

Proposed by:	Administration
Vote:	6 Aye 0 Nay 0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA**  
**RESOLUTION NO. 15-07R**

**A RESOLUTION OF THE MUNICIPALITY OF SKAGWAY, ALASKA AUTHORIZING SKAGWAY TERMINAL COMPANY TO ENTER INTO A LICENSE TO USE AGREEMENT WITH M & M TOUR SALES, 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; 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 M & M Tour Sales, Inc., for the term of May 1, 2015, through April 30, 2016.

**PASSED AND APPROVED** by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 5<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Mark Schaefer, Mayor

ATTEST:

  
\_\_\_\_\_  
Emily A. Deach  
Borough Clerk

(SEAL)



# LICENSE TO USE AGREEMENT

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This License to Use Agreement (the "Agreement") is effective May 1, 2015.

**BETWEEN:** **M & M Tour Sales, Inc.** (the "Licensee"), a company organized and existing under the laws of the State of Alaska, with its head office located at:

PO Box 1027  
Skagway, AK 99840

**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

WHEREAS Licensee wishes to obtain the right to use the Licensor's portion of Alaska Tidelands Survey No. 4, shown approximately in Red Crosshatching on "Schedule A" (the "Premises"). The Premises is the area south of the end of AIDEA's chain link fence and the Ore Dock.

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 1% of gross annual revenue derived from sale made on The Premise plus 5% City Sales Tax. This shall be submitted to PARN on the 10<sup>th</sup> day of each month, beginning in June and ending in October. The 1% payment shall be accompanied with a sales report of all gross revenue collected by the Contractor at its Ore location. The 1% payment shall be for the previous month, thus, the June payment shall be for gross revenue collected in May, and the October payment for September. Failure by the Contractor to remit payment to PARN for two successive months shall constitute a breach of the Agreement and PARN may terminate the Agreement.

## 2. WARRANTY, LIABILITY, INDEMNITY

### 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 tour sales, 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.

## 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.

## 2.4 **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 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.

## 3. **TERM & TERMINATION**

### 3.1 **Term**

This Agreement shall terminate on April 30, 2016, 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 has a receiving order made against it, 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) Licensor's rights under this agreement shall immediately cease;
- (d) Licensee shall deliver a detailed statement to Licensor of the inventory of all Licensee's products located in the Premises (the "Equipment") as of the date of termination;
- (e) 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.
- (f) No fee refund will be issued to Licensor.

## 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](mailto:jbricker@wpyr.com)

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

M & M Tour Sales, Inc.

PO Box 1027

Skagway, AK 99840

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 the laws of the State of Alaska. 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 or any nature arising out of or related in any way to this Agreement. Licensor and Licensee agree that the trial of any action shall be in Skagway, Alaska. Licensee specifically agrees to waive any right or opportunity to request a change of venue for trial from Skagway, Alaska pursuant to A.S. 22.10.040.

#### 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 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.

**4.9 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**  
M & M Tour Sales, Inc.

**LICENSOR**  
Skagway Terminal Company

Per: \_\_\_\_\_  
Authorized Signature

Per: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

Schedule A

