

Proposed by:	Administration
Attorney Review:	10/25/2018
First Reading:	11/01/2018
Second Reading:	11/20/2018
Vote:	6 Aye 0 Nay 0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 18-19**

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AUTHORIZING THE MUNICIPALITY OF SKAGWAY TO LEASE PROPERTY TO ED&D INC. / SKAGWAY CABLE TV.

WHEREAS, the Municipality received a request from Patty Campbell, dba ED&D Inc. / Skagway Cable TV to lease 4,533 square-feet of property; and

NOW, THEREFORE BE IT ORDAINED BY THE ASSEMBLY OF THE MUNICIPALITY OF SKAGWAY, ALASKA that the Municipality of Skagway shall lease to ED&D Inc. / Skagway Cable TV, 4,533 square feet consisting of 2,371 square feet of the Third Avenue right-of-way east of Alaska Street, and 2,162 square feet of the north portion of Block 31, Lot 1, in the appraisal report dated July 16, 2018 by Horan & Company LLC (Exhibit A), for the period of January 1, 2019, through December 31, 2023; and

BE IT FURTHER ORDAINED that the lease is subject to the terms and conditions set forth in SMC 16.02.160; and

BE IT FURTHER ORDAINED that ED&D Inc. / Skagway Cable TV shall be charged an annual rent of eight percent (8%) of fifty percent (50%) of the appraised value of \$68,900.00 according to Exhibit A, or \$2,756.00 annually plus applicable sales tax, prorated and paid in advance every calendar quarter; and

BE IT FURTHER ORDAINED that the Borough Manager is authorized to execute said lease with terms as defined above.

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

Section 2. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 20th day of November, 2018.



Monica Carlson, Mayor

ATTEST:



Emily Deach, Borough Clerk

(SEAL)



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JUL 19 2018

MUNICIPALITY OF SKAGWAY

E.D. & D.,Inc.

Skagway Cable TV

PO Box 1229

Haines, Ak 99827

(907)766-2337

(907)973-2205 (cell)

pcampbell99827@yahoo.com

July 12, 2018

Skagway City Council


Dear Skagway Council members,

I am writing in regards to my land lease of 2,371 square feet of 3rd Avenue Right of Way east of Alaska Street and 2,162 square feet of the north portion of block 31, lot 1.

I would like to request a lease renewal for another five (5) years.

I understand it is the year for another appraisal.

Thank you for your consideration.



Patty A. Campbell

**APPRAISAL REPORT
IN FEE SIMPLE INTEREST
OF THE LAND LEASED TO
SKAGWAY NETWORK CABLE TV,
LOT 1, BLOCK 31, SKAGWAY TOWNSITE,
SKAGWAY, ALASKA**



Prepared For: Michelle Gihl, Deputy Clerk
Municipality of Skagway
P O Box 415
Skagway, Alaska 99840

Prepared By: William G. Ferguson
Horan & Company, LLC
403 Lincoln Street, Suite 210
Sitka, Alaska 99835

Effective Date: July 5, 2018

Report Date: July 16, 2018

Our File No.: 18-031

EXHIBIT A

HORAN & COMPANY

REAL ESTATE APPRAISERS/CONSULTANTS

CHARLES E. HORAN MAI / WILLIAM G. FERGUSON,
JOSHUA C. HORAN, AND SLATER M. FERGUSON

403 LINCOLN STREET, SUITE 210, SITKA, ALASKA 99835

Phone: (907) 747-6666

Fax: (907) 747-7417

commercial@horanappraisals.com

July 16, 2018

Michelle Gihl, Deputy Clerk

Municipality of Skagway

P O Box 415

Skagway, Alaska 99840

Re: Summary Appraisal Report In Fee Simple Interest of a portion of the 3rd Ave ROW and a portion of Lot 1, Block 31, Skagway, Alaska; Our File 18-031

Dear Ms. Gihl:

We have completed the attached appraisal report of the above-referenced property per your request. The report is provided in a brief summary narrative format with analysis of four comparables found within the report. The market value as of July 5, 2018 for this lease tract is estimated at:

\$68,900(rounded) or \$15.20/SF

Your attention is directed to the content of this report with further descriptions of the subject property as well as brief descriptions of comparables considered. We appreciate the opportunity to be of service to you. Should there be any further questions regarding this subject, please do not hesitate to contact us.

Respectfully submitted,



William G. Ferguson

HORAN & COMPANY, LLC

TABLE OF CONTENTS

Certification of Appraisal iii

1 Introduction 1

 1.1 Property Identification 1

 1.2 Purpose of Appraisal; Intended Use and User 1

 1.3 Property Rights Appraised 1

 1.4 Inspection and Effective Date 1

 1.5 Three Year Property History and Ostensible Owner 1

 1.6 Synopsis of Lease 1

 1.7 Scope of Appraisal 2

 1.8 Assumptions and Limiting Conditions 2

 1.9 Terminology 3

2 Area Analysis 6

 2.1 Skagway Area Analysis 6

 2.2 Neighborhood Analysis 6

3 Property Description 8

 3.1 Site Description 8

 Topography, Utilities & Access 8

 3.2 Zoning 8

 3.3 Easements and Encroachments 8

 3.4 Assessed Valuation 8

4 Valuation 9

 4.1 Highest and Best Use 9

 4.2 Land Valuation 9

Addenda

- Subject Photographs
- Lease
- Qualifications of William Ferguson

CERTIFICATION OF APPRAISAL

We certify that, to the best of our knowledge and belief:

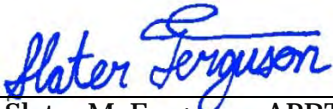
- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to the review by its duly authorized representatives.
- William Ferguson inspected the site on March 14, 2018.
- Slater Ferguson, Appraiser Trainee provided significant real property appraisal assistance to the persons signing this certification.
- Our office has performed assessment services regarding the subject property within the prior three years, as contract assessors for the Skagway Borough. We have performed no other appraisal services with regard to the subject property in the previous three years.



William G. Ferguson, AA618

July 16, 2018

Report Date



Slater M. Ferguson, APRT972

July 5, 2018

Effective and Inspection Date

1 INTRODUCTION

1.1 PROPERTY IDENTIFICATION

The subject site is referred to as the Skagway Network TV Lease site. It is located along the Skagway Airport at the end of the 3rd Avenue Right-of-Way (ROW). It encompasses a portion of the ROW and a portion of Lot 1, Block 31. Alaska Street is on its east side

1.2 PURPOSE OF APPRAISAL; INTENDED USE AND USER

The purpose and intended use of this appraisal is to estimate the fair market value to be used as a basis for annual lease rates. The market value estimated is limited by the Assumptions and Limiting Conditions herein. The site is leased to Skagway Network TV for continued use for transmission equipment. The intended user and client is the Municipality of Skagway.

1.3 PROPERTY RIGHTS APPRAISED

The subject property is appraised in its fee simple interest.

1.4 INSPECTION AND EFFECTIVE DATE

The subject property was inspected on March 14, 2018 by William G. Ferguson, and Slater M. Ferguson. The effective date of this report is July 5th, 2018. It is considered an extraordinary assumption of this report that the subject site is in a similar condition to when the site was inspected on March 14, 2018.

1.5 THREE YEAR PROPERTY HISTORY AND OSTENSIBLE OWNER

The subject property is owned by the Municipality of Skagway and has been for some time. It has not sold in the last three years. It is proposed to be in a continued use as leased to a private business, in this case, Skagway Network TV. It has been leased to this lessee since 1996. The annual rent is discussed below.

1.6 SYNOPSIS OF LEASE

The major points of the lease as it exists are summarized below. A copy of the lease is included in the addenda of this report.

<i>Leased Premises:</i>	Ptn.Lot 1, Block 31, and adjacent ROW - see lease for more detailed legal description, Skagway Recording District, First Judicial District, State of Alaska.
<i>Lessor/Ostensible Owner:</i>	Municipality of Skagway
<i>Lessee:</i>	ED&D Inc. / Skagway Cable TV
<i>Term of Lease:</i>	5 years evaluated annually.
<i>Current Annual Lease Payment:</i>	\$4,896.00 per year. The lease amount is based upon 50% of the appraised fair market value as provided by an appraisal report. "Terms and Conditions of Lease" per Municipal Code 16.02.160 govern this lease unless otherwise provided for.
<i>Lease Dates:</i>	Current lease originated in 1996 and was amended in 2013.
<i>Use:</i>	Television Transmission

1.7 SCOPE OF APPRAISAL

This appraisal report is intended to comply with the rules, regulations and procedures as set forth by the Uniform Standards of Professional Appraisal Practice (USPAP).

The scope of this appraisal included an investigation of the real estate market in Skagway. Comparable land sales or leases were analyzed to determine the market value of the subject land. The Direct Sales Comparison Approach was relied on for development of a market value opinion of the land.

Market information was obtained through interviews with area land owners, realtors, buyers, sellers, and others active in the real estate market. Our office maintains market data information on sales, transfers and on a geographic location basis for those rural properties not connected to a road system and various other real estate transactions. Within each of these areas, the data is further segmented into commercial and residential properties. Within these divisions of separation are divisions for zoning and whether the properties are waterfront or upland parcels. Horan & Company, LLC maintains and continually updates this library of sale transactions throughout the Southeast Alaska region and has done so for over 35 years.

1.8 ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal report and valuation contained herein are expressly subject to the following assumptions and/or conditions:

Extraordinary Assumption: It is an extraordinary assumption of this report that the subject site is in a similar condition as of the effective date (07/05/18) compared to when the site was inspected on March 14, 2018

1. It is assumed the data, maps, and descriptive data furnished by the client or his representative are accurate and correct. Photos, sketches, maps, and drawings in this appraisal report are for visualizing the property only and are not to be relied upon for any other use. They may not be to scale.
2. The valuation is based on information and data from sources believed reliable, correct and accurately reported. No responsibility is assumed for false data provided by others.
3. No responsibility is assumed for building permits, zone changes, engineering or any other services or duty connected with legally utilizing the subject property.
4. This appraisal was made on the premise that there are no encumbrances prohibiting utilization of the property under the appraiser's estimate of the highest and best use.
5. It is assumed the title to the property is marketable. No investigation to this fact has been made by the appraiser.
6. No responsibility is assumed for matters of law or legal interpretation.
7. It is assumed no conditions existed that were undiscoverable through normal diligent investigation which would affect the use and value of the property. No engineering report was made by or provided to the appraiser.

EXHIBIT A

8. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
9. The value estimate is made subject to the purpose, date and definition of value.
10. The appraisal is to be considered in its entirety, the use of only a portion thereof will render the appraisal invalid.
11. Any distribution of the valuation in the report between land, improvements, and personal property applies only under the existing program of utilization. The separate valuations for land, building, and chattel must not be used in conjunction with any other appraisal and is invalid if so used.
12. The appraiser shall not be required to give testimony or appear in court by reason of this appraisal with reference to the property described herein unless prior arrangements have been made.

1.9 TERMINOLOGY

Market Value

The most probable price that the specified property interest should sell for in a competitive market after a reasonable exposure time, as of a specified date, in cash, or in terms equivalent to cash, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest, and assuming that neither is under undue duress.

The Dictionary of Real Estate Appraisal, 6th Edition, Appraisal Institute Pg 141

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

The Dictionary of Real Estate Appraisal, 6th Edition, Appraisal Institute, Page 90

Leased Fee Interest

The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires.

The Dictionary of Real Estate Appraisal, 6th ed., Appraisal Institute, Page 128

Leasehold Interest

The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.

The Dictionary of Real Estate Appraisal, 6th ed., Appraisal Institute, Page 128

EXHIBIT A

Extraordinary Assumption

An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

The Dictionary of Real Estate Appraisal, 6th ed., Appraisal Institute, Page 83

EA1 - The subject site is in a similar condition as of the effective date (07/05/18) to when the site was inspected on March 14, 2018.

EXHIBIT A

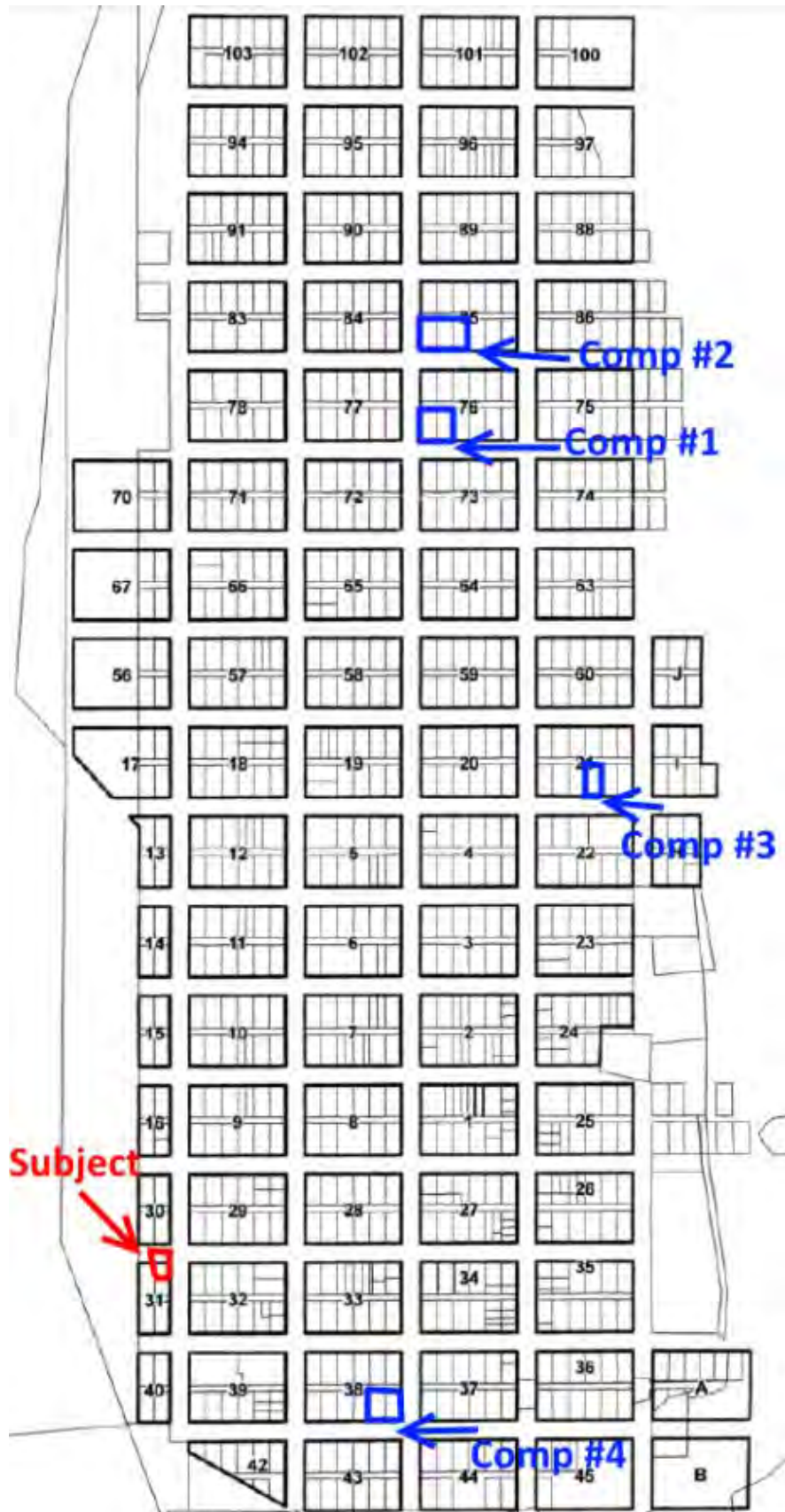


Figure 1.1 – Neighborhood & Comparable Sales Map

2 AREA ANALYSIS

2.1 SKAGWAY AREA ANALYSIS

Real Estate Market Trends

The increased seasonal demand has caused significant appreciation over the years in general real estate housing and commercial land. Statistics kept for assessment adjustments show that values have gone up about 160% since 1995 for real estate land in general and over 200% for land in the central Historic Business District. The suburban Klondike Highway Industrial District, the Hillside District, and Dyea areas have not experienced the same level of overall appreciation, with assessment values increasing by a significantly smaller percentages in the same time period. This may be due to a lack of sales that occur in these areas on an annual basis. There was a 10% decline in 2010 and another 15% decline in 2011 in the assessment values for Skagway's town core land, reflecting the market's reaction to the decline of tourism visitation. Tourism numbers have again been increasing, and assessed values proved stable for 2012 and 2013 and gradually increased in varying degrees 2014 – 2018, depending on the area.

2.2 NEIGHBORHOOD ANALYSIS

The subject neighborhood is defined as the industrial zoned strip along the western side of the Skagway town site, to the east of the Skagway River. This strip of land stretches from the airport to the south, to the local school to the north. The area includes a large portion of the Skagway Airport and runway. It is within three blocks of the downtown core. There are a variety of additional uses, many of which are related to the runway. Uses include plane/helicopter parking, private hangars, tourism bus parking/maintenance, employee bunkhouses, single-family & multi-family residential, a national park service maintenance facility, a telecommunications company, and a distillery. Several of the noted commercial uses are associated with Skagway's seasonal tourism industry and are left unutilized during the winter months.

This defined neighborhood is almost completely built-up with minimal vacant land left for development, the growth of the tourist market in Skagway has continued to play a key role to the development of Skagway as a whole as well as this neighborhood.

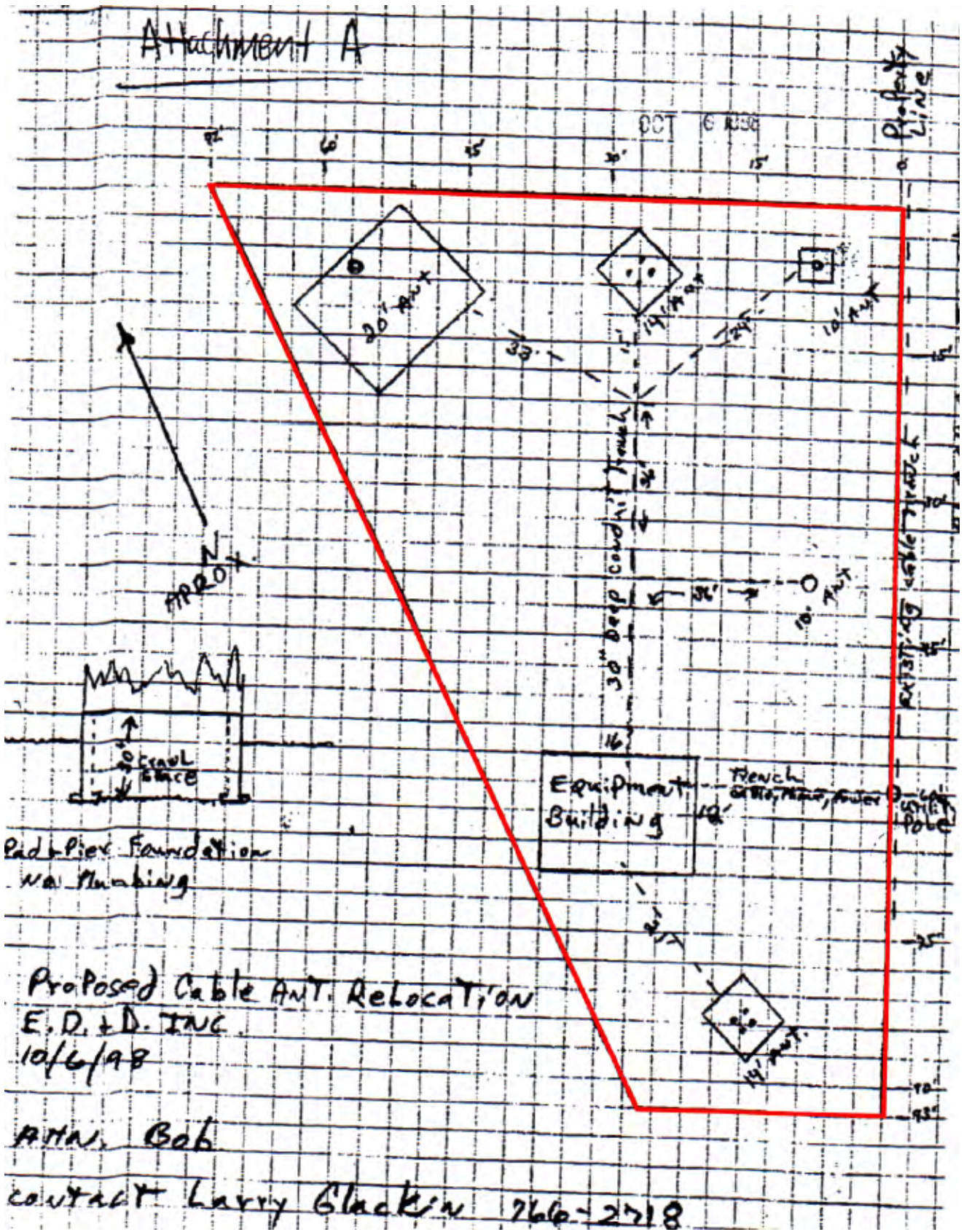


Figure 2.1 – Drawing of Subject Site with Subject outlined in Red

3 PROPERTY DESCRIPTION

3.1 SITE DESCRIPTION

The subject site is an approximate triangular-shaped parcel with the southern apex cut off. Please see Figure 2.1 on the previous page. The airport runway is directly behind and to the west of the site. The site is level and borders Alaska Street on the east. It is composed of 2,371 SF of the 3rd Avenue right-of-way and 2,162 SF of the north portion of Block 31, Lot 1, for a total area of 4,533 SF. It has 93' of frontage along Alaska Street and is approximately 72' at its deepest portion on the north end.

Topography, Utilities & Access

The subject site is level and is near the same grade as Alaska Street and the airport runway. All utilities are available to the site. Access to the subject site is via Alaska Street. As noted, the subject property is at the intersection of Alaska Street and 3rd Avenue on the airport (west) side of Alaska Street.

3.2 ZONING

The subject site is zoned Light Industrial (IL). This district is generally for urban and suburban light manufacturing, processing, storage, wholesaling and distribution, and railroad and airport related industries and businesses. This district is intended to promote efficient use of the land while at the same time, allowing for a variety of compatible uses.

3.3 EASEMENTS AND ENCROACHMENTS

There are no known easements or encroachments on the subject parcel. It is a combination of a road ROW and small portion of the land owned by the city. The entire property is in contiguous ownership and the road ROW is generally not deemed as necessary in the current configuration of the airport and road system.

3.4 ASSESSED VALUATION

The subject site is owned by the Municipality of Skagway; however, it is taxed based on possessory interest. The 2018 assessed value of the possessory interest of the land is \$26,100, this is possessory interest on a fee simple value of \$68,810.

4 VALUATION

4.1 HIGHEST AND BEST USE

The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

The Dictionary of Real Estate Appraisal, 6th Edition, Appraisal Institute, page 109

The Light Industrial Zoning allows for a large variety of uses with preference towards light industrial demands. It is felt that the subject property could easily compete with properties in the BG zone. Any light industrial or commercial use which would fit well in this location would fit the highest and best use scenario. The current use by Skagway Network Television meets all four tests of highest and best use.

4.2 LAND VALUATION

The subject land will be valued by the Sales Comparison Approach. This approach employs the principal of substitution; whereby, willing buyers would typically pay no more for a property than what could be found as a substitute property within a reasonable period of time. This approach compares sales of vacant land relatively similar to the subject, or at least bracketing the subject, as superior or inferior, on a price per unit basis. Since there are no two properties alike, some adjustments or ranking of the comparable sales will be performed. The following is a summary of the comparable sales used in developing a market value estimate for the subject property.

TABLE 4.1 - COMPARABLE SALES TABLE						
Comp#	Location	Date	Price	Zone	SF	\$/SF
1	Lots 7&8, Blk 76, Skagway TS (10113)	06/16	\$152,000*	BG	10,000	\$15.20
2	Lot 7, 8, & 9, Block 85, Skagway TS (9155)	10/15	\$211,750*	BG	15,000	\$14.12
3	Lot 10, Block 21, Skagway TS (9354)	09/15	\$65,000	IL	5,000	\$13.00
4	Lot 11A, Block 38, Skagway TS (10137)	08/16	\$188,700	BG	10,000	\$18.87
Subject		07/18	Solve	IL	4,533	Solve

*Land Allocation

EXHIBIT A



Comparable 1 is the land allocation from an improved sale. It was improved with a residence at the time of sale. It was zoned BG. It is larger in size and similar in topography. It is several blocks from the downtown core. Considering the economies of scale and location, this 2016 sale is ranked overall **similar**.



Comparable 2 is the sale of a BG zoned 1-story house on three lots located in downtown Skagway. The land value was allocated from the improved sale. The three lots are mostly lawn with minimal trees. A small creek runs through Lot 7. Due primarily to size and location, this sale is considered **inferior** to the subject on a \$/SF basis.



Comparable 3 is the sale of a vacant 5,000 SF lot located on the eastern side of the Skagway town site. This lot is zoned similarly to the subject and was cleared and buildable at the time of sale. This sale is one of the older transactions considered and sold below unit values indicated by an appraisal. It is ranked **inferior**.



Comparable 4 is the sale of two adjacent vacant lots located approximately two blocks from the subject site, towards the business historic district. These lots were level, and vegetated with grass and alder trees at the time of sale. Comp 4 is considered **superior** due to its proximity to the BH core of town.

EXHIBIT A

TABLE 4.2 – COMPARABLE SALES RANKING GRID				
Comp #	Date	Location	Price/SF	Rating
4	08/16	Lot 11A, Block 38, Skagway	\$18.87/SF	Superior
1	06/16	Lts 7&8, Blk 76	\$15.20/SF	Similar
Subject	07/18	Subject	Solve	Similar
2	10/15	Lot 7, 8, & 9, Block 85, Skagway	\$14.12/SF	Inferior
3	09/15	Lot 10, Block 21, Skagway	\$13.00/SF	Inferior

The comparables indicate a relatively tight range of price per square foot value. All are in relatively close proximity to the subject and are similar in developability. The subject is estimated slightly below the middle of the range considering Comp #4's high indication of value. Comp #1 - 3 are given the most weight in this analysis. Due to the lack of more current sales, the value is estimated at slightly above comps #1-3 which is summarized as follows:

4,533 SF @ \$15.20/SF = \$68,901.60
\$68,900, rounded.

ADDENDA

EXHIBIT A

SUBJECT PHOTOS



PHOTO 1 – LOOKING NW TOWARDS SUBJECT PROPERTY. (031418_1796



PHOTO 2 – LOOKING SW TOWARDS SOUTHERN PORTION OF SUBJECT PROPERTY. (031418_1799)



MUNICIPALITY OF SKAGWAY

GATEWAY TO THE KLONDIKE
P.O. BOX 415, SKAGWAY, ALASKA 99840
(PHONE) (907) 983-2297
(FAX) (907) 983-2151
www.skagway.org

This Lease Amendment, dated October 3, 2014 for the purpose of modifying the existing lease dated and entered into on the 6th day of December, 2013, between the Municipality of Skagway (hereinafter Municipality) a municipal government and ED&D Inc. / Skagway Network Cable TV (hereinafter Lessee), a private business, for the purpose of leasing a parcel of land containing 4,533square feet of Municipal owned property.

Amended Lease Amount:

The amended lease amount effective September 18, 2014, is based on the Skagway Borough Assembly adopting Ordinance 14-22 that adds "cable television" services as a "utility" for the purpose of determining lease rates.


The lease amount shall be determined by multiplying:

- 50% of the appraised annual value of the land, by
- Eight percent (8%)

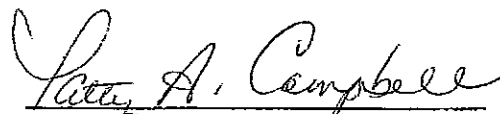
Annual lease payment shall be in the amount of \$ \$2,448.00 (Two Thousand, Four Hundred Forty Eight Dollars and 00/100), plus any applicable municipal sales tax. This amount is payable in four (4) equal quarterly installments of \$612.00 (Six Hundred Twelve Dollars and 00/100) plus applicable tax, due on or before the thirtieth day of, March, June, September, and December.

All other terms of the existing Lease Agreement, dated December 6, 2013, shall remain unchanged. Any further modifications shall be agreed upon by both parties in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Modification as of the date first written above.

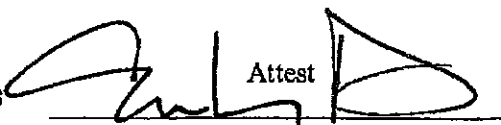

 Mark Schaefer, Mayor
 For the Municipality of Skagway

Date 10 15 2014


 Patty Campbell
 Lessee

Date 10-16-14




 Attest
 Emily Deach, Municipal Clerk



MUNICIPALITY OF SKAGWAY

GATEWAY TO THE KLONDIKE
P.O. BOX 415, SKAGWAY, ALASKA 99840
(PHONE) (907) 983-2297
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RECEIVED

DEC 17 2013

MUNICIPALITY
OF SKAGWAY

**Municipality of Skagway
And
ED&D Inc. /Skagway Cable TV
Lease Agreement**

This Lease is entered into on this 6th Day of December, 2013, by and between the Municipality of Skagway (hereinafter, Municipality) a municipal corporation, and ED&D Inc. /Skagway Network Cable TV (hereinafter Lessee), for the purpose of leasing 4,533 square feet of Municipal Property.

WITNESSETH:

WHEREAS the Municipality owns property described above; and

WHEREAS the Municipality wishes to extend the lease of a portion of land in conformance with the Skagway Municipal Code requirements;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, it is agreed as follows:

1. **DURATION:**

This lease shall be in effect for a 5-year period, from December 1, 2013 to December 30, 2018.

2. **FACILITIES:**

A. The leased premises subject to this lease shall be 4,533 square feet consisting of 2,371 square feet of 3rd Avenue Right-of-way east of Alaska Street and 2,162 square feet of the north portion of block 31, Lot 1.

B. The Lessee recognizes that the Municipality may construct improvements to the premises during the term of this lease. Adjustments to the lease amount, if any, due to such improvements shall be negotiated by the Municipality and Lessee, and approved in writing by both parties.

3. **LEASE AMOUNT:**

Annual lease payment shall be in the amount of \$4,896.00 (Four Thousand, Eight Hundred Ninety Six Dollars and No/100), plus any applicable municipal sales tax. This amount is payable in four (4) equal quarterly installments of \$1,224.00 (One Thousand, Two Hundred Twenty Four Dollars and No/100) plus applicable tax, due on or before the thirtieth day of, March, June, September, and December. Additionally, Lessee shall be responsible for cost of preparing the lease, including, but not limited to survey and appraisal costs. The cost of current appraisal dated

EXHIBIT A

A LEASE AGREEMENT BETWEEN THE MUNICIPALITY OF SKAGWAY AND ED7D INC. /SKAGWAY CABLE TV.

August 29, 2013 is due December 31, 2013. Failure to make payments when they are due shall constitute a material breach of the lease.

4. OPERATIONS AND MAINTENANCE:

- A. Lessee shall promptly repair, rebuild or restore premises or facilities damaged or destroyed, except damage caused solely by the Municipality.
- B. The Municipality may, at all reasonable times and with prior notice, enter upon and inspect the leased premises. If the Municipality demonstrates that the Lessee has failed to perform maintenance or repair work required under this lease, and if Lessee, after prior notice of the deficiencies, fails to correct the deficiencies or begin corrective action within a reasonable time, the Municipality may enter any part of the leased premises and perform the necessary work. Lessee shall reimburse the Municipality for all reasonable expenses incurred by this work within ten days of the Municipality providing the Lessee with an invoice for the work.

5. INDEMNITY AND INSURANCE:

- A. **INDEMNIFICATION OF LESSOR.** Lessee agrees to indemnify, defend and save Lessor 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 in or about the leased Premises, beginning May 1, 2013, regardless of when such claims may have occurred, arose or accrued, which in any way relate to the leased premises, including, without limitation, in connection with Hazardous Materials. Lessee also agrees to indemnify, defend and save Lessor harmless against and from any and all claims arising during the lease term from any condition of the leased property. Lessee also agrees to indemnify, defend and save harmless Lessor from any and all claims, including but not limited to physical injury, including death, property damage, special damages, consequential damages, expenses, costs, and attorneys fees, directly or indirectly arising out of, in connection with, or incident to the operation of the leased premises or arising from any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of Lessee to be performed, pursuant to the terms of this lease, or arising from Lessee's failure to comply with any law, ordinance or regulation of any governmental body, or arising from any negligent act or omission of Lessee or any of its agents, contractors, servants, employees, licensees, guests and sub lessees and any agents, contractors, servants, employees, licenses and guess of its sub lessees. Lessee's obligation to defend, indemnify and save Lessor harmless shall include Lessee's payments of reasonable actual legal fees.
- B. **INSURANCE:** Lessee shall provide to the Municipality of Skagway a certificate of insurance showing that the Lessee has obtained at least one million dollars (\$1,000,000.00) general liability insurance, which covers the Lessee's operations on the leased premises. Lessee shall provide the Certificate of Insurance, naming the Municipality as an additional insured, at the time of the effective date of the lease. Failure to maintain such insurance shall constitute a material breach of the terms and conditions of the lease. Lessee shall notify the municipality twenty (20) days before the policy is canceled or terminated and unless the Lessee provides a new Certificate of Insurance within 30 days of cancellation or termination, the Municipality may terminate this lease without further notice at its sole option.

EXHIBIT A

A LEASE AGREEMENT BETWEEN THE MUNICIPALITY OF SKAGWAY AND ED7D INC. /SKAGWAY CABLE TV.

C. **HAZARDOUS WASTE RESPONSIBILITY.** Lessee represents and warrants that the leased Premises will never 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.

D.

Lessee agrees to hold Lessor harmless and to indemnify and defend Lessor against any and all claims and losses resulting from Lessee' 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, including death, property damage, or other harm, and (ii) any response costs, costs of remedial, restoration or clean-up actions, fines suffered or incurred by Lessor arising out of or related to the presence of Hazardous Materials in, on, or under the property, or out of any such use of the property, or due to the incorporation of such materials. This obligation to indemnify, defend and hold Lessor harmless shall survive the term of this lease and include any claim, cause of action or administrative regulatory enforcement action in which Lessee or Lessor are determined or alleged to be a potentially responsible party.

6. **DEFAULT:**

When the Municipality determines that the provisions of this Lease are not being met and attempts to resolve the matter are unsuccessful, written notice shall be given to the Lessee stating the nature of the deficiency and necessary corrective action. Lessee shall either take immediate corrective action or respond to the Municipality in writing within ten calendar days stating the reason for noncompliance and a schedule for compliance. If the Municipality determines this response unacceptable, in its sole discretion, the Municipality shall give Lessee written notice of default. In the event of default, Lessee shall have thirty calendar days from receipt of notice to remove personal property and vacate the premises. If such property is not removed within this time period, the Municipality may take possession of the property and dispose of the property without any liability to the Lessee.

7. **TERMINATION**

The Lessee may terminate this Agreement at any time by giving 90 days written notice to the other party of such termination and specifying the effective date of such termination. This Lease Agreement shall otherwise terminate automatically on June 30, 2018. The Lease Agreement shall not be extended beyond June 30, 2018 unless such extension is in writing and signed by both parties. In the event of any extension of the lease, the lease payment amount in paragraph 3 above shall be increased in accordance with the Skagway Municipal Code and any other direction from the Assembly for a lease payment increase.

EXHIBIT A

A LEASE AGREEMENT BETWEEN THE MUNICIPALITY OF SKAGWAY AND ED7D INC. /SKAGWAY CABLE TV.

8. TERM AND CONDITIONS:

- A. This Agreement specifically supersedes any prior written or oral agreements between parties relating to the Lease of the property as described in this agreement.
- B. Unless otherwise provided for in this Lease, the provisions of Skagway Municipal Code Title 16.02.160, Terms and conditions of Lease, shall govern this lease and are attached to and incorporated into the terms and conditions of this lease.

9. NOTICE:

All notices and requests in connection with this lease shall be in writing and shall be addressed as follows:

MUNICIPALITY: Municipality of Skagway
Municipal Manager
P.O. Box 415
Skagway, AK 99840

LESSEE: ED&D Inc. /Skagway Cable TV
Patty Campbell
P.O. Box 454
Haines, AK 99827

10. MISCELLANEOUS

The Superior Court for the First Judicial District at Juneau, Alaska shall be the exclusive jurisdiction and venue for any action of any kind or any nature. Lessee specifically agrees that trial in any action filed shall be in Skagway, Alaska.

- A. This Agreement is binding upon the heirs, successors and assign of the parties.
- B. 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. Lessee specifically understands and agrees that no Municipal employee, Assembly member, or the Mayor has any authority to verbally modify this lease and any modifications must be in writing approved by the Assembly.
- C. The Municipality's waiver of any term or condition in this Agreement shall not constitute a waiver of any term or condition in this Agreement.
- D. 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.
- E. 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.

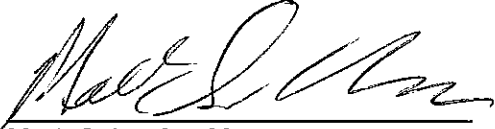
EXHIBIT A

A LEASE AGREEMENT BETWEEN THE MUNICIPALITY OF SKAGWAY AND ED7D INC. /SKAGWAY CABLE TV.

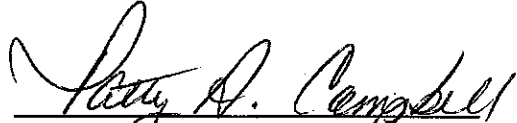
F. Lessee is not relying on any representations by a Municipal employee, officer, assembly member, consultant or attorneys. Lessee acknowledges he has had a full opportunity to consult with his own attorney before entering this Lease.

This Lease shall not be assigned by the Lessee without the prior written consent of the Municipality.

IN WITNESS WHEREOF, the parties hereto have executed this lease as of the date first written above.




Mark Schaefer, Mayor
for the Municipality of Skagway



Patty Campbell, Authorized Representative
for, ED&D Inc. /Skagway Cable TV,
Lessee

Date 12/23/2015

Date 12-1-13

ATTEST:

Emily Deach, Borough Clerk

(SEAL)



Chapter 16.02

LEASE OF LANDS

Sections:

- 16.02.010 Definitions.
- 16.02.020 Lands available for leasing.
- 16.02.025 Referral to voters.
- 16.02.030 Applications, fees, terms, payment.
- 16.02.040 Appraisal.
- 16.02.050 Rights prior to leasing.
- 16.02.060 Public use.
- 16.02.070 Review.
- 16.02.080 Term of leases.
- 16.02.090 Public notice.
- 16.02.100 Appeal.
- 16.02.110 Completion of bid requirements.
- 16.02.120 Issuance of lease.
- 16.02.130 Negotiated leases
- 16.02.140 Responsibility to properly locate on leased premises.
- 16.02.150 Approval of other authorities.
- 16.02.160 Terms and conditions of leases.

- 16.02.010 Definitions.
 - A. "Auxiliary to cultivation" are those structures directly necessary for cultivation, including barns, tool sheds and green houses. Residences, retail outlets and patron parking are not considered auxiliary to cultivation, and will not be subject to the easement. Any structure combining an auxiliary and non-auxiliary use will be considered non-auxiliary.
 - B. "Commercial agriculture" is the cultivation of crops, flowers, plants, shrubs or trees for commercial resale, or for use in commercial ventures, where the cultivation of such is the primary purpose of the development of the property.
 - C. "Land" or "lands" as used in this chapter includes the land and improvements of any nature made to or upon the land or such improvements, unless the context clearly indicates otherwise.
 - D. "Utilities" are those services offered to the general public by private business that provide for heating fuel and propane.

(Ord. 02-21, Amended, 10/03/2002; Ord. 2002-15, Amended, 08/01/2002; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

- 16.02.020 Lands available for leasing.
 - A. All lands and interests in land owned by the municipality, including tide and submerged lands, may be leased as hereinafter provided for surface use only.
 - B. Tidelands may be leased, subject to the pertinent provisions of this chapter, for surface use only, but shall not be sold.

EXHIBIT A
Skagway Municipal Code

16.02.010 – 16.02.160

- C. Before accepting applications to lease lands, the municipality shall have classified by ordinance the lands in question for leasing and for particular land uses; and a land use plan of the area shall have been prepared and publicly posted in the office of the borough clerk for a period of not less than ten (10) calendar days. The land use plan shall be approved by the borough assembly prior to posting. No lease shall be granted except for the particular use for which the tract is classified.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.025 Referral to voters.

- A. Where required by subsection B, 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. Ratification shall be by a majority of the qualified voters voting at a general or special election at which the question of ratification of the ordinance is submitted. In addition to federal government notice requirements, thirty (30) days' notice shall be given of the election, and during that period the borough assembly shall have published in the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the proposed sale, and stating the time and date of passage of the ordinance. Notice shall also be given by posting a copy of the ordinance in at least three (3) public places in the municipality at least thirty (30) days before the election. Subsection B shall not apply to leases between the municipality and any subdivision of the State of Alaska or between the municipality and any agency or corporation of the State of Alaska authorized to enter leases and enter contracts.
- B. Ratification of the ordinance by the voters shall be required when the value of the lease payments over the entire term of the lease exceed five-million dollars (\$5,000,000.00). This value shall be estimated by multiplying the number of years in the entire lease term times the average annual rent for the first five (5) years, notwithstanding the possible future adjustment of the annual rent for subsequent five (5) year segments of the lease term pursuant to provisions of this chapter. 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. Subsection B shall not apply to leases between the municipality and any subdivision of the State of Alaska or between the municipality and any agency or corporation of the State of Alaska authorized to enter leases and enter contracts.

(Ord. 13-05, Amended, 04/04/2013; Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.030 Applications, fees, terms, payment.

Unless otherwise provided by the borough assembly by a resolution which deals with the lease of specific lands, the following subsections shall apply to land leasing procedures:

- A. Qualifications of applicants or bidders. An applicant or bidder for a lease is qualified if the applicant or bidder:

EXHIBIT A

Skagway Municipal Code

16.02.010 – 16.02.160

1. Is eighteen (18) years of age or over, or
 2. Is a group, association, partnership or corporation which is authorized to conduct business under the laws of Alaska, or
 3. Is acting as an agent for another or has qualified by filing with the borough manager or his designee, prior to the time set for the disposition, a power of attorney or a letter of authorization creating such agency. The agent shall represent only one principal, to the exclusion of himself.
- B. Applications for Lease. All applications for lease of lands shall be filed with the borough clerk on forms provided by her. Only forms completed in full and accompanied by a one hundred dollar (\$100.00) filing fee will be accepted for filing. Filing fees are not refundable. With every application the applicant shall submit a development plan showing and stating:
1. The purpose of the proposed lease;
 2. The use, value and nature of improvements to be constructed;
 3. The type of construction;
 4. Dates construction is estimated to commence and be completed; and
 5. Whether the intended use complies with the zoning ordinance and comprehensive plan.
- C. Deposits for Cost. All applications filed with the borough clerk will be forwarded to the borough manager or his designee to determine estimated costs required to handle the application, including but not limited to one (1) or more of the following: survey, appraisal, and advertising of the proposed lease of the area under application. Upon determination of the estimated costs, said official shall notify the applicant in writing of such costs, and a deposit thereof must be made within thirty (30) calendar days after the notice is mailed. Failure of the applicant to pay the deposit shall result in the application being cancelled. If the applicant does not accept a lease within thirty (30) calendar days after it is offered to the applicant, all deposit money spent or encumbered for survey, appraisal or advertising shall be forfeited, and the balance, if any, shall be returned to the applicant. If the land applied for is leased to another, the latter shall be required to pay actual costs of survey, appraisal and advertising, and the original deposit shall be returned to the depositor. The lessee shall be required to pay any excess of costs over deposits, and where the deposit exceeds actual costs, the excess shall be credited to present or future rents under the lease. All survey, appraisal and advertising shall be performed only under the control of the municipality, and any such work done without such control will not be accepted by the municipality.
- D. Payment of Annual Rentals. Unless otherwise provided by the borough assembly by resolution, the following lease payment schedules shall apply: Annual rentals of less than five hundred dollars (\$500.00) shall be paid annually in advance. Annual rentals of more than five hundred dollars (\$500.00) but less than five thousand dollars (\$5,000.00) shall be prorated and paid in advance every calendar quarter. Annual rentals of more than five thousand dollars (\$5,000.00) shall be prorated and paid in advance each calendar month.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

EXHIBIT A
Skagway Municipal Code

16.02.010 – 16.02.160

16.02.040 Appraisal.

No lands shall be leased, or a renewal lease issued therefor, unless the same has been appraised at its fair market value within six (6) months prior to the date fixed for beginning of the term of the lease or renewal date fixed for beginning of the term of the lease or renewal lease. No land shall be leased for an annual rent less than eight percent (8%) of the appraised value of the land and any improvement thereon owned by the municipality except as determined in 16.02.040 (A). Facilities for supplying utility services shall not be considered as such improvements.

- A. The borough assembly has determined that there is benefit to the municipality in having tracts of land in cultivation to protect the heritage of gardening in Skagway, as well as to beautify the community. The borough assembly, at its sole discretion, may establish conservation easements for municipally owned lands leased for purpose of commercial agriculture. The lease amount for such lands shall be based upon a formula of not less than eight percent (8%) of fifty percent (50%) of the appraised value. This shall apply only to the portion of those leased lands under cultivation. Those lands within a lease not under cultivation, or not directly auxiliary to cultivation shall be subject to lease at the full market value.
- B. The borough assembly has determined that there is benefit to the residents and businesses of the community in keeping the cost of utilities offered to the public at minimum. The borough assembly may, at its sole discretion, offer adjusted lease rates for municipally owned lands used for the delivery of utilities to local subscribers of utilities as defined in 16.02.010. The lease amount for such lands shall be based upon a formula of not less than eight percent (8%) of fifty percent (50%) of the appraised value. This shall apply only to the portion of those lands necessary to the provision of these utility services, including all required setbacks. All lands within municipally leased property not directly necessary to the offering of these utilities, or ancillary to the offering of these utilities shall be subject to lease at the full market value.

(Ord. 12-03, Amended, 03/01/2012; Ord. 2002-21, Amended, 10/03/2002; Ord. 2002-15, Amended, 08/01/2002; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.050 Rights prior to leasing.

The filing of an application for a lease shall give the applicant no right to a lease nor to the use of the land applied for. Any use not authorized by a lease shall constitute a trespass against the municipality.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.060 Public use.

The lease of any municipal lands may be made to any state or federal agency or political subdivision of the state or nonprofit organization for less than the appraised value, and for a

EXHIBIT A

Skagway Municipal Code

16.02.010 – 16.02.160

consideration to be determined by the borough assembly to be in the best interests of the municipality.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.070 Review.

The classification of a tract of leased land may be changed only by the borough assembly. No renewal lease for a use different from that in the original lease may be issued until the proposed renewal has been approved by the borough assembly by ordinance.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 89-21, Amended, 09/19/1989; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.080 Term of leases.

Leases may be issued for a term of not more than thirty-five (35) years. The applicant shall state in his application the term desired. In determining whether to grant a lease for the requested term, the borough assembly shall consider the nature, extent and cost of the improvements which the applicant agrees as a condition of the lease to construct thereon, the value of the applicant's proposed use to the economy of the municipality, and other relevant factors. The term of any given lease shall depend upon the desirability of the proposed use, the amount of investment and improvements proposed to be made by the lessee, and the nature of the improvements proposed with respect to the durability and time required to amortize the proposed investment. Unless a different maximum term is established by ordinance authorizing the lease, the maximum term of a lease shall be ten (10) years. A renewal option exercisable at the discretion of the lessee shall be counted in determining the term of the lease for purpose of this subsection.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.090 Public notice.

Public notice of lease of land is required to be given under the provisions of this chapter. Thirty days' notice shall be given by posting notice thereof in three (3) public places. The notice must contain the name of the applicant, a brief description of the land, its area and general location, proposed use, term, computed annual minimum rental, limitations if any, a declaration stating the particular method of disposal by which the disposition is to be effected and the time and place set for a hearing on the proposed lease.

(Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.100 Appeal.

In cases involving a competitive bidding process, an aggrieved bidder may appeal the determination of the apparent high bidder to the borough assembly within five (5) days (excluding Saturday and Sunday) following such determination. Such appeals must be in writing,

must be notarized and contain a short statement on the grounds for appeal. The borough assembly shall within thirty (30) days of receipt of a timely appeal review the asserted grounds for appeal and decide the appeal on the record. The assembly may extend the time for review in its sole discretion. The decision on appeal may be by vote at the assembly meeting at which the appeal was reviewed or in writing and adopted by the assembly, in the assembly's sole discretion. The borough assembly's decision shall be final. Any appeal to the Alaska Superior Court shall be on the administrative records before the assembly.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 86-03, Amended, 01/15/1986; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.110 Completion of bid requirements.

Following the appeal period or the borough assembly's ruling, the borough manager shall notify the successful bidder that the municipality is prepared to issue a lease. The bidder shall be given thirty (30) calendar days from date of mailing the notice in which to remit to the borough clerk any bid balance. Failure to do so shall result in forfeiture of any and all rights previously acquired in the proposed lease, and in addition, any monies paid or deposited with the municipality shall be forfeited.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.120 Issuance of lease.

After expiration of the five (5) day appeal period, or after the ruling on the appeal to the borough assembly, the borough manager shall cause a lease to be issued and executed containing such terms as the borough assembly may establish. The assembly reserves the right to require a guarantor on any lease to a Limited Liability Company (LLC), in the discretion of the assembly.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.130 Negotiated leases

Upon authorization by the borough assembly by ordinance, the borough manager may commence negotiations for the lease of municipal land. The final terms of a negotiated lease are subject to approval by the borough assembly unless the minimum essential terms and the authority of the borough manager to execute the lease are set forth in the ordinance authorizing negotiations. The negotiated lease may not be executed until the effective date of the ordinance.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.140 Responsibility to properly locate on leased premises.

It shall be the responsibility of the lessee to properly locate improvements on the leased land. It is unlawful to encroach on other lands of the municipality or on lands owned or leased by another, and violation shall constitute a misdemeanor.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.150 Approval of other authorities.

The issuance by the municipality of leases under the provisions of this title does not relieve the lessee of responsibility of obtaining licenses or permits as may be required of the municipality by duly authorized state or federal agencies.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

16.02.160 Terms and conditions of leases.

In addition to other applicable provisions of this code, the terms, conditions and covenants following as subsections` A through U of this section shall govern all leases made under the provisions of this chapter and shall be incorporated in all such leases of land made or issued by the municipality unless the borough assembly by resolution provides otherwise as to a specific lease, and are hereby incorporated as though set out in full in the lease. The lease shall contain such additional restrictions and reservations as the borough assembly deems necessary to protect the public interest including but not limited to hazardous substance and environmental indemnifications and adequate insurance requirements and additional insured protection for the municipality.

- A. Lease Utilization. Leased lands shall be utilized only for purposes within the scope of the applicable land use classification and the terms of the lease, and in conformity with the ordinances of the municipality, including any zoning ordinance. Utilization or development for other than the allowed uses shall constitute a violation of the lease and subject the lease to cancellation by the municipality at any time. The terms of this subsection are made a part of all leases and any violation thereof shall be grounds for cancellation of any lease.
- B. Adjustment of Rental. The annual rental payable pursuant to any lease shall be subject to adjustment by the borough assembly on the fifth anniversary of the date of the lease and at each five (5) year interval thereafter. The adjusted annual rent shall be computed at that percentage of the fair market value of the land as set by the lease, inclusive of any improvements thereon made by the municipality, but exclusive of any portion of value created by expenditures by lessee, except that the value of any improvements credited against rentals shall be included in the value. Such fair market value shall be determined by an appraisal made by the borough assessor and reviewed and approved by the borough assembly, whose decision is final. The new rental amount shall be effective at the beginning of the five (5) year interval to which it applies. The failure to complete an appraisal by the fifth anniversary or at a later five-year interval does not waive the municipality's right to increase the annual rate by completing an appraisal later than the fifth anniversary or later than any five-year interval.
- C. Subleasing. The lessee may sublease lands or any part thereof leased to him hereunder, provided that the lessee first obtains the approval of the borough assembly to such sublease. Leases not having improvements thereon shall not be sublet. Subleases shall be in writing, and subject to the terms and conditions of the original lease and such further terms and conditions as the borough assembly may

EXHIBIT A

Skagway Municipal Code

16.02.010 – 16.02.160

- deem appropriate, including but not limited to hazardous substance and environmental indemnifications and adequate insurance requirements and additional insured protection for the municipality. A copy of the sublease shall be filed with the borough manager.
- D. Assignments. The lessee may assign the lease issued to him, provided that the proposed assignment shall be first approved by the borough assembly under such further terms and conditions as the borough assembly may deem appropriate. The assignee shall be subject to all of the provisions of the original lease, and the assignor shall not be relieved of his obligations thereunder. The assembly reserves the right to require a guarantor on any assignment to a Limited Liability Company.
- E. Modification. No lease may be modified orally or in any manner other than by an agreement in writing signed by all parties in interest or their successor in interest.
- F. Cancellation and Forfeiture.
1. Leases in good standing may be cancelled in whole or in part, at any time, upon mutual written agreement by lessee and the borough assembly. Any lease may, at the borough assembly's option, include a term providing that the lease may be terminated by the lessee upon ninety (90) days' notice in writing to the municipality before the end of an annual rental period.
 2. If the lessee defaults in the performance or observance of any of the lease terms, covenants or stipulations, or any applicable term of this chapter, or any portion of the municipal code as applied to the property in question, the lessee is automatically in default on the lease by operation of law. If such default continues for thirty (30) calendar days after service upon lessee of written notice of default by the municipality without remedy by lessee of the default, the borough assembly shall take such action as is necessary to protect the rights and best interests of the municipality, including the exercise of any or all rights after default permitted by the lease. No improvements may be removed by lessee or any other person during any time the lessee is in default.
 3. The municipality may cancel the lease if it is used for any unlawful purpose.
 4. Failure to make substantial use of the land, consistent with the proposed use, within one (1) year shall with the approval of the borough assembly constitute grounds for cancellation. This time period may be extended by the borough assembly by resolution.
- G. Notice or Demand. Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in the U.S. mails enclosed in a registered or certified mail prepaid envelope addressed as herein provided.
- H. Rights of Mortgagee or Lienholder. In the event of cancellation or forfeiture of a lease for cause, the holder of a properly recorded mortgage of the improvements on the land shall be given a duplicate copy of any notice of default in the same

EXHIBIT A

Skagway Municipal Code

16.02.010 – 16.02.160

manner as notice is given the lessee, provided, such mortgagee has given the borough clerk notice of such mortgage and the mortgagee's address.

- I. Entry and Reentry. In the event the lease is terminated, or in the event that the demised lands, or any part thereof, are abandoned by the lessee during the term, the municipality or its agents, servants, or representative, may, immediately or any time thereafter, reenter and resume possession of such lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefor. No reentry by the municipality shall be deemed an acceptance of a surrender of the lease.
- J. Re-Lease. In the event that a lease is terminated, the borough assembly may offer the lands for lease or other appropriate disposal pursuant to the provisions of this chapter.
- K. Forfeiture of Rental. In the event that the lease is terminated because of any breach by the lessee, as herein provided, the annual rental payment last made by the lessee shall be forfeited and retained by the municipality.
- L. Written Waiver. The receipt of rent by the municipality with knowledge of any breach of the lease by the lessee, or of any default on the part of the lessee in observance or performance of any of the conditions or covenants of the lease, shall not be deemed to be a waiver of any provision of the lease. No failure on the part of the municipality to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the municipality unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the municipality to enforce the same in the event of any subsequent breach or default. The receipt by the municipality of any other sum of money after the termination in any manner, of the term demised; or after the giving by the municipality of any notice thereunder to effect such termination, shall not restate, continue or extend the resultant term therein demised, or destroy, or in any manner impair the efficiency of any such notice or termination as may have been given thereunder by the municipality to the lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the borough manager.
- M. Expiration of Lease. Unless the lease is renewed or sooner terminated, as provided herein, the lessee shall peaceably and quietly leave, surrender and yield up unto the lessor all of the leased land on the last day of the term of the lease.
- N. Renewal of Lease.
 - 1. Upon the expiration of the term of any lease, or the cancellation of a lease by mutual consent of all parties thereto, the borough assembly may grant a new lease to the lessee or his assignee who owns valuable improvements thereon, without competitive bidding, provided:
 - a. The lessee or his assignee makes written application therefor at least ninety (90) days prior to such termination;
 - b. The lessee is not in default under the lease;
 - c. The use to which the land is to be put is compatible with the current use classification and zoning provisions of the municipal code on that subject;

EXHIBIT A

Skagway Municipal Code

16.02.010 – 16.02.160

- d. Mutually agreeable terms, consistent with the provisions of this chapter governing lease terms, are negotiated by the municipality and the prospective lessee.
 2. Such lease shall be for an annual rental equal to the percentage of the appraised value of the land which is then being charged for new leases, and shall be subject to adjustment on every fifth anniversary.
 3. Any renewal preference granted the lessee is a privilege, and is neither a right nor bargained for consideration.
- O. Removal or Reversion of Improvements upon Termination of Lease. Improvements owned by a lessee may within sixty (60) calendar days after the termination of the lease be removed by him, provided, such removal will not cause injury or damage to the lands or improvements demised; and further provided that the borough assembly may extend the time for removing such improvements in cases where hardship is proven. All periods of time granted the lessee to remove improvements are subject to the lessee paying to the municipality pro rata lease rentals for such periods. If any improvements and/or chattels are not removed within the time allowed, such improvements and/or chattels shall revert to, and absolute title shall vest, in the municipality.
- P. Compliance with Regulations and Code.
1. The lessee shall comply with all regulations, rules, and the code of the municipality, and with all state and federal regulations, rules and laws as the code or any such rules, regulations or laws may affect the activity upon or associated with the leased land.
 2. The lessee shall comply with all provisions of the municipal code which are promulgated for the promotion of sanitation, life safety and public health. The leased premises shall be kept in a neat, clean and sanitary condition, and every effort shall be made to prevent pollution.
 3. Fire protection. The lessee shall take all reasonable precaution to comply with provisions of the municipal code concerning fire protection applicable to the area wherein the leased premises are located.
- Q. Inspection. The lessee shall allow an authorized representative of the municipality to enter the leased land at any reasonable time for the purposes of inspecting the land and improvements thereon.
- R. Use of Material. All coal, oil, gas and other minerals, and all deposits of stone, earth or gravel valuable for extraction or utilization, are reserved by the municipality and shall not be removed from the land except with written permission of the borough assembly. The lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peat moss, topsoil, or any other material valuable for building or commercial purposes; provided, however, that material required for the development of the leasehold may be used, if its use is first approved by the borough assembly in writing.
- S. Rights-of-Way. The lessor expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of the municipality to do so. If the lessor grants an easement or right-of-way across any of the leased land, the lessee shall be entitled to damages for all lessee-owned improvements destroyed or damaged. Damages shall be limited to improvements

EXHIBIT A

Skagway Municipal Code

16.02.010 – 16.02.160

only and loss shall be determined by fair market value. Annual rentals may be adjusted to compensate the lessee for the loss of use.

- T. Warranty. The municipality does not warrant by its classification or leasing of land that the land is ideally suited for the use authorized under the classification or lease and no guaranty is given or implied that it will be profitable to employ land to said use.
- U. Terms of Lease. All leases shall contain such limitations, reservations, requirements or special conditions as the borough assembly has determined, including requirements for improvements of a specified value to be constructed or located on the land within one (1) year from the date of the lease.

(Ord. 12-03, Amended, 03/01/2012; Ord. 90-17, Repealed & Replaced, 08/02/1990; Ord. 84-23, Repealed & Replaced, 10/25/1984)

EXHIBIT A

QUALIFICATIONS OF WILLIAM G. FERGUSON

Education:

Graduated from Pennsylvania State University, B.S./B.L.A. in Landscape Architecture, 1977

Employment:

Appraiser, Horan & Company, LLC, 08/04-Present

Appraiser, Horan, Corak & Company, formerly Pomtier, Duvernay & Horan, 03/87-07/04

Appraiser, Pomtier, Duvernay & Horan, 1986-1987

Associate Planner, City and Borough of Sitka, Alaska 1985-1986

Landscape Architect, U.S. Forest Service, Sitka, Alaska, 1983-1985

Landscape Architect, GWSM Inc., Pittsburgh, PA, 1977-1983

Certification:

State of Alaska, General Real Estate Appraiser, APRG618

Appraisal Education:

AIREA Residential Valuation, May 1989, Portland, Oregon

AIREA Residential Case Studies and Report Writing, May 1989, Portland, Oregon

AIREA Standards of Professional Practice, October 1987, Anchorage, Alaska

FNMA Appraisal Guidelines Seminar, July, 1987

FNMA Appraisal Guidelines Seminar, July, 1988

Veterans Administration Guidelines Seminar, February, 1988

AIREA Real Estate Appraisal Principals, October 1988 Traverse City, Michigan

Residential Demo - Appraisal Report Writing, Northern California Chapter, August 1992

Feasibility Analysis - Highest and Best Use, Alaska Chapter, November 92

Appraising the Tough Ones, Alaska Chapter, November 1992

Standards of Professional Practice - Part A, Alaska Chapter, January 1993

Standards of Professional Practice - Part B, Alaska Chapter, January 1993

New URAR Seminar, Anchorage, Alaska, December 1993

Valuation of Leasehold Interests, Anchorage, Alaska, December 1993

Understanding Limited Appraisals, Anchorage, Alaska, July 1994

Appraisal Institute, Appraisal Procedures, Pittsburgh, Pennsylvania, February, 1995

The Internet and the Appraiser, May 1996, Seattle, Washington

HighTech Appraisal Office, May 1996, Seattle, Washington

Dynamics of Office Bldg. Valuation, October 1996, Anchorage, Alaska

Appraisal of Retail Properties, October 1996, Anchorage, Alaska

Standards of Professional Practice - Part B, April 1997, Seattle, Washington

Basic Income Capitalization, March 1998, Chapel Hill, North Carolina

Standards of Professional Practice - Part C, 1998, Edmonds, Washington

FHA Training Seminar, October 1999, Seattle, Washington

FHA Seminar, August 2000, Anchorage, Alaska

FHA Appraisal Inspection From the Ground Up, June 2000, Anchorage, Alaska

Undivided Partial Interest Valuation/Divided Partial Interest Valuation, May 2001, Anchorage

Technical Inspection of Real Estate, April 2003, Anchorage, Alaska

EXHIBIT A

Code of Professional Ethics/Scope of Work, April 2003, Anchorage, Alaska
Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), Jan 2004, Philadelphia, PA
Rates and Ratios: Making Sense of GIMs, OARs and DCF, Feb 2005, Anchorage, AK
USPAP Update; Uniform Standards of Professional Appraisal Practice, Feb 2005, Anchorage, AK
USPAP 15 Hr; Uniform Standards of Professional Appraisal Practice, April 2006, Sacramento, CA
Basic Income Capitalization 310, July 2006, San Diego, CA
General Applications 320, July 2006, San Diego, CA
Subdivision Valuation, February 2008, Anchorage, AK
Appraisal of Local Retail Properties, February 2008, Anchorage, AK
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, June 2009, Juneau, AK
Home Valuation Code of Conduct & 1004 Market Conditions Form Seminar, June 2009, Juneau, AK
Business Practices and Ethics, November 2009, Online
Real Estate Appraisal Operations, February 2010, Online
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, February 2010, Kent, WA
Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), Dec 2010, Sacramento, CA
Fundamentals of Separating Real Property, Personal Property and Intangible Business Assets, April 2012, Portland, OR
Appraising the Appraisal - Appraisal Review - General, September 2012, Reno, NV
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, February 2013, Pittsburgh, PA
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, April 2014, Juneau, AK
Real Estate Finance Statistics and Valuation Modeling; February 2015, Las Vegas, NV
Supervisory Appraiser/Trainee Appraiser Course; April, 2015 Anchorage, AK
USPAP 7 hr Update; Uniform Standards of Professional Appraisal Practice, January 2017, Online
Analyzing Operating Expenses, February 2017, Online
Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), May 2017, Seattle, WA
Using Spreadsheet Programs in Real Estate Appraisals – The Basics, December, 2017 Online

Types of Property Appraised:

Residential - Single family residences, duplexes, tri-plexes, four-plexes, mobile homes, and vacant land
Commercial - Warehouses, vacant tracts, islands, office buildings, remote sites, hangars, tidelands, retail buildings, apartments, industrial complexes, market data and research

Types of Property Assessed for Taxation:

Appraiser, City of Petersburg real property assessment roll; Assistant Assessor, Cities of Pelican and Skagway; Appraiser, City of Craig real property assessment roll; Expert Witness, Board of Equalization, Petersburg, Pelican, Craig and Skagway; Single family, multi-family, vacant lands, mobile homes, commercial properties, remote homesites, islands and subdivisions

Planning Experience:

Site planning, construction documentation, construction supervisor
Local government planning duties including public presentations, narratives, zoning rewrites, mapping
University and recreation master planning



MUNICIPALITY OF SKAGWAY

GATEWAY TO THE KLONDIKE
P.O. BOX 415, SKAGWAY, ALASKA 99840
(PHONE) (907) 983-2297
(FAX) (907) 983-2151
www.skagway.org

**Municipality of Skagway
And
ED&D Inc. /Skagway Cable TV
Lease Agreement**

This Lease is entered into on this 1st day of January, 2019, by and between the Municipality of Skagway (hereinafter, Municipality) a municipal corporation, and ED&D Inc. /Skagway Network Cable TV (hereinafter Lessee), for the purpose of leasing 4,533 square feet of Municipal Property.

WITNESSETH:

WHEREAS the Municipality owns property described above; and

WHEREAS the Municipality wishes to extend the lease of a portion of land in conformance with the Skagway Municipal Code requirements;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, it is agreed as follows:

1. DURATION:

This lease shall be in effect for a 5-year period, from January 1, 2019 to December 31, 2023.

2. FACILITIES:

- A. The leased premises subject to this lease shall be 4,533 square feet consisting of 2,371 square feet of 3rd Avenue Right-of-way east of Alaska Street and 2,162 square feet of the north portion of block 31, Lot 1.
- B. The Lessee recognizes that the Municipality may construct improvements to the premises during the term of this lease. Adjustments to the lease amount, if any, due to such improvements shall be negotiated by the Municipality and Lessee, and approved in writing by both parties.

3. LEASE AMOUNT:

Annual lease payment shall be in the amount of \$5,512.00 (Five Thousand, Five Hundred Twelve Dollars and No/100), plus any applicable municipal sales tax. This amount is payable in four (4) equal quarterly installments of \$1,378.00 (One Thousand, Three Hundred Seventy-Eight Dollars and No/100) plus applicable tax, due on or before the thirtieth day of, March, June, September, and December. Additionally, Lessee shall be responsible for cost of preparing the lease, including, but not limited to survey and appraisal costs. The cost of current appraisal dated July 16, 2018. Failure to make payments when they are due shall constitute a material breach of the lease.

4. OPERATIONS AND MAINTENANCE:

- A. Lessee shall promptly repair, rebuild or restore premises or facilities damaged or destroyed, except damage caused solely by the Municipality.
- B. The Municipality may, at all reasonable times and with prior notice, enter upon and inspect the leased premises. If the Municipality determines the Lessee has failed to perform maintenance or repair work required under this lease, and if Lessee, after prior notice of the deficiencies, fails to correct the deficiencies or begin corrective action within a reasonable time, the Municipality may enter any part of the leased premises and perform the necessary work. Lessee shall reimburse the Municipality for all reasonable expenses incurred by this work within ten days of the Municipality providing the Lessee with an invoice for the work.

5. INDEMNITY AND INSURANCE:

- A. Lessee shall indemnify, save harmless and defend the Municipality from any and all claims or actions for injuries or damage of any kind and any nature, including but not limited to physical injury and death, property damage, special damages, consequential damages, expenses, costs, and attorney fees, directly or indirectly arising out of, in connection with, related to, or incident to the operation of the leased premises by the Lessee and the lessees employees, agents, guests, representatives, and invitees.
- B. Lessee shall provide to the Municipality of Skagway a certificate of insurance showing that the Lessee has obtained at least two million dollars (\$2,000,000.00) general liability insurance, which covers the Lessee's operations on the leased premises. Lessee shall provide the Certificate of Insurance, naming the Municipality as an additional insured, at the time of the effective date of the lease. Failure to maintain such insurance shall constitute a material breach of the terms and conditions of the lease. Lessee shall notify the municipality twenty (20) days before the policy is canceled or terminated and unless the Lessee provides a new Certificate of Insurance within 30 days of cancellation or termination, the Municipality may terminate this lease without further notice at its sole option.

C. **HAZARDOUS WASTE RESPONSIBILITY.** Lessee represents and warrants that the leased Premises will never 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.

Lessee agrees to hold Lessor harmless and to indemnify and defend Lessor against any and all claims and losses resulting from Lessee’ 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 Lessor arising out of or related to the presence of Hazardous Materials in, on, or under the property, or out of any such use of the property, or due to the incorporation of such materials. This obligation to indemnify, defend and hold Lessor harmless shall survive the term of this lease and include any claim, cause of action or administrative regulatory enforcement action in which Lessee or Lessor are determined or alleged to be a potentially responsible party.

6. **DEFAULT:**

When the Municipality determines that the provisions of this Lease are not being met and attempts to resolve the matter are unsuccessful, written notice shall be given to the Lessee stating the nature of the deficiency and necessary corrective action. Lessee shall either take immediate corrective action or respond to the Municipality in writing within ten calendar days stating the reason for noncompliance and a schedule for compliance. If the Municipality determines this response unacceptable, in its sole discretion, the Municipality shall give Lessee written notice of default. In the event of default, Lessee shall have ten calendar days from receipt of notice to remove personal property and vacate the premises. If such property is not removed within this time period, the Municipality may take possession of the property and dispose of the property without any liability to the Lessee.

7. TERMINATION

The Municipality or Lessee may terminate this Agreement at any time by giving no less than 90 days written notice to the other party of such termination and specifying the effective date of such termination.

8. TERM AND CONDITIONS:

A. This Agreement specifically supersedes any prior written or oral agreements between parties relating to the Lease of the property as described in this agreement.

B. Unless otherwise provided for in this Lease, the provisions of Skagway Municipal Code Title 16.02.140, 16.02.150, and 16.02.160 shall govern this lease and are attached to and incorporated into the terms and conditions of this lease and the Lessee is obligated to fully comply with Skagway Municipal Code Title 16.02.140, 16.02.150, and 16.02.160.

9. NOTICE:

All notices and requests in connection with this lease shall be in writing and shall be addressed as follows:

MUNICIPALITY: Municipality of Skagway
Municipal Manager
P.O. Box 415
Skagway, AK 99840

LESSEE: ED&D Inc. /Skagway Cable TV
Patty Campbell
P.O. Box 454
Haines, AK 99827

10. MISCELLANEOUS

A. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive court for jurisdiction and venue of any and all actions of any kind and any nature arising out of or related to this Lease Agreement. Venue for trial in any action shall be in Skagway, Alaska. Lessee specifically waives any right or opportunity to request a change of venue from Skagway, Alaska for trial pursuant to A.S. 22.10.040. The parties agree that this Agreement shall be governed by the laws of the State of Alaska.

B. This Agreement is binding upon the heirs, successors and assign of the parties.

C. This Agreement represents the entire Agreement of the parties and no other Agreement whether oral of 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. Lessee specifically understands and agrees that no Municipal employee, Assembly member, or the Mayor has any authority to verbally modify this lease and any modifications must be in writing approved by the Assembly.

- D. The Municipality's waiver of any term or condition in this Agreement shall not constitute a waiver of any term or condition in this Agreement.
- E. 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.
- F. 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.
- G. Lessee is not relying on any representations by a Municipal employee, officer, assembly member, consultant or attorneys. Lessee has had a full opportunity to consult with their own attorney before entering this Lease.
- H. This Lease shall not be assigned by the Lessee without the prior written consent of the Municipality. The Municipality will not approve an assignment to an LLC unless all the members of the LLC guarantee performance of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this lease as of the date first written above.

Monica Carlson, Mayor
for the Municipality of Skagway

Patty Campbell, Authorized Representative
for, ED&D Inc. /Skagway Cable TV, Lessee

Date_____

Date_____

ATTEST:

Emily Deach, Borough Clerk

(SEAL)