

Sponsor: City Manager

**CITY OF WHITTIER, ALASKA
RESOLUTION 2022-007**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA, SETTING FORTH AND APPROVING THE TERMS AND CONDITIONS OF A LEASE BETWEEN THE CITY OF WHITTIER AND THE ALASKA RAILROAD CORPORATION AND AUTHORIZING THE CITY MANAGER TO ENTER INTO ALL NECESSARY AGREEMENTS WITH THE PARTIES INCORPORATING THE ESSENTIAL TERMS APPROVED IN THIS RESOLUTION

WHEREAS, the Alaska Railroad Corporation (“ARRC”) is the owner of certain upland property at the Head of the Bay in Whittier, Alaska which the City of Whittier desires to lease and in turn sublease for the purpose of partnering with a wholly-owned subsidiary of Huna Totem Corporation to construct a cruise ship dock, terminal building and upland amenities (the “Project”), and

WHEREAS, the Project is expected to positively impact the revenue base of the City through additional cruise passenger vessel tax proceeds, increased property and sales tax revenues, and other related revenues, which can provide much-needed funding to address significant public infrastructure needs in Whittier, a community which lacks a tax base due to the significant amount of non-taxable land within its boundaries; and

WHEREAS, it is the City’s position that the Master Lease between the City and ARRC remains in effect in all respects, including with respect to the property subject to the proposed lease with ARRC, and that the City has demonstrated, through significant financial and other valuable actions and contributions, that it has and continues to comply with the terms of the Master Lease.

WHEREAS, it is ARRC’s position that the Leased Premises and most other ARRC land at the head of the bay are no longer subject to the provisions of the Master Lease due to the City’s failure to adequately develop the property in accordance with the terms of the Master Lease.

WHEREAS, in light of the disagreement of the parties, a dispute has arisen between ARRC and the City regarding whether the approximately twenty (20) acres owned by ARRC, and upon which a portion of the Project may be constructed, remain under the City’s control pursuant to the Master Lease or whether such control reverted back to ARRC under the terms of the Master Lease.

WHEREAS, ARRC and the City have agreed to set aside their dispute regarding the application of the Master Lease only as to the upland property sought to facilitate the Project,

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without making any acknowledgements, admissions, or concessions regarding their competing claims as to the current status of the parties' rights and interests pursuant to the Master Lease. By entering into the lease, neither the City nor ARRC waives any of their respective rights under the Master Lease or legal positions or arguments with respect thereto.

WHEREAS, the pertinent provisions of the lease include but are not limited to: 1) an initial 35-year lease term; 2) two optional extensions of 25 years; 3) rent for the initial term of \$30,000 annual rent for 35-year initial term, with rent to be prepaid subject to an 8% discount rate, in the amount of approximately \$350,000 4) rent for extension periods set at 8% of FMV and City to have option to prepay rent on the same terms as for initial 35-year term or to have adjustments via appraisal every 15 years with 35% caps and floors; 5) environmental indemnification against past contamination occurring at times the City did not possess a leasehold interest; 6) authority to enter into subleases without ARRC consent; 7) requirement that City enforce provisions of Huna Totem Lease driving Project commencement and completion; and 8) requirement that City submit conceptual plans at time of lease execution for ARRC pre-approval for compliance with use provisions of lease and Whittier Comprehensive Plan; and

WHEREAS, the parties acknowledge that there are substantial financial benefits to the community of Whittier from the Project in the form of increased property tax, commercial passenger vessel tax which will help fund critical community infrastructure, and sales tax derived from increased economic activity. and

WHEREAS, the parties acknowledge that under the law, one City Council cannot take actions to bind a future City Council, such as actions to prohibit a future City Council from making changes to financial contractual terms, whether that be the imposition of increased taxes or other financial burdens; however, the parties wish to acknowledge that they have conducted good faith negotiations and desire that the long-term financial interests of both parties are preserved and not diminished; and

WHEREAS, the Whittier City Council hereby finds that the public interest is best served by allowing for a lease having a term of longer than twenty (20) years based on the purpose of the lease for use in operating and managing a cruise ship terminal and dock facility, and the positive economic contribution of this activity to the community, as well as the specific nature and value of the property improvements placed on the leasehold premises, which will revert to the City at the conclusion of the amended and restated lease.

NOW, THEREFORE, the Whittier City Council hereby resolves that:

Section 1. Whittier City Council hereby approves the lease of the Property between the City of Whittier and the Alaska Railroad Corporation, subject to and conditional upon the following essential terms:

Term A: The parties agree to execute lease documents having the same essential terms as presented to the City Council.

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Term B: The City of Whittier will record, at its own cost and expense, a Memorandum of Lease for the Head of Bay Uplands– Cruise Parcel (2022) Lease Agreement upon final determination of legal property descriptions.

Section 2. City Council hereby declaring a public interest finding based on the purpose of the lease insofar as it contributes significantly to increased economic activity of the City, and due to the significant value of dock and cruise terminal facility infrastructure on City land, in accordance with Whittier Municipal Code 3.36.320 - Terms of Lease, as the same may be amended or renumbered from time to time.

Section 3. The City Manager is hereby authorized, empowered and directed to execute and deliver to the counterparties the lease and any memorandum of lease on behalf of the City after final review and approval as to form by the City Attorney, and to make any non-essential changes, modifications, additions and deletions therein as shall to such officer seem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of the said documents now before this meeting, and from and after the execution and delivery of the said documents, the City Manager is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the said lease as executed.

Section 4. This Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this 15th day of March, 2022.



Dave Dickason, Mayor

ATTEST:



Naelene Matsumiya
City Clerk

AYES: Blair, McCord, Shen, Wagner, Dickason
NAYS: None
ABSENT: Denmark, Pinguoch
ABSTAIN: None