

MEMORANDUM OF AGREEMENT  
AMONG THE U.S. ARMY CORPS OF ENGINEERS,  
ALASKA STATE HISTORIC PRESERVATION OFFICE,  
AND THE NORTH SLOPE BOROUGH,  
REGARDING THE BARROW ALASKA COASTAL EROSION PROJECT

- 1 WHEREAS, the U.S. Army Corps of Engineers (USACE) and North Slope Borough (NSB) propose to construct a protective barrier along the shoreline of Utqiagvik, Alaska as part of the Barrow Alaska Coastal Erosion Project (the Undertaking) under authorization of Section 116 of the Energy and Water Development and Related Agencies Appropriations Act of 2010 (P.L. 111-85); and
- 2 WHEREAS, the preferred Undertaking design is identified as “the preferred alternative” within the integrated Feasibility Report/Environmental Assessment *Barrow Coastal Erosion Feasibility Study*, dated 4 February 2019 (FR/EA); and
- 3 WHEREAS, the USACE has identified the Undertaking’s area of potential effects (APE), as defined at 36 CFR § 800.16(d), along the coast of the community of Utqiagvik from the bluff by the Wiley Post-Will Rogers Memorial Airport to the Naval Arctic Research Laboratory (NARL) properties at Imikpuk Lake (Appendix A); and
- 4 WHEREAS, the USACE has determined that the Utqiagvik Village Site (BAR-002), which the Keeper of the National Register has determined to be eligible for the National Register of Historic Places (NRHP), is the only historic property within the APE; and
- 5 WHEREAS, the USACE has found that the proposed undertaking will have an adverse effect on BAR-002, and the Alaska State Historic Preservation Office (SHPO) concurred on 28 January 2019; and
- 6 WHEREAS, the USACE consulted with the SHPO in accordance with Section 106 of the National Historic Preservation Act [54 U.S.C. 306108] and its implementing regulations [36 CFR § 800] to resolve the adverse effect of the undertaking on BAR-002; and
- 7 WHEREAS, BAR-002 is on land owned by the NSB and the City of Utqiagvik (CoU); and
- 8 WHEREAS, the USACE notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect on BAR-002 [36 CFR 800.6(a)(1)], and the ACHP chose to not participate; and
- 9 WHEREAS, the NSB, a local governing body, has been invited to be a signatory to this MOA and has accepted; and

- 10 WHEREAS, the CoU, a local governing body, has been invited to be a concurring party to this MOA and has accepted; and
- 11 WHEREAS, the Native Village of Barrow Iñupiat Traditional Government (NVB), a Federally-recognized tribe and a tribe culturally affiliated with BAR-002, has been invited to be a concurring party to this MOA and has accepted; and
- 12 WHEREAS, The Iñupiat Community of the Arctic Slope (ICAS), a Federally-recognized tribe and a tribe culturally affiliated with BAR-002, has been invited to be a concurring party to this MOA and has accepted; and
- 13 WHEREAS, the Arctic Slope Regional Corporation (ASRC), an Alaska Native organization which provides services throughout the region associated with the APE, has been invited to be a concurring party to this MOA and has accepted; and
- 14 WHEREAS, the Arctic Slope Native Association (ASNA), an Alaska Native non-profit organization which provides services throughout the region associated with the APE, has been invited to be a concurring party to this MOA and has accepted/declined; and
- 15 WHEREAS, the Ukpeaġvik Iñupiat Corporation (UIC), an Alaska Native organization which provides services throughout the region associated with the APE, has been invited to be a concurring party to this MOA and has accepted; and
- 16 NOW, THEREFORE, the signatories to this MOA agree that the following stipulations will be met in order to resolve the adverse effect that the Undertaking will have on BAR-002, in accordance with 36 CFR § 800.6(b)(1), and that these stipulations shall govern the Undertaking and all its parts until this MOA expires or is terminated.

## STIPULATIONS

The USACE will ensure that the following stipulations are implemented:

### I. MONITORING

- A. During the physical construction of the Undertaking, the USACE will provide for an Archaeological Monitor in the location described in the Appendix A as the “Revetment.” The Monitor shall meet the qualifications outlined in Stipulation VIII.
1. The Monitor will follow duties outlined by the Monitoring Plan developed per Stipulation IV(A)(2).

## II. DATA RECOVERY AT BAR-002

### A. Excavation

1. The USACE will fund a salvage archaeological excavation of an appropriate feature of BAR-002. The excavation area will be determined in the Research Design per Stipulation IV(A)(3).
  - a. Excavation is anticipated to start the field season following congressional funding appropriations for construction.
  - b. The excavation shall follow the Research Design which will be completed as per Stipulation IV(A)(3).
  - c. USACE will obtain Right of Way permits to access the cultural feature.
  - d. The excavation will be contracted to a firm which has experience in the Arctic. The Primary Investigator (PI) shall meet the qualifications outlined in Stipulation VIII. USACE shall follow policy on identifying qualified contractors.

### B. Analysis

1. The USACE will fund an archaeological analysis of a representative sample of the artifacts and ecofacts recovered during the excavation. The details of this analysis will be defined in the Research Design per Stipulation IV(A)(3).
2. The landowner shall provide access to the recovered artifacts and ecofacts during analysis. A Memorandum of Understanding among the USACE, landowner, and Federally-recognized tribes regarding approved analysis techniques will be developed prior to construction.
  - a. The landowner, who owns all recovered archaeological materials, shall have final say over whether destructive testing is conducted (*e.g.*, radiocarbon dating of charcoal or animal bone).
  - b. Temporary storage of artifacts, prior to Stipulation II(C)(3) Will be outlined in the Research Design as per Stipulation IV(A)(2).

3. The analysis will be contracted out to a firm which has experience in the Arctic. The Primary Investigator (PI) shall meet the qualifications outlined in Stipulation VIII.
4. The USACE will update the Alaska Heritage Resource Survey (AHRS) record for BAR-002 after the completion of the data recovery report.

#### C. Curation

1. Recovered archaeological artifacts, ecofacts, and bulk samples will be mapped, field-cataloged, and stored in sealed plastic bags labeled with site provenience and stratigraphic information.
2. All recovered materials will be temporarily stored in a secure location identified by the archaeological contractor.
3. All artifacts, faunal remains, original field notes, and related materials shall be accessioned to a repository of the landowner's choosing that complies with Federal regulations for curation (36 CFR § 79.9).
  - a. A curation agreement will be entered into by the chosen repository, USACE, and the landowner prior to excavation.
  - b. The curation agreement will include provisions for the potential future transfer to the IHLC once they meet 36 CFR § 79.9.
4. Data will be stored in the following formats:
  - a. Archaeological maps, excavation notes, photologs, and other data will be curated on rainproof notebooks and paper.
  - b. GPS and laser transit data will be curated as digital files in PDF or other interchangeable formats.
  - c. Digital photographs will be curated on DVDs.
  - d. Artifacts, ecofacts, and bulk samples will be curated in plastic bags with zip-type closures that meet the repository's curation requirements.

5. Any human remains and associated funerary objects recovered during the excavation shall be treated per Stipulation V of this MOA.

#### **D. Landowner**

1. If it is determined that data recovery will happen on a property outside NSB property, the landowner for that outside parcel will be identified and invited to be as a signatory following the procedure in Stipulation IX.

### **III. PUBLIC OUTREACH ACTIVITIES**

#### **A. Public Presentation**

1. Findings associated with the data recovery at BAR-002 will be presented locally at Utqiagvik by USACE's contractor within 1 year of completion of excavation.
  - a. Any presentations regarding human remains, DNA recovery, or funerary objects must be approved by NVB prior to presentation.
  - b. A digital copy of the presentation slides and any handouts will be provided to the Signatories for their own records after the presentation is complete.

#### **B. Professional Presentation**

1. Findings associated with the data recovery at BAR-002 will be presented at a conference of peers, such as the Annual Meeting of the Alaska Anthropological Association or equivalent venue, by USACE's contractor within 2 years of completion of excavation.
  - a. Any presentations regarding human remains, DNA recovery, or funerary objects must be approved by NVB prior to presentation.
  - b. Information recovered from the Undertaking in all venues will emphasize the scientific productivity of collaborative, interdisciplinary studies.
  - c. A digital copy of the abstract, projector slides, and any handouts will be submitted to SHPO and NSB after the conference. A scanned copy of the conference session where the presentation is being held will also be provided.

### C. Professional Publication

1. The USACE, in consultation with their contractor, shall submit an article about the findings associated with the data recovery at BAR-002 for publication in a peer-reviewed journal within 2 years of completion of excavation.
  - a. If the article is not accepted for publication in a peer-reviewed journal, it will be published elsewhere.
  - b. Any publication regarding human remains, DNA recovery, or funerary objects must be approved by NVB prior to presentation.
  - c. Information recovered from the Undertaking in all venues will emphasize the scientific productivity of collaborative, interdisciplinary studies.

## IV. TIMING AND SUBMITTALS

### A. Planning and Design

1. If USACE approves the Feasibility Study and the project moves to the Pre-construction Engineering and Design (PED) phase [Anticipated February 2020], USACE will send out a Letter of Continuing Progress to inform all parties that the project has been approved for PED within 15 days.
  - a. PED is a USACE internal milestone which accepts the findings of the Feasibility Study and moves to develop the final design of the project. It is required for continued funding of the project.
  - b. If the project does not move into PED, the MOA will remain active until PED has been achieved. If PED has not been reached within 3 years, the MOA will be void and a new MOA will be drafted if the project is renewed.
2. USACE will submit a draft Monitoring Plan to the SHPO for comment no later than 90 days prior to implementation.
  - a. Upon receipt, the SHPO shall have 30 days to review the draft and submit comments to USACE. USACE will take into consideration timely comments when drafting the final Monitoring Plan. If no comments are received, then the draft will be considered final.

- b. If the SHPO has comments on the draft Monitoring Plan, USACE will take into consideration these comments and develop a second draft. The second draft Research design shall be submitted to the SHPO, and upon receipt, the SHPO shall have 15 days to review the second draft and submit comments to USACE. Then the draft Monitoring Plan will be considered final.
    - c. NSB will receive a copy of the Monitoring Plan.
- 3. USACE will submit a draft Research Design to the SHPO for comment no later than 120 days prior to implementation.
  - a. Upon receipt, the SHPO shall have 30 days to review the draft and submit comments to USACE. USACE will take into consideration timely comments when drafting the final Research Design. If no comments are received, then the draft will be considered final.
  - b. If the SHPO has comments on the draft Research Design, USACE will take into consideration these comments and incorporate them to develop a second draft. The second draft Research design shall be submitted to the SHPO, and upon receipt, the SHPO shall have 15 days to review the second draft and submit comments to USACE. USACE will review the additional comments and incorporate them where feasible, and provide the Final Research Design to the Signatories prior to its implementation.

**B. Final Monitoring Report**

- 1. The USACE will submit a Monitoring Report detailing the results of archaeological monitoring to the SHPO no later than 180 days after fieldwork ends. Final report submittals will consist of:
  - a. One printed color copy and one digital copy submitted to the signatories: SHPO and NSB.
  - b. One digital copy submitted to each of the concurring parties: NVB, ICAS, ASRC, ASNA, and UIC.
- 2. Final Report of Investigations



- a. At the conclusion of excavation and analysis the contracted firm will prepare a Final Report of Investigations on the archaeological data recovery, outlining the excavation, analysis, interpretation, and importance of BAR-002 to USACE. The PI shall ensure that the report will meet professional standards and the *Secretary of the Interior's Format Standards for Final Reports of Data Recovery Programs* [42 CFR § 5377-79].
- b. The USACE shall submit one digital copy of the draft archaeological data recovery report to each of the signatories and concurring parties to this agreement no later than 1 year after the completion of field data recovery efforts. A hard copy will be provided upon request.
  - i. Upon receipt, the signatories and concurring parties shall have 30 days to review the draft and submit comments to USACE.
- c. The USACE shall carefully consider comments by all signatories and concurring parties. Any comments that have not been taken into account in the final draft of the report will be explained in writing.
- d. USACE shall submit the final draft of the Final Report of Investigations on the archaeological data recovery at BAR-002 no later than 90 days after the end of the comment period. Final report submittals will consist of:
  - i. One printed color copy and one digital copy submitted to each of the signatories: SHPO, NSB.
  - ii. One printed color copy and one digital copy submitted to each of the concurring parties: CoU, NVB, ICAS, ASRC, UIC.
  - iii. Two printed color copies submitted to each of the following: Alaska State Library, Alaska Resource Library and Information Service, the Tuzzy Consortium Library, and the Iñupiat Heritage Center.

## V. DISCOVERY AND NOTIFICATION

- A. Pursuant to 36 CFR § 800.13(a)(2), should any previously unknown historic or prehistoric property be encountered within the APE, the SHPO, landowner, and Federally-recognized tribes, NVB and ICAS, will be notified and all work that might affect the property, as determined by a SOI-qualified individual, shall cease until:



1. The USACE determines the property's eligibility for the NRHP in consultation with the SHPO and other interested parties; and
2. The USACE assesses the potential effect of the Undertaking on the newly discovered property in consultation with the SHPO and other interested parties; and
3. If the Undertaking will adversely affect the newly discovered property, mitigation measures developed in consultation with the SHPO and other interested parties will be completed.
  - a. The USACE will notify the ACHP of any newly discovered NRHP-eligible properties that will be adversely affected and the mitigation measures that have been carried out.
  - b. Work may resume after on-site mitigation measures have been completed.
4. Consultation with the SHPO and other interested parties will be carried out in an expeditious manner so as to avoid unnecessary delays to the undertaking.

## VI. HUMAN REMAINS

- A. BAR-002 is known to contain human remains as defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001). Should there be an inadvertent discovery of human remains and/or funerary objects during current or future undertakings within the APE, the USACE will follow standard operating procedures in accordance with *Alaska Statute (AS) 12.65.005(a)(1)*, *AS 18.50.250*, and the *Memorandum of Understanding among the Alaska Office of History and Archaeology, Alaska State Medical Examiner, and Alaska State Troopers*, and the *USACE Guidelines for Human Remains Discovery*.
  1. Upon discovery, all activity in the vicinity of the human remains and/or funerary objects must cease and the site will be secured against further disturbance.
  2. The person making the discovery will immediately inform the Archaeological Monitor and Site Supervisor, who will immediately stop work at the discovery site and contact the USACE archaeologist by phone, to be followed by written notification.

3. As per *AS 12.65.005(a)(1)*, The USACE archaeologist will immediately notify a peace officer (NSB Police Department/Alaska State Trooper/Missing Persons Clearinghouse), the Alaska State Medical Examiner, the land owner, and the SHPO by phone. Pursuant to *36 CFR § 800.13(b)(3)*, notifications will be completed within 48 hours of discovery.
  4. A qualified person with the appropriate level of expertise as decided by the PI and the State Medical Examiner or SHPO must examine the remains to determine postmortem interval.
    - a. If remains are determined to be ancient (postmortem interval >100 years), the PI will contact the land owner, the USACE, the SHPO, the Tribes, and the land owner by phone, followed by written notification.
- B.** If remains are determined to be recent (postmortem interval <100 years), the USACE will notify the land owner and follow the direction of the Alaska State Troopers, State Medical Examiner, or local peace officer regarding their treatment and disposition, in accordance with appropriate Federal and State regulations.
- C.** Should the remains need to be removed, relocated, transported, or reburied, the USACE archaeologist will contact the Alaska Bureau of Vital Statistics, Alaska Department of Health and Social Services, to obtain a disinterment and reinterment permit and/or burial-transit permit as per *AS 18.50.250*.
1. An MOU will be developed among the USACE, NVB, and Federally-recognized tribes during PED regarding potential analyses of human remains.
  2. The treatment of any discovered human remains will follow procedures previously developed by the NVB and UIC for the handling of human remains recovered.

## **VII. DISPUTE RESOLUTION**

- A.** If any party to this agreement objects to any actions conducted during the term of this MOA or to the manner in which the terms of this MOA are implemented, the USACE shall consult with such party to resolve the objection. If the USACE determines that such objection(s) cannot be resolved, the USACE will:
1. Forward all documentation relevant to the dispute, including the USACE proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within 30 calendar days of receiving documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written

response that takes into account any timely advice or comments regarding the dispute from the ACHP and Signatories, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the USACE may make a final decision regarding the dispute and proceed accordingly. Prior to reaching a final decision, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Signatories to the MOA, and provide them and the ACHP with a copy of such written response.
3. The USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

#### **VIII. PROFESSIONAL STANDARDS**

- A. All work pursuant to this MOA will be developed by or under the direct supervision of a person or persons meeting the minimal professional qualifications as appropriate, listed in the Secretary of the Interior's (SOI) Historic Preservation Professional Qualification Standards [62 FR 33708].

#### **IX. AMENDMENT**

- A. Any signatory to this MOA may request that other Signatories consider amending it, whereupon the parties will consult to consider such amendments. Amendments will be executed in the same manner as the original MOA. No amendment will be effective unless all Signatories to the MOA have agreed to it in writing. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

#### **X. PUBLIC OBJECTION**

- A. If at any time during implementation of the measures stipulated in this MOA, should any objection to any such measure or its implementation be raised by a member of the public, the USACE will take the objection into account and consult as needed with the objecting party, the SHPO, or the ACHP to resolve the objection.

#### **XI. ANTI-DEFICIENCY ACT**

- A. All requirements set forth in this MOA requiring the expenditure of USACE funds are expressly subject to the availability of appropriations and the requirements of the Anti-

Deficiency Act [31 U.S.C. § 1341]. No obligation undertaken by the USACE under the terms of this MOA will require or be interpreted to require a commitment to expend funds not obligated for a particular purpose.

1. If the USACE cannot perform any obligations set forth in the MOA due to the unavailability of funds, the parties to this MOA intend the remainder of the agreement to be executed.
2. In the event that any obligation under the MOA cannot be performed due to the unavailability of funds, the USACE agrees to utilize its best efforts to renegotiate the provision.

## **XII. MUTUAL AGREEMENTS AND UNDERSTANDINGS**

- A. Nothing contained in this MOA shall be construed or interpreted in any way so as to waive the sovereign immunity of any party.
- B. Points of Contact for Signatories and Concurring Parties are listed in Appendix B.
- C. Electronic mail (email) will serve as the official correspondence method for all communications regarding this Agreement and its provisions. Contact information in Appendix B may be updated as needed without an amendment to this Agreement. It is the responsibility of each signatory [add as appropriate “concurring party” or “consulting party”] to immediately inform the USACE of any change in name, address, email address, or phone number of any point-of-contact. The USACE will forward this information to all signatories and concurring parties by email.

## **XIII. DURATION**

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution or terminate in accordance with Stipulation XIV. Prior to such time, USACE may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IX.

## **XIV. TERMINATION**

- A. Any signatory to this MOA may propose to terminate this agreement by providing 30-calendar days’ notice to the other signatories explaining the reasons for the proposed termination [36 CFR § 800.(c)(8)].

1. The USACE will consult with the other parties during this 30-calendar day period to seek agreement on amendments or other actions that will avoid termination.
2. In the event of termination, the USACE shall either execute an MOA with signatories under 36 CFR § 800.6(c)(1) or will request comments from the ACHP under 36 CFR § 800.7(a). The USACE shall notify the Signatories as to the course of action it will pursue.

Execution of this Memorandum of Agreement by USACE, NSB, and SHPO and implementation of its terms evidence that USACE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

---

Phillip J. Borders Date  
Colonel, U.S. Army Corps of Engineers  
District Commander, Alaska District

*John M. Anderson* *5 June 2019*

---

*fr* Judith Bittner Date  
Alaska State Historic Preservation Officer  
State of Alaska

*Harry K. Brower, Jr.* 6/6/2019

---

Harry K. Brower, Jr. Date  
Mayor  
North Slope Borough

**CONCURRING PARTIES:**

---

Fannie Suvlu  
Mayor  
City of Utqiagvik

Date

---

Charles Brower  
President  
Native Village of Barrow Iñupiat Traditional Government

Date

---

Frederick Brower  
Executive Director  
Inupiat Community of the Arctic Slope

Date

---

Rex Rock, Sr.  
President and CEO  
Arctic Slope Regional Corporation

Date

---

Marie Carroll  
President and CEO  
Arctic Slope Native Association

Date

---

Delbert Rexford  
President and CEO  
Ukpeagvik Iñupiat Corporation

Date



**APPENDIX A: APE Map**



## APPENDIX B: Points of Contact

### **U.S. Army Corps of Engineers**

Mr. Joseph Sparaga  
Alaska District Archaeologist  
U.S. Army Corps of Engineers  
CEPOA-PM-CW-ER (Sparaga)  
P.O. Box 6898  
Joint Base Elmendorf Richardson, Alaska 99506  
Phone: (907) 753-2640  
Email: joseph.e.sparaga@usace.army.mil

### **Alaska State Historic Preservation Office**

Ms. Judith Bittner  
State Historic Preservation Officer  
Office of History and Archaeology  
550 West 7<sup>th</sup> Avenue, Suite 1310  
Anchorage, AK 99501-3565  
Phone: (907) 269-8700  
Email: dnr.oha@alaska.gov

### **North Slope Borough**

Mr. Harry K Brower, Jr.  
Mayor  
P.O Box 69  
Barrow, AK 99723  
Phone: (907) 852-2611  
Email: Harry.Brower@north-slope.org

### **City of Utqiagvik**

Fannie Suvlu,  
Mayor  
City of Utqiagvik  
PO Box 629  
Barrow, AK 99723  
Phone: (907) 852-5211  
Email: fannie.suvlu@utqiagvik.us

### **Native Village of Barrow Inupiat Traditional Government**

Charles DN Brower  
President  
P.O. Box 1130  
Barrow, AK 99723  
Phone: (907) 852-4411  
Email: charles.brower@nvbarrow.net

**Iñupiat Community of the Arctic Slope**

Frederick Brower  
Executive Director  
P.O. Box 934  
Barrow, AK 99723  
Phone: (907) 852-4227  
Email: frederick.brower@inupiatgov.com

**Arctic Slope Regional Corporation**

Rex A. Rock, Sr.  
President & CEO  
P.O. Box 129  
Barrow, AK 99723  
Phone: (907) 852-8633  
Email: Rrock@asrc.com

**Arctic Slope Native Association**

Marie Carroll  
President & CEO  
P.O. Box 1232  
7000 Uula St.  
Barrow, AK 99723  
Phone: (907) 852-6417  
Email: marie.carroll@arcticslope.org

**Ukpeaġvik Iñupiat Corporation**

Delbert Rexford  
President & CEO  
P.O. Box 890  
Barrow, AK 99723  
Phone: (907) 852-4460  
Email: Delbert.Rexford@UICalaska.com