

DRAFT

August 1, 2017 – Assemblywoman Carlson

1. **Proposed Amendment to 1968 Lease.** White Pass proposes to amend the existing March 19, 1968 “tidelands” lease and the August 1, 1968 “uplands” lease (collectively, the “1968 Lease”) as follows:
 - a. The annual rent under the 1968 Lease would be increased to ~~\$200,000~~ \$250,000 per year.
 - b. The term of the 1968 Lease would remain intact, so that it terminates on March 18, 2023.
 - c. White Pass and the MOS would agree to split the cost of a new floating dock in a manner to be agreed upon that results in the equivalent of a 50% contribution or reimbursement by the Municipality and White Pass contributing the other 50%, and the lease amendment would specify the general design parameters for that floating dock. White Pass proposes to use the “3B design” proposal that has been outlined by Moffatt & Nichol, for the approximate cost of \$15 million dollars (subject to bidding and mutually agreeable finalization of the design). Upon execution of the lease amendment, White Pass would build the floating dock. White Pass would diligently pursue the construction of the floating dock with a goal of having it ready for the 2019 tourist season and expected increased ship sizes during that season and beyond.
 - d. The leased premises would be the Ore Dock area and the Broadway Dock area, which amounts to 334,862 sq. ft. The tidelands area to be covered by the amended lease shall be only the land directly beneath the existing and new Ore and Broadway docks and any current and future improvements located above the leased tidelands.
 - e. **Semi-Annual Condition Surveys: The Municipality of Skagway and its representative will conduct an inspection of all premises semi-annually, before and after the cruise ship season, to observe and note the condition of and existing damage to the Premises and determine repairs and maintenance required to be performed. Responsibility of repairs and any defects will be the sole responsibility of the White Pass.**
 - f. The current operations conducted by White Pass to operate the cruise terminal may be continued by White Pass through the term of the lease. **White Pass will be required to maintain an on-line schedule of up-to-date cruise ship and non-cruise ship schedule to be accessible online by the City Port Director for the ability to access information for future port planning. The City Port Director will have access to Cruise Line Agencies of Alaska deployment schedules as far into the future as known. The MOS Port Director will have authority to represent Skagway to all cruise lines.**
 - g. There are currently seven subleases or other agreements between White Pass and third parties related to the use of the area encompassed by the 1968 Lease. Upon execution of the 1968 Lease amendment, White Pass will assign these subleases and other agreements to the Municipality. For the period of the lease amendment through the end date of those sublease and agreements, and any extensions of those leases and agreements through March 18, 2023, the Municipality will remit to White Pass the current amount of revenue in each currently existing sublease or agreement and no more and no less. If the Municipality voluntarily chooses to terminate any of the currently existing subleases and agreements prior to 2023, the Municipality will still

DRAFT

be subject to the make whole provision for that specific sublease or agreement through March 18, 2023. The Municipality shall not be subject to the make whole provision if, after good faith negotiations, the current holder of the sublease or agreement refuses to enter an extension of the current sublease or agreement to March of 2023. The Municipality may also negotiate new leases with the current sublessees in an amount greater than the current lease payments to White Pass, and in that event, the Municipality shall be entitled to the amount above the current lease payments. The new lease amendment shall specifically state that any current subleases or agreements shall not be extended by White Pass. The existing subleases or agreements are with: AIDEA, AML, CLAA, Harbor, Harbor Flowage, NOAA, and TEMSCO.

- h. The lease amendment would incorporate tenant and environmental **“defend and indemnify”** obligations from White Pass as previously agreed to by White Pass and the Municipality. **Tenant agrees to defend and indemnify and hold the MOS free from any and all claims , causes of action, regulatory demands, liabilities, fines, penalties, losses and expenses, including without limitation clean-up or other remedial costs (including attorneys’ fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation.**
- i. The lease amendment would provide that the Municipality and White Pass would share Ore Dock use rights on the following basis: (i) cruise ships would have docking priority rights in all instances; (ii) White Pass would receive all revenues and fees related to cruise ship docking, disembarking, embarking, etc.; ~~and (iii) the Municipality would receive Ore Dock revenues and fees in relation to all non-cruise ship docking, disembarking, embarking, loading, unloading, etc. The lease amendment will include a provision that the Municipality and White Pass shall share responsibility for repairs and maintenance of the Ore Dock.~~ As between White Pass and the Municipality, White Pass shall bear all responsibility for any damage to the Ore Dock caused by any cruise ship and ~~the Municipality shall bear~~ all responsibility for any damage to the Ore Dock caused by any ship. ~~other than a cruise ship and~~ White Pass shall have ~~no~~ responsibility for damage to the Ore Dock-caused by any ship ~~other than a cruise ship.~~
- j. ~~The amendment will include a provision that the Municipality grant easements to White Pass for all areas to conduct business as currently conducted by White Pass without additional payments for those easements, and~~ White Pass will allow the Municipality access to the leased premises to conduct reasonable inspections and for the purpose of achieving remediation addressed in the separate Environmental Remediation Agreement.
- k. **Construction Oversight: MOS will receive reasonable access to the construction site and a means of inspecting work.**
- l. **White Pass will maintain a Construction Document Management System. In order to better permit the parties to achieve the Project’s budget and schedule objectives.**

DRAFT

- m. Construction Schedule. White Pass will provide monthly schedule updates and three week look ahead schedules. The MOS Port Manager will make reasonable requests of construction updates and concerns, to be answered by White Pass in a reasonable time.
 - n. Insurance: Pollution Liability Coverage. The MOS Port named as an additional insured on the policy, in an amount of not less than \$2,000,000.00 per occurrence.
 - o. March 18, 2023 – The Ore Terminal Basin will be clean. If the DEC has not deemed the basin clean, White Pass will be found in breach, and all property and improvements under the tidelands lease of 1968 will revert to the MOS. The New Lease Agreement will be also be terminated.
 - p. Security: White Pass will obtain and deliver to the MOS a corporate surety company bond, irrevocable stand-by-letter of credit, cash, deposit or other security in an amount equal to fifteen million \$15,000,000.00 to assure in White Pass full performance of its good faith the Ore Basin will clean by March 18, 2023. The amount, form, provisions and nature of the Security, and identity of the surety or other obligator thereunder, shall at all times be subject to MOS approval. The security shall remain in place at all times throughout the full term of this agreement. No interest shall be paid on this security and the MOS shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to security.
 - q. Return of Security: The Security is part of the consideration of the execution of this agreement. If tenant has fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to White Pass within sixty (60) days following the termination date without interest; otherwise the MOS shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.
 - r. White Pass will provide the MOS a Wreck and Pollution liability policy of no less than 10 million.
 - s.
2. **New Lease Agreement.** White Pass proposes to enter into a new lease that would relate to the period after the 1968 Lease term:
- a. The term of the new lease will be for ~~twenty (20)~~ ~~fifteen (15)~~ five (5) years, beginning on March 19, 2023 and ending on March 19, ~~2043~~ ~~2038~~ **2027**.
 - b. The leased premises would be the Ore Dock area and the Broadway Dock area. The tidelands area to be covered by the new lease shall be only the land directly beneath the existing Ore and Broadway docks and any current and future improvements located above the leased tidelands.
 - c. ~~The schedule of annual lease payments shall increase by 3.5% annually be as follows:~~
 - ~~Years 1-5: _____ \$200,000~~ **\$300,000 per year**
 - ~~Years 6-10: _____ \$200,000~~ **\$325,000 per year**
 - ~~Years 11-15: _____ \$200,000~~ **\$350,000 per year**

DRAFT

- ~~Years 16-20: \$200,000 per year~~
- ~~2023: \$250,000~~
- ~~2024: \$258,750~~
- ~~2025: \$267,806.25~~
- ~~2026: \$277,179.47~~
- ~~2027: \$286,880.75~~
- ~~2028: \$296,921.58~~
- ~~2029: \$307,313.83~~
- ~~2030: \$318,069.82~~
- ~~2031: \$329,202.26~~
- ~~2032: \$340,724.34~~
- ~~2033: \$352,649.69~~
- ~~2034: \$364,992.43~~
- ~~2035: \$377,767.16~~
- ~~2036: \$390,989.02~~
- ~~2037: \$404,673.63~~
- ~~2038: \$418,837.21~~

t. ~~d. The current operations conducted by White Pass to operate the cruise terminal may be continued by White Pass through the term of the lease. The Municipality shall operate the cruise terminal through the term of the lease. **White Pass shall operate the cruise terminal, with priority berthing arrangements for cruise ships, and the schedule shall be finalized one year prior to docking so the port can schedule other use. White Pass shall be responsible for the cost of disruptions to other users caused by priority berthing.** White Pass will be required to maintain an on-line schedule of up-to-date cruise ship and non-cruise ship schedule to be accessible online by the City Port Director for the ability to access information for future port planning. The City Port Director will have access to Cruise Line Agencies of Alaska deployment schedules as far into the future as known. The City Port Director will have authority to represent Skagway to all cruise lines. White Pass ceases to be Cruise Terminal Operator March 19, 2027.~~

e. ~~The new lease shall provide that the Municipality will reimburse White Pass, unless a new lease is negotiated on or before 2042-**2038**, for capital (other than maintenance or repair) improvements according to the following schedule:~~

- ~~Before: no reimbursement~~
- ~~**2029: 10%**~~
- ~~**2030: 20%**~~
- ~~**2031: 30%**~~
- ~~**2032: 40%**~~
- ~~2033: 10% **50%**~~
- ~~2034: 20% **60%**~~
- ~~2035: 30% **70%**~~

DRAFT

- ~~2036: 40%~~ **80%**
- ~~2037: 50%~~ **90%**
- ~~2038: 60%~~ **100%**
- ~~2039: 70%~~
- ~~2040: 80%~~
- ~~2041: 90%~~
- ~~2042: 100%~~

~~The new lease will contain a provision that defines “capital improvement” mutually agreed upon by the Municipality and White Pass.~~

~~f. The new lease will include a provision that the Municipality will grant easements to White Pass for all areas to conduct business as currently conducted by White Pass without additional payments for those easements. White Pass will allow the Municipality access to the leased premises to conduct reasonable inspections and for the purpose of achieving remediation addressed in the separate Environmental Remediation Agreement.~~

~~g. The new lease will have provisions similar to the 1968 Lease amendment described above in relation to the existing subleases – all rents from such subleases going to the MOS.~~

~~h. The new lease will have provisions similar to the 1968 Lease amendment described above in relation to ship revenue, Ore Dock sharing, Ore Dock damage, and tenant indemnity and environmental indemnity obligations from White Pass.~~

~~i. The new lease will have the indemnification and environmental indemnification “defend and indemnify” provisions previously agreed upon by White Pass and the Municipality.~~

~~j. White Pass shall lease the parking lot owned by PARN at the corner of First Avenue and State Street to the Municipality for twenty (20) years at a rate of \$1.00 per year. This parking lot lease shall expire in 2038 at the end of the term of the new lease.~~

~~k. Pricing Policy: White Pass will provide a pricing policy that maintains a competitive and reasonable structure for the jointly owned dock.~~

~~l. White Pass will provide a Basic Guarantee of Passengers on the Ore floating dock.~~

~~m. Ore dock becomes property of the MOS on March 19, 2027.~~

~~uu. The lease would provide that the Municipality and White Pass would share Ore Dock use rights on the following basis: (i) cruise ships would have docking priority rights in all instances; (ii) White Pass and MOS would split all revenue 50% and fees related to cruise ship docking, disembarking, embarking, etc.; and (iii) the Municipality would receive Ore Dock revenues and fees in relation to all non-cruise ship docking, disembarking, embarking, loading, unloading, etc. The lease amendment will include a provision that the Municipality and White Pass shall share responsibility for repairs~~

DRAFT

~~and maintenance of the Ore Dock. As between White Pass and the Municipality, White Pass shall bear all responsibility for any damage to the Ore Dock caused by any cruise ship and the Municipality shall bear all responsibility for any damage to the Ore Dock caused by any ship other than a cruise ship and White Pass shall have no responsibility for damage to the Ore Dock caused by any ship other than a cruise ship.~~

v. MOS will receive monthly reporting of all dock revenue. White Pass will remit payments with 5 days of each vessel visit.

3. ~~**Environmental Remediation Agreement.** White Pass proposes to enter into a remediation agreement with the Municipality in relation to remediation, including related dredging of the Ore Dock basin.~~

- ~~• The remediation would be to Alaska Department of Environmental Conservation (“ADEC”) standards. The remediation would be pursuant to a scope of work prepared by Golder Associates and approved by the ADEC.~~
- ~~• The remediation would be funded with a \$2,500,000 contribution from White Pass and a \$1,500,000 contribution from the Municipality. To the extent that, after initial site excavation, it was determined that the required scope of work will be more than \$4,000,000, White Pass and the Municipality would meet and confer to decide how to proceed.~~
- ~~• This agreement would address remediation and dredging, as opposed to having those matters addressed in the lease amendment and new lease described above.~~
- ~~• The execution of this agreement is a condition precedent to the Municipality entering the new lease.~~

~~The remediation of the Ore basin will be completed by March 18, 2023. There is no need for this agreement in the lease extension.~~

~~The easements will be addressed in a separate lease agreement by March 18, 2023.~~

~~The parking lot will be a separate lease agreement.~~