



Municipality of Skagway

GATEWAY TO THE KLONDIKE

P.O. BOX 415 SKAGWAY, ALASKA 99840

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WWW.SKAGWAY.ORG

AN EASEMENT BETWEEN PACIFIC & ARCTIC RAILROAD & NAVIGATION COMPANY AND THE MUNICIPALITY OF SKAGWAY

This easement is granted and conveyed by the Municipality of Skagway, a first-class borough whose mailing address is P.O. Box 415, Skagway, Alaska 99840 (Grantor) to Pacific and Arctic Railroad and Navigation Company an Alaska corporation, whose mailing address is P.O. Box 435, Skagway, Alaska 99840 (Grantee).

WHEREAS, the Grantee desires the use of certain property of the Grantor for use as an easement for the purpose of rail spurs and railroad operations to the Broadway Dock and Ore Dock areas [as identified on Attachment “A”]; and

WHEREAS, the Assembly of the Municipality of Skagway has adopted Resolution No. 22-02R authorizing the Municipality to grant this easement subject to the terms and conditions set forth in Resolution No. 22-02R and this easement agreement,

NOW, THEREFORE, the Grantor conveys an easement to the Grantee as follows:

1. Grant of Easement and Price.

Grantor, for and in consideration of \$126,100, (One-Hundred Twenty-Six Thousand One-Hundred Dollars), paid yearly, (“Easement Payment”), conveys and grants to Grantee, its successors and assignees, an Easement (as defined below) along, over, across and through the following-described tract of land located in the State of Alaska: A portion of ATS #4, and Blocks 36, 37, and 45, Skagway Recording District, First Judicial District, State of Alaska. The easement price will be amended every 5 years with an updated appraisal.

Easement area is shown and described on the plats and legal description attached hereto and made a part hereof this instrument (Attachment A) (the “Easement”). The easement parcel contains 107,920 square feet, more or less. Grantor has good title to the above-described tracts of land.

2. Terms and Conditions.

A. Term.

The easement shall be for a term of twenty (20) years commencing April 21, 2023 and expiring March 20, 2043, and will automatically expire at that time. The Grantee may request a new easement in writing at least 60 days before the expiration of this easement.

The Borough Assembly may in its sole discretion grant a new easement for up to 10 years, and on terms and conditions, which may be different from the terms and conditions in this Agreement, as approved by the Borough Assembly approval by resolution. Grantee understands and acknowledges that it has no right to a renewal or extension of this easement.

Notwithstanding any other provision in this Agreement, Grantor, may relocate all or portions of the spur lines and the Easement by providing written notice to Grantee of relocation six months (180 days) before the Grantor's designated relocation date, provided, however, that such relocation shall not unreasonably interfere with Grantee's use of the Easement and railroad operations.

Notwithstanding any other provision in this Agreement, Grantor or Grantee may terminate this Easement at any time by providing written notice of termination one year (365 days) before the termination date. In the event this right of termination is exercised, the parties understand and agrees that all obligations and responsibilities under this Easement shall continue until the date of termination. The parties agree that if this right to terminate is exercised, neither party will bring any cause of action of any kind or any nature against the other party for any alleged damages of any kind or any nature alleged to arise out of or be related to exercise of this option to terminate. The option to terminate and the agreement not to sue constitute material terms of the Easement Agreement. If Grantor terminates this Easement, the Easement Price shall be prorated accordingly between the parties.

B. Use.

The Easement is limited to use for the purpose of construction, maintenance, repair, and replacement of railroad spurs and engaging in railroad operations, which includes loading, unloading, and transporting passengers to and from the Broadway Dock and Ore Dock areas, and direct railroad ticket sales. The Grantee shall not construct structures in the easement from which to conduct railroad ticket sales, or use the Easement for any other purpose, including tour sales unrelated to direct railroad operations, without written consent of the Municipality, which consent shall not be unreasonably withheld or delayed.

C. Non-Exclusivity.

The Easement shall be non-exclusive, provided that other uses of the Easement shall not materially interfere with Grantee's use. The Municipality reserves the right to convey overlapping easements, provided that such overlapping easements do not materially interfere with Grantee's use.

D. Easement Payment.

Grantee shall pay to Grantor the Easement Payment for the Easement as set out in Section 1 above. Grantee shall pay Grantor the first yearly Easement Payment on May 1, 2023, prorated accordingly. Grantee shall pay Grantor the second and subsequent yearly

Easement Payments, in advance, by January 31 of each year. Payments should be made by mailing a check to the Municipality of Skagway, P.O. Box 415, Skagway, AK 99840. The Easement Payments shall be amended every five (5) years by an updated appraisal, by an appraiser mutually acceptable to both parties. The appraisal shall not include the value of Grantee's improvements on the Easement in the determination of market value. Grantee shall pay for the cost of the appraisals.

E. Abandonment and Termination.

If the easement has not been used for a period of more than two years, the Municipality may, in its sole discretion, determine the easement has been abandoned and declare it terminated.

F. Construction and Maintenance.

1. No material improvements or changes to the railroad spurs, or Grantee's other improvements, within the Easement, other than maintenance and repair, may be made within the Easement without prior written approval of the Grantor, which approval shall not be unreasonably withheld or delayed.
2. Within six (6) months of termination of this Easement, Grantee shall remove its improvements, fill in and compact any excavations, and remove all debris from the Easement.
3. During the term of the Easement, the Grantor may require suspension of use of portions of the Easement to accommodate construction of municipal projects. If Grantor requires suspension, the price of the easement shall be prorated accordingly.

G. As-Built Survey.

Within a reasonable time of completion of the construction of any new (constructed after execution of this Agreement) improvements within the Easement area, the Grantee shall provide Grantor with accurate, complete and legible as-built drawings of such improvements. Upon making any changes or additions to such new improvements, the Grantee shall provide the Grantor with as-built drawings showing such changes or addition and such changes or additions shall become part of the Easement. The requirement to provide an as-built shall not apply to maintenance and repair.

H. Defend, Indemnify and Hold Harmless.

(i) Grantee

To the extent allowed by law, Grantee shall indemnify, defend, and hold the Grantor harmless from any claim or liability for damages to property or injury to person of any kind and any nature, including death, and including any environmental event, and including any federal or state administrative proceeding or hearing related to any environmental event, arising out or related in any way to Grantee's construction, installation, maintenance, repair, or use of the Easement, except to the extent any such

claims are attributable to or were otherwise caused, directly or indirectly, by Grantor. The Grantee and Grantor shall be defined to include their respective employees, subcontractors, agents, independent contractors, guests, and invitees. Grantee shall insure that this provision is included in every contract the Grantee enters with any other person or entity who will be involved in any construction, installation, use, maintenance, or repair of the easement.

(ii) Grantor

To the extent allowed by law, Grantor shall indemnify, defend, and hold the Grantee harmless from any claim or liability for damages to property or injury to person of any kind and any nature, including death, and including any environmental event, and including any federal or state administrative proceeding or hearing related to any environmental event, arising out or related in any way to Grantor's use of the Easement, except to the extent any such claims are attributable to or were otherwise caused, directly or indirectly, by Grantee. The Grantee and Grantor shall be defined to include their respective employees, subcontractors, agents, independent contractors, guests and invitees. Grantor shall insure that this provision is included in every contract the Grantor enters with any other person or entity who will be involved in any construction, installation, use of the Easement.

I. Insurance.

Grantee shall provide the Municipality with a Certificate of Insurance demonstrating the Grantee has general liability insurance in at least the amount of \$5,000,000 per occurrence and showing the Municipality listed as an additional insured before the Grantee shall use the easement. Grantee shall insure that this provision is included in every contract the Grantee enters with any other person or entity who will be involved in any construction, use, installation, maintenance or repair of the easement, including that the Municipality is listed as an additional insured. The Assembly or Borough Manager may require additional insurance as may be reasonably determined in the best interests of the Municipality during the Term and any extensions.

J. Hazardous Materials

Grantee is familiar with and has had full opportunity to visually examine the Easement for the presence of any Hazardous Materials. Grantee acknowledges that Grantor, its agents, authorized representatives, or employees have made no representations as the physical conditions of the Easement, including but not limited to the subsurface and soil conditions. Grantee accepts the Easement in an "as is" condition. Grantee accepts and assumes responsibility and liability for pre-existing subsurface and/or soil conditions of the Easement prior to the Easement Term that arise from Railroad Operations.

Any other provision of this Easement to the contrary withstanding, Grantee releases Grantor from any and all claims, demands, penalties, fines, judgments, liabilities,

settlements, damages, costs, or expenses arising, during or after the expiration of the Easement Term, and resulting from the existence of Hazardous Material on the Easement. This release includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or policy subdivision or by law, relating to Grantee's use, keeping, storage, or disposal of Hazardous Materials on the Property.

K. Permits.

Grantee shall obtain all local, State, and Federal regulatory approvals and permits for all work in the Easement to install, maintain, and repair the rail spurs and any State or Federal approvals and permits required for use of the Easement by Grantee.

L. Vegetation.

Should clearing of trees or vegetation beyond general repair and maintenance within the Easement become necessary, it must be pre-approved in writing by the Grantor through the Grantee submitting a written request to the Borough Manager's office. Any clearing must be conducted in compliance with all required local, state and federal regulatory approvals and permits obtained by Grantee. Grantee shall stabilize any non-vegetated areas cleared by Grantee with grass mixes approved for erosion control in this region, or alternative vegetation as required under any permits or regulatory approvals obtained by Grantee, including but not limited to, the requirements under Alaska's Pollution Discharge Elimination System. Any work of any kind related to this section shall comply with all local, state and federal laws applicable to such work.

M. Historical or Archeological Resources.

If Grantee uncovers artifacts of historic, prehistoric, or archeological nature during construction, use or maintenance in the Easement, the Grantee shall notify the Grantor immediately and stop work and use at the location.

N. Understanding.

Each party acknowledges it has read and understands the terms of this Easement and has had the opportunity to review the Easement with counsel of their choice and is voluntarily executing this Easement. Each party acknowledges and agrees that each party is not relying on any statements or representations of the other party or its attorneys in entering this Easement other than what is stated herein.

O. Jurisdiction; Choice of Law.

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 and any nature arising out of any use, construction, maintenance or repair by the Grantee or arising out of this Agreement. Grantee agrees that venue for any trial in any action shall be in Skagway, Alaska. The laws of the State of Alaska shall govern the rights and obligations of the parties.

P. Assignment.

Grantee shall not assign this Easement agreement without the written approval of Grantor, which approval shall not be unreasonably withheld or delayed. The Grantor may in its sole discretion refuse to allow an assignment to an LLC unless the members of the LLC guarantee performance of the terms and conditions of the Easement.

Q. Covenants Running with the Land.

The terms and conditions of this Agreement shall be covenants burdening and running with the Easement, and performance of the covenants contained herein may be specifically enforced, subject to the conditions under Section 2A of this agreement.

R. Notices.

All notices required or permitted under the terms of this Agreement shall be in writing and shall be deemed given when a copy thereof, addressed as provided herein, is actually delivered, either by U.S. nationally recognized overnight courier (with confirmation), or by certified or registered mail, return receipt requested, to Grantor or Grantee at the address stated for it in the first paragraph of this Agreement, and to the successors and assigns of Grantor or Grantee, at the address for such successor shown on the recorded conveyance to such successor or assign, or at such other address of which the parties or such successor or assign may notify the other party in writing.

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

Andrew Cremata, Mayor
For the Municipality of Skagway

Signer
For Pacific & Arctic Railroad & Navigation
Company

Date_____

Date_____

ATTEST:

Steve Burnham Jr., Borough Clerk

(SEAL)

ATTACHMENT A



Total Easement Area = 3,520 sq. ft. + 3,600 sq. ft. + 7,720 sq. ft. + 11,800 + 29,760 sq. ft. + 51,520 sq. ft. = **107,920 sq. ft. or 2.48 AC**