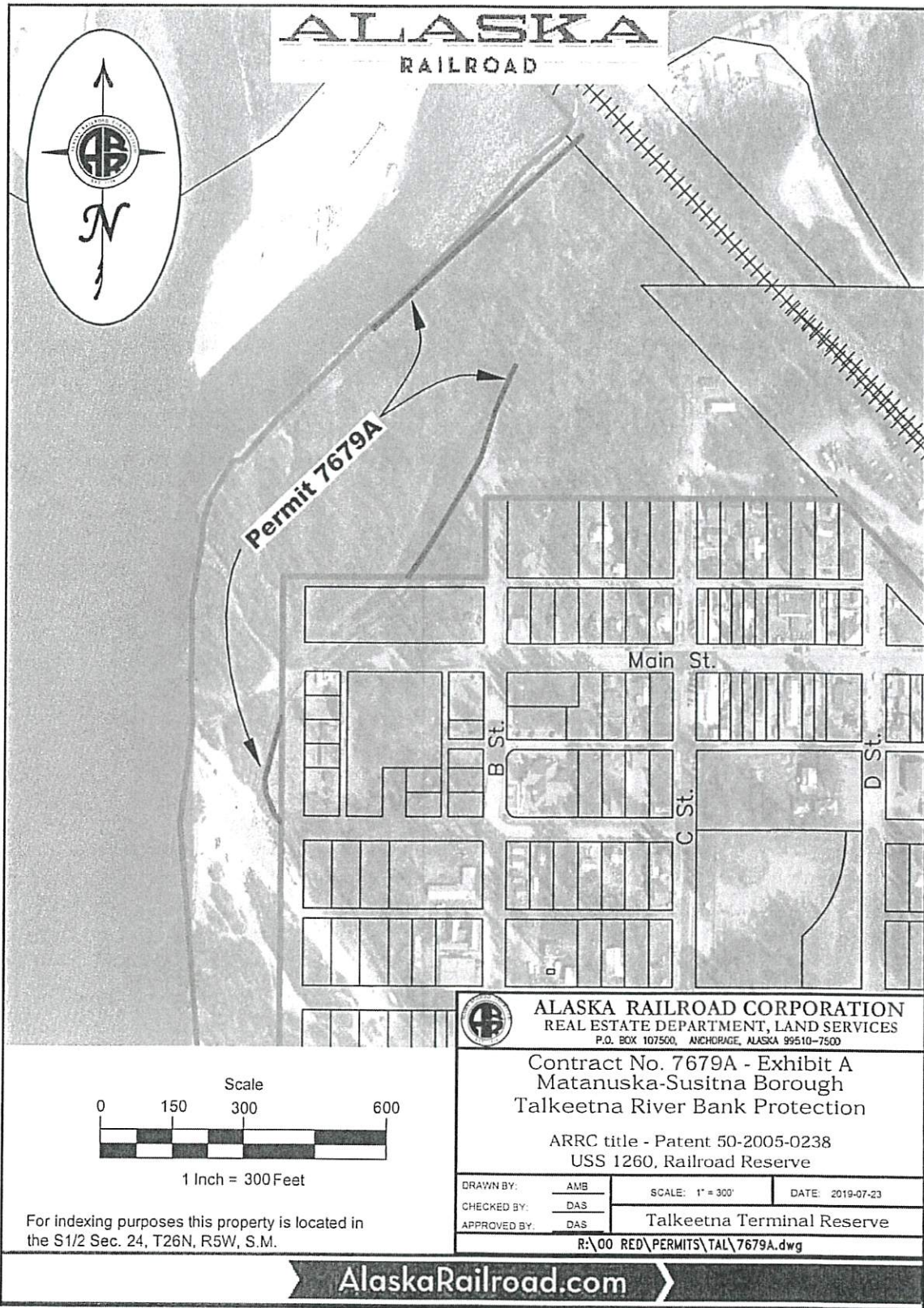


Attachments:

☒ Exhibit A – Drawing

☒ Exhibit B – Standard Specifications for Work on Railroad Property, rev. 01/05/2017

[Rev 5/2011]



1M 20-097

Standard Specifications for Work on Railroad Property

- Section 1. Definition of Terms
- Section 2. General Requirements
- Section 3. Safety Requirements
- Section 4. Insurance Requirements
- Section 5. Notice
- Section 6. Flag Protection and Protection of ARRC Traffic
- Section 7. Train Delays
- Section 8. Protection of ARRC Communication Lines
- Section 9. Road Crossings
- Section 10. Power and Communication Lines
- Section 11. Underground Utilities
- Section 12. Open Trenching
- Section 13. Excavations
- Section 14. ARRC Inspectors
- Section 15. Use of Explosives
- Section 16. Snow Removal
- Section 17. Clean-up
- Section 18. Record Drawings
- Section 19. Indemnity

SECTION 1. DEFINITION OF TERMS

ARRC

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

ARRC Property

all lands owned or withdrawn for the use of the
ARRC, including the ARRC's track right-of-way and
communications pole line right-of-way.

Chief Engineer

the person employed by the ARRC as head of its
Engineering Department or Branch, or his/her
authorized representative.

Contractor

any agent of the Permittee, including Contractors or
subcontractors employed to construct, reconstruct,
operate and/or maintain the Facility. The term
"Contractor" shall be synonymous with the term
"Permittee" when the Permittee performs the
construction, reconstruction, operation and/or
maintenance of the Facility with its own personnel.

Director, Real Estate

the person authorized by the ARRC to execute
contractual real estate agreements on behalf of the
ARRC.

Facility

any improvements owned by the
Permittee/Contractor which are to be placed on
ARRC property in accordance with written
permission executed by ARRC and Permittee.

Telecommunications Supervisor

the person employed by the ARRC as head of its
Signals and Telecommunications Department or
Branch, or his/her authorized representative.

Permittee/Contractor

the person, company or governmental agency to
whom the right to enter upon ARRC Property was
given in the form of written permit, easement or
contract executed by the ARRC and
Permittee/Contractor.

Track Work

all work on the line from the top of subgrade to the
top of rail, including geotextile, when required.

Track Materials

all hardware, excluding signals and controllers,
associated with the running of a railroad.

SECTION 2. GENERAL REQUIREMENTS

- 2.1 All construction, reconstruction, operation, and maintenance on ARRC Property shall be performed in compliance with these Standard Specifications for Work on Railroad Property, including all revisions thereto.
- 2.2 Failure to comply with these Standard Specifications for Work on Railroad Property shall result in the demand of ARRC to suspend all work on ARRC Property.
- 2.3 All work on or about ARRC Property shall be performed by experienced personnel in a safe and workmanlike manner in keeping with approved ARRC practices, and as specified herein. ARRC traffic and property shall be protected at all times.
- 2.4 The safety and continuity of the operation of the traffic of ARRC shall be of first importance and shall be at all times protected and safeguarded. The Permittee/Contractor and its subcontractors shall be required to perform and arrange their work accordingly. Whenever, in the opinion of the Chief Engineer or his or her representatives, the work or its performance may affect or involve the safety of ARRC's facilities and/or operation of its railroad, the method of doing such work shall first be submitted by the Permittee/Contractor to the Chief Engineer for his/her approval, without which it shall not be commenced or executed. The approval of the Chief Engineer, when given, shall not be considered as a release from responsibility or liability for any damage which ARRC may suffer, or for which it may be liable, as a result of the acts or omissions of the Permittee/Contractor, its subcontractors or employees.
- 2.5 Whenever, in the opinion of the Chief Engineer, the construction may cause a hazard to the safe operation of ARRC, ARRC may, in its discretion, place at the site of the work the required number of qualified employees to protect its operations. The providing of such employees and such other precautions as may be taken shall not relieve the Permittee/Contractor and its subcontractors from liability for the payment of damages caused by their operations. ARRC shall be the sole judge of the necessity for, and as to the number and classification of employees required. The Permittee/Contractor shall reimburse ARRC for the cost and expense incurred in providing such employees.

SECTION 3. SAFETY REQUIREMENTS

- 3.1 The safety of personnel, property, rail operations, and the public is of paramount importance in the execution of any work on ARRC Property. The Permittee/Contractor shall comply with all Federal, State and local governmental regulations (e.g. OSHA, NESC, etc.) applicable to the construction, installation, or maintenance of any Facility. As reinforcement and in furtherance of overall safety measures to be observed by Permittee/Contractor (and not by way of limitation), the following special safety rules shall be followed while working on ARRC Property. Further railroad safety information may be obtained from the ARRC Safety Office at 907-265-2265. Safety information is also available on the ARRC website at www.alaskarailroad.com.

- 3.2 ARRC flag protection is required before any activity can occur on or near a railroad operating facility such as a track, yard, bridge or shop building. For incidental work, such as surveying or inspection, an ARRC furnished flagman will provide a safety briefing prior to the commencement of the work. For any activity involving a disturbance or potential disturbance to the track, track embankment, or any railroad facility, ARRC may require the Permittee/Contractor to submit a specific Railroad Safety Plan prior to startup. Projects which involve activities which cross the tracks or are longitudinal to the tracks will require a specific Railroad Safety Plan and a one hour ARRC provided training course for Permittee/Contractor's project supervisors prior to the initiation of work on ARRC Property. Specific information on Railroad Safety Plans may be obtained from the ARRC Safety Office at 907-265-2265.
- 3.3 The Permittee/Contractor shall arrange for ARRC flag protection when performing any work within 20 feet of any track. All work within 20 feet of the track shall cease when a train passes and all Permittee/Contractor employees shall maintain a distance of at least 20 feet from the track until the train has safely passed. In addition, any work that could come within 20 feet of the track will cease when a train passes. For example, crane or pile driving activities shall stop when trains pass when the maximum boom and suspended load radius can come within 20 feet of the tracks. Pile driving shall not be done when trains are passing the work site. Vehicles and other construction equipment shall not be operated or parked closer than 20 feet from any track without ARRC flag protection.
- 3.4 In the event Permittee/Contractor will be performing construction or other activities on or in close proximity to a railroad track, the Permittee/Contractor shall be responsible for compliance with applicable Federal Railroad Administration's Roadway Worker Protection ("RWP") regulations (49 CFR 214, Subpart C) if its employees qualify as "Roadway Workers"¹. Under 49 CFR 214, Subpart C, railroad contractors are responsible for the training of their employees on these regulations. All RWP related Work shall be conducted in strict compliance with the RWP safety standards set forth in 49 CFR 214, Subpart C and the Permittee/Contractor will be required to submit a Railroad Safety Plan to ARRC to demonstrate compliance with said safety standards prior to beginning any RWP related Work.
- 3.5 In the event Permittee/Contractor will be performing construction or other activities on a railroad bridge, the provisions of 49 CFR 214 regarding bridge worker safety shall apply. All bridge related work shall be conducted in strict compliance with the bridge worker safety standards set forth in 49 CFR 214 and the Permittee/Contractor will be required to submit a Railroad Safety Plan to ARRC to demonstrate compliance with said safety standards prior to beginning any bridge related work.

¹ A Roadway Worker is any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities, or roadway machinery on or near a track or with the potential of fouling a track.

SECTION 4. INSURANCE REQUIREMENTS

- 4.1 The Permittee/Contractor shall procure and maintain at all times while performing work on ARRC Property, and be covered by the types of insurance with the minimum limits as specified in Section 4.4.
- 4.2 Each policy specified in Section 4.4 shall be: (1) endorsed to include ARRC as an additional insured with respect to the performance of the work; (2) endorsed whereby the insurance company will notify ARRC of any material change, cancellation, non-renewal or expiration of the insurance policy in writing not less than thirty (30) days prior to the effective date; (3) endorsed with a waiver of subrogation rights in favor of ARRC; and (4) endorsed with the Alaska Suit Endorsement.
- 4.3 Prior to commencement of any work on ARRC Property, the Permittee/Contractor, shall deliver to ARRC certificate(s) of insurance showing evidence of the insurance required in Section 4.4.
- 4.4 Alaska Railroad Corporation Minimum Insurance Requirements.
 - a. Commercial General Liability insurance with limits not less than \$5,000,000 per occurrence and \$10,000,000 aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, and Broad Form Property Damage Liability. Coverage shall not contain any exclusions for Explosion, Collapse, Underground, Rail Operations, or Work on Railroad Property.
 - b. Automobile Liability insurance on all owned, non-owned, hired and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.
 - c. Worker's Compensation insurance in accordance with the statutory coverages required by the State of Alaska and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the Work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, and the Federal Employers Liability Act.
 - d. If any part of the work to be performed on ARRC Property is located within fifty feet (50') of a railroad track, then the Permittee/Contractor shall also obtain Railroad Protective Liability insurance (Alaska Railroad Corporation as named insured) with limits of liability of not less than \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.

SECTION 5. NOTICE

- 5.1 A pre-construction meeting shall be held with ARRC's Chief Engineer and representatives of the Permittee/Contractor and subcontractors prior to the commencement of any work on ARRC Property by the Permittee/Contractor or its subcontractors. Permittee/Contractor should coordinate the pre-construction meeting with the Project Manager identified in the Permit issued for the work.
- 5.2 The Permittee/Contractor shall give written notice to the Chief Engineer not less than ten (10) days in advance of the commencement of any construction, reconstruction or major maintenance activity on ARRC Property, in order that the necessary arrangements may be made for the protection of ARRC's operations. This notice shall include a description of the proposed work on ARRC Property, schedule of work, and the names of any Permittee/Contractor's subcontractor who may also be working on ARRC Property.

SECTION 6. FLAG PROTECTION AND PROTECTION OF ARRC TRAFFIC

- 6.1 Whenever ARRC flag protection is required, it will be provided by ARRC at Permittee/Contractor's expense. ARRC flag protection is to ensure the safe movement of trains and other rail traffic and shall be done in strict accordance with the ARRC rules on flagging. All flag protection must be scheduled prior to any work commencing within the ARRC right-of-way.
- 6.2 ARRC will, during the progress of the work, utilize as many qualified flag people as in the opinion of the ARRC may be required for the adequate protection of ARRC traffic. All expense for providing such flagpersons shall be paid by the Permittee/Contractor to ARRC.
- 6.3 The Permittee/Contractor shall arrange with ARRC to keep itself informed on the time of arrival of all trains and shall stop any of Permittee/Contractor's operations which might be or cause a hazard to the safe passage of the train past the site of the work from ten (10) minutes before the expected arrival of the train until it has safely passed.
- 6.4 Track outages will only be approved in exceptional cases for limited durations. Prior to a proposed track outage, the Permittee/Contractor shall submit a closure plan to ARRC. The plan will describe the work to be accomplished, the equipment, manpower and other resources required, and the work schedule. Once approved by ARRC, the Permittee/Contractor shall follow the plan. ARRC reserves the right to assume control of the work to reestablish rail service if the schedule is not met. Permittee/Contractor shall bear all costs and damages which may result from failure to meet the closure schedule, in addition to the train delay charges provided for herein.

SECTION 7. TRAIN DELAYS

- 7.1 All work on ARRC Property shall be conducted in such a manner as to prevent delays to trains or other rail traffic operated by ARRC.
- 7.2 Should any of the Permittee/Contractor's or its subcontractor's actions or activities cause delays to trains or other rail or water traffic, the agreed amount of liquidated damages shall be at the following rates and shall be collected from the Permittee/Contractor by ARRC.

Passenger trains each:	\$50 per minute of delay, 60-minute minimum charge.
All other rail traffic:	\$50 per minute for each delay over five minutes, 30-minute minimum charge.
Rail barges, or other	No charge for delays of one hour or less; \$1,000 per hour
Connecting Carrier Vessels:	for each hour or any part of an hour thereafter with a minimum charge of \$6,000.

- 7.3 Delay time will be taken from the train sheet in ARRC's Dispatcher's Office, Anchorage for all delays and such train sheet shall be the official document by which the length of time a train is delayed will be determined. If another crew is needed to relieve the original crew, the charge shall also apply to the second crew. If such delay causes a water carrier to miss a sailing, the liquidated damage computation of time covering the period of time to the next possible sailing time shall be in addition to the length of time determined by said train sheet.

SECTION 8. PROTECTION OF COMMUNICATION LINES & FIBER OPTIC CABLE

- 8.1 All work on ARRC Property shall be conducted in such a manner as to protect ARRC's communication facilities at all times from outages resulting directly or indirectly from the Permittee/Contractor's or its subcontractor's operations.
- 8.2 Should any of the Permittee/Contractor or its subcontractor's operations cause outages to said communications facilities, the agreed amount of liquidated damages shall be at the following rates and shall be collected from the Permittee/Contractor:
- | | |
|-----------------------------------|-------------------------------|
| Open wire communication circuits: | \$1.00 per minute per circuit |
| Communication cable: | \$1.00 per minute per cable |
- 8.3 A minimum charge of \$250.00 will be made for each outage plus the total repair costs. The outage time shall be that as established by ARRC's Test Board, Anchorage.
- 8.4 There shall be no equipment operated or excavation made within fifteen (15) feet of any ARRC communication pole guy, anchor, or other communications apparatus unless authorized in advance by the Telecommunications Supervisor.
- 8.5 Fiber optic cable systems are buried on ARRC's ROW Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on ARRC's Property.

SECTION 9. ROAD CROSSINGS

- 9.1 Whenever automatic railroad crossing signals are in the work area, these signals must remain in operating condition at all times. If, as a result of the Permittee/Contractor's or subcontractor's activities the signals become inoperable, the crossing shall be continuously flag protected until the signals are again operable. See Section 6 for flagging specifications.
- 9.2 When regular railroad crossings are used as haul routes inside or outside the work area, flagpersons shall be provided by the Permittee/Contractor for said crossings in all situations at the discretion of the ARRC.
- 9.3 Temporary road crossings may be installed provided the Permittee/Contractor has acquired from ARRC a temporary road crossing permit for said crossing. If the crossing is not shown on the project plans as approved by ARRC, then it will be at ARRC's sole discretion whether to allow a later-requested crossing.
- 9.4 The temporary road crossing shall be constructed to the length and the standards specified in the temporary road crossing permit. All protective signs required by ARRC shall be provided and properly maintained by the Permittee/Contractor. The temporary road crossing shall be installed under ARRC flag protection in accordance with Section 6 of these specifications.
- 9.5 The flange ways of all road crossings used by the Permittee/Contractor or its subcontractor as haul routes or temporary road crossings shall be kept clean and free of gravel at all times and shall otherwise be maintained to the satisfaction of the Chief Engineer.
- 9.6 When a temporary road crossing is in use, ARRC flag protection shall be provided at all times. See Section 6 for specifications.
- 9.7 When a temporary or private road crossing is not in use, the Permittee/Contractor shall provide suitable barricades (gates with padlocks, posts driven into the ground, etc.) to prevent vehicular access to the crossing.
- 9.8 When not in use during the winter season, the temporary road crossing shall be removed. Upon completion of the work or termination of the crossing permit, the temporary crossing shall be removed and the area restored to its original condition.
- 9.9 The Permittee/Contractor agrees that all others using the private road crossing, except ARRC and its employees, shall be considered agents of the Permittee/Contractor.
- 9.10 Sight Triangles at road crossings shall be maintained by Permittee/Contractor free of vegetation and other obstructions to vision in accordance with the table entitled "Sight Triangle Distance" and as otherwise established and revised from time to time by ARRC. The Sight Triangle Distance table can be provided upon request.
- 9.11 Temporary public road crossings must be included in a traffic control plan submitted by the Permittee/Contractor to Alaska Department of Transportation (ADOT) for review and approval prior to constructing the crossing.

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SECTION 10. POWER AND COMMUNICATION LINES

- 10.1 All power and communication lines shall be designed and constructed in accordance with the current edition of the National Electric Safety Code (NESC).
- 10.2 Underground power and communication lines shall be installed in accordance with Section 11 of these specifications. Whenever an underground power or communication line crosses underneath a track, a casing pipe shall be installed for carrying such lines.
- 10.3 The minimum clearance above the top of rail of ARRC track shall be in accordance with the handbook referenced in Section 11.1, plus six (6) inches to allow for future grade raises.
- 10.4 The minimum clearance above ARRC communication lines shall be in accordance with the handbook referenced in Section 11.1.
- 10.5 Additional lines may not be added, or the characteristics of the line(s) changed without the prior written approval of ARRC's Director, Real Estate or Chief Engineer.
- 10.6 Wires shall be strung across ARRC tracks only when ARRC flag protection is provided in accordance with Section 6 of these specifications.
- 10.7 No wires shall be strung across ARRC's communications lines without first receiving prior written approval from ARRC's Telecommunication Supervisor, and such work must be accomplished only at a time and in a manner prescribed by said Telecommunication Supervisor.

SECTION 11. UNDERGROUND UTILITIES

- 11.1 All underground utilities, including culverts, pipelines, and underground power and communication lines, on ARRC Property shall conform to the current American Railway Engineering and Maintenance-of-way Association (AREMA) Manual for Railway Engineering.
- 11.2 Unless another method is authorized in advance and in writing by the Chief Engineer, all underground utilities shall be installed under tracks and roads by boring, jacking or tunneling.
- 11.3 Boring, jacking or tunneling shall be done under ARRC tracks only when ARRC flag protection is provided in accordance with Section 6 of these specifications.
- 11.4 The proposed plan for boring, jacking or tunneling shall be approved by the Chief Engineer prior to commencing the operation.
- 11.5 All boring, jacking or tunneling headings shall be continuously protected against any loss of ground material by shoring and/or cribbing as necessary.

SECTION 12. OPEN TRENCHING

- 12.1 Only when authorized in advance and in writing by ARRC shall any portion of the track be removed to allow trenching for installation of the Facility.

- 12.2 If allowed to open trench, the track may be removed from service only at the time authorized by the Chief Engineer and shall be restored to service within the time period specified by the Chief Engineer. Should the track not be restored to service within the time period specified, the agreed amount of liquidated damages shall be at the rate specified in the written authorization allowing the open trenching or the liquidated damages in accordance with Section 7 of these specifications, whichever is greater, and shall be collected from the Permittee/Contractor.
- 12.3 All track work shall be accomplished by qualified track persons.
- 12.4 Only that portion of the track structure necessary to excavate, stockpile and install the Facility shall be removed. All track material removed shall be handled, stockpiled and relayed in a manner to avoid damage. Any material which may be damaged shall be replaced by the Permittee/Contractor at its own expense.
- 12.5 The backfill of the trench under the track and in the road bed prism shall be of the same type of material as taken out, except the top 2 feet shall be clean pit run gravel. Backfilling and compaction shall be in one-foot lifts with a compaction of 95% of maximum density in the area affecting the roadbed prism.
- 12.6 The ballast used in replacing the track shall be equal in depth and quality as that which was removed. The track shall be relayed and brought to original grade in accordance with standard ARRC practices. The track shall be resurfaced as often as necessary for a period of 12 months after completion of construction to remove any settlement that may have occurred.

SECTION 13. EXCAVATIONS

- 13.1 Unless authorized in advance and in writing by ARRC, the top of any excavation shall not be within 20 feet of the centerline of any track; nor shall any excavation exceed ten (10) feet in depth regardless of its proximity to track.
- 13.2 No water shall be allowed to stand in open excavations in the track area.
- 13.3 Bridging and shoring shall be adequate to safely carry ARRC traffic and the decision of the Chief Engineer pertaining to same shall be final.
- 13.4 All open excavations shall be continuously protected by flags, flares, barricades or watchpersons, as directed by ARRC.
- 13.5 No excavation shall be left open more than three days, unless authorized by the Chief Engineer.
- 13.6 ARRC embankments and cut slopes shall not be disturbed any more than necessary to accommodate the construction and shall be left in a stabilized condition.
- 13.7 ARRC ditches, culverts and roadways shall be kept clean and free of rock, gravel, construction debris and equipment at all times.

SECTION 14. ARRC INSPECTIONS

- 14.1 ARRC may furnish an inspector during the periods of construction on ARRC Property. The ARRC inspector will inspect the removal and replacement of tracks, excavation, backfill, necessary bridging for tracks, shoring, flagging, lighting, clearances, etc., when necessary. The ARRC inspector will work directly with the representative of the Permittee /Contractor and the decision of the ARRC inspector in matters pertaining to ARRC operations and safety shall be final. In the event more than one shift is worked, an ARRC inspector will be required for each shift. Presence or absence of an ARRC inspector shall not relieve the Permittee /Contractor of liability for damage done to property of ARRC, or the property of ARRC lessees or permittees having installations on ARRC Property. All ARRC cost and expense for furnishing said inspector(s) shall be collected from the Permittee /Contractor.

SECTION 15. USE OF EXPLOSIVES

- 15.1 The use of explosives shall be done in compliance with all applicable Federal, State and local laws and ordinances regarding same.
- 15.2 No blasting of any kind will be permitted unless the Permittee/Contractor thoroughly safeguards the movement of trains and other rail traffic and personnel in the area where such blasting is being conducted. Before blasting, ARRC flag protection in accordance with Section 6 of these specifications shall be provided on each side of the blast area by the Permittee/Contractor. This flag protection shall not be removed until the track is inspected for damage from the blast.

SECTION 16. SNOW REMOVAL

- 16.1 Snow removal operations shall be conducted in such a manner as to not place snow (1) upon the tracks of ARRC; (2) where it interferes with the normal operation of the automatic crossing signals; or (3) where it impairs the visibility of either highway or rail traffic at the crossing.
- 16.2 Snow removal operations shall be conducted in accordance with Section 3 of these specifications.

SECTION 17. CLEAN-UP

- 17.1 At all times, all work and activities on ARRC Property shall be accomplished in such a manner as to keep the ARRC Property in a neat, orderly and safe condition satisfactory to ARRC.
- 17.2 Upon completion of Permittee/Contractor's work, all equipment and unused materials shall be removed and the ARRC Property shall be left in a neat and clean condition satisfactory to ARRC.
- 17.3 Should the Permittee/Contractor or its subcontractor fail to comply with Section 17.1 and 17.2 above, ARRC may perform the required clean-up. All ARRC costs and expenses for performing this work shall be collected from the Permittee /Contractor.

SECTION 18. RECORD DRAWINGS

- 18.1 Contractor shall provide record drawings (as-builts) of the Project to ARRC promptly upon completion of construction. In addition to record drawings, ARRC may, in its reasonable discretion, require Contractor to provide GPS data or other locational information regarding the completed Project and Contractor agrees to provide such data or information upon ARRC's request. The required method of submittal of record drawings is one hard copy for the ARRC file, to be mailed to the ARRC Real Estate Department, and one digital copy in AutoCAD, which can be emailed to ARRC Land Services Manager Doug Stephens at StephensD@akrr.com.

SECTION 19. INDEMNITY

- 19.1 To the maximum extent allowed by law, not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless ARRC, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, death, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- 19.2 The right to indemnity under this Section 19 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- 19.3 Contractor expressly and specifically assumes potential liability under this Section 19 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 19.
- 19.4 No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against Contractor may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- 19.5 The provisions of this Section 19 shall survive the completion of any work performed by Contractor. In no event shall this Section 19 or any other provision herein be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.