



THE CITY OF WHITTIER

Gateway to Western Prince William Sound

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**WHITTIER CITY COUNCIL
WILL HOLD
A SPECIAL MEETING
WEDNESDAY DECEMBER 6, 2017
AT 6:00 PM**

**COUNCIL CHAMBERS
P-12 BUILDING**

AGENDA

Page #

1. **CALL TO ORDER**
2. **OPENING CEREMONY**
3. **ROLL CALL**
4. **APPROVAL OF SPECIAL MEETING AGENDA**
5. **CITIZEN COMMENTS ON AGENDA ITEMS NOT SCHEDULED FOR PUBLIC HEARING**
6. **ORDINANCE**
Introduction (1st reading)

#08-2017 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ALASKA RAILROAD CORPORATION TRANSFERRING TRACT A-1 TO THE ALASKA RAILROAD IN EXCHANGE FOR TRACT W AND THE DELONG DOCK SUBJECT TO SPECIFIC ESSENTIAL TERMS AND CONDITIONS EXECUTED BY THE PARTIES

7. COUNCIL DISCUSSION
8. CITIZEN DISCUSSION
9. ADJOURNMENT

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**CITY OF WHITTIER, ALASKA
ORDINANCE #08-2017**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ALASKA RAILROAD CORPORATION TRANSFERRING TRACT A-1 TO THE ALASKA RAILROAD CORPORATION IN EXCHANGE FOR TRACT W AND THE DELONG DOCK, SUBJECT TO SPECIFIC ESSENTIAL TERMS AND CONDITIONS EXECUTED BY THE PARTIES.

WHEREAS, in 2000, the Alaska Legislature passed CSHB 320, a bill that authorized and directed the Alaska Railroad Corporation ("ARRC") to receive Tract W, including the DeLong Dock, from the United States, and further directed ARRC to reconvey Tract W, excluding the DeLong Dock, to the City of Whittier ("City"); and

WHEREAS, CSHB 320 stated, "the corporation [ARRC] and the City of Whittier shall agree to diligently work together in good faith to resolve disputes and to collaborate with each other in developing a management agreement for operation of the DeLong Dock facility with the goal of operating the facility as a single entity for economic development purposes"; and

WHEREAS, it has been seventeen years since the 2000 legislation, during which time ARRC has held exclusive use of the DeLong Dock, refused to allow the City access to the Dock, shared no revenues from the Dock, and used the Dock unilaterally to support the financial interest of ARRC, while causing significant detriment to the City and the Prince William Sound region; and

WHEREAS, in May of 2017, the United States quitclaimed Tract W and the DeLong Dock to ARRC; and

WHEREAS, ARRC must reconvey Tract W, excluding the DeLong Dock, to the City as directed in CSHB 320; and

WHEREAS, it is in the best interest of and advantageous to the City to enter into an agreement with ARRC whereby ARRC will convey Tract W and the DeLong Dock to the City, in exchange for City-owned Tract A-1; and

WHEREAS, Whittier Municipal Code 3.36.150.E. allows the City to exchange a parcel of City property with property owned by another party, after City Council approval and public notice of the exchange, and subject to conditions imposed by the City Council; and

WHEREAS, the City Manager has negotiated and agreed with ARRC a Joint Statement of Essential Terms of the proposed agreement to exchange Tract W and the DeLong Dock for Tract A-1 to be presented to the City Council for approval; and

WHEREAS, upon the City Council's approval of the essential terms of the agreement, the City must negotiate the non-essential terms of the agreement and all the conveyance documents, and execute the final agreement and conveyance documents.

NOW, THEREFORE, the Whittier City Council ordains:

Section 1. The form and content of the Joint Statement of Essential Terms Between the Alaska Railroad Corporation and the City of Whittier, Alaska, signed on August 22, 2017 by the City and on August 18, 2017 by ARRC (attached as exhibit A), now before this meeting, are in all respects authorized, approved and confirmed by this ordinance.

Section 2. The City Council authorizes, empowers, and directs the City Manager to negotiate the non-essential terms of the agreement between the City and ARRC for the exchange of Tract W and the DeLong Dock with Tract A-1. The City Council also authorizes, empowers, and directs the City Manager to execute and deliver on behalf of the City a final agreement for the exchange of Tract W and the DeLong Dock with Tract A-1, containing the essential terms as approved in Section 1 and the non-essential terms as negotiated by the City Manager with ARRC, with such changes, modifications, additions and deletions therein as he shall deem necessary, desirable or appropriate.

Section 3. The City Council further authorizes, empowers, and directs the City Manager 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 final agreement as executed, including any and all property conveyance documents.

Section 4. Effective date. This ordinance shall be effective immediately upon adoption.

1st reading: December 6, 2017

2nd reading and public hearing: December 19, 2017

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this 21st day of December, 2017.

Daniel Blair
MAYOR

ATTEST:

Krista Fish
CITY CLERK

Ayes:

Nays:

Absent:

Abstain:

EXHIBIT A

JOINT STATEMENT OF ESSENTIAL TERMS BETWEEN THE ALASKA RAILROAD CORPORATION AND THE CITY OF WHITTIER, ALASKA

1. Representatives of the Alaska Railroad Corporation ("ARRC") and the City of Whittier ("City") met on June 2, 2017 to discuss management/ownership of the DeLong Dock and other related land management issues.
2. Bill O'Leary, James Kubitz, Tim Sullivan, Jr., and Andy Behrend attended the meeting on behalf of ARRC and Daniel Blair, Mark Lynch, and Holly Wells attended the meeting on behalf of the City (hereafter collectively referred to as the "Representatives").
3. The Representatives negotiated the essential terms of an agreement.
4. Ms. Wells was directed to memorialize the essential terms agreed upon by the parties.
5. Mr. Behrend was directed to draft an agreement incorporating the agreed upon essential terms while both legal representatives would work together to finalize an agreement acceptable to both parties as soon as practicable so that such agreement could be presented to the Whittier City Council and ARRC Board of Directors for approval.
6. Both parties recognize that the essential terms agreed upon by the Representatives are as follows:
 - A. The City conveys all of Tract A to ARRC;
 - B. ARRC shall convey its full interest in the DeLong Dock, Tidelands, and Uplands for all of Tract W to the City on an As Is-Where Is basis;
 - C. The City shall lease the mooring facility that services the ITB/Cordova Provider that is adjacent and attached to the DeLong Dock, along with legal non-public access to said mooring facility, to ARRC for 20 years with two options to renew, that may be exercised by ARRC after receiving written consent by the City Council;
 - D. The lease for the ITB/Cordova Provider facility that is adjacent and attached to the DeLong Dock shall be in exchange for 8% of the gross revenues generated by wharfage and moorage fees at the ITB/Cordova Provider facility;
 - E. Under the lease for the ITB/Cordova Provider facility, ARRC shall be responsible for maintaining the leased area but the City shall be responsible for any large improvements to the Dock and ARRC shall provide the City

access as needed to install any such improvements and shall agree to maintain them as described in the terms of the lease;

- F. ARRC shall provide the City 40% of net revenues in wharfage and moorage generated on the DeLong Dock for 2017, excluding those revenues generated by the ITB/Cordova Provider facility;
- G. ARRC recognizes that Smitty's Cove is a popular recreation spot for scuba divers and Whittier visitors and agrees to provide legal public vehicular, ramp and pedestrian access to Smitty's Cove for public use;
- H. ARRC also agrees to provide legal public vehicular and pedestrian access across ARRC property to permit the City and the public to access the City-owned DeLong Dock; and
- I. Both parties agree that any agreement between the parties is not effective unless and until the City issues a mining permit to ARRC allowing it to recontour ARRC-owned land adjacent to Tract A and rezones ARRC-owned parcels adjacent to Tract A from commercial to industrial use; and
- J. The City agrees to provide legal access across the southwest corner of Tract W to permit ARRC to access Tract A from existing ARRC property located to the west of Tract W.
- K. The City recognizes that ARRC's development of Tract A and adjacent ARRC-owned parcels for industrial use will require the placement of railroad tracks onto Tract A and that routing such tracks from existing ARRC property to Tract A will require ARRC either to retain ownership of or to have exclusive use rights over a portion of Tract W at its southwest corner. The City is willing to provide ARRC with exclusive rights to such portion of Tract W and will continue to discuss potential ownership rights to the portion at issue, for the sole purpose of allowing safe and unimpeded operation of trains upon said tracks; and
- L. Both parties agree that if both of the actions listed in Item I and a decision by the City as to whether ARRC's rail access across Tract W will be in the form of fee simple ownership or exclusive use rights, as described in Item K, above, have not occurred on or before January 1, 2018, the agreement evidenced by this statement of terms shall terminate, provided that said deadline can be extended upon the mutual written agreement of the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

I, hereby attest that the essential terms identified above are an accurate reflection of the terms agreed upon by the parties for presentation and approval by the Whittier City Council and the ARRC Board of Directors.

Daniel Blair

Daniel Blair, Whittier Mayor

Date: 8/22/17

Bill O'Leary

Bill O'Leary, ARRC President and CEO

Date: 8/10/17