

MUNICIPALITY OF SKAGWAY, ALASKA
RESOLUTION NO. 13-11R

A RESOLUTION OF THE MUNICIPALITY OF SKAGWAY, ALASKA AUTHORIZING SKAGWAY TERMINAL COMPANY TO ENTER INTO A LICENSE TO USE AGREEMENT WITH ALASKA MARINE LINES, INC.

WHEREAS, in 1968 the Municipality of Skagway entered into a lease of portions of ATS 4 with Pacific and Arctic Railway and Navigation Company (PARN); and

WHEREAS, the PARN lease was assigned to a subsidiary, Skagway Terminal Company (STC), in 1968;

WHEREAS, Alaska Marine Lines, Inc., subleases a portion of the tidelands from STC and would like the right to use land outside of its current sublease and within the PARN tidelands lease; and

WHEREAS, all agreements between STC and sub lessees must be approved by the Skagway Borough Assembly;

NOW, THEREFORE BE IT RESOLVED, that the Skagway Borough Assembly approves and authorizes the license to use agreement between Skagway Terminal Company and Alaska Marine Lines, Inc., for the term of June 1, 2013, through May 31, 2014.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 2nd day of May, 2013.



Stan Selmer, Mayor

ATTEST:



Emily A. Deach
Borough Clerk

(SEAL)





WHITE PASS & YUKON ROUTE

THE SCENIC
RAILWAY OF THE WORLD

P.O. Box 435
Skagway, Alaska 99840
Toll Free: 1-800-343-7373
Phone: (907) 983-2217
Fax: (907) 983-2734
info@whitepass.net
wpyr.com

February 1, 2013

Natalie Stephenson
Alaska Marine Lines
5615 W Marginal Way
P O Box 24348

RE: Tax overcharge on lease

Dear Natalie,

Enclosed please find check in the amount of \$150.00 for an overcharge on city taxes calculated on the June 1, 2012 License to use Agreement between Alaska Marine Lines and Skagway Terminal Company. There are two tax rates for Skagway; 6 months at 5% and 6 months at 3%. We use 4% for the year; however, when the lease was set up, 5% was used. Should you have any questions, please feel free to contact me.

Kind regards,

Helga Davis
Accountant
908-983-9828
hdavis@wpyr.com



LICENSE TO USE AGREEMENT

This License to Use Agreement (the "Agreement") is effective June 1, 2013.

BETWEEN: **Alaska Marine Lines, Inc** (the "Licensee"), a company organized and existing under the laws of the State of Alaska, with its head office located at:

5615 W Marginal Way SW
PO Box 24348
Seattle, WA 98124-4348

AND: **Skagway Terminal Company** (the "Licensor"), a company organized and existing under the laws of the State of Alaska, with its head office located at:

PO Box 435
231 Second Ave
Skagway, AK 99840-0435

WHEREAS Licensee wishes to obtain the right to use the portion of Licensor's Alaska Tidelands Survey No. 4 shown approximately in Red Crosshatching on "Schedule A" (the "Premises"). The Premises is the area between the West Fence border AML's currently leased freight yard and west of that, ending approximately 20 ft. from the concrete side walk that follows the railroad tracks. At least 20 feet east of the sidewalk and 20 feet at the mouth of the ore dock must be free of all obstructions at all times to maintain adequate emergency access as shown in blue arrows on Schedule A.

NOW THEREFORE in consideration of the premises, covenants and agreements contained herein, the parties agree as follows:

1. LICENSE

1.1 Grant

Subject to the terms of this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable, royalty free, license to use the Premises.

1.2 Fee

The Licensee shall pay Licensor \$15,000 annually plus 4% sales tax, on the date the agreement is signed for use of its Premise, to be prorated on a daily basis for any partial year.

2. WARRANTY, LIABILITY, INDEMNITY, NO BAILMENT

2.1 No Warranties or Conditions

Licensor does not represent that the use of the Premises by Licensee will produce any specific results, that the Premise will be fit for temporary vehicle, equipment and chassis storage while it awaits further delivery; herein called the "Equipment" or that the Premises will not cause any damage or harm, it being the intention of the parties that no liability whatsoever will attach to Licensor out of Licensee's use or inability to use the Premises. Licensor expressly disclaims any implied warranty or condition of merchantability or fitness for a particular purpose with respect to the Premises. Licensor makes no expressed or implied warranty that Municipal zoning will allow use of the Premises. Licensee is responsible for investigating zoning and permitting requirements.

2.2 **No Recourse**

Licensee shall have no recourse against Licensor, whether by way of any claim, suit or action for any loss, liability, damage, or cost that Licensee may suffer or incur at any time, by reason of its use or inability to use the Premises.

2.3 **Limit on Liability**

In no event will Licensor be liable to Licensee for any indirect, incidental, special or consequential damages whatsoever, including but not limited to loss of revenue or profit, lost or damaged data or other commercial or economic loss, arising out of any breach of this Agreement, any use or inability to use the Premises, or any claim made by a third party, even if Licensor has been advised of the possibility of such damage or claim.

In no event will Licensee be liable to Licensor for any indirect, incidental, special or consequential damages whatsoever, including but not limited to loss of revenue or profit, lost or damaged data or other commercial or economic loss, arising out of any breach of this Agreement, any use or inability to use the Premises, or any claim made by a third party, even if Licensee has been advised of the possibility of such damage or claim

2.4 **Insurance Provision for Municipality of Skagway**

Licensee shall, at Licensee's expense, maintain in effect throughout the terms of this license commercial general liability insurance covering the Premises and its appurtenances and the walkways fronting any building or improvement thereon in the amount of \$1,000,000.00 each occurrence/\$2,000,000.00 aggregate for bodily injury, including death, and property damage. Such insurance shall specifically show the Municipality of Skagway as an additional co-insured on such policies.

2.5 **Indemnity**

Licensee shall defend, indemnify and hold Licensor harmless from any Claim for any personal injury (including death) or loss of or damage to any property (including the Premises) caused by any act or omission of Licensee, its licensed affiliates, sub-contractors, agents or employees (collectively the "Licensee's Representatives") in connection with or related to Licensee's or Licensee's Representatives' use of the Equipment.

Licensee agrees to indemnify, defend and save the Municipality of Skagway 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 on that portion of Alaska Tidelands Survey No. 4, shown approximately in Red Crosshatching on "Schedule A" (the "Premises") regardless of when such claims may have occurred, arose or accrued, which in any way relate to the Licensee's use of the Premises, including, without limitation, in connection with Hazardous Materials. Licensee agrees to indemnify, defend and save the Municipality of Skagway harmless against and from any and all claims arising during the term of the license from any condition of the Premises. Licensee agrees to indemnify, defend and save harmless the Municipality of Skagway from any and all claims arising from any of the Licensee's failure to comply with any law, ordinance or regulation of any governmental body, or arising from any negligent act or omission of Licensee or any of its agents, contractors, servants, employees, licensees, guests and sublessees and any agents, contractors, servants, employees, licenses and guess of its sublessees. Licensee's obligation to defend, indemnify and save the Municipality of Skagway harmless shall include Licensee's payments of reasonable actual legal fees, litigation costs and expert fees, and costs incurred by the Municipality of Skagway in relation to any claim filed against it which is tendered to the Licensee.

2.6 **No Bailment**

Nothing in this License to Use Agreement shall create or be deemed to create a bailor-bailee relationship or give rise to a bailment relationship of any nature whatsoever between Licensor and Licensee with respect to any Equipment or other personal property of Licensee located at any time on the Premises.

3. TERM & TERMINATION

3.1 Term

This Agreement shall terminate on May 31, 2014, unless terminated earlier in accordance with the provisions of Subsection 3.2.

3.2 Termination by Licensee

Licensee may terminate this Agreement by written notice, which termination will be effective 30 days after receipt thereof.

3.3 Termination by Licensor

Licensor may terminate this Agreement by written notice, which termination will be effective 30 days after receipt thereof.

Licensor may terminate this Agreement by written notice to Licensee, to take effect immediately upon the receipt thereof, if:

- (a) Licensee commits or permits a breach of any of its covenants or obligations under this Agreement and Licensee has failed to remedy such breach within 10 days after being required in writing to do so by Licensor;
- (b) Licensee becomes bankrupt or insolvent, or subject to a receivership proceeding, or makes an assignment for the benefit of creditors, or an order is made or a resolution is passed for the winding up of Licensee, or Licensee takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors; or
- (c) there is any change in the ownership, management or structure of Licensee which in Licensor's opinion, acting reasonably, would be inconsistent with the interests of the Licensor.

3.4 Consequence of Termination

Upon termination of this Agreement for any reason:

- (a) the rights and obligations under Section 2 (Warranty, Liability, Indemnity) or as otherwise noted in this Agreement or by implication required to survive, will survive termination of this Agreement;
- (b) Licensee's rights under this agreement shall immediately cease;
- (c) Licensee shall deliver a detailed statement to Licensor of the inventory of all Licensor Equipment located in the Premises as of the date of termination;
- (d) Licensee shall immediately remove all Equipment from the Premises, and in any event no later than 10 days following the termination date. In the event the Equipment has not been removed by Licensee within such time period, Licensor may dispose of the Equipment at the expense of Licensee.
- (e) No fee refund will be issued to Licensor if Licensor terminates pursuant to Section 3.3.

4. GENERAL

4.1 Notice

Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by telecopier, telex or other similar means of electronic communication (confirmed on the same or following day by prepaid mail) addressed, in the case of notice to the Licensor as follows:

Skagway Terminal Company
PO Box 435
Skagway, AK 99840
Attention: Jaime Bricker
Facsimile: (907) 983-2017
Phone: (907) 983-9800
E-mail: jbricker@wpyr.com

And in the case of notice to the Licensee, as follows:

Alaska Marine Lines, Inc
5615 W Marginal Way SW
PO Box 24348
Seattle, WA 98124-4348
Attention: _____
Facsimile: _____
Phone: _____
E-mail: _____

Any notice so given to the Licensor or the Licensee shall be deemed conclusively to have been given and received when so personally delivered or sent by telex, telecopier or other electronic communication or on the 10th business day following the sending thereof by private courier or mail. Any party hereto or others mentioned above may change any particulars of its address for notice by notice to the others in the manner aforesaid.

4.2 Severance

In the event that any provision of this Agreement is invalid, unenforceable or illegal, then such provision shall be severed from this Agreement and this Agreement shall be read as if such provision were not part of this Agreement.

4.3 Applicable Law

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of The State of Alaska and The United States of America as applicable.

4.4 Entire Agreement

This Agreement constitutes the entire contract between the parties and supersedes any previous agreement or understanding between the parties with respect to this subject matter. This Agreement may only be amended in writing, signed by both parties, which expressly states the intention to amend this Agreement.

4.5 Assignment

Either Party shall not, without the other Party's prior written consent, assign, delegate, pledge or otherwise transfer this Agreement, or any of its rights or obligations hereunder to any person.

4.6 Language

The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only.

4.7 Hazardous Waste Responsibility Provision

Licensee represents and warrants that the Licensor's portion of Alaska Tidelands Survey No. 4, shown approximately in Red Crosshatching on "Schedule A" (the "Premises") shall not 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.

Licensee agrees to hold the Municipality of Skagway harmless and to indemnify and defend the Municipality of Skagway against any and all claims and losses resulting from Licensee's 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 the Municipality of Skagway arising out of or related to the presence of Hazardous Materials in, on, or under the Premises, or out of any such use of the Premises, or due to the incorporation of such materials into or onto the Premises. This obligation to indemnify, defend and hold the Municipality of Skagway harmless shall survive the term of this license lease and include any claim, cause of action or administrative regulatory enforcement action in which the Municipality of Skagway is determined or alleged to be a potentially responsible party.

4.8 No Assignment Without Written Consent of Municipality of Skagway

Licensee shall not assign, delegate, pledge or otherwise transfer this License or any of its rights or obligations hereunder to any person or entity without the written consent of the Municipality with approval of the Borough Assembly.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at Skagway, AK on the date indicated above.

LICENSEE
Alaska Marine Lines, Inc

LICENSOR
Skagway Terminal Company

Per: _____
Authorized Signature

Per: _____
Authorized Signature

Print Name and Title

Print Name and Title

Schedule A

