



MUNICIPALITY OF SKAGWAY

GATEWAY TO THE KLONDIKE
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**Municipality of Skagway
And
Petro Marine
Lease Agreement**

This Lease is entered into on this 1st day of January, 2018, by and between the Municipality of Skagway (hereinafter, MUNICIPALITY) a municipal corporation, and Petro Marine Services. (hereinafter LESSEE), for the purpose of leasing a parcel of land for Marina Fuel Storage Facility to serve the boat harbor and transient vessels in Skagway, Alaska.

WITNESSETH:

WHEREAS the MUNICIPALITY owns the property described; and

WHEREAS the MUNICIPALITY wishes to extend the lease of a portion of land in conformance with the Skagway Municipal Code requirements;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, it is agreed as follows:

1. DURATION:

This lease shall be in effect for a 5-year period, from January 1, 2018 to December 31, 2022.

2. LAND DESCRIPTION:

A parcel of land containing 1,600 square feet, within Alaska Tidelands Survey No.4, Tax Lot 5A.

3. LEASE AMOUNT:

A. The lease amount shall be determined by multiplying:

- The appraised annual value of the land on a per square foot basis*, by
- 1,600 square feet, by
- Eight percent (8%)
- This amount is divided by twelve to give a monthly lease fee.

***The annual value of the land on a per square foot basis is \$16.00.**

The lease amount shall be \$2,048.00 per year paid in twelve (12) monthly payments of \$170.67

4. PERMISSIBLE USES

- A. Lessee shall utilize the property only for the purpose of constructing and operating a Marina Fuel Storage Facility consisting of a fenced concrete pad and two 10,000 gallon "diaper" tanks. Lessee shall be allowed to build structures on the leased premises with the approval of the Borough Assembly. Accessory uses of the property are allowed if pre-approved in advance in writing by the Borough Assembly.
- B. The Lessee shall comply with all regulations, rules, Municipal code, state and federal regulations, and all federal, state, and local environmental laws and regulations, as well as rules and laws such as the code or any such rules, regulations or laws that may affect the operation and maintenance of the Marina Fuel Storage Facility.
- C. The Lessor does not warrant that the property is suitable for the purposes sought. Lessee assumes all risks associated with the location and use of the leased premises.

5. CONDITIONS OF LEASING

- A. Annual Lease payments shall be subject to adjustment on every fifth year or upon time of renewal of Lease Agreement. Lease payments will be based upon fair market value of the land provided by an appraisal report by the Borough assessor. Lessee is responsible for all costs of the appraisal associated with this Lease Agreement.
- B. Lessor shall pay a .005 cent per gallon flow charge payable to the Lessor on or by December 31st of each calendar year. Lessee shall provide accurate and complete documentation of the gallon flow of the facility every quarter per year.
- C. Lessee shall pay for any survey and appraisal costs associated with this Lease Agreement as a condition of entering into this Lease.
- D. Lessee shall pay for any environmental assessment study to determine damage on the leased premises since the Lessee took possession of the leased premises as deemed necessary by Lessor, or as required by any federal or state agency.

6. RENEWAL

- A. If Lessee is not in default of any Lease terms and in compliance with Skagway Municipal Code (SMC) 16.02.160(N) at the end of the term of the current Lease, Lessee shall have the option to renew Lease for one successive term of five years. The option to renew shall be exercised in writing within (90) days prior to the expiration of the current terms.
- B. Lessee, upon exercising the right to renew this Lease, shall provide Lessor with written proof from ADEC that the leased premises are clean and free from any contamination and that Lessee is complying with all local, State, and federal Environmental Laws. Lessee shall not be able to renew this Lease absent a letter from ADEC certifying any environmental problems which might exist on the property have been cleaned up to ADEC's satisfaction, including but not limited to a closure letter and removal of the leased premises from any contaminated site list.

4. OPERATIONS AND MAINTENANCE:

- A. LESSEE shall promptly repair, rebuild or restore premises or facilities damaged or destroyed.
- B. The MUNICIPALITY may, at all reasonable times and with prior notice, enter upon and inspect the leased premises. If the MUNICIPALITY demonstrates that the LESSEE has failed to perform maintenance or repair work required under this lease, and if LESSEE, after prior notice of the deficiencies, fails to correct the deficiencies or begin corrective action within ten (10) days, the MUNICIPALITY may in its sole discretion, enter any part of the leased premises

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and perform the necessary work. LESSEE shall reimburse the MUNICIPALITY for all reasonable expenses incurred by this work within ten days of the MUNICIPALITY providing the LESSEE with an invoice for the work. The failure of the Lessee to do the work and/or failure to pay for the work in full within ten days of receipt of the invoice shall constitute a material default of the lease.

- C. Lessee shall at all times provide sufficient personnel to operate and maintain the leased premises. Lessee shall keep and maintain the leased premises and all alterations, additions, and improvements which exist or which may be erected, installed or made on the property, in good and substantial repair and condition. Lessee shall make all necessary repairs. Lessee shall maintain the leased premises and facilities at all times in a clear, clean, safe, and sanitary condition, and shall make every effort to prevent pollution and/or contamination of any kind. Any occurrence on the leased property that results in any pollution or contamination shall constitute a material default on the lease and the MUNICIPALITY shall have the right to terminate the lease immediately in its sole discretion.
- D. Lessee is responsible and shall pay all costs of utilities, furnished to or constructed on the leased premises, during the term of this Lease.
- E. Lessee shall pay all property taxes owed on the leased premises in accordance with Skagway Municipal Code 4.10. Lessee shall also collect and remit sales tax in accordance with Skagway Municipal Code 4.08.
- F. Lessee shall be responsible for any and all special assessments for public improvements which may be made against the leased premises during the term of this Lease or any option to renew by the Lessee .
- G. Lessee shall promptly repair, rebuild, or restore the leased premises, facilities or surrounding property damaged or destroyed.
- H. The Lessee shall take all reasonable precaution to comply with provisions of Municipal code concerning fire protection applicable to the are wherein the leased premises are located.
- I. Lessee shall at all times during this Lease be in compliance with Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 U.S.C. §9601, or most recent regulations. In order to prove CERCLA compliance, lessee shall have the premises inspected and certified by an environmental engineer once a year for the duration of the Lease.

5. INDEMNITY AND INSURANCE:

- A. INDEMNIFICATION OF LESSOR. LESSEE agrees to indemnify, defend and save LESSOR harmless against and from any and all claims by or on behalf of any person, firm or corporation, arising from the conduct or management of or from any work or thing whatsoever done in or about the leased Premises, beginning from the date of the Lessee's first entry on the leased premises pursuant to previous leases, regardless of when such claims may have occurred, arose or accrued, which in any way relate to the leased premises, including, without limitation, in connection with Hazardous Materials. LESSEE also agrees to indemnify, defend and save LESSOR harmless against and from any and all claims arising during the lease term from any condition of the leased property. LESSEE also agrees to indemnify, defend and save harmless LESSOR from any and all claims , including but not limited to physical injury, property damage, special damages, consequential damages, expenses, costs, and attorney's fees, directly or indirectly arising out of, in connection with, or incident to the operation of the leased premises or arising from any breach or default on the part of in the performance of any covenant or agreement on the part of LESSEE to be performed, pursuant to the terms of this lease, or arising from LESSEE's failure to comply with any law, ordinance or regulation of any governmental body, or arising from any negligent act or omission of

LESSEE or any of its agents, contractors, servants, employees, licensees, guests and sub LESSEES and any agents, contractors, servants, employees, licenses and guess of its sub LESSEES. LESSEE' obligation to defend, indemnify and save LESSOR harmless shall include LESSEE's payments of reasonable actual legal fees,

- B. INSURANCE:** LESSEE shall provide to the MUNICIPALITY of Skagway a certificate of insurance showing that the LESSEE has obtained at least two million dollars (\$2,000,000) general liability insurance and at least two million dollars (\$2,000,000) in Pollution Liability insurance,, which covers the LESSEE'S operations on the leased premises. LESSEE shall provide the Certificates of Insurance, naming the MUNICIPALITY as an additional insured, at the time of the effective date of the lease. Failure to maintain such insurance shall constitute a material breach of the terms and conditions of the lease. LESSEE shall notify the MUNICIPALITY twenty (30) days before the policy is canceled or terminated and unless the LESSEE provides a new Certificate of Insurance within 30 days of cancellation or termination, the MUNICIPALITY may terminate this lease without further notice at its sole option.

6. ENVIRONMENTAL INDEMNITY

- A.** Lessee acknowledges and agrees that environmental contamination may exist on or adjacent to the leased premises. Lessor has not made, and Lessee has not relied on, any representations as to the presence, absence, nature, or extent of any such environmental contamination by Lessor. Lessee hereby expressly assumes the risk that any such environmental contamination may cause loss of or damage to Lessee's real and personal property and improvements and may render the leased premises unfit for Lessee's purposes.
- B.** Lessee shall use, store, handle, and deal with the Environmental Substances (as defined below) in compliance with all Environmental Laws (as defined below). Lessee shall take prompt and responsible action to correct any noncompliance reported by Lessee or alleged by DEC or EPA with any requirements of any Environmental Law or any contamination or pollution caused by a release (as defined below) of an Environmental Substance. Lessee shall obtain all necessary permits, licenses, and other authorizations issued pursuant to Environmental Laws required for Lessee to own or operate the leased premises. Operation of the leased premises shall be in compliance with any terms and/or conditions of such permits, license, and other authorizations. "Environmental Laws" means all Federal, State, or local laws, statutes, ordinances, codes, rules, regulations, orders, decrees, and directives imposing liability or standards of conduct for or relating to the protection of health, safety, or the environment. "Environmental Substances: include without limitation any substance, material, waste, pollutants, contaminant or chemical, regardless of how it is referred to or defined, that is regulated in, or pursuant to, any Environmental Laws. "Release" includes an actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage, or disposal which is or may be in breach of any Environmental Law, regardless of cause. "Lessee" includes Lessee, any subsidiaries of the Lessee, any partnership or joint ventures involving the Lessee, Lessee's agents, representatives, employees, invitees, or contractors or any agents, representatives, employee's invitees, or contractors of lessee's subsidiaries, partnerships or joint ventures.
- C.** Lessee acknowledges and agrees that the creation, use handling, storage, release, and disposal of waste, garbage, pollutants, and toxic or hazardous substances, and the investigation, remediation, and clean-up of environmental contamination, are governed by a wide variety of Environmental Laws. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of hazardous substances and Environmental Substances and shall take all practicable measures to

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minimize the quantity and toxicity of hazardous substances and Environmental Substances used, handled, or stored on the leased premises.

- D. Nothing in this Lease alters any obligation Lessor or Lessee may have to investigate, remediate, or clean up any environmental contamination that may exist on the leased premises.
- E. Lessee shall defend, indemnify and hold harmless the Lessor for any contamination, spill, pollution or any similar environmental event on the Leased premises or any violation of any local, State, or Federal Environmental Law.
- F. **HAZARDOUS WASTE RESPONSIBILITY.** LESSEE represent and warrant that the leased Premises will never be used for the generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance. The term "Hazardous Waste or Substance" means hazardous or toxic substances, materials or wastes, including but not limited to any substance, material or waste which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls (PCBs); (iv) toxic or hazardous substances as defined in Alaska Statute 18.60.105 or 46.03.826, and associated regulations; (v) designated as a "Hazardous Substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ' 9601, et. seq.; (vi) designated as a "Hazardous Waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. ' 6901, et. seq.; (vii) designated as a "Hazardous Substance" under the Clean Water Act, 33 U.S.C. ' 1321, or listed pursuant to 33 U.S.C. § 11317; (viii) listed by the U.S. Department of Transportation at 49 C.F.R. Part 302; and (ix) any other substance, waste or material which is regulated as hazardous or dangerous by any Federal, State or local agency.

LESSEE agrees to hold LESSOR harmless and to indemnify and defend LESSOR against any and all claims and losses resulting from LESSEE' breach of this paragraph, including, but not limited to, any loss, damage, liability, cost, or expense, including reasonable actual attorneys' and consultants' fees and expert fees, and including without limitation (i) any claims of third parties for personal injury, property damage, or other harm, and (ii) any response costs, costs of remedial, restoration or clean-up actions, fines suffered or incurred by LESSOR arising out of or related to the presence of Hazardous Materials in, on, or under the property, or out of any such use of the property, or due to the incorporation of such materials. This obligation to indemnify, defend and hold LESSOR harmless shall survive the term of this lease and include any claim, cause of action or administrative regulatory enforcement action in which LESSEE or LESSOR are determined or alleged to be a potentially responsible party.

7. **DEFAULT:**

When the MUNICIPALITY determines that the provisions of this Lease are not being met and attempts to resolve the matter are unsuccessful, written notice shall be given to the LESSEE stating the nature of the deficiency and necessary corrective action. LESSEE shall either take immediate corrective action or respond to the MUNICIPALITY in writing within ten calendar days stating the reason for noncompliance and a schedule for compliance. If the MUNICIPALITY determines this response unacceptable, in its sole discretion, the MUNICIPALITY shall give LESSEE written notice of default. In the event of default, LESSEE shall have ten calendar days from receipt of notice to remove personal property and vacate the premises. If such property is not removed within this time period, the MUNICIPALITY may take possession of the property and dispose of the property without any liability to the LESSEE.

8. TERMINATION

The MUNICIPALITY or LESSEE may terminate this Agreement at any time by giving no less than 90 days written notice to the other party of such termination and specifying the effective date of such termination.

9. TERM AND CONDITIONS:

- A. This Agreement specifically supersedes any prior written or oral agreements between parties relating to the Lease of the property as described in this agreement.
- B. Unless otherwise provided for in this Lease, the provisions of Skagway Municipal Code Title 16.02.160, Terms and conditions of Lease, shall govern this lease and are attached to and incorporated into the terms and conditions of this lease.

10. NOTICE:

All notices and requests in connection with this lease shall be in writing and shall be addressed as follows:

MUNICIPALITY: Municipality of Skagway
Municipal Manager
P.O. Box 415
Skagway, AK 99840

LESSEE: Petro Marine Services
General Manager
2101 East 63rd Avenue
Anchorage, AK 99507

11. MISCELLANEOUS

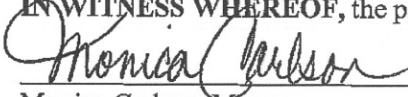
- A. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive jurisdiction for any action of any kind an any nature arising out of this Lease Agreement or arising out of any acts or omissions of the Lessee. Venue for trial in any action shall be in Skagway, Alaska, and the Lessee specifically waives any right to have trial conducted in any other venue. The law of the State of Alaska shall govern the rights and obligations of the parties.
- B. This Agreement is binding upon the heirs, successors and assign of the parties.
- C. This Agreement represents the entire Agreement of the parties and no other Agreement whether oral of written which is not specifically set forth in this Agreement or an addendum to this Agreement will have any force or effect upon the other party. LESSEE specifically understands and agrees that no Municipal employee, Assembly member, or the Mayor has any authority to verbally modify this lease and any modifications must be in writing approved by the Assembly.
- D. The MUNICIPALITY'S waiver of any term or condition in this Agreement shall not constitute a waiver of any term or condition in this Agreement.
- E. If any term of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be valid and binding upon the parties.

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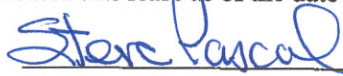
- F. Titles and headings to sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
- G. LESSEE is not relying on any representations by a Municipal employee, officer, assembly member, consultant or attorneys. LESSEE has had a full opportunity to consult with their own attorney before entering this Lease.

This Lease shall not be assigned by the LESSEE without the prior written consent of the MUNICIPALITY.

IN WITNESS WHEREOF, the parties hereto have executed this lease as of the date first written above.



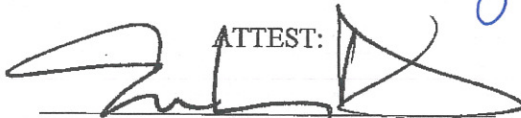
Monica Carlson, Mayor
For the Municipality of Skagway



Steve Pascal
For Petro Marine Services, Lessee

Date July 2, 2018

Date July 12, 2018

ATTEST:


Emily Deach, Borough Clerk

(SEAL)

