

ALASKA RAILROAD CORPORATION

**457 DEFERRED
COMPENSATION PLAN**

2020 Restatement

**ADOPTED EFFECTIVE
December 1, 2020**

Article I.	INTRODUCTION	1
1.1	Introduction	1
Article II.	DEFINITIONS	2
2.1	Account	2
2.2	Basic Elective Deferrals	2
2.3	Board of Directors	2
2.4	Code	2
2.5	Committee	2
2.6	Compensation	2
2.7	Deferral Election	3
2.8	Elective Catch-up Deferrals	3
2.9	Eligible Employee	3
2.10	Employer	3
2.11	Investment Funds	3
2.12	Normal Retirement Age	3
2.13	Participant	4
2.14	Participant Account	4
2.15	Plan	4
2.16	Plan Year	4
2.17	Rollover Account	4
2.18	Severance From Employment	4
2.19	Supplemental Elective Deferrals	4
2.20	Trust	4
2.21	Trust Agreement	4
2.22	Valuation Date	5
Article III.	PARTICIPATION	6
3.1	Eligibility to Participate	6
3.2	Enrollment in the Plan	6
Article IV.	CONTRIBUTIONS	7
4.1	Deferral Election	7
4.2	Participant Deferrals	7
4.3	Plan Limitations	8
4.4	Rollover Account	9
Article V.	ACCOUNT ADMINISTRATION	10
5.1	Eligible Employee Account	10
5.2	Investment Funds	10
5.3	Investment Earnings/Losses	10
5.4	Change of Elections/Transfers Between Investment Funds	11
Article VI.	VESTING OF ACCOUNT	12
6.1	Vesting of Account	12

Article VII.	IN-SERVICE WITHDRAWALS	13
7.1	In-service Distributions of Small Balances	13
7.2	Other In-service Distributions.....	13
7.3	Loans.....	13
Article VIII.	PAYMENT OF BENEFITS.....	14
8.1	Payment of Benefits	14
8.2	Rollover Out upon Severance From Employment	15
8.3	Required Minimum Distributions	15
8.4	Payment of Death Benefits.....	17
Article IX.	AMENDMENT OR TERMINATION OF PLAN	18
9.1	Amendments Generally.....	18
9.2	Right to Terminate	18
Article X.	MISCELLANEOUS	19
10.1	No Guarantee of Employment	19
10.2	Nonalienation of Benefits	19
10.3	Qualified Domestic Relation Order.....	19
10.4	Taxes and Withholding	19
10.5	Applicable Law	19
10.6	Headings and Subheadings	20
10.7	Severability	20
10.8	Transfer to Purchase Permissive Service Credit	20
10.9	Correction of Errors	20
10.10	Facility of Payment	20
10.11	Notices to Participants and Beneficiaries.....	21
10.12	Notices to Employer or Committee.....	21
Article XI.	ADMINISTRATION OF THE PLAN.....	22
11.1	Plan Administrator	22
11.2	Committee	22
11.3	Organization and Procedures	23
11.4	Duties and Authority	23
11.5	Expenses	24
11.6	Claims Procedure	24
11.7	Appeal Procedure.....	24
Article XII.	INVESTMENT OF THE TRUST.....	26
12.1	Trust Agreement	26
12.2	Exclusive Benefit Rule.....	26

Article I. INTRODUCTION

1.1 Introduction

Alaska Railroad 457 Deferred Compensation Plan (the “Plan”) has been established by the Alaska Railroad Corporation (the “Employer”), a public corporation and instrumentality of the State of Alaska, for the purpose of providing deferred compensation for the exclusive benefit of participants as described in the Plan.

The Plan is intended to comply with the eligible deferred compensation plan requirements of Section 457(b) of the Internal Revenue Code of 1986, as amended and the regulations thereunder, and other applicable law. The Plan is to be maintained according to the terms of this document, and the Employer or its designee shall have the sole authority to construe, interpret, and administer the Plan.

The Plan was established effective September 1, 2004. The Plan was restated effective December 1, 2020 to update terms, make specified changes, and clarify and conform certain provisions.

Article II. DEFINITIONS

Wherever used in the Plan, the following terms have the meanings set forth below, unless otherwise expressly provided:

2.1 Account

Account means the sum of a Participant's separate accounts established in the Plan, which is credited with the contributions made by the Employer on behalf of the Participant pursuant to the Participant's deferral elections described in Section 4.2 of the Plan, any assets transferred into the Participant's account in the Plan pursuant to Section 4.4 of the Plan, and adjusted with any earnings or losses thereon pursuant to Section 5.3 of the Plan.

2.2 Basic Elective Deferrals

Basic Elective Deferrals means the amount of Compensation a Participant elects to defer for any given calendar month that is allocated to the Participant Account as further described in Section 4.2(a)(1) of the Plan and in accordance with the Plan limitations as set forth in Section 4.3 of the Plan.

2.3 Board of Directors

Board of Directors means the Board that governs the Employer.

2.4 Code

Code means the Internal Revenue Code of 1986, as amended.

2.5 Committee

Committee means the Non-Represented Tax Deferred Savings and 457 Plans Committee as from time to time constituted and appointed by the Employer that will be responsible for the administration of the Plan pursuant to Article XI.

2.6 Compensation

Compensation means gross pay paid to an employee by the Employer, excluding car allowance, meals, severance pay, termination pay, injury pay, and "other" pay (as defined by the Employer), and including any salary reduction amounts under a 401(k) plan, deferral amounts under Article IV of the Plan, "picked up" contributions to a retirement plan pursuant to Section 414(h) of the Code, and any employee salary reduction contributions to any other benefit plan of the Employer. Compensation shall also mean fees for service as a member of the Board of Directors. Compensation shall not include amounts attributable to any period during which the individual is not an Eligible Employee. Compensation shall not include accumulated, unused sick leave or annual leave (vacation) upon termination, personal leave or annual leave cash in, or severance or release pay. Notwithstanding the previous sentence, effective January 1,

2021, annual leave that is required to be cashed out as excess carryover leave is included in Compensation and may be deferred in accordance with the special rules in Section 4.2(a)(4).

2.7 Deferral Election

Deferral Election means the written salary reduction agreement entered into by a Participant and the Committee pursuant to the Plan and that is made on a form and in the manner described in Section 4.1 of the Plan.

2.8 Elective Catch-up Deferrals

Elective Catch-up Deferrals means the additional deferral amount of Compensation for a Participant who is eligible to make Basic Elective Deferrals under the Plan and who has attained age 50 before the close of the Plan Year as further described in Section 4.2(a)(2) of the Plan and in accordance with the Plan limitations set forth in Section 4.3 of the Plan.

2.9 Eligible Employee

Eligible Employee means any full-time and part-time non-represented employee who is employed by the Employer and any member of the Board of Directors. Eligible Employee shall not include special services employees, leased employees, or individuals classified by the Employer as independent contractors, regardless of whether such classification is controlling for federal employment tax purposes or under any other applicable federal, state, or local law, and regardless of whether such individual is classified as an employee by a court or by any federal, state, or local agency.

2.10 Employer

Employer means the Alaska Railroad Corporation, a public corporation and instrumentality of the State of Alaska within the meaning of Section 414(d) of the Code, or any successor by merger, purchase, or otherwise, with respect to its employees.

2.11 Investment Funds

Investment Funds means one or more investment options of the regulated investment companies selected by the Committee and made available under the Plan by the Employer for designation by Participants under the Plan. The term Investment Funds shall also include any additional or successor investments that may be selected by the Committee.

2.12 Normal Retirement Age

Normal Retirement Age means age 58.

2.13 Participant

Participant means an Eligible Employee who is participating in the Plan in accordance with the provisions of Article III.

2.14 Participant Account

Participant Account means the separate account established in the name of each Participant to maintain the Basic Elective Deferrals, Elective Catch-up Deferrals, and Supplemental Elective Deferrals in accordance with Section 4.2 of the Plan and shall include the Participant's Rollover Account.

2.15 Plan

Plan means the Alaska Railroad 457 Deferred Compensation Plan, as set forth in this document and as amended from time to time.

2.16 Plan Year

Plan Year means the calendar year, the twelve- (12-) consecutive month period beginning each January 1 and ending on December 31.

2.17 Rollover Account

Rollover Account means the separate account established in the name of each Participant to maintain rollover contributions in accordance with Section 4.4 of the Plan.

2.18 Severance From Employment

Severance From Employment occurs if an employee dies, retires, quits, or is involuntarily terminated by the Employer. In the case of a director, Severance From Employment means the cessation of services as a director in good faith and in a complete termination of the individual's status as a director.

2.19 Supplemental Elective Deferrals

Supplemental Elective Deferrals means the amount credited to an Eligible Employee's Participant Account as further described in Section 4.2(a)(3) of the Plan and in accordance with the limitations set forth in Section 4.3 of the Plan.

2.20 Trust

Trust means the trust fund or funds that holds the assets of the Plan and established by the Trust Agreement.

2.21 Trust Agreement

Trust Agreement means the agreement entered into between the Employer and the trustee under which Plan assets are held and invested.

2.22 Valuation Date

Valuation Date means any business day the New York Stock Exchange is open for trading.

Article III. PARTICIPATION

3.1 Eligibility to Participate

An employee or member of the Board of Directors shall be eligible for participation in the Plan on the date such individual becomes an Eligible Employee.

3.2 Enrollment in the Plan

Eligible Employees may enroll in the Plan by completing a written form in accordance with Section 4.1 of the Plan and delivering the same to the Committee or designee in such time period as the Committee may designate prior to the date the forms are to be effective.

Article IV. CONTRIBUTIONS

4.1 Deferral Election

- (a) **General.** All deferrals of Compensation made under the Plan shall be made by payroll deductions, or by deductions from fees for services by members of the Board of Directors, pursuant to a written agreement between the Participant and the Employer that (i) is entered into before the beginning of the calendar month with respect to which it becomes effective, and (ii) authorizes the Employer to reduce the Participant's current Compensation for future payment in accordance with the provisions of the Plan.
- (b) **Changes.** A Participant may change or suspend a deferral election pursuant to the written agreement with the Employer as of the first day of any month, provided that notice of such change or suspension is given to such Employer within such reasonable period of time before the beginning of such month as the Committee may require for the purposes of the Plan.
- (c) **Limitations.** The Employer or the Committee may reduce or completely suspend the amount being deferred under a Participant's deferral election pursuant to the written agreement at any time if such reduction or suspension is deemed by such Employer or the Committee to be necessary or appropriate to satisfy the requirements and limitations applicable to an eligible deferred compensation plan within the meaning of Section 457 of the Code.

4.2 Participant Deferrals

- (a) **General.** A Participant may elect to make the following deferrals into the Participant Account in a manner prescribed by the Committee and as further described below:
 - (1) Basic Elective Deferrals in any whole percentage amount of such Participant's Compensation.
 - (2) Elective Catch-up Deferrals if the Participant has attained age 50 before the close of the Plan Year and defers the maximum Compensation allowable as Basic Elective Deferrals as specified in Section 4.3(a) in any whole percentage of such Participant's Compensation.
 - (3) Supplemental Elective Deferrals if the Participant is in the last three (3) taxable years ending before the year in which the Participant attains Normal Retirement Age in any whole percentage amount of such Participant's Compensation.
 - (4) Compensation attributable to annual leave that is required to be cashed out as excess carryover leave under Section 8.A.6 of Policy # 65-10 (or its successor policy requiring the cashout of excess carryover leave)

("Leave Policy") may be deferred if the deferral election is submitted under Section 4.1 before the earliest of the following: (i) the last day of the leave year for which such excess carryover was determined, or (ii) the last day of the month before the month in which the cashout would otherwise be paid.

Deferrals shall be subject to the limitations set forth in Section 4.3.

- (b) **Allocation.** The Employer shall contribute any deferrals described in Section 4.2(a) of the Plan to the Eligible Employee's Participant Account.
- (c) **Compensation Change.** The percentage of Compensation that is contributed by the Participant pursuant to this Section 4.2 shall automatically apply to increases and decreases in such Participant's Compensation.
- (d) **Effective.** A Participant's election will remain in effect until the Participant elects to change the percentage as described in Section 4.1 of the Plan. Notwithstanding the above, an election to defer a cashout of excess carryover leave under Section 4.2(a)(4) shall apply only to the year specified in the deferral election and shall not apply to any future period.

4.3 Plan Limitations

- (a) **General.** The maximum amount of Compensation that may be deferred by a Participant under the Plan for any taxable year shall not exceed the lesser of:
 - (1) The applicable dollar amount as determined under Section 457(e)(15) of the Code (\$19,500 for calendar year 2020 and as adjusted for the cost-of-living thereafter), or
 - (2) One hundred percent (100%) of the Participant's Compensation for the taxable year.
- (b) **Age 50.** Notwithstanding the foregoing, the maximum amount of Compensation that may be deferred by a Participant under the Plan for any taxable year where the Participant has attained age 50 before the close of the Plan Year shall not exceed the limitation of Section 457(e)(18) of the Code that is the greater of:
 - (1) The sum of:
 - (A) the general limitation described in Section 4.3(a) of the Plan, plus
 - (B) the applicable dollar amount for the taxable year determined under Section 414(v)(2)(B)(i) of the Code (\$6,500 for calendar year 2020 and as adjusted for the cost-of-living thereafter), or

- (2) If applicable, the amount determined under Section 457(b)(3) of the Code and described in Section 4.3(c) of the Plan.
- (c) **Final Three Years.** The maximum amount of Compensation that may be deferred by a Participant under the Plan for any taxable year that is one of such Participant's last three (3) taxable years ending before the Participant attains Normal Retirement Age shall not exceed the limitation under Section 457(b)(3) of the Code that is the lesser of:
- (1) twice the applicable dollar amount in effect as described in Section 4.3(a)(1) of the Plan; or
 - (2) the sum of:
 - (A) the general limitation described in Section 4.3(a) of the Plan, plus
 - (B) the unused maximum deferrals for prior taxable years.
- (d) **Coordination with Other Plans.** If a Participant participates in more than one Code Section 457 plan, the maximum amount that may be deferred under all such plans shall not exceed the applicable dollar amount determined under Section 457(e)(15) of the Code as adjusted for cost-of-living increases and subject to modification under Section 457(e)(18) of the Code. It shall be the Participant's responsibility to notify the Committee in writing of such participation in other plans in order to avoid exceeding the maximum deferral limitations of Code Section 457.
- (e) Notwithstanding any provision of the Plan to the contrary, contributions with respect to qualified military service will be provided consistent with Section 414(u) of the Code.
- (f) **Correction of Excess Deferrals.** If the deferral on behalf of a Participant for any calendar year exceeds the limitations described in this Section 4.3, then any excess deferral (adjusted for any income or loss in value, if any, allocable thereto) shall be distributed to the Participant.

4.4 Rollover Account

A Participant may elect to rollover pre-tax benefits accrued on behalf of such Participant under a governmental Code Section 457(b) plan into such Participant's Rollover Account of the Plan in a manner prescribed by the Committee.

Article V. ACCOUNT ADMINISTRATION

5.1 Eligible Employee Account

All contributions shall be made to the Trust for the exclusive benefit of the Participants in the Plan. The Committee shall maintain an Account in the name of each Participant to record:

- (a) the amounts of the Basic Elective Deferrals, Elective Catch-up Deferrals, and Supplemental Elective Deferrals pursuant to Section 4.2 of the Plan contributed to the Participant's Participant Account;
- (b) the amount of any rollover contributions pursuant to Section 4.4 of the Plan contributed to the Participant's Rollover Account;
- (c) any investment earnings or losses pursuant to Section 5.3 of the Plan; and
- (d) the payment of benefits to the Participant or the Participant's beneficiary under Article VIII of the Plan.

5.2 Investment Funds

- (a) The Participant's Account shall be invested in one or more of the available Investment Funds as designated by the Participant pursuant to the Deferral Election.
- (b) The Committee shall determine the Investment Funds to be available and may, in its discretion, terminate or change any of the Investment Funds.
- (c) If a Participant fails to make a proper designation, then the Participant's Account shall be deemed to be invested in a default Investment Fund designated by the Committee in a uniform and nondiscriminatory manner.

5.3 Investment Earnings/Losses

- (a) The Participant's Account shall be credited with amounts of investment earnings or debited with amounts of investment losses that correspond to the total investment return earned by the Investment Funds elected by the Participant.
- (b) The designation by a Participant of any Investment Fund shall be made in accordance with rules and procedures established by the Committee.
- (c) The Investment Funds are valued each day the New York Stock Exchange is open for trading.

5.4 Change of Elections/Transfers Between Investment Funds

- (a) A Participant may elect to change or revise the Investment Funds elected at such time and manner permitted by the Committee.
- (b) The Participant will have the right to transfer all or any fraction of the Participant's Account between the available Investment Funds at any time during the Plan Year, except that no transfers may be made into any Investment Fund that prohibits such transfer. Such transfer shall be made in a manner prescribed by the Committee.
- (c) Notwithstanding the above, if a Participant is exchanging to the detriment of an Investment Fund, the trustee or designee may limit transfer and exchange privileges of such Participant.
- (d) Dividends, interest, and other distributions received on the assets held by the Trust in respect to each of the Investment Funds shall be reinvested in the respective Investment Fund.
- (e) The Committee retains the right to review and restrict transfer rights at any time.

Article VI. VESTING OF ACCOUNT

6.1 Vesting of Account

A Participant shall be fully vested in the value of the Participant's Participant Account at all times.

Article VII. IN-SERVICE WITHDRAWALS

7.1 In-service Distributions of Small Balances

- (a) **General Rule.** An active employee with the Employer will be permitted to elect a distribution of any part of the Participant's Account balance or the Participant's entire Account balance if:
- (1) such employee's total Account balance does not exceed \$5,000; and
 - (2) such employee has not made elective deferrals pursuant to Section 4.2 of the Plan for a period of two (2) years or more.
- (b) **Frequency.** An active employee shall be permitted to make only one in-service distribution election of a small balance from the Plan.

7.2 Other In-service Distributions

Notwithstanding Section 7.1 of the Plan, no other type of in-service distributions (*e.g.*, unforeseen emergency) of any kind shall be permitted.

7.3 Loans

Loans will not be permitted under the Plan.

Article VIII. PAYMENT OF BENEFITS

8.1 Payment of Benefits

- (a) **General Rule.** Except as provided in subsections (b) and (d) of this Section 8.1 and Section 7.1 of the Plan, a Participant is entitled to the Participant's entire Account balance as soon as administratively feasible following Severance From Employment with the Employer.
- (b) **Time of Distribution.** A Participant or former Participant may elect benefit payments to commence on any date that is the first day of a month that is no earlier than as soon as administratively feasible following Severance From Employment and not later than the Minimum Distribution Date described in Section 8.3 of the Plan.
- (c) **Revisions.** A former Participant may subsequently revise the benefit payment date from time to time to any date that is the first day of a month that is not later than the Minimum Distribution Date described in Section 8.3 of the Plan.
- (d) **Small Amounts.** Notwithstanding any provision in this Article VIII to the contrary, if an employee is entitled to a distribution under Section 8.1(a) of the Plan, and the value of the Account including the Rollover Account is not greater than \$1,000, such distribution shall be made in a single lump-sum payment in cash as soon as practicable following such Severance From Employment.
- (e) **Form of Distribution.** Subject to the provisions of Section 8.3, distribution of benefits may take one of the following forms, as elected by the Participant:
 - (1) a lump-sum cash payment of the Participant's entire Account balance;
 - (2) a lump-sum cash payment of any portion of the Participant's Account balance; or
 - (3) payments in monthly, quarterly, semiannual, or annual cash installments, as specified by the Participant.

After a Participant has elected to receive benefits in a partial lump sum under Section 8.1(e)(2) above, or an election to receive benefits in installments under Section 8.1(e)(3) above, such Participant may not make another election under this Section 8.1 for a period of one (1) month.

- (f) **Valuation.** When distribution instructions are received and acted upon by the trustee, the amount of the distribution shall be calculated based on the value of the Account as of the most recent Valuation Date.

8.2 Rollover Out upon Severance From Employment

Upon Severance From Employment, with respect to a distribution that is an eligible rollover distribution, a Participant may elect, in accordance with Section 457(e)(16) of the Code, either: (1) a direct rollover to another government Code Section 457(b) plan, a Code Section 401(a) plan, a Code Section 403(b) plan, or an individual retirement account; or (2) a cash payment with twenty percent (20%) federal income tax withholding. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for a period of ten (10) years or more shall not be an eligible rollover distribution.

8.3 Required Minimum Distributions

All distributions under the Plan will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9) and the following sections:

- (a) **Required Beginning Date.** The Participant's Account will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) **Form of Distribution.** Benefits may be paid in any form of distribution allowed under Section 8.1(e) that satisfies Section 8.3(c) as elected by the Participant. If the Participant makes no election that satisfies the requirements of Section 8.3(c) prior to the Participant's required beginning date, benefits on and after the required beginning date shall be paid in installments that satisfy Section 8.3(c).
- (c) **Required Minimum Distribution.** With respect to distributions beginning on the required beginning date, the minimum amount that may be distributed for each distribution calendar year is the lesser of:
 - (1) The quotient obtained by dividing the Participant's Account by the distribution period in the uniform lifetime table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) If the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse the quotient obtained by dividing the Participant's Account by the number in the joint and last survivor table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as the Participant's and spouse's birthdays in the distribution calendar year.
- (d) **Death.** Required minimum distributions will be determined pursuant to the foregoing beginning with the first distribution calendar year and up to and

including the distribution calendar year that includes the Participant's date of death. Thereafter the rules set forth in Section 8.4 shall govern.

(e) Temporary Waiver of Required Minimum Distributions.

- (1) Effective April 1, 2020, notwithstanding this Section 8.3, a Participant who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Section 401(a)(9)(I) of the Code ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either (A) equal to the 2020 RMDs, or (B) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, will not receive those distributions unless the Participant chooses to receive the distribution.
- (2) In addition, notwithstanding Section 8.2, and solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs will be treated as eligible rollover distributions when they are paid with an additional amount that is an eligible rollover distribution without regard to Section 401(a)(9)(I) of the Code.

(f) Definitions. For this Section 8.3, the following definitions apply:

- (1) Designated beneficiary is the person who is designated as the beneficiary under the Plan (including any individual who is a default beneficiary identified under Section 8.4 of the Plan), and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4, Q&A-1, of the Treasury regulations.
- (2) Distribution calendar year is a calendar year for which a minimum distribution is required. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required distribution date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) Life expectancy shall mean life expectancy as computed by use of the single life table in Section 1.401(a)(9)-9 of the Treasury regulations.

- (4) Required beginning date means April 1 following the calendar year in which the Participant attains age 72 or has a Severance From Employment, if later.

8.4 Payment of Death Benefits

Each Participant shall designate a beneficiary on the proper beneficiary form as prescribed by the Committee to receive the Participant's Account in the event of death. If a Participant dies with a balance credited to the Participant's Account, such balance shall be paid to the applicable beneficiary or beneficiaries as follows:

- (a) Upon the death of the Participant, the entire value of the Participant's Account shall be distributed to the beneficiary of record in a single lump sum.
- (b) Notwithstanding the above, if no beneficiary designation is on file with the Committee at the time of the Participant's death or such designation is not effective for any reason then the Participant's beneficiary shall be the following in the order named:
 - (1) Surviving spouse at the date of death.
 - (2) Estate of the Participant.
- (c) Any death benefit will be paid as soon as practicable following the receipt by the Committee of acceptable proof of the Participant's death.
- (d) Distribution of the Participant's Account shall be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death, notwithstanding any other provision of the Plan to the contrary.
- (e) If, with respect to all or any portion of a distribution from the Plan on behalf of a deceased Participant, a direct rollover is made from the Plan to an individual retirement account or annuity described in Section 402(c)(8)(B)(i) of the Code or (ii) established for the purpose of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined in Section 401(a)(9)(E) of the Code) of the Participant and who is not the surviving spouse of the Participant, then (1) the transfer shall be treated as an eligible rollover distribution, (2) the individual retirement account or annuity shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Section 408(d)(3)(C) of the Code), and (3) Section 401(a)(9)(B) of the Code (other than clause (iv) thereof) shall apply to such individual retirement account or annuity.

Article IX. AMENDMENT OR TERMINATION OF PLAN

9.1 Amendments Generally

The Employer reserves the right to amend the Plan at any time. No amendment, however, may reduce the amount credited to a Participant's Account at the time of the amendment's adoption, except as may otherwise be required by law. The Plan may be amended to eliminate future deferrals for existing Participants or to limit participation to existing Participants and employees.

9.2 Right to Terminate

The Employer may terminate the Plan at any time in whole or in part and for any reason. In the event of termination, the Employer may, at its option, pay each Participant the then value of the Participant's Account in one lump-sum payment of cash. Alternatively, the Employer may elect to continue the Plan and make distribution of Participants' Accounts in accordance with their elections and the terms hereof. Termination of the Plan shall not serve to reduce the amount credited to a Participant's Account at the time of termination.

Article X. MISCELLANEOUS

10.1 No Guarantee of Employment

Nothing contained in the Plan shall be construed as a contract of employment between the Employer and any Participant, or as a right of any Participant to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any Participant with or without cause.

10.2 Nonalienation of Benefits

Except as may be required by law and as explained in this Article X, benefits payable under the Plan are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, whether voluntary or involuntary. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits under the Plan shall be void. The Employer shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits under the Plan.

10.3 Qualified Domestic Relation Order

- (a) Notwithstanding any Plan provisions to the contrary, benefits under the Plan may be paid to someone other than the Plan Participant or beneficiary, pursuant to a Qualified Domestic Relations Order ("QDRO"), in accordance with Section 414(p) of the Code.
- (b) To the extent permitted in a QDRO and the Plan, an alternate payee may elect any of the optional forms of benefit that would be available under the Plan to a terminated Participant.
- (c) The Committee shall establish uniform and nondiscriminatory procedures to determine whether an order meets the requirements of Section 414(p) of the Code.

10.4 Taxes and Withholding

For each Plan Year in which the Participant defers a portion of Compensation under the Plan, the Employer will withhold from the Participant's non-deferred Compensation the Participant's share of FICA and other employment taxes.

10.5 Applicable Law

The Plan shall be construed and enforced in accordance with the laws of the State of Alaska.

10.6 Headings and Subheadings

Headings and subheadings in the Plan are inserted for convenience only and are not to be considered in the construction of the provisions.

10.7 Severability

The invalidity and unenforceability of any particular provision of the Plan shall not affect any other provision, and the Plan shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

10.8 Transfer to Purchase Permissive Service Credit

To the extent permitted by the transferee plan, all or a portion of the Participant's Account hereunder may be transferred to a defined benefit governmental plan and no amount shall be includable in gross income by reason of the transfer. The transfer may be made before Severance From Employment. The transfer must be either (1) for the purchase of permissive past service credit (as defined in Section 415(n)(3)(A) of the Code under the receiving defined benefit governmental plan), or (2) a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.

10.9 Correction of Errors

In accordance with the Committee's authority and responsibility to administer the Plan pursuant to this Section 8, the Committee may, in its sole discretion, correct any Plan administrative errors. The Committee also has sole discretion to determine whether to participate in any correction programs sponsored by any governmental agencies that may be available.

Any Employer contributions to the Trust made under a mistake of fact (or investment proceeds of such contribution if a lesser amount) shall be returned to the Employer within one year after payment of the contribution.

10.10 Facility of Payment

Whenever, in the Committee's opinion, a person entitled to receive any benefit payment is under a legal disability or is incapacitated in any way so as to be unable to manage his or her affairs, the Committee may direct the Trustee to make payments to such person or to his or her guardian or other legal representative, or in the absence of a guardian or legal representative, to a custodian for such person under a Uniform Transfers to Minors Act or to any relative of such person by blood or marriage, for such person's benefit. Any payment made in good faith pursuant to this provision shall fully discharge the Employer and the Plan of any liability to the extent of such payment.

10.11 Notices to Participants and Beneficiaries

All notices, reports and statements given, made, delivered or transmitted to a Participant or Beneficiary shall be deemed to have been duly given, made or transmitted when mailed by first class mail with postage prepaid and addressed to such Participant or Beneficiary at the address last appearing on the records of the Committee. A Participant or Beneficiary may record any change of address from time to time by written notice filed with the Committee.

10.12 Notices to Employer or Committee

Written directions, notices and other communications from Participants or Beneficiaries to the Employers or the Committee shall be deemed to have been duly given, made or transmitted either when delivered to such location as shall be specified upon the forms prescribed by the Committee for the giving of such directions, notices and other communications or when mailed by first class mail with postage prepaid and addressed to the addressee at the address specified on such forms.

Article XI. ADMINISTRATION OF THE PLAN

11.1 Plan Administrator

The Committee shall be the Plan Administrator and, except to the extent that authority and responsibility has been specifically reserved for the Board herein, shall have sole authority and responsibility for the administration of the Plan as specified in the Plan and the Trust, including the discretionary authority to interpret the provisions of the Plan and the facts and circumstances of claims for benefits. The Committee shall have absolute discretion to carry out its responsibilities. Any decision by the Committee shall be final and bind all parties, and shall not be subject to de novo review in any judicial proceeding.

11.2 Committee

The Board shall appoint a committee consisting of one or more members, who are Employees, which shall be known as the "Committee." The Board shall appoint all the Committee members; however, the CEO shall nominate the Committee members, subject to the approval of the Board. If the CEO does not nominate the Committee members within 30 days after the Board's written request, the Board shall select and appoint any such representatives. Every member of the Committee shall be deemed a Plan fiduciary.

The Committee shall be responsible for the administration of the Plan, in accordance with its terms and the Code, except for duties and responsibilities specifically vested in the Board, duties and responsibilities specifically vested in the Trustee. The Board shall have the right at any time, with or without cause, to remove any member or members of the Committee by providing a written notice of removal to each Committee member who is removed. A member of the Committee may resign, effective upon delivery of a written resignation to the Board and to the Committee. A member of the Committee shall automatically be removed from the Committee effective on the date he or she is no longer an Employee.

Upon the resignation, removal or failure or inability for any reason of any member of the Committee to act hereunder, the Board shall appoint a successor member. The CEO shall nominate any replacement, subject to the approval of the Board. All successor members of the Committee shall have all the rights, privileges and duties of their predecessors, but shall not be held accountable for the acts of their predecessors.

The Board shall be responsible for periodically monitoring the performance of the Committee. The Board shall not participate in any Committee deliberations or decisions concerning the administration of the Plan and shall not direct or veto any Committee actions with respect to the Plan, and shall not be responsible for any Plan administration, other than appointing, monitoring and removing Committee members.

11.3 Organization and Procedures

The Committee may act at a meeting, or by writing without a meeting, by a vote or written assent of a majority of its members. The Board shall designate a Committee chairman and the Committee shall elect a secretary. The secretary may, but need not be, a member of the Committee. The Chairman of the Committee may sign any report required by law or other filing (including required and voluntary filings of any type) sent to any governmental agency, on behalf of all members of the Committee.

The Committee shall keep a record of all of its proceedings and shall keep or cause to be kept all books of account, records and other data as may be necessary or advisable in its judgment for the administration of the Plan, including records relating to each Participant's Service, Account balance, notifications to Participants and any government filings.

The Committee may adopt such additional rules and procedures as it deems desirable for the conduct of its affairs and the administration of the Plan, provided that any such rules and procedures shall be consistent with the provisions of the Plan.

11.4 Duties and Authority

- (a) **Administrative Duties.** The Committee shall administer the Plan in a nondiscriminatory manner for the exclusive benefit of Participants and their beneficiaries. The Committee shall perform all such duties as are necessary to supervise the administration of the Plan and to control its operation in accordance with the terms thereof and in its uncontrolled discretion, including, but not limited to, the following:
- (1) Interpret the provisions of the Plan and determine any question arising under the Plan, or in connection with the administration or operation thereof;
 - (2) Determine all considerations affecting the eligibility of any employee to be or become a Participant;
 - (3) Determine eligibility for and amount of retirement benefits for any Participant;
 - (4) Authorize and direct all disbursements of benefits under the Plan; and
 - (5) Employ and engage such persons, counsel, and agents and to obtain such administrative, clerical, medical, legal, audit, and actuarial services as it may deem necessary in carrying out the provisions of the Plan.
- (b) **Investment Authority.** The Committee shall have the responsibility and authority to select the available investment options to be offered under the Plan

and from time to time to add new options and delete existing options. The Committee shall notify Participants in writing on a timely basis with respect to the available options under the Plan.

- (c) **General Authority.** The Committee shall have all powers necessary or appropriate to carry out its duties. Any interpretation or construction of or action by the Committee with respect to the Plan and its administration shall be conclusive and binding upon any and all parties and persons affected hereby subject to the exclusive appeal procedure set forth in Section 6.

11.5 Expenses

All reasonable expenses that are necessary to operate and administer the Plan may be deducted from the Trust or paid directly by the Employer, at the Employer's discretion.

11.6 Claims Procedure

- (a) **Conditions of Payment.** Benefit payments under the Plan shall not be made prior to the fulfillment of the following conditions:

- (1) The Committee has been furnished with such applications, proofs of birth, address, form of benefit, and other information the Committee deems necessary;
- (2) The Participant is eligible to receive benefits under the Plan as determined by the Committee.

The Committee may rely upon all such information so furnished it, including the Participant's current mailing address.

- (b) **Payment.** Subject to the balance of this paragraph, benefits shall be paid no later than sixty (60) days after the distribution date specified herein for commencement of benefits. If the information required above is not available prior to such date, the amount of payment may not be ascertainable. In such event, the payment shall be delayed until no more than sixty (60) days after the date the amount of such payment is ascertainable. Notwithstanding the foregoing, in no event shall payment be made later than required under Section 8.3.

11.7 Appeal Procedure

- (a) **Notice of Denial.** Any time a claim for benefits is wholly or partially denied, the Participant or beneficiary (hereinafter "Claimant") shall be given written notice of such action within a reasonable time after the claim is filed. Special circumstances may require a longer time for processing. Such notice will indicate the reason for denial, the pertinent provisions of the Plan on which the denial is based, an explanation of the claims appeal procedure set forth herein,

and a description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary.

- (b) **Right to Request Review.** Any person who has had a claim for benefits denied by the Committee, or is otherwise adversely affected by action of the Committee, shall have the right to request review by the Committee. Such request must be in writing and must be made within sixty (60) days after such person is advised of the Committee's action. If written request for review is not made within such sixty- (60-) day period, the Claimant shall forfeit the right to review. The Claimant or a duly authorized representative of the Claimant may review all pertinent documents and submit issues and comments in writing.
- (c) **Review of Claim.** The Committee shall then review the claim. It may hold a hearing if it deems it necessary and shall issue a written decision reaffirming, modifying, or setting aside its former action within a reasonable time after receipt of the written request for review. Special circumstances, such as a hearing, may require a longer time. A copy of the decision shall be furnished to the Claimant. The decision shall set forth its reasons and pertinent plan provisions on which it is based. The decision shall be final and binding upon the Claimant and the Committee and all other persons involved.

Article XII. INVESTMENT OF THE TRUST

12.1 Trust Agreement

The assets of the Plan shall be held in the Trust by one or more trustees selected by the Committee and pursuant to the terms of a Trust Agreement between such trustee and the Employer.

12.2 Exclusive Benefit Rule

The corpus and income of the funds of the Plan shall be used exclusively for the purpose of providing benefits to Participants and beneficiaries and defraying reasonable expenses of administering the Plan not paid directly by the Employer. No person shall have any interest in or right to any part of the assets held under the Plan, or any right in, or to, any part of the assets held under the Plan, except to the extent expressly provided by the Plan.

IN WITNESS WHEREOF, the Employer, by action of its Board of Directors, approved this Restatement of the Plan and its terms at a meeting held November 13, 2020, and authorizes its due execution on this 13th day of November, 2020.

ALASKA RAIL ROAD CORPORATION

BY: 

ITS: President and Chief Executive Officer


Witness