

BURRO CREEK HYDROELECTRIC DEVELOPMENT

AGREEMENT

This Agreement (“*Agreement*”) is made as of _____, by and between Burro Creek Holdings, LLC (BCH), and the Municipality of Skagway (MOS).

RECITALS

- A. Burro Creek Holdings, LLC (BCH) is an entity organized and existing under the laws of the State of Alaska;
- B. The Municipality of Skagway (MOS) is a first-class borough incorporated in Skagway, Alaska;
- C. BCH owns a 121-acre parcel of land legally described as USS 1560 (Burro Creek). The property features a wilderness lodge, marine landing site, dock, helipad, and numerous log cabin outbuildings;
- D. Pursuant to Resolution No. 24-14R, BCH and MOS are interested in the development of a hydroelectric project at Burro Creek, for the purpose of developing shore power at the Port of Skagway, under terms that would be negotiated in good faith by the parties;
- E. It is anticipated that the facilities to be developed at Burro Creek would include a hydroelectric project and submarine cable;
- F. BCH and MOS have entered into discussions regarding how to develop and construct the hydroelectric project that would be financed and constructed by MOS on land owned by BCH, using specifications and development parameters agreed to between BCH and MOS. The parties will, prior to the start of any construction work, negotiate the terms and conditions of MOS’s use of the property consistent with the Skagway Municipal Code.
- G. As part of this effort, BCH and MOS are prepared to update the energy potential study of Burro Creek, update the cost estimate for construction and regulatory requirements, apply for necessary permits, study the shore power needs in the Port of Skagway, study and implement the appropriate partnership arrangements, and construct the project (“*Deliverables*”).
- H. Understanding the feasibility risk and that the development of this project will benefit both parties, BCH and MOS have agreed that they will each be responsible for various Deliverables as outlined in this agreement.

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

1. Deliverables.

- (a) The MOS will be responsible for funding and developing the following deliverables:
- Assessment of Port of Skagway shore power needs and associated infrastructure.
 - Cost estimate of the required uplands design and infrastructure identified in the assessment.
 - Recommendation for partnership arrangement (i.e., lease, water rights, purchase, etc.).
 - Application to regulatory agencies as appropriate.
- (b) BCH will be responsible for funding and developing the following deliverables:
- Updated Burro Creek hydroelectric capacity study.
 - Updated cost estimate for construction of the project at Burro Creek, regulatory requirements, and submarine cable.
- (c) Upon execution of a partnership arrangement for the proposed project, MOS will be responsible for funding and developing the following deliverables:
- Construction of the project and associated infrastructure as detailed in the partnership arrangement.
 - Management of the project and associated infrastructure as detailed in the partnership arrangement.
2. **Commitment.** This Agreement shall not commit either party to Project Construction.
3. **Term.** This Agreement shall terminate on December 31, 2025, 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 related to or arising out of 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. BCH 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]

DRAFT
May 29, 2024

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

BCH:

By: _____

Name: []

Title: []

Address:

MOS:

By: _____

Name: Sam Bass

Title: Borough Mayor

Address:

P.O. Box 415

Skagway, AK 99840