

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into as of September __, 2021, by and between the Municipality of Skagway Borough (Municipality) and Alaska Department of Transportation and Public Facilities (DOT&PF). The Municipality and the DOT&PF are sometimes herein referred to collectively as the “Parties,” and each individually as a “Party.”

I. RECITALS

A. Through its marine division, the Alaska Marine Highway System (AMHS), DOT&PF owns, operates, and maintains an intermodal ferry terminal in Skagway, Alaska, which includes uplands, submerged lands, and a concrete floating dock (Terminal). Attached as Exhibit 1 is a diagram marked “General Layout” that provides a general aerial view of the Terminal and includes some explanatory notes.

B. The Terminal constitutes a highway right-of-way. That is, it comprises “real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.” 23 C.F.R. §710.105. The Terminal is a component of the National Highway System (NHS).

C. The Federal Highway Administration (FHWA) has furnished federal-aid that DOT&PF has used in the performance of Terminal-related projects. As such, DOT&PF may convey a property interest in the Terminal, if at all, only in compliance with federal law. 23 U.S.C. §129(c)(7)(A).

D. As a rule, federal law permits DOT&PF to transfer by sale or other conveyance permanent rights in real property if the property interest is not currently or in the foreseeable future needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code. 23 C.F.R. §710.409.

E. Similarly, state law permits DOT&PF to sell, contract to sell, lease, or exchange land or rights in land if it determines that land or rights in land acquired by the department are no longer necessary for highway purposes. AS 19.05.070(b)(2).

F. In appropriate circumstances, DOT&PF may convey an interest in the right-of-way via right-of-way use agreement (ROWUA) where the proposed use is for a non-highway purpose and the use: (1) is in the public interest, (2) is consistent with the continued operation, maintenance, and safety of the facility, and (3) will not impair the highway or interfere with the free and safe flow of traffic. 23 C.F.R. §710.405.

G. The Municipality and the State of Alaska (State), through DOT&PF, have worked collaboratively for many decades to ensure safe and reliable ferry service to Skagway, Alaska. This long history of cooperation dates back to 1962 when the Municipality, then the City of Skagway, acknowledged the importance of ferry service to

the community by making the first of several grants of ownership and easement interests in lands and streets to the State for the purpose of accessing, constructing and utilizing a ferry terminal.

H. In August 1978, the Municipality and the State entered into an Agreement (1978 Agreement) for (1) removal and disposal of existing upland and in-water infrastructure and (2) construction and maintenance of a floating dock, along with supporting infrastructure (1978 Improvements) on land earlier conveyed by the Municipality to the State.

I. The 1978 Improvements built under the 1978 Agreement have served the Municipality and the State well over the years but are now in need of replacement.

J. In recent years, the State has experienced increasingly difficult fiscal challenges and continues to explore opportunities to ease financial demands while maintaining services to its citizens. At the same time, the Port of Skagway has experienced significant increases in commercial and recreational vessel traffic causing the Municipality to explore better means of accommodating such traffic. As a part of that effort, the Municipality is in the early stages of developing a proposed plan to remove much of the 1978 Improvements, including the existing floating dock, and, in place thereof, construct a modern, dual use dock and supporting infrastructure (Project). As envisioned, the new dock would be the subject of a ROWUA and provide: (1) a dedicated, berth designed for AMHS ferries; (2) a segregated dockside area sufficient to satisfy the functional needs of AMHS and its customers; (3) one or more berths for commercial cruise ships; and (4) segregated means of uplands ingress/egress for their respective passengers and, in the case of AMHS, their motor vehicles. AMHS will have exclusive use and control over its dedicated berth, its segregated dockside area, and its segregated means of uplands ingress/egress for AMHS passengers and ferried vehicles.

K. The contemplated ROWUA will not convey any legal interest in Terminal uplands to the Municipality. However, the State will provide a controlled access corridor of sufficient width to enable cruise ship passengers and crew to walk from the ship to points beyond the Terminal and back again.

L. This MOU is intended to set forth the general understanding of the Parties with respect to proposed development, financing, ownership, and management of the Project and their goal in achieving those ends, if possible.

M. The Parties will pursue this effort in good faith. If consistent with applicable law, and if mutually beneficial, they intend to enter agreement(s) addressing future design, construction, operation, maintenance development, financing, management, and/or ownership of the Project, as appropriate.

NOW, THEREFORE, the following understandings exist between the Parties that will form the basis of appropriate agreements to be negotiated between and among the Parties to achieve the purposes of this MOU.

II. STATEMENT OF GOALS AND INTENTIONS

A. The Municipality desires to develop a new, dual use floating dock and supporting infrastructure within the right-of-way boundaries that accommodates AMHS ferries and cruise ships. The Parties believe construction of this new dock will confer a public benefit, namely: (1) AMHS will receive a dedicated ferry berth, dockside area, and separate ingress/egress for its exclusive use at the newly constructed dock at no cost to the State; and (2) the Municipality can better manage commercial cruise ship traffic in the Port of Skagway.

B. As designed, constructed, operated, and maintained, the dual-use dock will be consistent with the continued operation, maintenance, and safety of the Terminal and connecting NHS route. Its use by the Municipality and its licensees shall not impair the highway or interfere with the free and safe flow of passenger or vehicle traffic along the highway.

C. DOT&PF, through AMHS, intends to continue to provide scheduled ferry service to and from the Terminal and desires a modern, reliable ferry dock and supporting infrastructure that will permit it to continue such service. The new dock proposed by the Municipality will provide AMHS with a dedicated ferry berth for its exclusive use in the same fashion as the existing dock.

D. The Municipality is presently in the initial planning stage for the proposed dock and has engaged the services of professional designers and engineers to develop plans that will best meet: (1) the needs of the Municipality and of DOT&PF and (2) the requirements of FHWA and applicable law. The Municipality will submit such plans to DOT&PF and FHWA and seek their approval at appropriate intervals.

E. Upon the development of a plan for the new dock that is acceptable to the Parties and to FHWA, DOT&PF and the Municipality will execute such documents as are necessary to transfer sufficient property interest in the right-of-way to the Municipality. The Parties shall act cooperatively to take such steps as are necessary to obtain federal approval for such transfer, with DOT&PF taking the lead in communicating with FHWA and seeking its approval of the proposed ROWUA. However, with the exception of the cost of State employee time spent seeking FHWA approval, the Municipality is responsible for all costs required in connection with the FHWA review and approval process, *e.g.*, NEPA review per 23 C.F.R. §710.403(d). The Parties do not intend that any such transfers will include roadways that lead to the Terminal and docking facilities or any Terminal uplands.

F. The Parties intend to explore potential sources of financing for the proposed new dock, including the consideration and utilization of state, federal and/or private

resources that may be available and most beneficial. The Municipality will undertake the primary responsibility for (1) locating financing for the new project and (2) the maintenance expenses incurred in the operation of the project facilities. DOT&PF will commit to reimburse the Municipality for expenses related to its proportionate share of the operation and maintenance of the newly constructed dock, with the exception of the expenses that DOT&PF may directly incur or take responsibility for with regard to the maintenance and operation of the ferry related facilities. DOT&PF is not responsible for any costs incurred in the planning, design, or construction of the new dock and supporting infrastructure.

G. The Parties will negotiate in good faith to finalize written agreements in form and substance acceptable to the Parties to carry out the intentions of the Parties as stated in this MOU. The Municipality will take the lead in preparing such written agreements.

H. The Parties acknowledge that, despite their good faith efforts, the Project might not ultimately come to fruition.

III. NON-BINDING

Other than the covenants contained in paragraphs II.G, III, IV, V and VI of this MOU (the “Binding Provisions”), this MOU is not binding upon either the State or the Municipality. Neither of the Parties will be obligated to consummate any transaction contemplated herein, unless and until the Parties have executed written agreements. The covenants in the Binding Provisions are binding upon the Parties whether or not the Parties enter into written agreements.

IV. EXPENSES

Each Party will pay all of its expenses, including legal fees, incurred in connection with the pursuit and implementation of the purposes of this MOU.

V. TERMINATION

Any Party may terminate its involvement in this MOU for any reason at any time by sending written notice thereof to the other Party, provided, however, that paragraph III shall remain in effect following such termination as to such terminating Party.

VI. GOVERNING LAW

This MOU, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Alaska without giving effect to any conflicts-of-law provisions that would result in the application of the substantive law of any other jurisdiction.

IN WITNESS WHEREOF, the undersigned have duly executed this MOU, as of the day and year first hereinabove set forth.

**MUNICIPALITY OF SKAGWAY
BOROUGH**

Date: _____

By: _____

(Print name and capacity)

**ALASKA DEPARTMENT OF
TRANSPORTATION AND PUBLIC
FACILITIES**

Date: _____

By: _____

(Print name and capacity)