



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into as of _____, by and between the Municipality of Skagway Borough (Municipality) and the Skagway Traditional Council (the Tribe), referred to collectively as the “Parties.”

I. RECITALS

- A. The Tribe is a federally recognized tribe with a mission is to nurture, educate, and protect tribal members by preserving cultural heritage and natural resources, improving partnerships and economic stability, and providing services to tribal members and other Indigenous individuals residing within the Tribe’s service area.
- B. The Municipality is a first-class borough and municipal government incorporated under Title 29 of Alaska Statutes that serves the Skagway community by providing services to the residents and visitors of the borough through the application of professional skills, adopted plans, and standards which facilitate the growth of the local economy and protect and enhance the quality of life, while fostering a respectful and successful workplace and preserving the environment and history for current and future generations.
- C. The St. Pius X Mission Residential Boarding School for Native children was built on Blocks 95 and 102 in Skagway (“the Site”) in 1932 by Father Edgar Gallant, with financial assistance from the Catholic Extension Society, and was operated until 1959.
- D. Since the early 1990s, the Site has been managed privately as an RV park, through a contract with the Catholic Diocese. Site plans from 1993 show the proposed installation of water and sewer lines on the site, as well as several buildings. In 2013, the Municipality purchased the Site from the Diocese. Subsequently, the Municipality continued to use the Site as an RV park. While the Municipality maintained the existing water and sewer infrastructure, it has not conducted any major upgrades to or otherwise replaced these utilities. In 2018, the Municipality upgraded the electrical connections at the Site.
- E. The Tribe has recommended to the Skagway Borough Assembly that prior to further development or sale of the Site, the Municipality conduct an archaeological assessment of the Site and consider gifting a section of the Site to the Tribe to acknowledge the impact St. Pius X Mission Residential Boarding School had on the lives of indigenous people throughout Alaska.
- F. The Municipality recognizes the importance of acknowledging the history and cultural impact of the property to Skagway’s indigenous community and other Indigenous people who attended the Pius X Mission Catholic Resident School for Native Children.

- G. The Municipality has contracted with the University of Arizona to conduct an archaeological assessment of the property (Project), in order to provide the Tribe and the Municipality with detailed information regarding Pius X Mission and the current condition of historic or cultural materials that may remain subsurface at its previous location. It is expected that the results of this assessment will be useable as a management tool to assist the Tribe and MOS in future decisions involving this property. The University of Arizona team will produce a multifaceted assessment report that will include the location history, current conditions, findings, and management recommendations.
- H. This MOU is intended to set forth the general understanding of the Parties with respect to their collaboration on the Project.
- I. The Parties will pursue this effort in good faith. If consistent with applicable law, and if mutually beneficial, they intend to collaborate on the development, financing, and management of the Project, as set forth below.

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

II. STATEMENT OF GOALS AND INTENTIONS

- A. The Municipality has contracted with the University of Arizona (Contractor) to perform the Project and will manage the contractor as required by law and this MOU.
- B. Prior to the initiation of the Project, the Municipality will consult with the Tribe on the development of the Project, including the development and approvals of workplans, study designs, human remains discovery protocols, artifact preservation plans, assessment reports, recommendation and management plans, and notification procedures. Together with the Contractor, the Municipality will incorporate the Tribe's concerns, comments, and recommendations into such workplans, designs, protocols, and plans. If the Municipality has not incorporated the Tribe's concerns, comments, and recommendations, it shall explain why the Tribe's concerns, comments, or recommendations were not incorporated. After receiving final drafts of such workplans, designs, protocols, plans, and reports from the Municipality, the Tribe shall have no less than 10 business days to review, comment upon, and notify the Municipality of its approval or disapproval of such documents. If the parties cannot reach consensus on the content of final versions of any plans, designs, protocols, and reports, that dispute will be referred to a committee comprised of an equal number of representatives from both the Tribe and the Municipality, selected by the Tribe and the Municipality, respectively, to consider the dispute and make a final determination. For purposes of this MOU, the term "consult" means a formal, two-way, government-to-government dialogue between official representatives of the Tribe and the Municipality to discuss concerns, questions, proposals, or other matters of relevance, interest, or importance related to the Project before the Municipality makes decisions on those matters.

If the committee is unable to make final determinations, the Municipality may cancel the Project, in its sole discretion, or a final recommendation will be made by the Borough Manager to the Assembly and the final determination will be made by the Assembly.

- C. The Municipality shall notify the Tribe at least two days in advance of any Project activity at the Project site. Such notification can include providing the Tribe with a proposed schedule of Project activity. The Tribe may select at least one monitor to be present at the Project Site at any time during Project activity. The tribal monitor(s) will follow all Project site protocols required by the Contractor. If the Tribe has any concerns about Contractor actions at the Project site, the Tribe will communicate those concerns in writing to the Borough Manager. In the event of an emergency, the Tribe may notify the Municipality using other means.
- D. The Municipality will provide the Tribe with all records relating to and created as a result of the Project, including drafts, within 30 days of the creation of the record. For purposes of this MOU, the term “record” is defined consistent with the definition at AS 40.21.150(6). After receiving any such record from the Municipality, the Tribe shall have 30 days after to review, comment upon, and determine whether the record contains culturally sensitive information. For purposes of this MOU, the term “culturally sensitive information” means any personal, sensitive, or nonpublic information of or about tribal members, previous students of Pius X Mission, or any person connected to the Pius X Mission and their descendants. Following the Municipality’s receipt of the Tribe’s comments and determinations, the Municipality shall make a good faith effort to integrate the Tribe’s comments and determinations into final versions of any records that require adoption or approval. If the Tribe determines a record contains culturally sensitive information, the Municipality shall not share, publish, or otherwise make that information publicly available without first receiving the written permission of the Tribe. If the Tribe does not grant such permission, the Municipality shall not make that record available to the public. If the Municipality is required to make the record or records available to the public pursuant to Alaska law, it shall redact culturally sensitive information from the record or records.
- E. Information contained in records that is otherwise restricted from public disclosure by the Alaska Public Records Act, considered confidential and restricted, or information the Contractor gained by the Tribe granting access to such information will be prohibited to share, publish, or otherwise make public without explicit permission from the Tribe and will remain strictly under the Tribe’s control. If after 30 days from providing the information to the Tribe, the Tribe has not responded in writing to the Municipality that any information is culturally sensitive, this provision will not apply to that information.
- F. The Municipality shall permit the Tribe to take physical custody of and exert control over any artifacts discovered at the Project site that are reasonably believed to be associated with Alaska Native history or culture, including artifacts related to St. Pius X Mission School for Native Children will go to the Tribe. The Tribe is responsible for making a final determination of what artifacts are or may be associated with Alaska Native history or

culture. For purposes of this MOU, the term “artifacts” means any intact or partial objects made or altered by humans. Procedure for what artifacts will be collected and analyzed during the project will be developed and approved in accordance with section IIB of this agreement.

- G. In the event that human remains are discovered at the Project site, the Municipality will notify the Tribe immediately and the Project site will be closed and blocked off from view of the public. The parties will then follow any human remains protocols and procedures, developed and approved pursuant to Section IIB of this Agreement, that are consistent with Federal and State law applicable to human remains. The Tribe will have sole authority for all decisions regarding the removal, treatment, relocation, and subsequent interment of any such remains in accordance with Federal and State law.

III. NON-BINDING

This MOU represents the understanding of the Parties with respect to the administration of the Project and the Parties’ duties and responsibilities to communicate with one another and their actions throughout the duration of the Project. The Parties agree that this MOU is not a legally enforceable agreement nor does it create a contractual relationship between the Parties. The Parties waive any rights of any kind to bring any action or proceeding against one another based on any legal or equitable theory, including but not limited to estoppel, equitable estoppel, promissory, estoppel, specific performance, breach of the implied covenant of good faith, and fair dealing, failure to negotiate in good faith, misrepresentation, lost profits, or lost business opportunity, that may arise out of the Parties’ performance or failure to perform consistent with this MOU. The Tribe and the Municipality understand and agree that this MOU is not an agreement to agree.

IV. EXPENSES

Each Party assumes responsibility for and agrees to pay all its own expenses, including legal costs and fees, incurred in connection with the negotiation and implementation of this MOU. The Parties have each committed to funding the Project. The Tribe will reimburse the Municipality for the cost of this Project up to the maximum payment of \$20,000.

V. SOVEREIGN IMMUNITY AND FEDERAL TORT CLAIMS COVERAGE

The Parties understand and agree that the Tribe is a federally recognized Indian tribe, which may possess sovereign immunity from suit. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the Tribe, Tribal Council members, Tribal employees or other Tribal officials to the extent allowed by law.

VI. TERMINATION

Any Party may terminate this MOU by providing to the other Party a written notice of its intent to terminate. Any such notice shall include the grounds for termination and shall indicate whether and

how grounds for termination may be remedied by the other Party. If the grounds for termination cannot be remedied, the notice of termination shall take effect 20 days after the notice is sent by the terminating party. If the grounds for termination can be remedied, the Parties agree to consult to reach consensus on how to achieve a remedy.

VII. GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the State of Alaska without giving effect to any conflicts-of-law provisions that would result in the application of the substantive law of any other jurisdiction.

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

MUNICIPALITY OF SKAGWAY BOROUGH

Date: _____

By: _____
Andrew Cremata, Mayor

SKAGWAY TRADITIONAL COUNCIL

Date: _____

By: _____
Jaime Bricker, Tribal President