

Proposed by:	Administration
Attorney Review:	05/27/2015
First Reading:	06/04/2015
Second Reading:	07/06/2015
Vote:	4 Aye 2 Nay 0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 15-18**

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AUTHORIZING THE MUNICIPALITY OF SKAGWAY TO LEASE TIDELANDS PROPERTY TO PACIFIC AND ARCTIC RAILWAY AND NAVIGATION COMPANY (PARN) THROUGH DECEMBER 31, 2050

WHEREAS, the Borough Assembly has been actively engaged in efforts to enhance the economic development of the Municipality of Skagway, and in particular, to expand the potential uses of the Skagway harbor and waterfront, and to reassert control by the Municipality of the harbor and waterfront, which control the Municipality does not currently have due to the existing tidelands lease with PARN through 2023; and

WHEREAS, the development of the Gateway Project has been identified as a priority for the community by the Assembly and the Port Commission; and

WHEREAS, the construction of the Gateway Project requires access to certain areas of the tidelands which are currently leased to PARN through 2023; and

WHEREAS, the Assembly authorized representatives of the Assembly and Municipality to explore the possibility of entering a new lease with PARN, pursuant to SMC 16.02.130, which would terminate the existing lease with PARN; and

WHEREAS, an essential term of a new lease with PARN would be to substantially reduce the area of tidelands leased to PARN to 334,862 square feet, and allow full access for all areas of the tidelands necessary for the construction of the Gateway Project; and

WHEREAS, an essential term of a new lease would require PARN to provide a substantial contribution to the remediation of the Skagway harbor currently in progress pursuant to certain State orders dating back to 1989, which PARN is not required to do under the existing lease; and

WHEREAS, the Assembly's designated representatives have met with PARN representatives to discuss certain essential terms and conditions for a new lease, which if those essential terms and conditions are ratified by the qualified voters of the Municipality of Skagway would terminate the existing lease with PARN and restore most of the tidelands back to the control of the Municipality; and

WHEREAS, a special election to ratify this ordinance is required per SMC 16.02.025(B) to approve the essential terms and conditions of a lease as contained in this ordinance; and

WHEREAS, the Mayor is authorized to execute a Lease consistent with the essential terms and conditions in this ordinance upon ratification of this ordinance by qualified voters of the municipality pursuant to SMC 16.02.025(A).

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

Section 2. Purpose. To enter into a lease of approximately 334,862 square feet of tidelands property to Pacific and Arctic Railway and Navigation Company (PARN), and terminate the existing lease with PARN, for the purpose of enhancing the economic development of the Skagway waterfront and harbor for the benefit of the community of the Municipality of Skagway; and to complete the construction of the Gateway Project; and to substantially reduce the total tidelands area currently leased to PARN through 2023, returning those tidelands to the control of the Municipality.

Section 3. Essential Terms and Conditions of New Lease with PARN

A new Lease with PARN would contain the following essential terms and conditions:

- a) The leased premises would be limited to the tidelands directly beneath the Ore Dock and directly beneath the Broadway Dock, an area comprised of approximately 334,862-square feet, as shown on the attached Exhibit A;
- b) The current lease with PARN and all amendments to that lease through 2023 would be terminated upon ratification of this ordinance by the qualified voters of Skagway and the signing of a new Lease by the Municipality and PARN;
- c) The lease term would be for thirty-five years, beginning upon ratification of this ordinance by the qualified voters of Skagway, and the subsequent signing of a lease by the Municipality and PARN, with the essential terms and conditions as in this ordinance;
- d) PARN would be permitted a non-exclusive easement approximately fifty-four feet wide as related to existing railroad tracks;
- e) PARN would be permitted to apply to the Assembly for a not-to-exceed 25,000 square foot expansion area, which would not increase the yearly rental payments;
- f) PARN would pay to the Municipality annual rent beginning in 2015 at \$250,000 per year, increasing by \$25,000 every five years, to \$400,000 per year in the final five years of the Lease;
- g) PARN will pay \$2,000,000 toward the remediation of the current contamination in the harbor, to be paid in one year, beginning with the Notice to Proceed for construction of the Gateway Project;
- h) The Municipality will be allowed access to the leased area for the purpose of completing the Gateway Project;
- i) Construction of the Gateway Project would not interrupt cruise ship operations, and in the event there is an interruption during actual construction, PARN and the Municipality will agree upon reasonable compensation to PARN for any actual losses incurred and documented by PARN;
- j) PARN will be required to comply with all federal, state and local laws, including any statutes, regulations or ordinances that become effective after the beginning date of the Lease, and including any municipal ordinances or regulations that may result from the creation of a Port Authority;
- k) The Municipality will have a right of inspection of the leased area upon reasonable notice and at reasonable times;
- l) The current subleases held by PARN will be assigned to the Municipality, and the Municipality will become the Lessor on those subleases. The current revenue from the subleases will be paid to White Pass through 2023, unless a sublease is not renewed by

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- the subtenant, and the Municipality may negotiate new subleases directly with the subtenants, now or after 2023;
- m) PARN and the Municipality will jointly share in the construction of a floating dock in order to allow for the docking of the larger cruise vessels expected to begin operation in 2017;
 - n) Upon construction of a new Ore Dock, the Municipality will receive all revenues generated by non-cruise vessel activity from the north half of the Ore Dock and PARN will receive revenues from the cruise ship operations at the south end of the Ore Dock. PARN will be responsible for all damages related to incidents involving cruise ship related vessels at the north end of the Ore Dock and the Municipality will be responsible for all damages related to non-cruise ship vessels at the north end of the Ore Dock;
 - o) PARN will defend and indemnify the Municipality from any action or liability or damage of any kind and any nature, including as to any environmental event or spill or contamination. The environmental defend and indemnification would survive the thirty-five year term of the lease in 2050;
 - p) PARN will maintain general liability insurance for the benefit of the Municipality in the amount of at least \$5,000,000;
 - q) At the expiration of the Lease, all buildings and improvements on the leased area shall become property owned by the Municipality.
 - r) The Municipality will reimburse PARN for capital improvements other than maintenance and repair in an amount equal to the remaining, unamortized value of the capital improvement after depreciation is deducted from the cost of the capital improvement. All improvements must be approved in writing, in advance of their construction, by the Borough Assembly. The floating dock is not considered to be a capital improvement under the lease.

The Lease would 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. Effective Date. This ordinance shall become effective upon ratification by a majority of the qualified voters of the Municipality of Skagway.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 6th day of July, 2015.


Mark Schaefer, Mayor

ATTEST:


Emily Deach, Borough Clerk

(SEAL)

