

July, 11, 2017
Assemblyman Orion Hanson
Skagway Borough Assembly

To the Mayor and Assembly Members:

This letter is the outline of a counter offer in response to the proposal from White Pass dated June 26, 2017. **This document was composed by Orion Hanson, or modified from the White Pass proposal, and requires additional review by legal counsel.**

1. **Proposed Amendment to 1968 Lease.** The Municipality of Skagway (MOS) proposes to amend the existing March 19th, 1968 tidelands lease and the August 1, 1968 uplands lease (collectively, the “1968 Lease”) as follows:
 - a. The annual rent under the 1968 Lease would be increased to \$250,000 per year (2018-2023).
 - b. The term of the 1968 Lease would remain intact, so that it terminates on March 18th, 2023.
 - c. White Pass and the MOS would agree to split the cost of a new floating dock at the south end of the Ore Dock 50%/50%, using the guidelines of the “3B” concept outlined by Moffatt and Nichol. White Pass builds the dock to specifications with the goal of new floating dock completion by the 2019 tourist season.
 - d. The leased premises would be the Ore Dock and Broadway Dock, which amounts to 334,862 sq. ft. (only lands directly below docks and the docks themselves).
 - e. The current operations conducted by White Pass to operate the cruise terminal may be continued by White Pass through the term of the lease.
 - f. There are currently seven subleases or other agreements between White Pass and third parties related to the use of the area encompassed by the 1968 Lease. Upon execution of the 1968 Lease amendment, White Pass will assign these subleases and other agreements to the Municipality. For the period of the lease amendment through the end date of those sublease and agreements, and any extensions of those leases and agreements through March 18, 2023, the Municipality will receive the current amount of revenue in each currently existing sublease or agreement. If the Municipality voluntarily chooses to terminate any of the currently existing subleases and agreements prior to 2023, the Municipality will still be subject to the make whole provision for that specific sublease or agreement through March 18, 2023. The Municipality shall not be subject to the make whole provision if, after good faith negotiations, the current holder of the sublease or agreement refuses to enter an extension of the current sublease or agreement to March of 2023. The Municipality may also negotiate new leases with the current sublessees in an amount greater than the current lease payments to White Pass, and in that event, the Municipality shall be entitled to the amount above the current lease payments. The new lease amendment shall specifically state that any current subleases or agreements shall not be extended by White Pass. The existing subleases or agreements are with: AIDEA, AML, CLAA, Harbor, Harbor Flowage, NOAA, and TEMSCO.

- g. The lease amendment would incorporate environmental tenant “defend and indemnify” obligations from White Pass to cover the Municipality.
- h. The lease amendment would provide that the Municipality and White Pass would share the Ore Dock use rights on the following basis: (i) cruise ships would have docking priority rights in all instances; (ii) White Pass would receive all revenues and fees related to cruise ship docking, disembarking, embarking, etc.; and (iii) the Municipality would receive Ore Dock revenues and fees in relation to all non-cruise ship docking, disembarking, embarking, loading, unloading, etc. The lease amendment will include a provision that an evaluation of the current condition of the Ore Dock is conducted prior to the amendment and satisfactory repairs are completed by White Pass (i.e. the MOS does not want to inherit a dilapidated dock from the ship loader north). Upon a new amendment agreement, there will be a provision that the MOS and White Pass shall share responsibility for repairs and maintenance of the Ore Dock. As between White Pass and the Municipality, White Pass shall bear all responsibility for any damage to the Ore Dock caused by a cruise ships. The MOS will bear responsibility for damage caused to the Ore Dock by any ship other than a cruise ship. Essentially, White Pass controls the south end of the Ore Dock to the ship loader, and MOS controls from the ship loader to the north.
- i. The amendment will include a provision that the MOS grant easements to White Pass for all areas to conduct business as currently conducted by White Pass without additional payments for those easements, and White Pass will allow the MOS access to the leased premises to conduct inspections and for the purpose of achieving remediation addressed in the separate Environmental Remediation Agreement.
- j. White Pass will lease the parking lot owned by PARN at the corner of 2nd Ave and State St. to the MOS for 20 years at a rate of 1\$/year.
- k. Non-transferable (the Assembly needs to come to a consensus on this item).

2. New Lease Agreement.

- a. 15 years beginning March 19, 2023, and ending March 19, 2038.
- b. The leased premises would be the Ore Dock area and the Broadway Dock area. The tidelands area to be covered by the new lease shall be only the land directly beneath the existing Ore and Broadway docks and any current and future improvements located above the leased tidelands. Provisions detailed in the “amendment to the 1968” lease as discussed previously in this document would continue in the new lease.
- c. Schedule of annual lease payments would be as follows:
 - years 1-5: \$300,000 per year
 - years 6-10: \$325,000 per year
 - years 11-15: \$350,000 per year
- d. The current operations conducted by White Pass to operate the cruise terminal may be continued by White Pass through the term of the lease.
- e. The new lease shall provide that the Municipality will reimburse White Pass for capital improvements with the caveat the MOS is reimbursed for its investment in the

new floating dock at the south end of the Ore Dock (\$7.5 million). Reimbursement schedule:

- before: no reimbursement
- 2033: 10%
- 2034: 20%
- 2035: 30%
- 2036: 40%
- 2037: 50%
- 2038: 60%

The new lease will contain a provision that defines “capital improvement” mutually agreed upon by the Municipality and White Pass.

- f. The amendment will include a provision that the MOS grant easements to White Pass for all areas to conduct business as currently conducted by White Pass without additional payments for those easements, and White Pass will allow the MOS access to the leased premises to conduct inspections and for the purpose of achieving remediation addressed in the separate Environmental Remediation Agreement.
- g. No subleases. All uplands are in the hands of MOS.
- h. The new lease will have provisions similar to the 1968 lease amendment described above in relation to ship revenue, Ore docking sharing, dock damage responsibility, and tenant defend and indemnity and environmental obligations from White Pass.
- i. The new lease will have defend and indemnification provisions previously agreed upon by White Pass and the Municipality.

3. Environmental Remediation Agreement. MOS and White Pass propose to enter into a remediation agreement in relation to remediation, including dredging and relocation of dredged materials of the Ore Basin.

- a. The remediation will be to mutually agreed upon plan with minimum standard as suggested by ADEC. It is understood by MOS and White Pass that dredging must be done to achieve necessary basin depth for docking necessity. Environmental cleanup is paramount to any agreement between MOS and White Pass.
- b. For dredging/remediation costs, White Pass will pay 60%, MOS will pay 40%. White Pass will oversee and administrate dredging/remediation related operations.
- c. The Environmental Remediation Agreement will address remediation and dredging, as opposed to having those matters addressed in the lease amendment and new lease as described above.
- d. The execution of this agreement is a condition that precedes the Municipality entering the new lease.