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MUNICIPALITY OF SKAGWAY

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AN AGREEMENT FOR LIMITED COMMERCIAL USE OF DYEA VALLEY BETWEEN _____ COMPANY AND THE MUNICIPALITY OF SKAGWAY

This agreement is entered into this ____ day of February, 2021, between _____ Company (hereinafter referred to as OPERATOR) and the MUNICIPALITY of Skagway (hereinafter referred to as MUNICIPALITY) for the purpose of limited commercial use of the Dyea Valley. By signature on this agreement the parties agree to the following terms and conditions:

I. DESIGNATION OF AREAS OPEN TO COMMERCIAL USES

- A. West Creek: There shall be no commercial tour operations on the West Creek Road or into the West Creek Valley.
- B. Taiya River: There shall be no commercial tour operations north of the Rafter Put-in on the Taiya River or at the mouth of West Creek where it enters Taiya River.
- C. The number of commercial permits allowed in Dyea outside of the Dyea Flats shall be three (3). Commercial tour operations on the Dyea Flats are governed separately by SMC 16.08 and are not covered by this permit.

II. GENERAL TERMS AND CONDITIONS OF PERMITTED USE

- A. This permit allows the OPERATOR commercial recreational activity in the Dyea and West creek valleys, in accordance with Skagway Municipal Code (SMC) 16.10.020, Dyea Management Plan. The Dyea Community Advisory Board shall conduct an annual review of the OPERATOR at the end of each tourist season to ensure that the conditions of the Dyea Management Plan and this Agreement are being met. The OPERATOR shall fully cooperate with the Dyea Community Advisory Board and the failure to do so constitutes a material breach of this agreement.
- B. OPERATOR shall be responsible for complying with all State, Federal and local laws applicable to their activities.
- C. OPERATOR shall have in their possession at all times the permit issued pursuant to this section.
- D. OPERATOR shall be responsible for compliance with permit conditions. Any person listed on a permit issued shall be deemed to be jointly and severally liable for any violation of this chapter by any person or employee operating under the permit.
- E. Each permitted OPERATOR shall provide on an annual basis following each season, a report to the Dyea Community Advisory Board, (DCAB), of the

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commercial activity of that season. Annual reports shall include all reports of complaints, accidents or incidents, daily volumes, monthly totals, and seasonal totals of activity.

- F.** Permits authorized under this chapter are not transferable, and shall immediately terminate in the event of any abandonment or failure to perform and may be assigned to another person or entity in the sole discretion of the municipality.
- G.** Damage to public property or resources. The permit holder shall be responsible for any damages to any public land, road, trail, facility or natural resources including trees, waters, or wildlife, and shall pay actual costs of remediation of these damages.
- H.** Impact upon the quiet enjoyment of public lands by non-commercial users. Complaints by non-commercial users of public lands filed with the Skagway Police Department against any commercial operator may result in a citation.
- I.** Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) per violation. Each act or violation and every day upon which a violation occurs or continues constitutes a separate offense.
- J.** Grievance Procedure – Any reported violation of this code may result in a correction order issued by the borough manager under SMC 5.01.050. An appeal of such correction order may be filed as provided in SMC 5.01.070, Appeal to borough assembly.

III. OPERATOR'S RESPONSIBILITIES

- A.** OPERATOR agrees to abide by all federal state and local laws, ordinances and regulations, including SMC 16.10.020(B)(3). The OPERATOR shall comply with the Migratory Bird Treaty Act and shall comply with the provisions of those federal laws as applicable to migratory birds, eggs, and nests in Skagway Borough.
- B.** OPERATOR represents and warrants that the no activity of the OPERATOR shall use, generate, manufacture, store, treat, dispose, release, or threaten 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.
- C.** OPERATOR shall pay to the MUNICIPALITY the amount of \$.50 for each customer in every group of the OPERATOR in the Dyea valley. This amount shall be due at the time that quarterly sales tax returns are due. Failure to provide the MUNICIPALITY with full payment when due will result in immediate suspension

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of this Agreement and constitute an immediate material breach of this Agreement. Failure to provide the MUNICIPALITY with full payment within thirty (30) days of the quarterly sales tax return dates shall result in termination of the Agreement, in the sole discretion of the MUNICIPALITY. A penalty of ten percent (10%) of such user fee as is unpaid shall be added for the first month of delinquency or any fraction thereof, and an additional ten percent (10%) shall be added for each additional month of delinquency or fraction thereof, until a total penalty of thirty percent (30%) has accrued. Interest shall be charged at the rate of 15% per annum on any late payment. Such penalty and interest shall be included in the term "full payment" in this section. The municipality may collect all monies owed the municipality in a court action or through any other lawful process.

- D.** OPERATOR shall comply with all federal, state and local COVID-19 mandates and protocols in place at all times when conducting any tour through the use of this permit.

IV. INSURANCE AND INDEMNIFICATION

- A.** OPERATOR shall present to the MUNICIPALITY a certificate of insurance showing that the OPERATOR has obtained at least two million dollars (\$2,000,000.00) general liability insurance, which certificate of insurance shall name the MUNICIPALITY of Skagway as an additional insured. Proof of such insurance shall be provided to the MUNICIPALITY as a condition of entering the contract. Failure to provide the certificate of insurance as required by this provision at the time of signing the contract shall constitute a material breach by the OPERATOR and the MUNICIPALITY may choose not to proceed with the OPERATOR in its sole discretion. Failure to maintain such insurance shall constitute a material breach of contract and entitle the MUNICIPALITY to terminate the OPERATOR and this Agreement in its sole discretion. The certificate of insurance must establish that the MUNICIPALITY is named as an additional insured on such policy, and that the insurer thereof shall notify the MUNICIPALITY twenty (20) days before the policy is canceled or terminated. OPERATOR'S insurance coverage shall apply to any coverage carried by the MUNICIPALITY which may cover the work specified in this Agreement. OPERATOR'S insurance carrier must be an admitted carrier in the State of Alaska or must be Best Rated or better. "OPERATOR" shall be defined to include OPERATOR'S employees, consultants, representatives, and invitees for purposes of the defend and indemnification provisions of this Paragraph.
- B.** The OPERATOR shall indemnify, defend and hold harmless the MUNICIPALITY of Skagway from any and all claims of any kind and any nature for injury or damage to persons or property, including death, and including as to any and all claims or actions related to any hazardous substance or remediation of or damages caused by any hazardous substance, arising out of or relating in any way to the OPERATOR'S acts or omissions.
- C.** Worker's Compensation Insurance is required in compliance with the laws of the State of Alaska, AS 23.30 et seq., and federal jurisdiction where the work is being performed and is required by this agreement.

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D. OPERATORS' Pollution Liability – 2,000,000 each claim and in the aggregate.

V. TERMINATION AND SUSPENSION

The Municipality reserves the right to terminate the commercial activities of the OPERATOR at any time when the Municipality determines that termination is in the best interests of the Municipality. If the Municipality terminates the agreement pursuant to this section, the Municipality shall notify the OPERATOR in writing as of the effective date to stop commercial activity and the OPERATOR shall immediately stop all commercial activity. Under no circumstances shall the MUNICIPALITY be liable to the OPERATOR or anyone else for any damages of any kind and any nature alleged to have been caused or the result of termination by the MUNICIPALITY, including but not limited to lost profits, lost business opportunities, incidental damages, special damages, or any other kind of damages.

VI. MISCELLANEOUS

A. Written notice shall be provided to the parties, by certified mail, return receipt requested, at the following addresses:

Municipality	Municipality of Skagway PO Box 415 Skagway, AK 99840 Attn: Borough Manager
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Operator	Name Address Address Attn: Owner
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- B.** This Agreement is binding upon the heirs, successors and assign of the parties.
- C.** This Agreement cannot be assigned without prior written consent of the other party. This provision is a material provision of the contract and the assignment by the OPERATOR without prior written approval of the Municipality may result in the Municipality terminating the contract for this breach, stopping all or part of the project until the OPERATOR fully complies with this provision, or any other remedy or action the Municipality determines to be in the best interests of the project and Municipality, all in the sole discretion of the Municipality. The Municipality will not consent to any assignment to a LLC without a personal guarantee by all of the members of the LLC.
- D.** This Agreement represents the entire Agreement of the parties and no other Agreement whether oral or 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.
- E.** This Agreement can be modified if agreed to by both parties in writing. OPERATOR agrees and acknowledges that no employee nor the borough

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manager, nor the mayor, nor any assembly member nor any representative of the Municipality has any actual or apparent authority to orally modify or change any of the terms of this contract.

- F.** OPERATOR's or the MUNICIPALITY'S waiver of any term or condition in this Agreement shall not constitute a waiver of any other term or condition in this Agreement.
- G.** 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.
- H.** 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.
- I.** 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 or related to this Agreement or arising out of or relating to the performance of this Agreement. OPERATOR agrees that venue for 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.
- J.** The OPERATOR specifically waives any right or opportunity to request a change of venue for trial pursuant to A.S. 22.10.040.

The OPERATOR acknowledges that the OPERATOR has read and understands the terms of this Agreement and has had the opportunity to review the Agreement with counsel of his/her choice, and is executing this Agreement of his/her own free will. OPERATOR acknowledges and agrees that OPERATOR is not relying on any representations by any Municipal employee, the Mayor, an assembly member, the borough attorney, the borough manager or any consultant of the MUNICIPALITY in deciding to enter this Agreement and perform this project.

OPERATOR warrants and represents that the person who executes and signs this Agreement on behalf of the OPERATOR is lawfully authorized to execute and sign the Agreement, and to bind OPERATOR to the terms and conditions of the Agreement.

Andrew Cremata, Mayor
For the Municipality of Skagway

Name
For Business

Date_____

Date_____

ATTEST:

Emily Deach, Borough Clerk

(SEAL)