

**ORE PENINSULA FERRY TERMINAL**  
**PRELIMINARY ENGINEERING AGREEMENT**

This Preliminary Engineering Agreement (“**Agreement**”) is made as of [\_\_\_], 2022, by and between the Department of Transportation and Public Facilities (DOT&PF), an agency of the State of Alaska, and the Municipality of Skagway (MOS).

**RECITALS**

A. The Department of Transportation & Public Facilities (DOT&PF) is an agency of the State of Alaska organized and existing under the laws of the State of Alaska, including the Alaska Marine Highway System (AMHS) that operates ferries;

B. The Municipality of Skagway (MOS) is a first-class borough incorporated in Alaska that owns real property and improvements at Ore Peninsula in Skagway, Alaska;

C. DOT&PF and MOS are interested in the development of a new ferry facility at Ore Peninsula that would be financed and built by MOS on MOS land and, after its completion, leased to DOT&PF to be used by AMHS;

D. It is anticipated that the facilities to be developed at Ore Peninsula would consist of an AMHS ferry berth, terminal building, vehicle staging area, parking, and associated facilities and related improvements;

E. DOT&PF and MOS have entered into discussions regarding how to develop and construct ferry facilities at Ore Peninsula that would be financed and constructed by MOS on land owned by MOS using specifications and development parameters agreed to between DOT&PF and MOS. Upon completion, the MOS intends to lease the facilities built by MOS to DOT&PF for an agreed-to period of years and upon terms and conditions consistent with the Skagway Municipal Code.

F. As part of this effort, MOS is prepared to contract for and develop specifications and preliminary engineering plans (20% design) to explore the feasibility of developing ferry facilities at Ore Peninsula. Understanding the feasibility risk and that the development of these plans and the construction cost estimates will benefit both parties, DOT&PF and MOS have agreed that MOS will contract for and pay for needed contractors and professional services and that DOT&PF will pay for fifty percent (50%) of the direct costs of the preliminary engineering undertaken by MOS and its contractors and professional service companies.

G. DOT&PF and MOS desire to enter into this Agreement to address DOT&PF contributing fifty percent (50%) of the direct costs of the preliminary engineering surveys and studies (the “**Preliminary Engineering**”), up to but not to exceed \$1,000,000 (the “**Funding Cap**”).

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, the parties agree as follows:

## 1. Reimbursement.

(a) Within ten (10) days following the end of each calendar month during the pendency of this Agreement, MOS shall submit a detailed invoice (each, an “**Invoice**”), together with supporting documentation satisfactory to DOT&PF, setting forth all of the direct costs expended by MOS on Preliminary Engineering (the “**Reimbursable Costs**”) during such calendar month. DOT&PF shall reimburse MOS for fifty percent (50%) of the Reimbursable Costs [which DOT&PF concurred with pursuant to Section 1(b)] for such calendar month within thirty (30) days of the date such Reimbursable Costs are finally determined pursuant to Section 1(d); provided, however, that the aggregate amount DOT&PF shall be obligated to reimburse pursuant to this Agreement shall not exceed the Interim Funding Cap.

(b) MOS shall have authority to determine the scope of the Preliminary Engineering Activities, provided that all such direct costs are necessary to carry out the Preliminary Engineering Activities. MOS has the authority to enter into contracts with any engineers, consultants, and other professionals who will undertake the Preliminary Engineering Activities and shall administer such contracts and direct the persons overseeing the work, provided that MOS will provide DOT&PF an opportunity to concur regarding the scope of work to be performed under any such contracts that MOS intends to enter into with such professionals. DOT&PF agrees to pay for contracted services in accordance with Section 1(a), which are concurred with pursuant to this Section 1(b), except for the ability to dispute invoices under Section 1(d).

(c) For purposes of this Agreement, direct costs mean the costs necessary to carry out the approved scope of work for the Preliminary Engineering Activities. These costs include but are not limited to costs of engineers, consultants, and other professionals and travel and transportation costs. Direct costs do not include MOS or DOT&PF staff time or either party’s administrative or overhead costs.

(d) Within ten (10) days following receipt of the Invoice for the applicable month (each such period, a “**Dispute Period**”), DOT&PF may provide written notice to MOS asking for additional information or disputing all or any part of the applicable Invoice (the “**Dispute**”), setting forth in reasonable detail the elements and amounts with which DOT&PF disagrees (each, a “**Dispute Notice**”). If DOT&PF does not deliver a Dispute Notice to MOS within the Dispute Period, then the applicable Invoice will be deemed to have been accepted and agreed to by DOT&PF in the form in which it was delivered and will be final and binding on the parties. If DOT&PF delivers a Dispute Notice to MOS within the applicable Dispute Period, the parties will use reasonable efforts to resolve the Dispute within thirty (30) days following receipt of the Dispute Notice. If the parties cannot resolve each element of the Dispute within such thirty (30) day period, then the parties will jointly engage the dispute resolution group of a mutually agreed upon nationally recognized certified public accounting firm (having no conflict of interest with either party) mutually agreed between the parties (the “**Accounting Firm**”) to resolve each remaining element of the Dispute. The Accounting Firm will promptly decide on each component of the Dispute in writing to the parties after its appointment.

2. **Funding Commitment.** This Agreement shall not commit either party to Project Construction or to provide any funding for the Project in excess of the Funding Cap. This Section 2 shall survive the full funding of the Funding Cap by MOS or earlier termination of this Agreement.

3. **Term.** This Agreement shall terminate on June 30, 2023, unless the parties mutually agree to extend the term of this Agreement in writing.

4. **Governing Law; Venue.** This Agreement is governed by the laws of the State of Alaska. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive jurisdiction and venue for any action of any kind and any nature arising out of or related to this Agreement.

5. **Amendment.** This Agreement may only be amended in writing and signed by both parties. This Agreement is binding on and shall inure to the benefit of the parties and their successors and assigns.

6. **Notices.** All notices required or permitted under this Agreement shall be in writing and given by mail, fax, or in-person to the parties at the addresses set forth on the signature page. All notices shall be effective upon actual delivery.

7. **No Third-Party Beneficiaries.** Nothing in this Agreement shall be interpreted as creating any rights of any kind whatsoever in persons or entities that are not parties to this Agreement. This Agreement does not create a partnership, joint venture, or any similar relationship between the parties, and neither party shall represent that any such relationship exists between them.

8. **Integration; Interpretation.** This Agreement contains the complete and final understanding of the parties concerning the subject matter covered. All prior agreements, understandings, negotiations, and representations are expressly superseded and may not be relied upon. DOT&PF and MOS have negotiated this Agreement with the assistance of their respective legal counsel. This Agreement shall not be construed against the party drafting it.

9. **Counterparts.** This Agreement may be signed in any number of counterparts, and the signature pages may be exchanged by electronic means, all of which shall be fully effective to bind the parties.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Preliminary Engineering Agreement effective as of the date first written above.

**DOT&PF:**

By: \_\_\_\_\_

Name: [\_\_]

Title: [\_\_]

Address:

**MOS:**

By: \_\_\_\_\_

Name:

Title:

Address: