

Proposed by:	Administration
Attorney Review:	02/24/2023
Vote:	<input type="checkbox"/> Aye <input type="checkbox"/> Nay <input type="checkbox"/> Absent

MUNICIPALITY OF SKAGWAY, ALASKA
RESOLUTION NO. 23-08R

A RESOLUTION OF THE MUNICIPALITY OF SKAGWAY, ALASKA APPROVING GENERAL TERMS FOR AN EXPORT COOPERATION AGREEMENT WITH THE YUKON GOVERNMENT FOR CONSTRUCTION OF A MARINE SERVICES PLATFORM AND AUTHORIZING THE BOROUGH MANAGER TO EXECUTE THE AGREEMENT.

WHEREAS, the Yukon Government (Yukon) has contributed funds for the design of the Marine Services Platform (MSP) at the Ore Dock, which is currently at 60% design; and

WHEREAS, the Municipality of Skagway (the Municipality) and Yukon are working together to finalize an agreement for construction of the MSP and future access to the MSP by Yukon industry, and have developed general terms to which both parties may agree;

NOW THEREFORE BE IT RESOLVED, by the Borough Assembly of the Municipality of Skagway:

Section 1. That the Municipality of Skagway approves the general terms for an export cooperation agreement with the Yukon Government for construction of and future access to a Marine Services Platform, as detailed in Attachment A.

Section 2. That the Municipality of Skagway does hereby authorize the Borough Manager to execute an export cooperation agreement with the Yukon Government consistent with the general terms in Attachment A, and to execute said agreement.

PASSED AND APPROVED this ___ day of _____, 2023, by the Assembly of the Municipality of Skagway, Alaska.

Andrew Cremata, Mayor

ATTEST:

Steve Burnham Jr., Borough Clerk

ATTACHMENT A

For Discussion Purposes Only – Without Prejudice

Yukon-Skagway Terms Sheet Summary

The summary below is intended as an informal summary of the non-binding terms sheet currently being negotiated between the Government of Yukon (YG) and the Municipality of Skagway (MoS), which is an expression of intent to negotiate a final and binding agreement.

All terms described in this summary only reflect the current draft. Terms are provisional, subject to further negotiation, and may not be reflected in the final terms sheet. The terms sheet will be considered correct in any disagreement between this document and the terms sheet.

Below is a high level summary of key business terms, with a more detailed summary beginning page 2.

Terms Sheet – Key Business Terms	
Basic Terms	<ul style="list-style-type: none">• YG makes milestone contributions for the MSP to be included in the Ore Peninsula Development Project.• MoS provides preferential access and a fee discount for designated export users.
Ownership and Management	<ul style="list-style-type: none">• MoS owns and manages the MSP.
Designated Export Users	<ul style="list-style-type: none">• YG designates mining companies to benefit from preferential access and a fee discount.• Any designated companies must be in good standing with MoS.
Fee Discount Amount	<ul style="list-style-type: none">• 25 percent of all fees associated with use of the MSP.
Fee Discount Duration	<ul style="list-style-type: none">• The discount available for 20 years. Start date to be determined.
Uplands	<ul style="list-style-type: none">• MoS will ensure 4 acres adjacent to the MSP and 2 acres within municipal limits are available for designated export users.• This use is preferential, but non-exclusive. Commercially reasonable notice must be provided.
Term of Agreement	<ul style="list-style-type: none">• Lasts 35 years, with renewal for 15 years by mutual agreement.
Termination	<ul style="list-style-type: none">• No termination for convenience.• Termination by mutual consent at any time, with partial reimbursement of YG.• Disputes related to breach will be resolved by mediation and then submission to State and Federal Courts in Anchorage, AK.
Automatic Review	<ul style="list-style-type: none">• Automatic review beginning after 20 years with changes by mutual agreement.<ul style="list-style-type: none">○ Each 5 years thereafter; or○ Each 2 years of consecutive non-use thereafter.
Approval Rights	<ul style="list-style-type: none">• YG will have certain approval rights over issues with a material effect on the MSP for oversight purposes.
Non-Binding	<ul style="list-style-type: none">• With exceptions for confidentiality and expenses, the terms sheet will be non-binding on both YG and MoS.

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Terms Sheet – Full Summary

Terms Sheet

The **non-binding terms sheet** will be used to inform a contractual agreement (provisionally, the “**Export Cooperation Agreement**”) that will be negotiated and entered into by YG and MoS.

A high level summary of key terms proposed terms are outlined below. All terms are subject to further negotiation and approval by the decision-making bodies of MoS and YG.

Basic Terms

YG will make **contributions on a milestone basis** to MoS not to exceed **\$17.65 million USD** (amount preliminary – subject to review) that enables the inclusion of a Marine Services Platform (MSP) in Skagway’s Ore Peninsula Development Project.

In exchange, MoS will include the MSP in its project and provide **preferential access** and a **fee discount** to designated export users for the use of an ore export facility that includes the MSP.

Ownership and Management

Subject to approval rights (below), MoS will at all times own, operate and manage the MSP supported by the agreement.

Designated Export Users

YG will **designate** certain mining companies that are in **good standing** with MoS that will benefit from the preferential access and fee discounts under the Export Cooperation Agreement.

MoS’s relationship with the designated export users will be governed by “**Use Agreements**”. MoS will cause any use agreements to reflect the intent of the Export Cooperation Agreement.

Fee Discount Amount

Designated export users will receive a discount of **25 percent** on the aggregate amount of all fees imposed by MoS, including but not limited to, fees for wharfage, dockage, unloading and loading.

Fee Discount Duration

The discount will be available to designated export users for **20 years**. Start date to be determined.

Uplands

MoS will ensure that a minimum of **4 acres** adjacent to the MSP is available for use in an ore export facility by designated export users, with an additional **2 acres** available elsewhere within municipal limits.

The uplands will be available for **preferential, non-exclusive** use. MoS may allocate the space for any alternative use, provided such use **does not preclude** current or future use by a designated export user, given commercially reasonable notice.

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Term of Agreement	The agreement will last for 35 Years . The agreement may be extended for an additional 15 years by mutual agreement.
Termination	
Termination for convenience	The agreement will have no termination for convenience available to either side.
Termination with mutual consent	The agreement may be terminated by mutual consent at any time . In case of termination by mutual consent, YG is reimbursed its initial contribution less the value of applied fee discounts to date. Repayment may occur over a period of time according to a negotiated schedule.
Breach of Contract	In case of a breach by either side, disputes will be settled by mediation , and if not successful may be submitted to or State or Federal Courts in Anchorage, AK .
Automatic Review	The agreement will be subject to automatic review beginning 20 years following the completion of MSP and every 5 years thereafter. Changes to the agreement may be made by mutual agreement. Automatic review will also occur, beginning 20 years after the completion of the MSP, if there is no usage under the agreement by a designated export user for a consecutive period of 2 years . Changes to the agreement may be made by mutual agreement.
Approval Rights	In support of YG's need for oversight, YG will have certain approval rights lasting until the completion of the MSP. MoS will not take actions that would materially affect the MSP in relation to these rights without prior written consent of YG.
Insurance, Liability, Confidentiality	The agreement will include insurance, liability, and confidentiality clauses that are compliant with relevant Canadian and Yukon laws and US and Alaska laws.
Non-Binding	Except for clauses related to confidentiality and expenses, the terms sheet will be non-binding on both parties, as an expression of intent to negotiate a final, binding agreement.