SCOMM
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STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

TO: The Cabinet
All Administrative
Services Directors

Special Staff Assistants
Regional Offices
Office of the Governor

DATE: April 20, 1989

PHONE: 465-3616

FROM: Mike Nizich
Director, Division of
Administrative Services
Office of the Governor

SUBJECT: Valdez Oil
Spill Expense
Reimbursement
Agreement

Attached is a copy of the Expense Reimbursement Agreement reached by Exxon Shipping Company and the State of Alaska during the April 18 meeting in Juneau. All agencies are to follow the expense submission procedures outlined in my April 3 memo. All agencies reimbursement and direct payment claims are to be submitted through the Office of the Governor, Division of Administrative Services. The only agency exception to this routing process is the Department of Environmental Conservation.

Again, claims to be submitted are for those expenses directly related to mitigating the effects of the oil spill. As stated in paragraph one of the agreement, consequential damage claims will be addressed at a future date.

Any equipment that is purchased for oil spill clean-up and reimbursed for or paid by Exxon is the property of Exxon. All agencies must be able to identify such equipment for future return to Exxon. In order to avoid possible repayment to Exxon for lost equipment, please ensure that detailed property inventories are maintained.

ACE 153800

As paragraph three of the Expense Reimbursement Agreement specifies, Exxon has agreed to process claims within 10 days of their receipt of the documentation. Any claims that are rejected by Exxon will be scrutinized by DEC for payment from their Oil and Hazardous Substance Release Response Fund. Exxon rejected claims that do not meet the criteria for payment from DEC's fund will be returned to the originating agency. Agencies are responsible for maintaining complete records of their rejected claims. The Department of Law will request those records at a later date for litigation purposes.

Please call me if you have any questions or need assistance.

cc: Garrey Peska

Attachments

STATE OF ALASKA - EXXON SHIPPING COMPANY
EXPENSE REIMBURSEMENT AGREEMENT

The State of Alaska and Exxon Company U.S.A. (a division of Exxon Corporation) as contractor for Exxon Shipping Company, agree to the following:

1. The State of Alaska ("State") may submit invoices to Exxon Shipping Company ("Exxon") as the State incurs expenses, debts, or obligations of any type, except damage assessment expenses (collectively "invoices") due to the oil spill from the M/V EXXON VALDEZ.

2. The State may submit invoices to Exxon for direct payment to the vendor, or the State may pay the vendor or use operating funds and seek reimbursement from Exxon by filing an invoice with Exxon. "Vendor" as used here includes, without limitation, any administrative agency of the State as well as any political subdivision of the State. Subject to the terms of this agreement, overhead will be payable on an incremental cost basis as described in paragraph 8 of the "Procedures For Payments/Accounting" which is attached as Exhibit A.

3. Exxon agrees that it will, within ten (10) days from the date Exxon receives an invoice from the State, either: a) pay the invoice directly to the vendor identified by the State, if the State has not paid the invoice; b) reimburse the State, if the State has already paid the invoice; or c) notify the State that Exxon will not pay the invoice. Exxon agrees that it will process all invoices pursuant to the "Procedures For Payments/Accounting" which is attached as Exhibit A.

4. By entering into this agreement, the State does not waive, release or acknowledge satisfaction of any claim or cause of action it may have against Exxon or any other party for penalties, civil assessments, damages or costs attributable to the oil spill from the M/V EXXON VALDEZ. The State specifically reserves the right to bring any action, civil or criminal, it may have against Exxon or any other party. The State agrees that it will not include any invoice paid by Exxon under this agreement as part of any future claim or demand on Exxon.

5. By entering into this agreement, Exxon does not admit any violation of law nor does it admit liability for any penalties, civil assessments, damages or costs attributable to the M/V EXXON VALDEZ oil spill or obligate itself to pay any invoices submitted by the State. However, Exxon is obligating itself to process all such invoices submitted by the State hereunder in accordance with this agreement.

6. The State agrees that Exxon may audit the State's contracts, records and other documentation (including the State's vendors' records and documentation) associated with any expense or invoice which Exxon pays directly or for which Exxon reimburses the State. In the event that such an audit determines that Exxon has overpaid a third party vendor, the State will assist Exxon's efforts to seek recovery from the vendor, including assigning or subrogating its contractual

rights against third party vendors to Exxon to allow Exxon to identify and recover any overpayment; provided, however, that the State is not obligated to bring suit in its own name against any third party vendor. In light of the State's agreement to assist, Exxon agrees that it will not seek reimbursement from the State for any third party vendor overpayment. Exxon and the State agree to expend their best efforts to resolve by mutual agreement any overpayments made to reimburse the State's own expenses that may be revealed by audits conducted pursuant to this paragraph.

7. In the event that a court or other judicial or administrative body should determine that Exxon was not liable for any penalties, civil assessments, damages, or costs attributable to the M/V EXXON VALDEZ oil spill, Exxon's right to recover from the State or its vendors funds paid pursuant to this agreement shall be limited to that specified in paragraph six above.

8. This agreement shall be executed in two counterparts, each of which shall be an original, but both of which when taken together shall constitute one and the same instrument.

Dated: _____

EXXON COMPANY U.S.A. (A DIVISION OF EXXON CORPORATION) AS A CONTRACTOR FOR EXXON SHIPPING COMPANY

By: _____

ACE 153804

Dated: April 21 1989

STATE OF ALASKA

By: Douglas B. Baily

Douglas B. Baily
Attorney General

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State / Exxon Shipping Co Expense:
Reimbursement Agreement.

ACE 153805

Exhibit A to Expense Reimbursement Agreement

PROCEDURES FOR PAYMENTS/ACCOUNTING FOR THE STATE OF ALASKA'S RESPONSE EXPENSES FOR THE M/V EXXON VALDEZ OIL SPILL

Expenses incurred by the State of Alaska as a result of the M/V EXXON VALDEZ oil spill will be processed by Exxon pursuant to the terms of the Expense Reimbursement Agreement. Exxon and the State agree to devise an accounting and payment process which promptly pays or reimburses State expenditures and which is consistent with the accounting processes of both Exxon and the State. Therefore, a Joint Financial Response Coordination Group is formed to ensure expeditious processing of invoices for State and vendors' expenditures (as defined in the Expense Reimbursement Agreement) incurred as a result of the M/V EXXON VALDEZ oil spill.

The Financial Response Coordination Group will consist of State and Exxon personnel organized to account for, process, and pay these expenditures. Participation of personnel from both organizations will: (1) facilitate prompt payments; (2) eliminate duplicate processing of documents, to the extent possible; and (3) minimize disputed costs. Further, the coordination during document processing will provide easy access, for both parties, to the appropriate decision level for items in question.

The Financial Response Coordination Group ("FRCG") will

ACE 153806

conduct operations to account for, process, and pay for invoices for State and vendors oil spill expenditures as follows:

1. The State and Exxon will be responsible for supervising the FRCG. The FRCG will consist of Exxon's Accounting and Control Manager in Valdez and the State's representatives.
2. Exxon will provide the staff necessary to account for and process the invoices submitted by the State, as well as all materials, equipment and supplies needed to perform this accounting, review and payment process.
3. All State requests for payment will be submitted by the State's representative to the FRCG for review and processing.
4. Processing will include supporting payment or reimbursement requests by appropriate documentation such as invoices, contracts, purchase authorizations, personnel documentation, appropriate State approval for the expenditure being reviewed, or other substantiation linking the expenditure to the State oil spill response.
5. Because of the unusual nature and magnitude of the emergency that precipitated State expenditures, it has not always been possible to follow normal procurement procedures for all expenditures and obligations.

Therefore, documentation of approval by an appropriate State official, along with an invoice, will serve as adequate support for submission of items procured by means other than normal procedures. Additional State approvals may be obtained during this review and processing period. However, nothing in this paragraph shall preclude Exxon from conducting audits pursuant to paragraph six of the Expense Reimbursement Agreement.

6. Exxon may request additional justification from the State during this review and processing period. If, after appropriate decision levels have been contacted, Exxon still has objections regarding an expenditure, the amount in question will be placed in an "Adjust and Hold" status. Under these circumstances, the State may pay the expenditure and the State reserves the right to assert the expense as a claim against Exxon or any other party at a later date, pursuant to the terms of the Expense Reimbursement Agreement. Nothing in this paragraph shall preclude Exxon from making partial payment on an invoice and reserving the balance for the Adjust and Hold status.

7. Exxon and the State will develop a spreadsheet to track expenditure review information. This spreadsheet will address all payment and cost

information data specified by both Exxon and the State. The spreadsheet shall include, but is not limited to, the following:

A. Invoice information
    1. Log-in date
    2. Invoice date
    3. Vendor
    4. Payee
        a. Vendor
        b. State
    5. Invoice number
    6. Review responsibility
    7. Invoice amount

B. Review results
    1. Review date
    2. Adjust and hold
    3. Amount payable

C. Payment information
    1. Exception amount
    2. Total paid
    3. Exxon check number
    4. Check date

It is recognized that the FRCG may change the specific format of the spreadsheet from time to time, but the spreadsheet shall as a minimum contain the above information.

8. Pursuant to the terms of the Expense Reimbursement Agreement, the State may submit for reimbursement invoices for reasonable overhead costs incurred as a result of the M/V EXXON VALDEZ oil spill. For the purposes of this agreement, "overhead costs" are defined as those costs incremental to normal State operations such as overtime, temporary personnel, office equipment and supplies, travel expenses, or other out of pocket expenditures which were directly related to the oil spill.

9. Exxon shall promptly review and process payment for invoices submitted by the State in no more than 10 days from the day the invoice is received by Exxon.

10. Exxon will make expeditious payment upon State invoices, as requested by the State, by either direct payment to the vendor or the State, or by wire transfer to the First Pennsylvania Bank, Philadelphia, Pennsylvania, ABA # 031000024 (attention: Catherine Jacobs) for credit to the State of Alaska account # 881-462-6.

11. Exxon will, on a daily basis, print a hard copy of the spreadsheet described in paragraph 7 above. Exxon will on a daily basis: provide two copies of the spreadsheet to the Department of Environmental

Conservation, Valdez, Alaska; and maintain one copy at Exxon's Valdez office.

Acknowledged:

By: _____ Date: April 21 1989

By: _____ Date: _____

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Exhibit "A" to State of Alaska/Exxon Shipping Co.
Expense Reimbursement Agreement

ACE 153811

PRESTON
THORGRIMSON
SHIDLER
GATES & ELLIS

ATTORNEYS AT LAW

SUITE 400
420 L STREET
ANCHORAGE, AK 99501-1937
TELEPHONE: (907) 276-1969
FACSIMILE: (907) 276-1365

TELECOPY COVER LETTER

TO: Charles Cole

AT: Dept. of Law, Juneau

TELECOPY NO: 907-463-5295

FROM: Craig Tillery and Joe Donohue

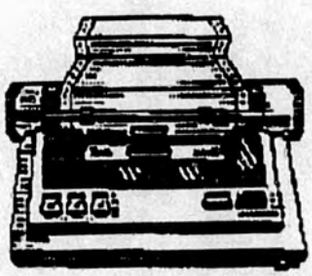
DATE: April 11, 1991 TIME: 5:45

FACSIMILE NO: (907) 276-1365

Total Number of Pages (Including cover letter): 5

If you do not receive all pages, please call: _____

COMMENTS: This is the best copy we could find.



REFERENCE NO: _____

ACE COPY

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 necessary 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 $13 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. 2923 (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 consistant 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 three (3) working days of the execution of this agreement provide $8.5 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 Section.

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.

IX. EXCESS DISBURSEMENTS

If the funds provided by Exxon under Sections 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. Collinsworth — Date
Commissioner
Department of Fish and Game,
State of Alaska

Clayton E. Yeutter — Date
Secretary
United States Department
of Agriculture

Manuel Lujan, Jr. — Date 4/13/89
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