

By: Administration
Adopted: October 12, 2015
Vote: Graham, O'Barr, Sullivan-Leonard, Wall, and Wilson in favor
Buswell absent

**City of Wasilla
Resolution Serial No. 15-30**

A resolution of the Wasilla City Council accepting the transfer of ownership of the Wasilla Depot Building from the Alaska Railroad Corporation through a Bill of Sale.

WHEREAS, the Alaska Railroad Corporation is proposing to convey the Wasilla Depot Building to the City of Wasilla in consideration of the public benefits to the community at no cost to the city; and

WHEREAS, the Alaska Railroad Corporation is seeking to divest its interest in the building as it does not support railroad operations; and

WHEREAS, the City of Wasilla is currently leasing the Wasilla Depot Building through a 55 year lease that expires in 2037; and

WHEREAS, the City of Wasilla currently maintains the building in accordance with the terms and conditions of the lease to preserve the depot as a historic landmark; and

WHEREAS, the conveyance will allow the building to be removed from the leased area to a new location in the future when it is in the best interest of the City of Wasilla to preserve and continue use of the building.

NOW, THEREFORE, BE IT RESOLVED, the Wasilla City Council hereby authorizes the mayor to execute a bill of sale with the Alaska Railroad Corporation for the conveyance of the Wasilla Depot Building, Alaska Railroad Building No. 160-01 and associated improvements.

ADOPTED by the Wasilla City Council on October 12, 2015.


BERT L. COTTLE, Mayor

ATTEST:



KRISTIE SMITHERS, MMC, City Clerk

[SEAL]

CITY COUNCIL LEGISLATION STAFF REPORT

Resolution Serial No. 15-30: Accepting the transfer of ownership of the Wasilla Depot Building from the Alaska Railroad Corporation through a Bill of Sale.

Originator: Mayor Bert L. Cottle
Date: September 29, 2015

Agenda of: October 12, 2015

Table with 4 columns: Route to, Department Head, Signature, Date. Rows include Recreation & Cultural Services Director, Finance Director, Public Works Director, Deputy Administrator, and City Clerk.

Reviewed by Mayor Bert L. Cottle: [Signature] 09:29:2015

Fiscal Impact: [] yes [x] no

Account name/number:
Attachments: Bill of Sale and photograph of depot building (5 pages)

Summary Statement: The Alaska Railroad Corporation is proposing to convey the Wasilla Depot Building to the City of Wasilla through a Bill of Sale. The Alaska Railroad is seeking to divest its interest in the Wasilla Depot Building as it is not used for railroad operations.

The City of Wasilla is currently leasing the building through a 55 year lease that expires in 2037. The City of Wasilla currently maintains the building in accordance with the terms and conditions of the lease to preserve the depot as a historic landmark. The City of Wasilla currently carries property insurance on the depot building.

The conveyance will allow the building to be removed from the leased area to a new location in the future when it is in the best interest of the City of Wasilla to preserve and continue use of the building.

Staff Recommendation: Adopt Resolution Serial No. 15-30.

BILL OF SALE

The **Alaska Railroad Corporation** ("ARRC" or "Seller"), a public corporation organized under AS 42.40, whose address is P. O. Box 107500, Anchorage, Alaska 99510-7500, in consideration of the public benefits to the residents of the City of Wasilla and the State of Alaska to be realized by the conveyance effectuated herein and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, sell, transfer and deliver to the **City of Wasilla** ("Buyer"), an Alaska municipal corporation, whose mailing address is 290 East Herning Avenue, Wasilla, Alaska 99654, (i) that certain building known as the Alaska Railroad Corporation's Wasilla Depot Building, designated as ARR Bldg. No. 160-01; (ii) appurtenances thereto, i.e., fuel oil systems and septic systems; and (iii) other improvements associated with the Wasilla Depot Building, including but not limited to the loading platform, buildings, foundations and footings to buildings, personal property, trash, vehicles, utilities, landscaping and equipment, all located within the Alaska Railroad Corporation's mainline track right-of-way at approximate Alaska Railroad Milepost 159.87, in Wasilla, Alaska. The Wasilla Depot Building, appurtenances and associated improvements described above shall be referred to collectively herein as "the Improvements." By conveyance of the Improvements pursuant to this Bill of Sale, Buyer shall not acquire any interest whatsoever in the land upon which the Improvements are currently located other than any leasehold interest in said land held by Buyer under the existing long-term lease, ARRC Contract No. 5480 ("the Lease"). The Improvements are transferred to the Buyer on an "**AS IS WHERE IS**" basis at their current location.

The Improvements and the parcel of land upon which the Improvements are located have most recently been leased to Seller by Buyer under a long-term lease, ARRC Contract No. 5480 ("the Lease"). The grant, sale, transfer and delivery of the Improvements effected by this document are contingent upon execution and performance by Seller of a supplement to the Lease that amends the Lease to remove the Improvements from the premises subject to the Lease, while at the same time retaining the land component of the leased premises ("the Supplement"). The failure of Seller to execute the Supplement shall render the grant, sale, transfer and delivery of the Improvements to Buyer null and void from the outset. Neither the execution of this Bill of Sale nor the execution of the Supplement shall affect in any way any liabilities or obligations of Buyer under the Lease that arose or are based upon events occurring before the execution of this Bill of Sale or the Supplement, which shall remain as liabilities and obligations under the Lease as amended by the Supplement.

As specified in the Supplement, Buyer may remove the Improvements from the premises subject to the Lease, or may demolish the Improvements, at any time prior to the expiration of the Lease, provided that the land is restored as required by the Lease as amended by the Supplement. In any event, Buyer shall demolish and/or remove the Improvements from Seller's property on or before the expiration date of the Lease or any mutually-agreed extension thereto, provided that such demolition or removal shall meet all requirements for those activities under the Lease as amended. As also specified in the Supplement, Buyer agrees that it shall not undertake reconstruction, expansion or significant improvements to the Improvements while they remain on Seller's land, and that any work performed by Buyer on the Improvements other than minimal alterations or standard maintenance and repair must be pre-approved by Seller.

Buyer agrees to save harmless, defend and indemnify Seller from any and all claims, demands, actions, debts, liabilities, and judgments, costs, and attorney's fees, in any manner arising out of, caused by, claimed on account of, or predicated upon injuries to or the death of any and all persons whomsoever, in any manner related or connected, directly or indirectly, to the Improvements; and Buyer further agrees to be liable for and to save Seller harmless from and on account of damages of any kind which Seller may suffer as the result of the use or removal or demolition of the Improvements by Buyer.

Seller makes no representations of any kind as to the condition of the Improvements or as to any use or purpose for which the Improvements are intended by the Buyer. Seller hereby specifically disclaims all warranties of every type whatsoever, both express and implied, and specifically including, but not limited to, warranties of merchantability and fitness for a particular purpose concerning the Improvements. The Improvements are being transferred hereunder on an "**AS IS-WHERE IS**" basis and Buyer agrees that it has had sufficient opportunity to inspect the Improvements and accepts the Improvements in their present condition.

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

SELLER:

ALASKA RAILROAD CORPORATION

Dated: _____

By: _____

James W. Kubitz
Vice President Real Estate & Corporate Planning

BUYER:

CITY OF WASILLA

Dated: _____

By: _____

Printed Name: _____

Its: _____

(Print Title)

SUPPLEMENT

THIS SUPPLEMENT is made on the day executed by the last signatory hereto, by and between the **ALASKA RAILROAD CORPORATION** ("Lessor"), a public corporation created pursuant to AS 42.40, whose mailing address is P.O. Box 107500, Anchorage, Alaska 99510-7500, and **CITY OF WASILLA** ("Lessee"), an Alaska municipal corporation, whose mailing address is 290 East Herring Avenue, Wasilla, Alaska 99654.

Recitals

A. Lessor is the lessor of real property located in the Palmer Recording District, Third Judicial District, State of Alaska, and more particularly described in paragraph 1 of this Supplement (the "Leased Premises"), under that certain lease, Contract No. 69-25-0003-5480, dated September 30, 1982, between the federally owned Alaska Railroad, as lessor, and Lessee as lessee (the "Lease").

B. The Leased Premises includes (i) the Alaska Railroad's Wasilla Depot and associated appurtenances and improvements including but not limited to the loading platform, buildings, foundations and footings to buildings, personal property, trash, vehicles, utilities, landscaping and equipment. (collectively, the "Improvements"); and (2) a parcel of land upon which the Improvements are located (the "Land"). The legal description of the Land in the initial Lease was incorrect. That legal description was corrected by operation of Supplement No. 1 to ARRC Contract No. 69-25-0003-5480, dated December 29, 1982. The correct legal description of the Land is reflected in the legal description set forth in paragraph 1 of this Supplement.

C. Pursuant to the Alaska Railroad Transfer Act, 45 U.S.C. §1201 et seq. and the Alaska Railroad Corporation Act, AS 42.40.010 et seq., Lessor is the successor in interest to the federally owned Alaska Railroad as lessor under the Lease, which is now administered as Contract No. 5480.

D. The Lease was amended by operation of Supplement No. 2 to Contract No. 5480, dated April 20, 1993, to reflect Lessor's agreement that Lessee need not pay fair market value rent for the remaining term of the Lease based on the status of the Leased Premises as non-operating property of Lessor and on Lessee's intended public service use of the Lease Premises.

E. The parties now agree that it would serve the public interest and the mutual interests of the parties for Lessor to convey ownership of the Improvements, but not ownership of the Land, to Lessee on the terms and conditions set forth herein. Accordingly, simultaneously with the execution of this Supplement, Lessor intends to convey the Improvements to Lessee via a bill of

sale, with said conveyance conditioned upon the execution of this Supplement by the parties. The parties intend by this Supplement to remove the Improvements from the legal description of the Leased Premises and to recognize the Improvements henceforth as Lessee-owned improvements located on the Leased Premises. The parties further intend to clarify the requirements of the Lease with respect to the eventual removal of the Improvements from the Leased Premises at or before the termination of the Lease.

Agreement

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties agree that the Lease be amended as follows:

1. The legal description contained on page 1 of the Lease, as amended by Supplement No. 1 of the Lease, is hereby deleted in its entirety and the following inserted in place thereof:

The Railroad hereby leases to the Lessee the following described property:

The north 45 feet of the southerly 85 feet of the Railroad's mainline track right-of-way from the east right-of-way line of the State of Alaska crossing at track Survey Station 5662+12.60, Milepost 159.87 (Main Street extended) east to a point 150 feet east of the east side of the Alaska Railroad's Wasilla Depot Building.

2. The Improvements, which are being conveyed to Lessee simultaneously with the execution of this Supplement, shall henceforth be Lessee-owned improvements under the terms and conditions of the Lease, including but not limited to the terms and conditions of the section designated as "SECOND" on pages 7 and 8 of this Lease.

3. Condition No. 6 of the Lease is hereby deleted in its entirety and the following inserted in place thereof.

6. Lessee agrees that, should the Railroad have a requirement for the Leased Premises for Railroad operations, other than as set forth in Condition 5 of this Lease, the Railroad may terminate the Lease on 90 days' written notice to the Lessee. Provided, however, the Railroad shall reimburse Lessee for the value of any improvements made to the Leased Premises other than the Wasilla Depot Building and associated appurtenances and improvements to the extent such value has not been recaptured by Lessee as an off-set against fair market rentals due the Railroad. Notwithstanding the foregoing, nothing in this Condition 6 shall require the Railroad to pay Lessee for the value of the Wasilla Depot Building or any associated appurtenances or improvements or to affect in

any way the Railroad's right, as provided in the section entitled "SECOND" on pages 7 and 8 of this Lease, to require Lessee to remove or to pay the costs of Lessor's removal of the Wasilla Depot Building and associated appurtenances and improvements from the Leased Premises upon termination of the Lease.

4. Condition No. 7 of the Lease is hereby amended by adding the following sentence to the end thereof.

Requests for modifications or alterations of the Wasilla Depot Building or associated appurtenances or improvements requested by Lessee under this Condition No. 7 shall be limited to requests for minimal modifications or alterations or standard maintenance and repairs, and shall not include requests for substantial modifications or alterations, such as reconstruction, expansion or other substantial improvements to the Wasilla Depot Building or associated appurtenances or improvements.

5. The section of the Lease designated as "SECOND" on pages 7 and 8 of the Lease is hereby amended by adding the following sentences to the end thereof.

Removal of any buildings or other improvements subject to this section of the Lease shall result in leaving the premises in a broom-clean and leasable condition, which shall include removal of all improvements, buildings, foundations and footings to buildings, personal property, trash, vehicles, utilities, landscaping and equipment. Any excavation on the property, including excavation to remove Lessee's buildings or other improvements, shall be filled and compacted with material approved by Lessor.

EXCEPT AS HEREIN AMENDED, all other terms and conditions of the aforesaid Lease, as they may have been previously amended, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Supplement as of the dates set out below.

ALASKA RAILROAD CORPORATION

Dated: _____

By: _____
James W. Kubitz

Vice President, Corporate Planning & Real Estate

CITY OF WASILLA

Dated: _____

By: _____

Printed Name: _____

Printed Title: _____

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by James W. Kubitz, Vice President of Corporate Planning & Real Estate of the Alaska Railroad Corporation, a public corporation created by Alaska Statute 42.40, on behalf of the corporation.

Notary Public in and for Alaska
My Commission expires: _____

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, the _____ of the City of Wasilla, an Alaska municipal corporation, on behalf of the municipal corporation.

Notary Public in and for Alaska
My Commission expires: _____

