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WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Our Fax Number: (907) 278-7022

FAX TRANSMITTAL LETTER

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FAIRBANKS, ALASKA 99701-4679
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FAX: (907) 458-1317
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PHONE: (907) 465-3600
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PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Charles E Cole
LOCATION: AGO - Juneau
FAX NUMBER: 463-5295

TOTAL NUMBER OF PAGES 6 INCLUDING COVER LETTER.

COMMENTS: Deliver Directly to A.G. Cole

This is an unsigned copy of the \$15 m deal with Exxon for CERCLA reimbursement. We are looking for a signed copy and for writings (which may not exist) re Trustee split of money

DATE SENT: 4/11/91 TIME: 5:05

FROM: Craig Tillery
Assistant Attorney General - Anchorage

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL:

bonita nipper or Mary Deaver at (907) 269-5274.

MEMORANDUM OF AGREEMENT

AMONG

EXXON SHIPPING COMPANY, THE STATE OF ALASKA
AND THE UNITED STATES ACTING BY AND THROUGH
THE DEPARTMENT OF AGRICULTURE,
THE DEPARTMENT OF THE INTERIOR, AND
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OF
THE DEPARTMENT OF COMMERCE

This agreement by and between the Exxon Shipping Company (Exxon) and the State of Alaska, the United States Department of Agriculture, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce (hereinafter referred to as Trustees), is entered into in recognition of the common interest of the Trustees in the determination of the likely costs or expenses necessarily to be incurred for restoration, replacement or loss of use of natural resources damaged or destroyed as a result of the discharge of oil from the tanker Exxon Valdez which resulted from its grounding on March 24, 1989, and the need to provide immediate funding to the Trustees to conduct such activities.

I. INTRODUCTION

On March 24, 1989, the tanker Exxon Valdez struck Bligh Reef in Prince William Sound, approximately 25 miles from Valdez, Alaska. The tanker was grounded and its hull damaged. As a result, a quantity of crude oil was released from the vessel into the waters of Prince William Sound.

II. SCOPE

This agreement provides the terms by which Exxon agrees to provide \$15 million to fund the activities which the Trustees undertake, through the efforts of their own personnel, contractors, and any other participant under the direction and control of the Trustees, or through other federal or state government agencies, in association with the assessment of costs or expenses for restoration, replacement or loss of use of natural resources affected by the oil released from the tanker Exxon Valdez.

III. AUTHORITIES

This agreement is entered into in connection with the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; Executive Order 12580 of January 23, 1987, 52 Fed. Reg. 2921 (January 29, 1987); 40 C.F.R. Part 300, Subpart G. (1988); and 15 U.S.C. §§ 1525 and 1526. Monies provided by Exxon under this agreement are being paid for purposes described herein. The following officials or their designees act on behalf of the public as state and federal Trustees for natural resources affected by the oil released from the tanker Exxon Valdez:

- the Commissioner for the Department of Fish and Game, acting on behalf of the Governor of the State of Alaska,
- the Secretary of Agriculture,
- the Secretary of the Interior, and
- the Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration acting on behalf of the Secretary of Commerce.

IV. PARTIES BOUND

The provisions of this agreement shall apply to and be binding upon the parties to this agreement, their agents, successors, and assigns.

V. RESERVATION OF RIGHTS

A. Exxon is not hereby released from any potential civil liability, including but not limited to claims for restoration, replacement or loss of use of natural resources, claims for costs for assessments for restoration, replacement or loss of use of natural resources, or any other causes of action or requests for relief, either administratively or judicially, as well as any criminal liability, or any claims, causes of action, or requests for relief in admiralty, arising from the oil released from the tanker Exxon Valdez. Payment by Exxon will not be deducted from nor applied to any liability Exxon may otherwise have.

B. Nothing in this agreement is intended or shall be construed to be an admission by Exxon or by the Trustees in any dispute or action between the parties to this agreement or between Exxon or the Trustees and a third party. Nothing in this agreement is intended or shall be construed as a waiver by Exxon or the

Trustees of any defenses in any subsequent legal action, or of any other rights or remedies.

VI. NATURAL RESOURCE DAMAGE ASSESSMENT PLAN

The Trustees shall prepare and implement a plan of study to assess the likely costs or expenses to be incurred for restoration, replacement or loss of use of natural resources. The Trustees will not have a firm estimate of the cost of the assessment until the Plan is completed. The Plan shall identify and document the use of the scientific and economic methodologies to study short- and long-term impacts that are intended to be used during the assessment. Exxon shall be given an opportunity to participate in the development of the plan consistent with the provisions of 43 C.F.R. § 11.32.

VII. INITIAL DISBURSEMENT

A. Exxon independently covenants to pay \$15 million to the Trustees. Exxon shall within 3 working days of the execution of this agreement provide \$2.5 million in immediately available funds to the Trustees which will be deposited into an appropriate account in the United States Treasury, which account the Trustees shall designate, for the Trustees' use to reimburse and fund natural resource damage assessment activities. Upon receipt of these funds by the Trustees, \$2 million will be available to each Trustee for use in activities in connection with the assessment of the likely costs or expenses to be incurred for restoration, replacement or loss of use of natural resources affected by the oil released from the tanker Exxon Valdez. The initial disbursement does not reflect the respective obligation of the Trustees, nor does it prejudice the manner of future disbursements to be agreed upon by the Trustees.

B. The remaining \$6.5 million shall be provided by Exxon in \$1 million increments to reimburse the designated United States Treasury account within five (5) days of receipt of notice by the Trustees or the lead Trustee that balance of said account has been depleted to less than \$0.3 million. Nothing shall release Exxon of the independent obligation to pay \$15 million under the terms of this paragraph.

VIII. ADDITIONAL DISBURSEMENTS

In the event that expenses for the natural resource damage assessment exceed the initial \$15 million provided pursuant to Section VII, the Trustees will request that Exxon provide additional funds to the above account. The parties recognize that additional funds may be necessary to complete the damage assessment. Exxon agrees to give any such request its prompt consideration, but is not bound to act favorably upon such request by the terms of this agreement.

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IX. EXCESS DISBURSEMENTS

If the funds provided by Exxon under Section VII and VIII exceed the actual cost of conducting the natural resource damage assessment, then such excess shall be credited toward Exxon's responsibility for replacement or restoration of the natural resources which are affected by the released oil from the tanker Exxon Valdez. Exxon's agreement to this Section is not an admission and does not contravene Section V. B.

IX. GENERAL

A. This agreement in no way affects or relieves Exxon of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

B. Information disclosure requests made to any Trustee shall be governed by applicable federal and state laws and regulations.

C. It is the intent of the parties that the clauses of this agreement are severable, and should any part of this agreement be declared by a court of competent jurisdiction to be invalid, the other parts of this agreement shall remain in full force and effect.

X. MODIFICATION

Any modification of this agreement shall be in writing, executed by all the parties.

This agreement can be executed in one or more counterparts, all of which shall be considered the original document.

IN WITNESS WHEREOF, the parties hereto have hereunto signed this agreement on the day and year appearing opposite their signatures.

EXXON:

Frank J. Iarossi Date
President
Exxon Shipping Co.

TRUSTEES:

Don W. Collineworth Date
Commissioner
Department of Fish and Game,
State of Alaska

Clayton K. Yautter Date
Secretary
United States Department
of Agriculture

Manuel Lujan, Jr. Date
Secretary
United States Department
of the Interior

William E. Evans Date
Under Secretary for Oceans
and Atmosphere, Administrator
of the National Oceanic and
Atmospheric Administration,
United States Department of
Commerce