MEMORANDUM OF AGREEMENT
BETWEEN
THE NATIVE VILLAGE OF PERRYVILLE
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and the Native Village of Perryville ("NVP") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA planning, design and construction management goods and services. This MOA is entered into pursuant to 10 U.S.C § 3036(d) (Chief's Economy Act).

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include (i) design, review of design, and design management, (ii) real estate services, (iii) solicitation and award of construction contracts, (iv) construction management, (v) construction inspection, (vi) construction related testing, and (vii) other services such as development of conceptual designs and design criteria, engineering studies, archaeological surveys, construction impacts, environmental studies, and such other related goods or services as may be agreed upon in the future.

Nothing in this MOA shall be construed to require the NVP to use the DA or to require the DA to provide any goods or services to the NVP, except as may be set forth in Support Agreements ("SA(s)").

ARTICLE III - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communication between the DA and the NVP, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on SAs.

For the NVP:
Gerald Kosbruk, President
Native Village of Perryville
P.O. Box 89
Perryville, AK 99648
907-853-2203, nvproads@hotmail.com

For the Corps:
Melanie Peterson, Project Manager
Corps of Engineers, Alaska District
P.O. Box 6898

JBER, AK 99506-0898
907-753-5694, Melanie.a.peterson@usace.army.mil

ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from the NVP for DA assistance under this MOA, the DA and the NVP shall conclude mutually agreed upon written SAs. Those SAs must be on either Engineer Form 4914-R or similar document containing the same information as Department of Defense Form 1144. SAs must include:

-a detailed scope of work statement;
-schedules;
-funding arrangements [funding must be received in advance of obligation; OMB Circular A-34 does not allow for reimbursement];
-the amount of funds required and available to accomplish the scope of work as stated above; and
-the NVP's fund citation and the date upon which the cited funds expire for obligation purposes;

The following must be addressed in each SA, or in this MOA:

-identification of individual project managers;
-identification of types of contracts to be used (if known);
-types and frequencies of reports;
-identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits;
-procedures for amending or modifying the SA; and
-such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate SA has been signed by a representative of each party authorized to execute that SA. Upon signature by each parties' representative, a SA shall constitute a valid order under 10 U.S.C § 3036(d). In the case of conflict between this MOA and a SA, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. The DA shall provide the NVP with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.

2. The DA shall identify authorized DA representatives to sign SAs.

3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The DA shall provide detailed periodic progress, financial, and other reports to the NVA as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures.

5. The DA shall inform the NVP of all contracts entered into under each SA.

B. Responsibilities of the NVP

1. The NVP shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of ER 1140-1-211.

2. The NVP shall pay all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of a SA, the availability of funds necessary to accomplish that SA.

3. The NVP shall ensure that only authorized NVP contracting officers sign SAs.

4. The NVP shall develop draft SAs to include scope of work statements.

5. The NVP shall obtain for the DA all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each SA.

ARTICLE VI - FUNDING

The NVP shall pay all costs associated with the DA's provision of goods or services under this MOA. Funds for the services to be provided by the DA shall be deposited to an escrow account at an approved Depository Bank. Funds will be transferred from the escrow account and deposited with the US Treasury prior to incurrence of any obligation by the DA.

The DA shall request transfer of funds from the Escrow Account to the US Treasury in sufficient time to ensure that necessary funds are available within the US Treasury in advance of obligations necessary to the provision of services. Established Federal Government accounting procedures shall be used.

If the DA forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify the NVP of the amount of additional funds necessary to complete the work under that SA. The NVP shall either provide the additional funds to the DA, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

Within 90 days of completing the work under a SA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the

DA shall return to the NVP any funds advanced in excess of the actual costs as then known, or the NVP shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the NVP's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) or its successor is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the NVP of any such litigation and afford the NVP an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the NVP and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to an entity to be agreed upon if and when this method is utilized.

ARTICLE X - RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the NVP shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the NVP have insufficient funds legally available,

including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds.

Notwithstanding the above, this MOA does not confer any liability upon the NVP for claims payable by the DA under the Federal Torts Claims Act. Provided further that nothing in this MOA is intended or will be construed to create any rights or remedies for any third party and no third party in intended to be a beneficiary of this MOA.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the NVP's programs before other agencies, departments, and offices shall be the responsibility of the NVP. The DA may provide, upon request, any assistance necessary to support the NVP's justification or explanations of the NVP's programs conducted under this MOA. In general, the NVP is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The NVP or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the NVP and the DA.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the NVP shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the NVP and the DA.

Native Village of Perryville

DATE: 5/18/12

U.S. Department of the Army

DATE: 29 May 2012

Attachment 1 - Tribal Statement

The Native Village of Perryville requests design and construction services from the Corps of Engineers, Alaska District, under 10 U.S.C. 3036(d) (Chief's Economy Act) for the Perryville Launch Ramp project. The Native Village of Perryville certifies that these services cannot be obtained reasonably and expeditiously through ordinary business channels.

5/18/12

Gerald Kosbruk
President
Native Village of Perryville

Commander's Concurrence.

29 May 12

Reinhard W. Koenig
Colonel, Corps of Engineers
District Commander

Rec'd 9 Mar 12 AE

10 U.S.C. 3036(d) STATEMENT

As a required prerequisite for prosecution of work authorized under 10 U.S.C. 3036(d) ("Chief's Economy Act"), the Bureau of Indian Affairs, Alaska Region – the agency responsible for providing Federal funding and oversight for the requisite work – avers it has no objection to the U.S. Army, Corps of Engineers, Alaska District's provision of any and all engineering, construction and inspection services to the Alaska Region Transportation Branch in support of Indian Reservation Roads (IRR)-funded projects for Federally Recognized Tribes in the Alaska Region. The BIA's funding and oversight role in administering the IRR program is codified in 25 CFR Part 170 and authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005 and the Transportation Acts which preceded it including the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act of the 21st Century (TEA-21) of 1998.

BUREAU OF INDIAN AFFAIRS

By: _____

Eugene Virden
Alaska Region
Regional Director