

Proposed by:	Finance Committee
Attorney Review:	07/27/2023
First Reading:	08/03/2023
Second Reading:	08/17/2023
Vote:	<input type="checkbox"/> Aye <input type="checkbox"/> Nay <input type="checkbox"/> Absent

**MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 23-20**

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AUTHORIZING THE MUNICIPALITY OF SKAGWAY TO LEASE TIDELANDS PROPERTY TO PETRO 49, INC., AND DIRECTING THE BOROUGH CLERK TO PLACE A PROPOSITION ON THE OCTOBER 3, 2023 REGULAR ELECTION BALLOT FOR RATIFICATION.

WHEREAS, at its meeting of August 18, 2022, the Borough Assembly authorized the Manager to enter into negotiations with Petro 49, Inc. (Petro) for a lease of municipal tidelands; and

WHEREAS, the Borough Manager has met with Petro representatives to negotiate general terms and conditions for a new lease; and

WHEREAS, additional time was required for negotiation of a longer-term lease and to provide for a vote if the requirements of SMC 16.03.025(B) are met, and therefore on March 20, 2023 the Municipality executed a short-term lease, expiring on November 30, 2023, to ensure uninterrupted fuel supply to Skagway and the Yukon; and

WHEREAS, the leased area is approximately 2.19 acres of property which lies within Alaska Tidelands Survey No. 4, as shown on Exhibit A as Lots 8 and 9; and

WHEREAS, the following improvements are situated on the property: 14 petroleum products storage tanks, office/warehouse building, two truck loading racks, and pumping station; and

WHEREAS, pursuant to SMC 16.03.025(B), ratification of the [lease] ordinance by voters shall be required when the value of the lease payments of the entire term of the lease exceeds five million dollars (\$5,000,000.00). ... A renewal option exercisable at the discretion of the lessee shall be counted in determining the term of the lease for purposes of this subsection; and

WHEREAS, pursuant to SMC 16.02.025(A), the qualified voters of the municipality shall ratify the lease of real property or an interest therein by voting to approve or not approve the ordinance providing for the terms and conditions of the subject disposal;

Section 1. Classification. This is a non-code ordinance.

Section 2. Purpose. To enter into a lease of approximately 2.19 acres of tidelands property to Petro, for the purpose of a business office and petroleum fuel transportation, storage, and distribution facility, and to place Ballot Proposition #3 before the voters at the October 3, 2023 Regular Election for ratification.

Section 3. General Terms and Conditions of New Lease with Petro.

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A new Lease with Petro 49, Inc. shall contain the following general terms and conditions:

- a) The leased area is approximately 2.19 acres of property which lies within Alaska Tidelands Survey No. 4, as shown on Exhibit A as Lots 8 and 9;
- b) The following improvements are situated on the property: 14 petroleum products storage tanks, office/warehouse building, two truck loading racks, and pumping station;
- c) Petro is granted the right to use and operate the fuel pipelines;
- d) Petro is granted the right to use the existing road at the southwest border of the property;
- e) The lease term would be for approximately 35 years, beginning upon the effective date of this ordinance, and the subsequent signing of a lease by the MOS and Petro, and continuing through March 31, 2058 with the essential terms and conditions as in this ordinance;
- f) If Petro shall holdover after the expiration of the lease term, such tenancy shall be from month-to-month;
- g) Annual rent shall be market rent determined in accordance with SMC 16.02.010 plus applicable sales tax, prorated and paid in advance, in accordance with Skagway Municipal Code;
- h) The property will be reappraised and annual rent accordingly adjusted every five (5) years during the lease term;
- i) Petro shall pay all applicable charges, fees, and levies set forth in Port of Skagway Tariff No. 3;
- j) Petro is not permitted to construct improvements on the Property during the lease term without the written consent of the Municipality;
- k) Petro is responsible for keeping the leased property, pipelines, and all buildings and improvement thereon in good condition and repair during the lease term, ordinary wear and tear excepted;
- l) Petro will maintain the fuel tanks according to at least industry standards;
- m) Prior to the expiration of the Lease term, Petro may remove machinery, building, improvements, fixtures, and equipment constructed or installed by Petro during the lease term on the leased property;
- n) Any buildings, improvements, fixtures, machinery, equipment, or other items of real or personal property constructed or installed by Petro on the leased property during the Lease Term, which are not removed prior to expiration of the Lease, shall become the property of the Municipality, unless the Municipality requires Petro to remove the same.

The Lease shall include other provisions of a general nature typical in ground leases as related to default, default remedies, payment of taxes, payment of utilities, notices, and similar general provisions.

Section 4. Proposition #3. The Borough Clerk is hereby directed to place Ballot Proposition #3 before the voters at the October 3, 2023 Regular Election.

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“Shall a 35-year lease with Petro 49, Inc. be ratified by approval of Ordinance No. 23-20 containing essential terms and conditions of the subject lease?

Approve

Not Approve”

Section 5. Effective Date. Section 4 of this ordinance shall become effective immediately. The remainder of this ordinance shall become effective upon ratification by a majority of the qualified voters of the Municipality of Skagway.

NOW, THEREFORE BE IT ORDAINED BY THE ASSEMBLY OF THE MUNICIPALITY OF SKAGWAY, ALASKA that the Municipality of Skagway shall lease to Petro 49 Inc., 2.19 acres of tidelands property described as Lots 8 and 9 in the appraisal report dated August 15, 2023 by Reliant LLC (Exhibit B), for the term of approximately 35 years beginning upon the effective date of this ordinance, ratification of the lease by the voters on October 3, 2023, and the subsequent signing of a lease by the MOS and Petro; and

BE IT FURTHER ORDAINED that Petro shall be charged market rent determined in accordance with SMC 16.02.010 plus applicable sales tax; and

BE IT FURTHER ORDAINED that the Borough Manager is authorized to negotiate lease terms in accordance with SMC 16.03.130 that are reasonably consistent with the foregoing and to execute said lease after voter ratification.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this ___ day of _____, 2023.

Andrew Cremata, Mayor

ATTEST:

Steve Burnham Jr., Borough Clerk

(SEAL)

