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4/19/2022

Andrew Cremata, Mayor  
Municipality of Skagway Borough  
P.O. Box 415  
Skagway, AK 99840

RE: RFP - Lease of Real Property for Fuel Facility

Dear Mayor, Cremata:

The draft RFP presented by the Borough Manager and moved forward by the Borough Assembly is incomplete, inaccurate and contains several inconsistencies that make the process of selection and an eventual lease flawed from the beginning. For example, the premise that the Municipality of Skagway Borough will simply “own a tank farm” at the end of the current lease term as stated by Robin Brena at the April 7<sup>th</sup> assembly meeting is not accurate. This proposition is based on several incorrect or incomplete factual and legal assumptions as explained below. Further, the capital and knowledge needed to operate a bulk fuel tank farm is immense, and the decision to be in the tank farm business should not be taken lightly.

Petro Marine purchased the facility in 1995 from Pacific and Arctic Railway and Navigation (PARN) and leased the sublease area from the Skagway Terminal Company (STC). We have operated and invested in the facility continuously since. We provide full-time employment for seven residents of Skagway. Our annual operating budget exceeds one million dollars annually, much of the money is spent in the community to maintain a high standard of operations. Petro Marine is proud to be part of the business community of Skagway and wishes to remain an integral part of the community for many years to come. However, we feel it was necessary to draft this letter with input from our legal counsel to address Mr. Brena’s assumptions and generalizations put forth at the April 7, 2022 Assembly meeting.

I would like to take the opportunity to provide some insight into our business and areas of concern with the draft RFP document to better inform the city. Petroleum storage and transport is a heavily regulated industry, and our Skagway facility is no different. ADEC, EPA, USCG, OSHA, and USDOT are just a sampling of the many state and federal agencies that regulate our operations. Many more niche departments within these agencies also regulate our operations, everything from air to water and barges to fuel trucks are heavily regulated. The process to gain all regulatory approvals and maintain compliance is both costly and time consuming. The notion that the very moment our current sublease expires a new operator or the Borough would be able to immediately commence operations is impossible.

Mr. Brena was correct when he stated that it is common that a landowner inherits tenant improvements at the end of a ground lease. What he did not add is that standard business practice is to renew or

extend a ground lease with the existing tenant at market rates unless the landowner is redeveloping the property for an entirely different use. The concept of refusing to renew the ground lease and offering to rent back to the tenant as a commercial lease with the improvements that the tenant built or purchased is bad faith. When renewing a ground lease, the value is calculated based on the value of the unimproved land. That value is easily assessed by professional appraisers. An RFP is not essential in making that determination. Tank farm ground leases are not unique in the state.

Contrary to Mr. Brenna's assertions, Skagway *can* negotiate directly with Petro Marine as to the future of the ground lease and/or purchase of the tank farm infrastructure. The fact that the PARN lease has not expired is immaterial to Skagway negotiating future leases on the property. Renewals of leases, both ground and commercial, are commonly negotiated with new property owners prior to closing. There is simply no reason Skagway cannot, under Skagway Municipal Code 16.02, negotiate with us to continue a seamless transition from our current sublease to a new lease.

Mr. Brena did not directly address the issue, but under common law and the terms of the ground lease, Skagway has no title or right to the installed infrastructure, including tanks, pipelines, and buildings. Thus, the proposed RFP is illegal in that it implies the tank farm will be part of the lease, and subject to invalidation based on that ambiguity.

Mr. Brena indicated that potential RFP bidders are "sophisticated" and will figure out the details. Beyond the uncertainties of infrastructure ownership, many of the details asked for in the RFP are proprietary information that is confidential. Our business is very competitive and providing this information would put us at a disadvantage in the marketplace.

The Borough's actions in refusing to negotiate and pushing through the RFP is not consistent with the stated goal of "facilitating private business and the free market to succeed in this community." It is not well considered and subjects the Borough to numerous potential liabilities and exposures, both for the RFP process itself and the claimed ownership of the tank farm and infrastructure.

Again, Petro Marine looks forward to working with the Borough in good faith and intends to remain a part of this community. We request, however, that this ill-considered RFP be tabled and that the Borough Manager be directed to engage in a good faith appraisal and negotiation process with the current lease holder.

Respectfully,



Matthew Lindsey  
Chief Operating Officer

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