

Presented by: The Manager
Presented: 04/17/2023
Drafted by: S. Layne

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2023-08

An Ordinance Repealing Ordinance 2022-63 and Authorizing the Manager to Enter into a Revised Revenue Sharing Agreement with Goldbelt, Inc. to Fund Installation of the Gondola and Associated Infrastructure at the Eaglecrest Ski Area.

WHEREAS, the City and Borough of Juneau owns Eaglecrest Ski Area and desires to develop and improve the public ski area by installing, deploying, and operating a gondola system and other associated amenities, facilities, and visitor attractions; and

WHEREAS, the City and Borough of Juneau Assembly appropriated \$2,000,000.00 for the purpose of a used gondola (February 28, 2022; Ordinance 2021-08(b)(am)(Z)); and

WHEREAS, shortly after the \$2,000,000.00 was appropriated, Goldbelt, Inc., a local Alaska Native Corporation, reached out with a \$10,000,000.00 offer to fund installation of the gondola and associated infrastructure; and

WHEREAS, the City and Borough of Juneau contemplated both market and bond bank financing and does not believe that these two approaches would be as favorable as working with Goldbelt, Inc., because neither private or bond bank financing would allow for joint marketing; moreover, private financing would require loan collateralization and revenue bond financing rates would be unfavorably high because the revenue stream does not yet exist; and

WHEREAS, in exchange for Goldbelt, Inc.'s capital contributions, the City and Borough of Juneau is willing to share summer revenue from the gondola project; and

WHEREAS, the City and Borough of Juneau is not pledging taxes, revenue from taxes, or the full faith and credit of the municipality but is securing this revenue sharing agreement principally with the summer revenue from the gondola project, (*see* CBJ Charter 10.1; A.S. 29.47.240 Revenue bonds); and

WHEREAS, this revenue sharing agreement does not create a property interest conversion for the purposes of the federal Land and Water Conservation Fund because ownership of the gondola project, like the surrounding Eaglecrest Ski Area, remains wholly owned by the City and Borough of Juneau (*see* 54 U.S.C.A. § 200305(f)(3); 36 C.F.R. § 59.3; LWCF Financial Assistance Manual at page 103 (3/11/2021)); and

WHEREAS, Goldbelt, Inc., is uniquely situated to execute a revenue sharing agreement with the City and Borough of Juneau because Goldbelt, Inc., owns the other gondola-like conveyance

(Goldbelt Tram Alaska) in the community, which eliminates competition concerns with the Goldbelt Tram Alaska, encourages visitor impact diversification and sustainable use of both aerial conveyances, and Goldbelt, Inc., has a natural financial interest to see both aerial conveyances prosper while benefiting the community; and

WHEREAS, this revenue sharing agreement and the underling gondola installation is in the best interest of the community and serves an important public purpose; and

WHEREAS, the Assembly adopted Ordinance No. 2022-63 on the 9th of January 2023, which authorized the Manager to execute the Revenue Sharing Agreement depicted in Exhibit A to that ordinance; and

WHEREAS, the specific terms of the Revenue Sharing Agreement adopted by Ordinance No. 2022-63 are no longer appropriate for the Eaglecrest Gondola Project, and need to be replaced with new terms that reflect the factual parameters of the project.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Repeal of Prior Ordinance. Ordinance No. 2022-63 is hereby repealed in its entirety.

Section 3. Authorization to Execute Revised Revenue Sharing Agreement. The Manager is authorized to execute the Revised Revenue Sharing Agreement depicted in Exhibit A to this ordinance. The Manager may make minor typographical and grammatical changes, but any material change to Exhibit A requires Assembly approval prior to such change taking effect.


Section 4. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 8th day of May, 2023.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk

REVENUE SHARING AGREEMENT

PART I: PARTIES

This Revenue Sharing Agreement (this “Agreement”), dated as of _____, 2023 (the “Effective Date”), is between the City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska (the “City”); and Goldbelt, Inc., an Alaska Native Urban Corporation (“Goldbelt”) incorporated under the laws of the State of Alaska with its principal place of business in Juneau, Alaska. The City and Goldbelt are collectively referred to herein as the “Parties” and individually as a “Party” to this Agreement.

PART II: CONTRACT ADMINISTRATION

All communications concerning this Agreement shall be directed as follows, any reliance on a communication with a person other than that listed below is at a Party’s own risk. Notices required under this Agreement must be in writing and personally delivered or sent to the address shown below and will be effective upon receipt.

City & Borough of Juneau:

Attn: Dave Scanlan, Manager
Eaglecrest Ski Area
155 South Seward Street
Juneau, AK 99801
Telephone: 907-789-2000
E-mail: dave.scanlan@eaglecrest.com

Goldbelt, Inc.

Attn: McHugh Pierre, President & CEO
Goldbelt, Inc.
3025 Clinton Drive
Juneau, Alaska 99801
Telephone: 907-790-4990
E-mail: mchugh.pierre@goldbelt.com

PART III: CONTRACT DESCRIPTION

This Agreement is identified as a Revenue Sharing Agreement. The following appendix and any exhibits or attachments incorporated by reference or attached thereto (collectively, the “Appendix”) and exhibits (the “Exhibits”) are attached and are considered a part of this Agreement.

Appendix A: Project, Contribution & Other Terms

Exhibit A: Project Location

Exhibit B: Project Description

If in conflict, the order of precedence shall be this Agreement and then Appendix A.

PART IV: CONTRACT EXECUTION

The City and Goldbelt agree and sign below. This Agreement is not effective until signed by the City. Goldbelt represents that the person signing below on its behalf has the authority to do so and that it is a valid and binding contract enforceable in accordance with its terms.

[Signatures on following page]

CITY AND BOROUGH OF JUNEAU

GOLDBELT, INC.

By: _____
Duncan Rorie Watt
City and Borough Manager

By: _____
McHugh Pierre
President & CEO

Date: _____

Date: _____

Content Approved by: _____ Dave Scanlan, Eaglecrest Ski Area
Form Approved by: _____ Sherri Layne, CBJ Law Dep't
Risk Management Review: _____ Chelsea Swick, CBJ Risk Management

APPENDIX A: PROJECT, CONTRIBUTION & OTHER TERMS

RECITALS

A. WHEREAS, the City is the owner of the Eaglecrest Ski Area located on Douglas Island, on an area of over 1500 acres on part of which the City currently operates Eaglecrest Ski Area as further described on the attached Exhibit A (the "Project Location");

B. WHEREAS, the City desires to develop the Project Location by acquiring, installing, deploying, and operating a gondola system at the Project Location (the "Project Gondola") and other associated amenities, facilities, and/or tourist attractions; all to attract the use of the Project (as defined below) by locals, independent tourists, cruise ship tourists, and independent tour operators;

C. WHEREAS, the City has the authority to make and receive grants and enter into agreements to foster the economic development of the City;

D. WHEREAS, Goldbelt agrees to provide the City with capital for the costs of installation and construction of the Project; and

E. WHEREAS, in order to induce Goldbelt to fund the Contribution (as defined below), the City is willing to share with Goldbelt certain summer revenue from the Project, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide the City with funds which will assist the City to build, construct, operate, and carry out the Project described further in Exhibit B (the "Project").

2. **Contribution.** In consideration of the various obligations to be undertaken by the City pursuant to this Agreement, Goldbelt agrees to provide the City with Ten Million Dollars US (US \$10,000,000) (the "Contribution") on such further terms and conditions as are described in

this Agreement. The City shall accept and use the Contribution for costs incurred in carrying out the Project as appropriated by the City and Borough of Juneau Assembly. Goldbelt will not, and shall not permit any subsidiary or affiliate, to record or obtain any lien on any property or asset of the Project.

3. **Disbursement of Contribution Funds.** Goldbelt will disburse Contribution funds as follows:

Ten Million Dollars US (US \$10,000,000) on or before July 3, 2023.

After making the disbursement as enumerated and on the date provided above, Goldbelt will have contributed a total of Ten Million Dollars (US \$10,000,000) to the Project.

4. **Term.** The term of this Agreement (the “Term”) shall commence on the Effective Date and will continue until the earliest to occur of: (a) 11:59 PM AST on the twenty-fifth (25th) annual anniversary of the date that the Project Gondola opens to the public (“Public Opening”); (b) the termination of this Agreement by the City; or (c) the termination of this Agreement by Goldbelt. In the event that Goldbelt has not yet received repayment by the City of its Goldbelt Share during Phase 2 (as defined below in Section 6) in an amount equal to two (2x) times the amount of the Contribution disbursed by Goldbelt to the City under this Agreement (“ROI Amount”) by the 25th anniversary of the Public Opening, the Term shall be automatically extended until such date upon which Goldbelt has been repaid an amount equal to the ROI Amount under this Agreement, unless this Agreement has been earlier terminated by either Party. Subject to Section 25, Force Majeure, the City warrants that the Project Gondola will open to the public no later than May 31, 2028. If the Project Gondola does not open by that date, Goldbelt may terminate this Agreement under Section 5(d) below, and, upon such termination, the City shall repay to Goldbelt an amount equal to: (a) the amount of the Contribution provided to the City as of the date of termination, plus (B) an amount equal to seven percent (7%) per annum interest compounded monthly (prorated for any partial year), calculated from the date such Contribution (or each part of the Contribution respectively) was made (“Contribution Recoupment Fee”). Notwithstanding the foregoing, under no circumstance shall the repayment to Goldbelt under this Section 4 be more than one hundred fifty percent (150%) of the amount of the Contribution provided to the City. Upon the payment described in this Section 4 being paid to Goldbelt, the Parties shall have no further obligation to each other.

5. **Termination, Default, and Remedies.**

(a) **Termination.** This Agreement shall terminate only upon the occurrence of any of the following circumstances: (i) upon written agreement of the Parties; (ii) pursuant to Section 5(b); (iii) pursuant to Section 5(c); or (iv) pursuant to Section 5(d).

(b) **For Convenience by City.** The City, in its sole discretion, may terminate this Agreement at any time, without cause, prior to any portion of the Contribution being received by the City or if the City & Borough of Juneau Assembly terminates deployment or operation of the Project Gondola or fails to appropriate funds necessary to construct or operate the Project (as described in Section 18), by providing at least fifteen (15) days’ prior written notice to Goldbelt.

The City shall pay Goldbelt the termination fee as described in Section 5(b)(i) or (ii) (the “Termination Fee”). Upon the payment of the Termination Fee described in Section 5(b)(i) or (ii), the Parties shall have no further obligation to each other. The Termination Fee (and the similar fee described in Section 4) is not a penalty, but rather a reasonable estimate of the damages Goldbelt will suffer if the Project fails to open to the public as scheduled or is terminated early.

(i) In the event this Agreement is terminated by the City pursuant to this Section 5(b) during Phase 1 (as defined below), the City shall, within sixty (60) days of the effective date of such termination, calculate the gross Summer Operations Receipts (as defined below), if any, as of the date of termination, and pay to Goldbelt the Termination Fee in cash, which shall be an amount equal to: (A) the amount of the Contribution provided to the City as of the date of termination, plus (B) an amount equal to seven percent (7%) per annum interest (prorated for any partial year), compounded monthly, calculated from the date such Contribution (or each part of the Contribution respectively) was made, minus (C) the Goldbelt Share as determined under Section 6, earned and paid to Goldbelt as of the date of termination. Notwithstanding the foregoing, under no circumstance shall the sum of subsections (A) and (B) above be more than one hundred fifty percent (150%) of the amount of the Contribution provided to the City. In addition, and notwithstanding the foregoing and subject to any approvals required as described in Section 18(a), upon mutual agreement between the City and Goldbelt, the City may provide annual rental credits to Goldbelt or any of its subsidiaries or affiliates, on a dollar for dollar basis, on properties leased by Goldbelt or any of its subsidiaries or affiliates from the City, in lieu of payment of all or part of the Termination Fee.

(ii) In the event the number calculated pursuant to Section 5(b)(i) above is negative, the City shall instead pay to Goldbelt the Termination Fee, which shall be an amount equal to the Goldbelt Share as determined under Section 6, earned and not yet paid to Goldbelt as of the date of termination, if any. Notwithstanding the foregoing and subject to any approvals required as described in Section 18(a), upon mutual agreement between the City and Goldbelt, the City may provide annual rental credits to Goldbelt or any of its subsidiaries or affiliates, on a dollar for dollar basis, on properties leased by Goldbelt or any of its subsidiaries or affiliates from the City, in lieu of payment of all or part of the Termination Fee.

(iii) In the event this Agreement is terminated by the City pursuant to this Section 5(b) during Phase 2 (as defined below), the City shall, within sixty (60) days of the effective date of such termination, calculate the gross Summer Operations Receipts (as defined below) as of the date of termination, and pay to Goldbelt the Goldbelt Share as determined under Section 6, earned but not yet paid to Goldbelt as of the date of termination.

(c) For Cause by City.

(i) This Agreement may be terminated before the expiration date of the Term on written notice by the City, if Goldbelt: (A) fails to pay any portion of the Contribution when due hereunder and such failure continues for fifteen (15) days after such due date; (B) breaches any provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, is not cured by Goldbelt within the time frame identified in the notice of default. If the breach is not curable within the time frame specified, Goldbelt shall provide a written cure plan for approval by the City, which approval shall not be unreasonably withheld. Goldbelt will begin

implementing the cure plan immediately after receipt of notice that the City approves the plan; (C) becomes insolvent; (D) is generally unable to pay, or fails to pay, its debts as they become due; (E) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law; (F) makes or seeks to make a general assignment for the benefit of its creditors; or (G) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property or business. Upon the payment described in this Section 5(c), being paid to Goldbelt, the Parties shall have no further obligation to each other.

(ii) In the event this Agreement is terminated by the City pursuant to this Section 5(c) during Phase 1 (as defined below), the City shall, within sixty (60) days of the effective date of such termination, calculate the gross Summer Operations Receipts (as defined below) as of the date of termination, and pay to Goldbelt an amount equal to: (A) the amount of the Contribution provided to the City as of termination, minus (B) the Goldbelt Share as determined under Section 6, earned and paid to Goldbelt as of the date of termination.

(iii) In the event the number calculated pursuant to Section 5(c)(ii) above is negative, the City shall instead pay to Goldbelt an amount equal to the Goldbelt Share as determined under Section 6, earned and not yet paid to Goldbelt as of the date termination.

(iv) In the event this Agreement is terminated by the City pursuant to this Section 5(c) during Phase 2 (as defined below), the City shall, within sixty (60) days of the effective date of such termination, calculate the gross Summer Operations Receipts (as defined below) as of the date of the event serving as the basis for the termination, and pay to Goldbelt the Goldbelt Share as determined under Section 6, earned but not yet paid to Goldbelt as of the date of termination.

(d) *For Cause by Goldbelt.* This Agreement may be terminated before the expiration date of the Term on written notice by the Goldbelt, if the City: (A) fails to pay any portion due hereunder and such failure continues for sixty (60) days after notice of such failure to pay; (B) materially breaches any provision of this Agreement and either the breach cannot be cured, or if the breach can be cured, it is not cured by the City within thirty (30) days after the City's receipt of written notice of such material breach. If the breach is not curable within thirty (30) days, the City shall deliver to Goldbelt a plan for curing such breach that is reasonably sufficient to effect a cure. If the City fails to cure or deliver a plan for curing such breach within thirty (30) days, Goldbelt may terminate this Agreement.

(e) *Remedies.* Subject to the remedies as provided in this Section 5, each Party shall have all rights available at law or in equity arising out of a breach or default of the other Party under this Agreement (including the breach or any representation or warranty by another Party), including, but not limited to, the right to specific performance, the right to an injunction (both temporary or permanent), the right to pursue payment of any amounts owed or claimed to be owed by a Party under this Agreement, and the right to seek such recovery, damages, or other relief, as may be available at law or in equity, except as may be explicitly limited by this Agreement, suffered by a Party and caused by a breach or default by the other Party.

(f) *Notice.* Goldbelt shall advise the City immediately of any default or alleged default of which any director, officer, manager, or agent of Goldbelt is aware under this Agreement by either Party hereto.

(g) No Consequential or Indirect Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR: CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES; OR LOST PROFITS OR REVENUES ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

6. Revenue Sharing. Subject to Goldbelt funding the entire Contribution as required under the terms of this Agreement, and there being no default event as described in Section 5(c) then in existence, the City shall share with Goldbelt certain fees and revenues (the “Goldbelt Share”). For each year beginning with the year the Gondola is opened to the public, the Goldbelt Share shall be the amount calculated as follows:

(a) Phase 1. Until Goldbelt has received payments in an amount equal to the ROI Amount (“Phase 1”), Goldbelt shall be entitled to:

(i) ten percent (10%) of the gross Summer Operations Receipts for the first fifty-five thousand (55,000) summer visitors to the Project (measured by total individual, packaged, or summer season pass sales for the Project Gondola);

(ii) fifteen percent (15%) of the gross Summer Operations Receipts from summer visitors in excess of fifty-five thousand (55,000) up to sixty-five thousand (65,000), to the Project (measured by total individual, packaged, or summer season pass sales for the Project Gondola);

(iii) twenty percent (20%) of the gross Summer Operations Receipts from summer visitors in excess of sixty-five thousand (65,000) up to seventy-five thousand (75,000), to the Project (measured by total individual, packaged, or summer season pass sales for the Project Gondola); and

(iv) twenty-five percent (25%) of the gross Summer Operations Receipts from summer visitors in excess of seventy-five thousand (75,000) to the Project (measured by total individual, packaged, or summer season pass sales for the Project Gondola).

(b) Phase 2. Once Goldbelt has received payments in an amount equal to the ROI Amount (“Phase 2”), Goldbelt shall be entitled to:

(i) ten percent (10%) of the gross Summer Operations Receipts for the first fifty-five thousand (55,000) summer visitors to the Project (measured by total individual, packaged, or summer season pass sales for the Project Gondola); and

(ii) twelve and one-half percent (12.5%) of the gross Summer Operations Receipts from summer visitors in excess of fifty-five thousand (55,000) to the Project (measured by total individual, packaged, or summer season pass sales for the Project Gondola).

(c) *Payment of Goldbelt Share.* Within sixty (60) days after receiving a final statement for the Project identifying the gross Summer Operations Receipts for the immediately preceding calendar year of the Term, the City will submit to Goldbelt the Goldbelt Share payable pursuant to this Section 6. Payments made by the City to Goldbelt pursuant to this Agreement will be accompanied by an accounting showing the following for the applicable calendar year: (i) total fees and revenue generated by Project activities collected by the City; (ii) total fees and revenue generated by the Project activities collected by Goldbelt and provided to the City; and (iii) total fees and revenue generated by the Project activities collected by third parties and provided to the City; all as described in Section 6(d) below.

(d) *Sources.* The “Summer Operations Receipts” shall mean the entire amount of all receipts, determined on a basis, from:

(i) revenue received by the City during the calendar year from the sale of individual, packaged, or summer season passes for the Project Gondola located at the Project Location for use during the summer, whether sold by the City, Goldbelt, or third parties. For purpose of this Agreement, “summer” is defined as the period which is the greater of: (A) the period between April 15th to October 15th of each calendar year; or (B) the cruise ship calendar for the City, provided by the Cruise Line Agencies of Alaska, for such calendar year;

(ii) revenue received by the City from the sale of individual, packaged, or summer season passes or sales for associated amenities, facilities, and/or tourist attractions funded by the Contribution located at the Project Location owned and operated by the City during the summer; and

(iii) Goldbelt shall be required to revert to the City from such sales an amount equal to the agreed upon wholesale pricing for individual Gondola rides or packaged adventure park products.

(iv) Summer Operations Receipts shall explicitly exclude existing amenities, facilities, and/or tourist attractions located at the Project Location as of the date of this Agreement, whether owned by a third party operator, Goldbelt, or the City.

(e) *Records and Reports.*

(i) On a weekly basis, Goldbelt will provide to the designated representative of the City a summary report of activity generated by Goldbelt related to the Project as described in Section 6(d) above by the Friday of the week following the reporting period.

(ii) On a weekly basis, the City will provide to the designated representative of Goldbelt a summary report of summer activity generated by the Project as described in Section 6(d) above by the Friday of the week following the reporting period.

(iii) The Parties shall maintain accurate financial records, in a form acceptable to the Parties, of all transactions relating to the Project.

(iv) Upon at least thirty (30) days’ prior written notice from a Party (and not more than once per calendar year), each Party shall have the right, and the other Party shall permit,

to have an independent certified public accounting firm selected by such Party, and reasonably acceptable to the other Party, to have access during normal business hours and at the audited Party's principal place of business, to such books of account and records of any audited Party as may be reasonably necessary to verify the accuracy of the summer revenues described in this Section 6 for any period of time ending not more than twenty-four (24) months prior to the date of such request. If an audit pursuant to this Section 6(e) establishes that the audited Party underpaid the unaudited Party, then the audited Party shall promptly (and, in any event, no less than fifteen (15) days after the accounting firm has notified both Parties in writing of the nature and amount of any underpayment) remit to the unaudited Party the amount of such underpayment plus interest (at a rate of seven percent (7%). The fees charged by such accounting firm in connection with any audit pursuant to this Section 6(e) shall be paid by the unaudited Party, provided, however, that such an audit establishes an underpayment by the audited Party that is more than five percent (5%) of the total amount of payments (or revenue remitted) by the audited Party to the unaudited Party for the period being audited, then the audited Party shall pay the reasonable and actual fees and expenses charged by such accounting firm in connection with such audit.

(v) The City will identify to Goldbelt any reports or documents required by this Agreement which are alleged to contain confidential or proprietary information of the City or the Project or any other person ("Identified Confidential Information"). To the extent reasonably permitted by local and state law, Goldbelt agrees to hold such Identified Confidential Information in confidence.

(vi) Goldbelt acknowledges and understands that the City is subject to the Alaska Public Records Act (AS 40.25.120) and that all documents received, owned, or controlled by the City in relation to this Agreement must be made available for the public to inspect upon request, unless an exception applies. It is Goldbelt's sole responsibility to clearly identify any documents Goldbelt believes are exempt from disclosure under the Alaska Public Records Act by clearly marking such documents "Confidential." Should the City receive a request for records under the Alaska Public Records Act applicable to any document marked "Confidential" by Goldbelt, the City will notify Goldbelt as soon as practicable prior to making any disclosure. Goldbelt acknowledges it has five (5) days after receipt of notice to notify the City of its objection to any disclosure, and to file any action with any competent court Goldbelt deems necessary in order to protect its interests. Should Goldbelt fail to notify the City of its objection or to file suit, Goldbelt shall hold the City harmless of any damages incurred by Goldbelt as a result of the City disclosing any of Goldbelt's documents in the City's possession. Additionally, Goldbelt may not promise confidentiality to any third party on behalf of the City, without first obtaining express written approval by the City in each instance.

7. **Other Obligations of the Parties.**

(a) City Obligations. The City shall:

(i) provide any information and support that may be reasonably requested by Goldbelt regarding the marketing, advertising, promotion, and sale of the passes for the Project attractions;

(ii) allow Goldbelt to participate, at its own expense, in any marketing, advertising, promotion, and sales programs or events that the City may use or make generally

available to third party sellers of the passes for the Project attractions, provided that the City may alter or eliminate any program at any time;

(iii) approve or reject, in its discretion, any promotional information or material submitted by Goldbelt for the City's approval;

(iv) set the prices for the passes, goods, and services for the Project attractions to be charged by the City, Goldbelt, and other third-party sellers, having solicited and considered Goldbelt's expertise and business experience; and

(v) in the City's sole discretion, provide promotional information and material for use by Goldbelt in accordance with this Agreement.

(b) Goldbelt Obligations. Goldbelt shall:

(i) market, advertise, promote, and sell passes for the Project attractions in a manner that reflects favorably at all times on the good name and reputation of the City and consistent with good business practice;

(ii) have sufficient knowledge of the Project and Project attractions so as to be able to explain in detail to customers information about the Project and Project attractions;

(iii) not use any promotional and marketing materials related to the Project, whether prepared by the City or others, without the prior written consent of the City;

(iv) not make any materially misleading or untrue statements concerning the City or the Project, including any "bait-and-switch" practices;

(v) promptly notify the City of any complaint or adverse claim about the Project or Project attractions of which Goldbelt becomes aware;

(vi) comply with the rules and regulations for the Project, including sales of passes, imposed by the City that are reasonably determined by the City to protect access to the Project for residents of the City, including, but not limited to, seasonal, daily, or hourly caps on visitors to the Project;

(vii) submit to the City complete and accurate weekly reports regarding the marketing and sales of the passes for the Project attractions in a computer-readable format and containing the scope of information acceptable to the City, maintain books, records, and accounts of all transactions and permit full examination thereof by the City in accordance with Section 6(e); and

(viii) only sell the passes for the Project attractions at not less than the prices determined by the City.

8. Non-Exclusive Relationship. The City may have other business interests or attractions and may engage in other activities in addition to those relating to the Project attractions. Goldbelt shall not have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the City or to the income or proceeds derived therefrom.

In addition, the City may obtain additional contributions or capital from third parties besides the Contribution in order to build or fund the Project. For avoidance of doubt, the City may own and operate other attractions (including, without limitation, gondolas, mountain coasters, ski huts or ski lifts directly competitive with those funded in whole or in part by the Contribution) whether located at the Project Locations or elsewhere and Goldbelt shall not be entitled to income or proceeds derived therefrom other than from the Project Gondola, or Ski Hut during the summer. Goldbelt and the City share ideas and motivation to build a responsible and prosperous community that will last forever. Because of these shared goals, the City intends to continue working with Goldbelt at Eaglecrest to build a successful and sustainable business operation for visitors and residents to enjoy. Through this relationship, the City will communicate with Goldbelt regarding plans to expand Eaglecrest operations near Goldbelt property on the shoreline of Douglas Island.

9. **Contractual Relationship.** The Parties intended that an independent contractor relationship will be created by this Agreement. The City is interested only in the results to be achieved as provided in this Agreement. Except for determining the minimum prices for the sale of passes or other goods or services of the Project (which shall be determined solely by the City), the conduct and control of the work by Goldbelt described herein will lie solely with Goldbelt. Goldbelt is not considered to be an agent or employee of the City for any purpose, and the employees of Goldbelt are not entitled to any benefits that the City provides for City employees.

10. **Indemnification.** Subject to the terms and conditions of this Agreement, Goldbelt shall indemnify, hold harmless, and defend the City and its officers, agents, employees, directors, and volunteers (collectively, the “Indemnified Parties”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including actual, reasonable attorneys’ fees even if in excess of Alaska Civil Rule 82, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, relating to any claim of a third party or City arising out of or occurring in connection with: (a) Goldbelt’s acts or omissions of Goldbelt, including breach of this Agreement; (b) Goldbelt’s advertising or representations that warrant performance of the Project or its attractions beyond that provided by the City; (c) any failure by Goldbelt or its personnel to comply with any applicable laws; or (d) allegations that Goldbelt breached its agreement with a third party as a result of or in connection with entering into, performing under, or terminating this Agreement. Subject to a specific appropriation by the Assembly for this purpose, the City agrees to indemnify Goldbelt for any breach of the City of its obligations under this Agreement. All Parties to this Agreement recognize and fully agree that the City has no appropriation currently available to it to indemnify Goldbelt under this provision, and that enactment of an appropriation in the future to fund a payment under this provision remains in the sole discretion of the Assembly, and the Assembly’s failure to make such an appropriation creates no further liability or obligation of the City.

11. **Insurance.**

(a) During the Term and for a period of two (2) years after the Term, Goldbelt shall, at its own expense, maintain and carry insurance in full force and effect approved by the City’s Risk Management that includes, but is not limited to: (i) commercial general liability with limits no less than One Million Dollars US (US \$1,000,000) for each occurrence and Two Million Dollars US

(US \$2,000,000) in the aggregate, which such policy is to contain, or be endorsed to contain, additional insured status for the City, its officers, officials, employees, and volunteers; (ii) automobile insurance with limits no less than One Million Dollars US (US \$1,000,000); (iii) workers' compensation insurance with limits of One Million Dollars (US \$1,000,000.00) per injury and illness, One Million Dollars (US \$1,000,000.00) in the aggregate; and; and (iv) all other types and amounts of insurance required by applicable law and all such insurance as necessary to protect the Indemnified Party from and against any third party claims; all with financially sound and reputable insurers. Upon the City's request, Goldbelt shall provide the City with a certificate of insurance and policy endorsements for all insurance coverage required by this Section 11(a), and shall not do anything to invalidate such insurance. The certificate of insurance shall name the City as an additional insured. Goldbelt shall provide the City with thirty (30) days' advance written notice in the event of a cancellation or material change in Goldbelt's insurance policies. Except where prohibited by law, Goldbelt shall require its insurers to waive all rights of subrogation against the City's insurers, Goldbelt and the other Indemnified Parties.

(b) The City agrees to maintain and carry insurance in full force and effect, subject to appropriate levels of self-insurance, in all types and amounts of insurance required by applicable law and as necessary to protect Goldbelt from and against any third party claims arising out of the City's gross negligence or willful misconduct related to the Project and the City's operation of the Project with financially sound and reputable insurers. Upon Goldbelt's request, the City shall provide Goldbelt with a certificate of insurance and policy endorsements for all insurance coverage required by this Section 11(b), and shall not do anything to invalidate such insurance. The certificate of insurance shall name Goldbelt as an additional insured. The City shall provide Goldbelt with thirty (30) days' advance written notice in the event of a cancellation or material change in the City's insurance policies.

12. **No Assignment or Delegation.** Goldbelt may not assign or delegate any interest in this Agreement without the prior written consent of the City, in its sole and absolute discretion. Goldbelt may assign its rights to any payment under this Agreement without the prior written consent of the City; however, notice of any such assignment or transfer shall be furnished promptly to the City by Goldbelt.

13. **Equal Employment Opportunity.** Goldbelt will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, familial status, sexual orientation, gender identity, gender expression, or national origin. Goldbelt shall include these provisions in any agreement related to the work performed under this Agreement with contractors or subcontractors.

14. **Choice of Law & Jurisdiction.** The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska shall be the exclusive jurisdiction for any action of any kind and any nature arising out of or related to this Agreement. Venue for trial in any action shall be in Juneau, Alaska. The laws of the State of Alaska shall govern the rights and obligations of the parties. Goldbelt specifically waives any right or opportunity to request a change of venue for trial pursuant to AS 22.10.040.

15. **Compliance with Laws & Regulations.** Goldbelt shall, at Goldbelt's sole cost and expense, comply with all applicable requirements of federal, state, and local laws, ordinances,

and regulations now in force, including safety, environmental, immigration, and security enactments, or which may be subsequently enacted. Goldbelt warrants that it has obtained and is in full compliance with all required licenses, permits, and registrations regulating the conduct of business within the State of Alaska and the City, and shall maintain such compliance during the effective Term of this Agreement.

16. **Payment of Taxes & Obligations to City.** As a condition of this Agreement, Goldbelt shall pay all federal, state, and local taxes incurred by Goldbelt and shall require their payment of any subcontractor or any other persons in the performance of this Agreement. Goldbelt shall not be delinquent in the payment of taxes, or any other obligation, to the City during the performance of this Agreement. Satisfactory performance of this Section 16 is a condition precedent to payment by the City under this Agreement.

17. **Ownership of Documents.** All designs, drawings, specifications, notes, artwork, marketing materials, and other work developed in performance of this Agreement shall become the sole property of the City and may be used by the City for any other purpose without additional compensation to Goldbelt. Goldbelt agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Goldbelt, beginning as of the Effective Date and for a period of three (3) years after the final payment under this Agreement, agrees to furnish and provide access to all retained materials at the request of the City. Unless otherwise directed by the City, Goldbelt may retain copies of all materials.

18. **Fiscal Funding and Other Risks.**

(a) The Parties acknowledge that the City is legally prohibited from encumbering funds that have not been duly appropriated, pursuant to the City's Charter 9.13. Funding for this Agreement beyond fiscal year 2023 is therefore subject to an appropriation of funds by, and at the sole discretion of, the City and Borough of Juneau Assembly. The Parties acknowledge and understand that in the event the Assembly fails to appropriate sufficient funds for the construction or operation of the Project or essential Project attractions, including, without limitation, for cause by either party under Section 5(c) or (d), as applicable, the Agreement will automatically terminate, subject to the Contribution Recoupment Fee described in Section 4 or the Termination Fee described in Section 5(b)(i) or (ii), if applicable, but without further penalty or further municipal liability, on June 30th of the City's current fiscal year, or as noted in the notice of termination thereunder. For avoidance of doubt, no Contribution Recoupment Fee or Termination Fee shall be payable in the event of a termination for cause by the City; solely the amounts described in Section 5(c)(ii), (iii) or (iv) shall be payable.

(b) The Parties acknowledge that each bears the risk of any caps on tourism established by the City and Borough of Juneau Assembly or the State of Alaska or limitations or restrictions on how the Project Location is used or the Project is operated imposed or established by the City and Borough of Juneau Assembly or the State of Alaska.

19. **Entire Agreement.** This Agreement, including the Appendix and Exhibits, constitute the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to the subject matters of this Agreement.

20. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

21. **Amendments.** No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

22. **Waiver.** No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

23. **No Third-Party Beneficiaries.** Subject to the next sentence, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person (including any customer) any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

24. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original. Such counterparts shall constitute one and the same instrument. A signed counterpart of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

25. **Force Majeure.** No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Goldbelt to make the Contribution), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, unusually severe weather, tsunami, volcanic activity, pandemics, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure

or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 25, the other Party may thereafter terminate this Agreement upon thirty (30) days' written notice.

26. **Press Releases and Promotional Materials.** The City may issue press releases or other promotional materials describing in general terms the terms of this Agreement. The City shall also provide Goldbelt with copies of all publications produced in conjunction with the Project.

27. **Other Agreements.** Any other agreements between the Parties related to the Project, such as fleet tours or transportation provided by Goldbelt, shall be agreed to by the Parties in their sole discretion and shall require additional agreements entered into by the Parties or an amendment to this Agreement.

[EXHIBITS ON FOLLOWING PAGES]

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EXHIBIT A

PROJECT LOCATION

The Project Gondola aerial ropeway system will be located at Eaglecrest Ski Area, 3000 Fish Creek Road, Juneau, Alaska 99801. The bottom station of the Gondola ropeway will be located Alaska State Plane Coordinates, Northing 2522673.9910, Easting 2353725.4892. The midway loading station will be located at Alaska State Plan Coordinates, Northing 2521902.7930 Easting 2350412.0533. The top of the Gondola and Summit Lodge will be located at Alaska State Plane Coordinates, Northing 2521139.7557, Easting 2347133.6802.

EXHIBIT B

PROJECT DESCRIPTION

The Gondola system will have a total maximum hourly capacity of 750 passengers per hour providing year-round recreational access to summer and winter activities. The Gondola is a 1989 Doppelmayr fixed grip pulse Gondola with twelve 15 passenger cabins. The refurbished Gondola installation will have four pods of three cabins traveling the line.

Goldbelt, Inc.

3025 Clinton Drive

LETTER OF INTENT

April 12, 2023

Attn: Dave Scanlan, Rorie Watt, City Manager

City and Borough of Juneau
City & Borough Manager's Office
155 South Seward Street
Juneau, AK 99801

Re: Gondola Project Revenue Sharing Agreement

Dear Mr. Scanlan and Ms. Watt,

We present this Letter of Intent ("LOI") for the Gondola Project revenue sharing agreement between the City and Borough of Juneau (the "City") and Goldbelt, Incorporated ("Goldbelt"). This LOI sets forth the proposed terms for the negotiations of a Gondola Project revenue sharing agreement (the "Agreement") between the City and Goldbelt to fund, install, and operate the Gondola Project (the "Project") at Eaglecrest Ski Area on Douglas Island. The terms set forth in this LOI will not become binding until a more detailed revenue sharing agreement is negotiated and signed by the parties.

Silent Partner:

Goldbelt, Incorporated

Independent Contractor:

City and Borough of Juneau

Project:

The City will install a gondola system to attract locals, tourists, cruise ship tourists and independent tour operators to the attractions in the area. Goldbelt will provide funds of \$10,000,000 to assist the City with the installation and operation of the Project and in exchange Goldbelt will receive a percentage share of revenues generated by the Gondola per Eaglecrest visitor for a term of 25 years. Goldbelt will not operate the Project, as the City and Goldbelt intend that an Independent Contractor relationship be created by the Agreement.

ROI:

The ROI is dependent upon gross revenue generated by the Project. The projected ROI is \$32,000,000 with a total projected revenue share of \$42,080,520 for Goldbelt over the 25-year term.

Term:

The Term of the Agreement starts on the Effective Date of the Agreement and ends on the twenty-fifth (25th) anniversary of the date that the Project opens to the public. City warrants

Exhibit B - Ordinance 2023-08

opening to the public by May 31, 2027. The Term will extend if Goldbelt has not received 2X its contribution in revenue (\$20,000,000).

Investment: Goldbelt will disburse Contribution funds of \$10,000,000 on or before July 3, 2023.

Termination: The City may terminate the Agreement for convenience: prior to receiving any portion of Goldbelt's investment; if it chooses to terminate deployment or operation of the project; or in the event of non-appropriation. The termination fee will be the amount contributed by Goldbelt minus any revenue sharing received prior to termination. Goldbelt will also receive seven percent (7%) per annum interest compounded monthly up to a cap of 150%, which will be \$5,000,000.

Revenue Sharing: Until Goldbelt has received payments equaling the entire investment amount ("Phase 1"), the City shall pay to Goldbelt a percentage of the gross Summer Operations Receipts. Goldbelt's percentage shall be determined by the number of visitors to the Project, with ranges from 10%-25%. After Goldbelt has received payments equaling its entire investment amount ("Phase 2"), the City shall pay to Goldbelt a percentage of the gross Summer Operations Receipts. Goldbelt's percentage shall be determined by the number of visitors to the Project, with ranges from 10%-12.5%. Payment of Goldbelt's share will be due within sixty (60) days of the City receiving a final statement identifying the gross Summer Operations Receipts for the calendar year of the Term.

Records: Both Parties will provide a written weekly summary report of revenues from the sale of individual, packaged, or summer season passes from the Project and have an end of the year audit summary report. On written notice, both Parties shall permit an audit by an independent certified public accounting firm to verify accuracy of summer revenues.

Future Engagements: Goldbelt and CBJ will share ideas and motivation to build a responsible and prosperous community that will last forever. Because of these shared goals, CBJ intends to continue working with Goldbelt at Eaglecrest to build a successful and sustainable business operation for visitors and residents to enjoy.

Communication: CBJ will communicate with Goldbelt regarding plans to expand Eaglecrest operations near Goldbelt property on the shoreline of Douglas Island.

Exhibit B - Ordinance 2023-08



Goldbelt, Incorporated
By: McHugh Pierre
Its: President & CEO

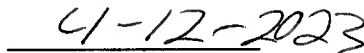


Dave Scanlan

Rorie Watt

April 12, 2023

Date



Date

Date