

## **MEMORANDUM of AGREEMENT**

This Memorandum of Agreement memorializes certain agreements reached between the parties hereto regarding the construction of the SEWARD HIGHWAY MP 105-107, WINDY CORNER PROJECT ("Project") located on the Seward Highway between Anchorage and Girdwood. Improvement of certain public facilities that are subject to this agreement include reconstruction of the Seward Highway between mileposts 105 and 107, realignment of the Alaska Railroad Corporation (ARRC) corridor as required to accommodate the road realignment, development of a material source, and the creation of project-related Chugach State Park visitor facilities. This agreement is intended to address specifically the Windy Corner Project, although acknowledges that the parties have entered into similar agreements in the past for other projects in the Seward Highway corridor.

### **I. PARTIES**

This MEMORANDUM of AGREEMENT ("MOA") is by and between the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES ("DOT&PF"), whose address is P.O. Box 196900, Anchorage, Alaska 99519-6900, and the STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES ("DNR"), whose address is Office of the Commissioner, 550 West Seventh Avenue, Suite 1400, Anchorage, Alaska 99501-3561, hereinafter referred to collectively as the "Parties". Inclusive within the DNR organization is the Chugach State Park, hereinafter referenced as 'CSP'.

### **II. RECITALS**

**WHEREAS, the Parties acknowledge and agree that:**

1. Each party to this MOA is a public entity with a separate mission and diverse functions, managing land or facilities along Turnagain Arm between Potter Station and Girdwood, Alaska, which includes the portion of the Seward Highway known as 'Windy Corner'. The affected lands encompass both a portion of the Chugach State Park and the transportation and utility corridors of the Seward Highway (hereinafter referred to as the "Project Area of Interest");
2. It is the Parties' intention for this MOA to express a mutual commitment to cooperative planning, development and operation of their diverse functions, while recognizing that each function is of significant public benefit, all of which can be compatible and complementary, with sufficient good faith efforts by all Parties;
3. CSP was created, in part, to protect areas of unique and exceptional scenic value, and to provide public recreational opportunities by establishing areas for specific uses and constructing the necessary facilities for public uses in those areas. Scenic viewing, recreating along the highway corridor, and driving for pleasure along the Seward Highway are primary public recreational uses in the Turnagain Arm portion of CSP. Enhancing the scenic and recreational values of CSP is an important consideration in the design and construction of the highway and railroad improvements to which this agreement pertains;
4. The Seward Highway provides the sole highway link between the Kenai Peninsula and the remainder of the state highway system, is an interstate highway on the National Highway System, a State Scenic Highway, a National Scenic Byway, and an All-American Road;
5. That portion of the railroad located within the Project Area of Interest is a part of the sole railway link between the open water ports of Seward and Whittier, the Kenai Peninsula, and the

remainder of the ARRC transportation system. The Alaska Railroad transports both passengers and freight and is an essential government function and a critical component of the state's transportation infrastructure;

6. Over the past 40 years, the section of the Seward Highway located within the Project Area of Interest (MP 105-107) has one of the highest number of high-severity crashes of any segment between Potter Station and Girdwood.

7. The realignment and/or widening of the Seward Highway and the related relocation of ARRC facilities within the Project Area of Interest will significantly enhance the reliability and safety of these vital transportation facilities.

8. Construction of separated highway lanes and adding better designed buffer zones between the industrial use that occurs in the railroad corridor and the traveling and recreating public, will decrease the opportunity for incidents of trespass, disruption to railroad operations, and personal injury.

9. The realignments and relocations of the highway, railroad and utility facilities will involve the establishment and transfer of new rights-of-way, easements, and other property interests as well as the relinquishment of abandoned rights-of-way and easements through CSP;

10. The realignment and relocation of the various rights-of-way will help identify and resolved any unclear property management boundaries within the Project Area of Interest;

11. Wherever possible, it is in the public interest for DOT&PF to relinquish to DNR sections of the Seward Highway right-of-way within the Project Area of Interest that are no longer necessary for transportation purposes so that those sections may be used for CSP facilities, such as parking areas, interpretive sites, and other similar, beneficial uses;

**AND WHEREAS**, in recognition of the principles contained in the foregoing recitals, the Legislature of the State of Alaska adopted findings and policy under Ch. 116 SLA 2000 effective June 7, 2000 (the 2000 Legislation), regarding the Parties and the public benefit of the improvements herein described that authorized the "...grants or conveyances of interests in public land among the [Parties] to relocate or widen the Seward Highway, to relocate railroad facilities, and to relocate adjacent utility facilities from Potter Station to Girdwood...".

**AND WHEREAS**, the 2000 Legislation authorized DNR to grant a highway easement to DOT&PF and receive land or interests in land from DOT&PF in exchange for the highway easement, upon a finding from the Commissioner of DNR that any grant or conveyance for the purpose of widening or relocating transportation facilities within the Project Area of Interest "would not significantly adversely affect the purposes for which the Chugach State Park was established."

**NOW, THEREFORE, in order to:**

1. Implement the intent of the Legislature as expressed in the 2000 Legislation;
2. Memorialize the agreement of the Parties as to the principles and procedures to be used to accomplish the relocation of the DOT&PF right-of-way, the ARRC transportation and utility corridor, and other utilities, with safety of use and operations being a high priority;

3. Establish the procedures and methods to be used to prepare and provide all necessary information to the Commissioner of DNR for a finding of whether the relocation of facilities and exchanges of property interests between the Parties would significantly adversely affect the purposes for which the CSP was established;

4. Provide for improvements to the Seward Highway, associated parking, turnout areas, and other highway related recreational facilities; and

5. Reflect the intent of the Parties to cooperate in planning, design, construction, and operation of their respective facilities within the Project Area of interest; the Parties agree to the principles and terms specified herein.

### **III. Existing Property Interests**

DNR, DOT&PF, and ARRC currently hold property interests within the Project Area of Interest, within which their respective facilities have been constructed. The following paragraphs generally describe those property interests:

1. DNR manages the legislatively designated Chugach State Park, which encompasses the Project Area of Interest. Under AS 41.21.121 the park is established for the following reasons.

- a. To protect and supply a satisfactory water supply for the use of the people;
- b. To provide recreational opportunities for the people by providing areas for specified uses and constructing the necessary facilities in those areas;
- c. To protect areas of unique and exceptional scenic value, to provide areas for the public display of local wildlife;
- d. To protect the existing wilderness characteristics of the easterly interior area and;
- e. The eastern area of the park shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.

2. DOT&PF has a 300-foot right-of-way, 150 feet each side of the existing Seward Highway centerline. The DOT&PF right-of-way has been relocated or straightened on numerous occasions since the original construction of the Seward Highway. DOT&PF and DNR have assumed that the right-of-way has moved with relocation of the highway centerline. Most recently, the Seward Highway right-of-way was relocated under a Memorandum of Agreement between DNR and DOT&PF dated August 10, 1990, and amended by a Memorandum of Understanding August 26, 1993 (1993 MOU);

3. ARRC has a 200-foot corridor, 100 feet each side of the railroad centerline as established by U.S. Survey Nos. 9010-14 and conveyed to the corporation under the Alaska Railroad Transfer Act of 1982 ("ARTA"), Pub., Law 468, by Exclusive License dated January 5, 1985. Pursuant to ARTA, the ARRC is entitled to a patent to said corridor conveying the full interest of the United States therein, but in any event not less than an exclusive use easement as defined by 46 U.S.C. §1202(6).

4. The DOT&PF right-of-way and the ARRC corridor overlap in part. By a Blanket Permit dated April 7, 1989, ARRC Contract No. 6012, DOT&PF and ARRC agreed on highway use of the ARRC corridor in various locations in Southcentral Alaska. DOT&PF and ARRC agreed, by the 1993 MOU, to modify the Blanket Permit to apply the management and other provisions of the 1993 MOU to the Bird Point-to-Girdwood segment of the highway improvement project.

5. The Project Area of interest also encompasses utility easements, permits and rights-of-way aligned generally within or adjacent to the ARRC corridor and DOT&PF right-of-way.

#### **IV. Construction and Relocation Plans**

DOT&PF is the lead agency in accomplishing the Seward Highway Windy Corner Project realignment/relocation goals herein specified, in cooperation with DNR and ARRC. It is DOT&PF's direct responsibility to design, schedule, budget, build, and maintain the highway realignments envisioned, consistent with AS 19.05.030 and 040. In addition, it will be DOT&PF's direct responsibility to design, schedule, budget, and build the relocated railroad facility and the relocated appurtenant utilities affected by the highway realignment project, consistent with AS 19.25.020.

The Parties agree that the realignment and relocation of the highway, railroad, and utilities within the Project Area of Interest will take place over several years and be accomplished over several construction seasons.

Pursuant to the foregoing, the Parties agree to undertake and perform the following duties:

**DOT&PF herewith agrees to:**

1. Deliver to DNR, within one month of the request by DNR, all information deemed necessary by the Commissioner of DNR to decide whether the grant or conveyance of easements necessary for construction and operation of the relocated highway, railroad and utilities, including any material site(s) necessary for construction, and the receipt of excess right-of-way and constructed CSP facilities, would not significantly adversely affect the purposes for which the Chugach State Park was established. At a minimum, a permit application will be required for DNR's analysis of any proposed extraction of construction materials from within the CSP boundaries;
2. Cooperate with DNR during the final design and construction of the relocated highway, railroad and utilities, including any material site(s) necessary for construction;
3. In conjunction with DNR, DOT&PF will design and construct two visitor parking/recreational access areas, using the excess highway right-of-way received by DNR in exchange for any granted highway easement, for CSP access and scenic/wildlife viewing alongside the new highway alignment;
4. Recognize the scenic and recreational values of the Seward Highway corridor within the CSP and, insofar as practical, design, build, and maintain the Area of Interest in a manner compatible with and supportive of those values;
5. Prepare sufficient property appraisals, environmental analysis and other documentation to facilitate conversion of the Project Area of Interest lands from Land and Water Conservation Fund (LWCF) protection to unencumbered state property by removing LWCF restrictions on CSP Land with National Park Service approval and allow the Project to relocate the road and railroad facilities and to utilize material from within CSP;
6. Work with DNR to finalize the new transportation and utility corridor rights-of-way and to relinquish the no longer necessary highway rights-of-way to DNR for use as CSP visitor parking/recreational access areas or for use as parkland. Conduct all land title research and prepare all property interest transfer documents or conveyance plats with the cooperation and assistance of DNR's Division of Mining, Land and Water's Realty Services Section and, with respect to existing and relocated railroad corridor, with the cooperation and assistance of ARRC's Real Estate Department.

7. Cooperate with DNR in the consideration of any DOT&PF permit application for authorization to extract construction materials from designated material site(s) for use within the Project Area of Interest. As part of the consideration of DOT&PF's request for authorization, DNR will assist DOT&PF in the planning of the eventual remediation measures for any designated material site(s);

8. Cooperate with DNR in the request for highway and railroad easements to DOT&PF and ARRC for the highway and rail corridors as needed to encompass the new alignments. It is envisioned that these easements will be transferred to DOT&PF and ARRC within 30 days of any finding by the Commissioner of DNR under the authority of the 2000 Legislation. As part of the consideration of the granting of highway and railroad easements, DNR and CSP will assist DOT&PF in the planning of any eventual remediation measures for any designated material site(s);

9. Provide to DNR after the Project construction is completed the as-built surveys of all relocated highway and railroad rights of way.

10. Cooperate with DNR and provide technical support in administrative appeal or legal challenge to any decision made by the Commissioner of DNR under the authority of the 2000 Legislation or other applicable state or federal law;

**DNR herewith agrees to:**

1. Consider all information deemed necessary by the Commissioner of DNR to decide whether the grant or conveyance of easements necessary for construction and operation of the relocated highway, railroad and utilities, including any permit application for material site(s) within CSP necessary for construction, would not significantly adversely affect the purposes for which the Chugach State Park was established;

2. Provide to the Commissioner of DNR, within 6 months of the effective date of this MOA, a recommended decision and any analysis to support the Commissioner of DNR's finding under the authority of the 2000 Legislation.

3. Cooperate with DOT&PF during the final design, construction and relocation of various portions of the Windy Corner Project, the tracks of the ARRC, and related visitor parking/recreational access areas within the Project Area of Interest;

4. Facilitate and finalize the conversion of the lands necessary for the Project from LWCF protected status into unencumbered state ownership;

5. Timely review and provide comments on DOT&PF studies, permit applications, plans and proposed remediation measures for extraction of any construction materials within the Project Area of Interest;

6. Issue any highway easement to DOT&PF and railroad easement to ARRC within 30 days of any finding by the Commissioner of DNR under the authority of the 2000 Legislation. DNR recognizes that ARRC will request an exclusive easement or other property interest that will provide ARRC with sole management authority over the relocated corridor consistent with AS 42.40, including but not limited to the power to issue permits, licenses or other contracts to third parties for activities within the railroad corridor and retain revenues therefrom;

7. Cooperate with DOT&PF in preparation of a facility maintenance and operations agreement which will delegate the responsibilities for the constructed visitor parking/recreational access areas to CSP;

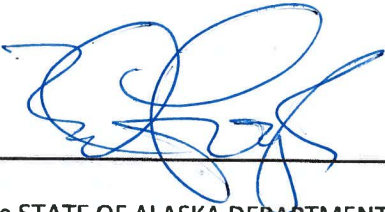
8. Acknowledge that DOT&PF will request a right-of-entry for access to and along the existing Seward Highway alignment, proposed realignments, and any new alignments within the Project Area of interest during construction of the relocated highway, railroad and utilities, to construct roadside facilities, and any other reasonable activities necessary to conduct the activities herein described;

9. Cooperate with DOT&PF and provide technical support in any administrative appeal or legal challenge to any federal environmental authorization for construction of the project.

#### V. Additional Terms

1. This MOA may be amended by consent of the Parties.
2. Nothing in this MOA is intended to conflict with any federal, state, or local law or regulation.
3. The term of this MOA is ten (10) years, unless extended or terminated sooner by mutual consent or otherwise terminated due to a material breach at the option of the non-breaching party.

The Parties do herewith accept and agree to the principles and obligations herein set forth as evidenced by their signatures below.

  
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DEPUTY COMMISSIONER 3/13/17  
For the STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES

  
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STEVEN P. HATTEN, DEPUTY COMMISSIONER, 3/6/2017  
For the STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES