FEB 14 1996

DEPT. OF ENVIRONMENTAL CONSERVATION

PRIBILOF ISLANDS ENVIRONMENTAL RESTORATION AGREEMENT

WHEREAS, the State of Alaska. Department of Environmental Conservation, (ADEC) and the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) desire to cooperatively identify, assess. and remedy environmental contamination due to former NOAA operations on the Pribilof Islands, it is hereby stipulated and agreed as follows:

Jurisdiction

1. NOAA enters this Agreement following its obligations under 33 U.S.C. § 1323 (federal facility compliance with state water pollution standards); 42 U.S.C. §§ 9601 et. seq. (CERCLA), in particular, 42 U.S.C. § 9620; 42 U.S.C. §§ 6961 et seq. (solid and hazardous waste requirements); and Executive Order 12580.

2. ADEC enters this Agreement under the above authorities and Alaska Statutes 46.03, 46.04, 46.08, and 18 Alaska Administrative Code ("AAC") 62, 18 AAC 60, 18 AAC 70, 18 AAC 72, 18 AAC 75, 18 AAC 78 and 18 AAC 80.

Purpose

3. The Parties enter this Agreement to perform necessary assessment, closure, and monitoring of source areas identified in Attachment A of this Agreement. These activities shall be performed in accordance with the schedules listed in Attachment B hereto, except as otherwise provided for in this Agreement.

Findings and Conclusions

4. ADEC alleges that releases of pollutants, hazardous substances, petroleum products and oil within the meaning of AS 46.03.826, AS 46.03.740 and 18 AAC 75.990(35) have occurred or may have occurred at one or more of the source areas identified in Attachment A, and have or may have contaminated the land and waters of the State of Alaska. ADEC also alleges that a number of active and abandoned landfills, scrap disposal areas and other solid waste management facilities have not been properly closed.

5. Therefore, the Parties find it advisable to undertake further investigation in order to assess the need for further remedial action under applicable state and federal environmental laws, and to plan and implement any further remedial action found on the basis of such investigation to be necessary, or found by NOAA to be otherwise advisable or appropriate.

Review and Comment on Documents

6. Except as otherwise agreed to by the Parties, NOAA shall prepare the documents identified in Attachment B to this Agreement by the corresponding deadlines established in Attachment B. Attachment B shall be reviewed and updated annually by the Parties, based on the site assessment and other information obtained during the course of the preceding year, and may be modified at any time in accordance with Paragraphs 81-82. Annual review of Attachment B shall commence in January of each year and shall be completed by March 31 of the same year. NOAA shall submit to ADEC a minimum of sixty-five (65) Days prior to the start of field work or construction at any source area, all draft final work plans for field work, site assessments or remedial actions (both interim and final) at such source area(s). Site Assessment and Remedial Action draft reports must be submitted to ADEC within 120 Days after completion of field work.

7. Unless the Parties mutually agree to another time period, all draft documents shall be subject to a thirty (30) Day period for ADEC review and comment. Review of any document by ADEC may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with the state and federal laws set forth in Paragraphs 21-25. Comments by ADEC shall be provided with adequate specificity so that NOAA can respond to the comments and incorporate changes as a result of the comments, if appropriate, into the final document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and upon request of NOAA, ADEC shall provide a copy of the cited legal authority or reference, if not already been provided. ADEC may extend the thirty (30) Day comment period for an additional twenty (20) Days by written notice to NOAA prior to the end of the 30 Day period. On or before the close of the comment period, ADEC shall transmit written comments to NOAA.

8. Representatives of NOAA shall make themselves readily available to ADEC during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by NOAA on the close of the comment period.

9. Following the close of the comment period for a draft document, NOAA shall give full consideration to all written comments on the draft document submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft document, NOAA shall transmit to ADEC a draft final document that shall include or be accompanied by NOAA's response to all written comments received during the comment period and incorporate the needed changes to reflect ADEC's comments on the draft document. Unless the parties mutually agree to another time period, NOAA shall submit the draft final document within thirty (30) days after the close of the comment period on the

draft of the document. While the resulting draft final document shall be the responsibility of NOAA, it shall be the product of consensus to the maximum extent possible.

10. NOAA may extend the thirty (30) Day period for either responding to comments on a draft document or for issuing a draft final document for an additional twenty (20) Days by providing notice to ADEC. ADEC shall either formally accept a draft final document as final or invoke dispute resolution with respect to the document within fifteen (15) Days of its receipt of the document. These time periods may be further extended in accordance with Paragraphs 63-65 (Extensions/Force Majeure).

11. Project Managers may agree to extend by fifteen (15) Days the period for finalization of the draft final documents in order to discuss and/or modify draft final documents as necessary to resolve potential disputes.

12. Either Party may invoke dispute resolution in accordance with Paragraphs 38-40 with respect to the development or acceptance of draft final documents.

13. The draft final document shall serve as the final document if no Party invokes dispute resolution regarding the document. If dispute resolution is invoked and NOAA's position is not sustained in the dispute resolution process, NOAA shall prepare, within not more than thirty-five (35) Days following NOAA's receipt of a written outcome of dispute resolution, a revision of the draft final document that conforms to the outcome of dispute resolution. The time period for this revision may be extended in accordance with Paragraphs 63-65.

Subsequent Modification

14. Following finalization of any document pursuant to Paragraphs 6-13 above, any Party may seek to modify the document, including seeking additional field work, or other supporting technical work, only as provided in Paragraph 15.

15. A Party may seek to modify a document after finalization if it determines, based upon new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary to ensure compliance with the requirements set forth in Paragraphs 21-25 of this Agreement, or to ensure practical feasibility of the remedial action. A party may seek such a modification by submitting a concise written request to the other Project Manager, specifying the nature of the requested modification, describing the new information on which it is based, and stating the source or manner of discovery of the new information.

16. In the event that a consensus among the Parties is reached, the modification shall be incorporated by reference to, and be deemed an integral and enforceable

provision of this Agreement. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution in accordance with Paragraphs 38-40.

17. Nothing in Paragraphs 14-17 shall alter ADEC's authority to request the performance of additional work that was not contemplated by this Agreement.

Site Investigation Work Plans

18. NOAA shall submit site investigation work plans under the schedules set forth in Attachment B. Each plan shall outline the course of the site investigation to properly delineate the nature and extent of contamination in soil and groundwater at each source area(s). Implementation of these plans shall comply with a QAPP (Quality Assurance Program Plan) addressing all planned source area activities. Field work will be conducted or directly supervised by a qualified person as defined in 18 AAC 78.995. Each site investigation plan shall incorporate data in the possession of NOAA or its consultants and provide for gathering other data required under this Agreement.

Site Investigation Reports

19. NOAA shall submit to ADEC a site investigation report summarizing field activities and investigation for those sites identified in Attachment A as requiring further investigation. Unless otherwise agreed, these reports will be submitted by the deadlines set forth in Attachment B. NOAA's reports shall contain the following, as applicable: a detailed written or, if appropriate, visual description of all work performed and a summary of all pertinent data prepared by NOAA and its consultants; monitoring well construction data and soil boring logs; site maps detailing existing improvements and (if known) the location of former fuel dispensing equipment, water table elevation maps, Petroleum product level and thickness (isoplot) maps, organic-contaminant concentration maps, aquifer interpretations, other potential source areas within 1/4 mile, interpretations of field observations and analytical data, and recommendations for any follow up work.

20. If upon review of a site investigation report ADEC reasonably determines additional contamination assessment is required, ADEC shall notify NOAA in writing. This notification shall rely on standard industry practices and set forth the technical bases for the ADEC finding that additional assessment is required. If additional assessment is required, either based on the ADEC findings or as a result of dispute resolution, the Parties shall, if appropriate, adjust the scheduled deadlines set forth in Attachment B to accommodate the additional assessment.

Remediation and Closure Standards

21. As a basis for establishing cleanup levels for petroleum contaminated soil NOAA and ADEC shall rely on the interim soil guidance for non-UST soil cleanup levels, dated July 17, 1991; the guidance for storage, remediation and disposal of non-UST petroleum contaminated soils, dated July 29, 1991; and for water, the applicable water standards set out in 18 AAC 70; and the applicable state and federal regulatory requirements for Maximum Contaminant Levels for drinking water; and interim guidance for surface and groundwater cleanups, dated September 26, 1990.

22. Releases from regulated underground storage tank systems will be remediated pursuant to 18 AAC 78. Regulated underground storage tank systems listed in Attachment A as undergoing closure will be closed pursuant to 18 AAC 78.

23. For purposes of this agreement, NOAA may use the latest Risk-Based Concentration (RBC) Table published by the U.S. Environmental Protection Agency, Region III, for non-petroleum contamination in the following circumstances:

a. For sites which meet the following criteria (items 1-6 below), NOAA may use the RBCs to conduct a screening level assessment to enable the Parties to determine if further site investigation or corrective action is required for sites where non-petroleum contamination is found.

(1) A single medium is contaminated;

(2) A single contaminant contributes nearly all of the health risk;

(3) Volatilization or leaching of that contaminant from soil is not expected to be significant;

(4) The exposure scenarios used in the RBC table are appropriate for the site;

(5) The fixed risk levels in the RBC table are appropriate for the site; and

(6) Risk to ecological receptors is expected not to be significant.

b. If site and contaminant characteristics are consistent with the above criteria, the RBCs may also be used as no-action levels or cleanup goals.

In the event site or contaminant characteristics are inconsistent with the above criteria, protective cleanup levels will be established through a risk assessment process as set forth in paragraph 25.

24. Solid waste disposal sites listed as undergoing closure in Attachment A will be closed using the criteria in 18 AAC 60.

25. If NOAA elects to pursue a risk assessment in lieu of specific cleanup criteria in paragraphs 21-24, NOAA shall submit a workplan within 90 days of ADEC's approval of the site investigation report to ADEC for its approval. The risk assessment shall include an exposure assessment, toxicity assessment and risk characterization and be prepared in accordance with EPA's national and Region 10 risk assessment guidance for CERCLA. ADEC shall either approve, approve with modifications, or reject the risk assessment. Acceptance of a risk assessment is a risk management decision in the sole discretion of the ADEC. NOAA shall notify ADEC in writing within ten (10) working Days of its dispute of any modification or rejection by ADEC. If ADEC and NOAA cannot reach agreement on the disputed rejection or modification of the risk assessment within ten (10) Days after receipt by the ADEC of NOAA's notice of objection, either Party may invoke dispute resolution.

Corrective Action Plans

26. For those source areas requiring corrective action to obtain the cleanup levels established in paragraphs 21-25, NOAA shall submit Corrective Action Plans which shall include proposed timeframes for inclusion in Attachment B. Each Corrective Action Plan will address, where applicable, Free Product Recovery and Soil Remediation as detailed in Paragraphs 29-32, and Groundwater Remediation and Monitoring as detailed in Paragraphs 33-35.

27. Each Corrective Action Plan shall include, as appropriate for the subject source area(s), individual source area plans for: cleanup, restoration, cover, and for long-range monitoring of soil and waters.

28. Corrective action shall be conducted or directly supervised by a qualified person, as defined in 18 AAC 78.995(70).

Free Product Recovery and Soil Remediation

29. The Corrective action Plan for free product recovery, at source areas with free product, and the cleanup, removal, treatment and disposal of all contaminated material above levels set out in Paragraph 21-25, shall address the following parameters:

a. Free product recovery and soil Corrective action Plans shall contain the following information: a schedule for implementation, support for choice of remedial technology, engineered system plans (where applicable), available equipment and skilled personnel, efficiency, reliability (life and difficulty of maintenance, costs and other associated impacts), compatibility of proposed actions with other reasonably foreseeable requirements, need for an on-site pilot scale study, qualified third-party field supervision of corrective actions in accordance with 18 AAC 78.995(70), procedures for equipment monitoring during remediation, contaminant media analysis to ensure remediation is progressing, and provisions for work documentation. Each plan shall reference the QAPP that will be followed and shall address any source area specific modifications necessary to conduct field work.

30. NOAA shall complete free product recovery and soil remediation, pursuant to each approved Corrective action Plan.

31. Following completion of soil remediation, NOAA shall submit a final corrective action report for each source area.

32. NOAA shall receive ADEC approval prior to treatment or disposal of cleanup materials.

Groundwater Remediation and/or Monitoring

33. Corrective action Plans for source area(s) with groundwater contamination shall contain the following information: a schedule for implementation, support for choice of remedial technology, engineered system plans (where applicable), available equipment and skilled personnel, efficiency, reliability (life and difficulty of maintenance, costs and other associated impacts), compatibility of proposed actions with other reasonably foreseeable requirements, need for an on-site pilot scale study, qualified third-party field supervision of corrective actions in accordance with 18 AAC 78.995(70), procedures for equipment monitoring during remediation, contaminant media analysis to ensure remediation is progressing, and provisions for work documentation. Each plan shall reference a Quality Assurance/Quality Control plan addressing all reasonably foreseeable planned activities and shall address any source area specific modifications necessary to conduct field work.

34. NOAA shall complete groundwater remediation and/or monitoring pursuant to each approved Corrective action Plan.

35. Following completion of groundwater remediation, NOAA shall submit a final corrective action report for each source area (report may be submitted in conjunction with the corrective action report for soil remediation).

Requests for Additional Plans or Information

36. If at any time after reviewing information submitted under this Agreement ADEC determines a threat to public safety, health or the environment exists, the ADEC may request submittal of additional information, revision to a Corrective action Plan, or revision to Attachment A. Final Corrective action Plans will be modified by agreement of the Parties, in accordance with Paragraphs 14-17; however, the Parties recognize that in the event a threat to public safety, health, or the environment exists, reasonable efforts should be made to expedite modification of the Corrective action Plan or to expand Attachment A, if applicable.

Plan Incorporation

37. When the written plans described in this Agreement are approved by ADEC, including any modifications agreed to by the Parties, the plans will be automatically incorporated into this Agreement and will be fully enforceable as if they were part of the original Agreement. If no satisfactory plan is submitted and approved by the ADEC pursuant to this Agreement, and the parties are unable to reach an informal accommodation, either party may invoke the dispute resolution procedures in Paragraphs 38-40.

Dispute Resolution

38. a. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Paragraph and Paragraphs 39 and 40 shall apply.

b. The Parties agree to make reasonable efforts to informally resolve all disputes at the Project Manager level. If the dispute is still unable to be resolved, representatives of NOAA and the ADEC will meet with the Spill Prevention and Response Director of ADEC (SPAR Director) and the Director of the NOAA Western Administrative Support Center (WASC Director) to resolve the dispute. If the SPAR Director, in concert with the WASC Director, are unable to resolve the issue(s) in dispute within twenty-one (21) Days, the SPAR Director and the WASC Director shall refer the dispute to the Commissioner for Environmental Conservation and the Deputy Under Secretary for Oceans and Atmosphere, respectively (collectively, the Senior Executives).

39. If the Senior Executives are unable to resolve the dispute by agreement within twenty-one (21) Days, the Commissioner of Environmental Conservation shall issue a final determination in writing. The written decision will be final for purposes of judicial review. NOAA will proceed with implementing the final determination within twenty-one (21) Days of the Commissioner's final determination subject to the reserved right of NOAA to pursue

any legal remedy at its disposal. The Commissioner's determination will remain in effect unless a stay is sought and granted by the court on appeal; absent a stay, NOAA will implement the determination consistent with the ADEC's Commissioner's final decision.

40. The pendency of any individual dispute shall not affect NOAA's responsibility for timely performance of undisputed work required by this Agreement. All elements of the work required by this Agreement which are not affected by the dispute shall continue to be completed in accordance with the applicable schedule.

Briefings & Progress Reports

41. NOAA shall prepare and submit to ADEC biannual written progress reports describing the status of activities conducted under this Agreement. NOAA and ADEC will meet biannually to discuss activities conducted under this Agreement. In extraordinary circumstances, ADEC may request additional progress reports but in no event shall written requests be requested more frequently than two (2) times per 12 month period. Each report at a minimum shall contain the following information:

a. A description of work performed at the source area;

b. Problems encountered along with corrective actions implemented;

c. Projected and/or scheduled work for the next fiscal or calendar quarter, as appropriate;

d. Copies of laboratory/monitoring data.

Project Managers

42. ADEC and NOAA shall each designate a Project Manager and Alternate (jointly referred to as Project Manager) to oversee the implementation of this Agreement. Within five (5) Days of the effective date of this Agreement, each Party shall provide the other Party with the name and address of its Project Manager. Any Party may change its designated Project Manager by notifying the other Party, in writing, within five (5) Days of the change. Any Party may designate different project managers for different source areas addressed pursuant to this Agreement. Communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Paragraphs 54-55 of this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed by their respective Agencies.

43. Project Managers shall have the authority to by mutual agreement: (1) take samples, request split samples to ensure work is properly performed and in accordance with the terms of any final Corrective action Plan: (2) observe all activities performed pursuant to this Agreement, take photographs, and make other such reports on the progress of the work as the Project Managers think appropriate; (3) review non-privileged records, files, and documents relevant to work performed under this Agreement; (4) recommend and request minor field modifications to the work performed pursuant to this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement; and (5) redefine the source areas covered by this Agreement; (6) act in accordance with Paragraphs 81 and 82 (Modification); and (7) exercise the authorities granted to them in this part.

44. Each Project Manager shall be, or rely on, a qualified person as defined in 18 AAC 78.995.

45. The Project Managers may, in accordance with Paragraph 82 of this Agreement, make modifications to the work performed under this Agreement, or in techniques, procedures, or designs utilized in carrying out this Agreement. Any modification proposed pursuant to this Paragraph by any Party approved orally, must be reduced to writing and within ten (10) Days be signed by both Project Managers. NOAA's Project Manager shall make a contemporaneous record of such modification and approval in a administrative record maintained pursuant to Paragraph 57 of this Agreement, and a summary of the record entry will be contained in the next progress report. Even after approval of the proposed modification, no Project Manager will require implementation by a government contractor without approval of the appropriate Government Contracting Officer.

46. The Project Manager for NOAA shall be responsible for day-to-day activities at the source areas. The Project Manager for NOAA, or his agent, contractor, or representative, shall be physically present at the site during all hours of work performed pursuant to this Agreement. Project Managers will determine the appropriate level of contractor oversight.

47. The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the duration of this Agreement. The absence of the NOAA or ADEC Project Manager from the site shall not be a cause for work stoppage or delay.

Access

48. Without limitation on any authority conferred on them by law, ADEC and its authorized representatives shall have authority to enter the source areas at all reasonable

times with written notice to the Project Managers for the purposes of, among other things: (1) inspecting non-privileged records, contracts, and other documents relevant to implementation of this Agreement; (2) reviewing the progress of NOAA, its response action contractors, or agents in implementing this Agreement; (3) conducting such tests as ADEC Project Manager thinks necessary; and (4) verifying the data submitted to ADEC by NOAA. NOAA shall honor all requests for such access by ADEC, subject only to any statutory or regulatory requirement as may be necessary to protect mission-essential activities, including in particular marine mammal protection. If access is denied by NOAA, NOAA shall, within forty-eight (48) hours of receipt of ADEC's request, provide a written explanation of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. NOAA shall not restrict the access rights of ADEC to any greater extent than NOAA restricts the access rights of its contractors performing work pursuant to this Agreement.

49. To the extent that this Agreement requires access to property not owned and controlled by NOAA, NOAA shall make every reasonable effort to facilitate access agreements for itself, its contractors, agents, and ADEC, and provide ADEC with copies of such agreements. In the event NOAA is unable to obtain access, ADEC will assist NOAA in making all reasonable efforts to gain such access for NOAA.

Sampling and Data/Document Availability

50. The Parties shall make available to each other quality-assured results of sampling, tests, or other data generated by or on behalf of any Party under this Agreement within sixty (60) Days of the submittal of samples to the laboratory. If quality assurance is not completed within sixty (60) Days, preliminary data or results shall be made available within the sixty (60) Day period and quality assured data or results shall be submitted as they become available but in no event later than one hundred and twenty (120) Days after the submittal of samples to the laboratory. These periods can be extended upon mutual agreement among the Project Managers.

51. At the request of the ADEC Project Manager, NOAA shall allow split or duplicate samples to be taken by ADEC during sample collection conducted during the implementation of this Agreement. NOAA's Project Manager shall notify the ADEC Project Manager not less than fourteen (14) days in advance of any well drilling, sample collection, corrective action or other monitoring activity, conducted pursuant to this Agreement. The fourteen (14) Day notification can be waived upon mutual agreement among the Project Managers.

52. If preliminary analysis indicates a potential imminent and substantial endangerment to the public health, all Project Managers shall be immediately notified.

53. Final laboratory reports shall be made available for the review of the Parties immediately upon receipt.

Notice to Parties

54. All Parties shall expeditiously transmit all documents and notices required herein. Time limitations shall commence upon receipt.

55. Unless otherwise provided, notice to the individual Parties shall be provided under this Agreement to the following addresses:

A. For NOAA:

Pribilof Project Manager
NOAA, Western Regional Center
7600 Sand Point Way NE
BIN C15700
Seattle, WA 98115
(206) 526-6647

B. For ADEC:

Contaminated Site Remediation Program
Site Remediation Section
Alaska Department of
Environmental Conservation
555 Cordova St.
Anchorage, AK 99501
(907) 269-7500

Community Advisory Committee

56. In order to encourage public participation of local community stakeholders on the Pribilof Islands, the Parties agree to work with a Community Advisory Committee for each Island in order to assist with planning for and implementing work carried on pursuant to this agreement. The Community Advisory Committee will consist of representatives of local governments, organizations, and members of the general public. The structure of the Community Advisory Board and its relationship to the parties will be governed by the EPA Restoration Advisory Board Implementation Guidelines ("Guidelines") set forth in Attachment D; provided, however, that the Project Managers may by mutual agreement depart from the Guidelines as appropriate. NOAA shall provide administrative support for the activities and functions of the Community Advisory Committee.

Administrative Record

57. NOAA agrees to maintain an administrative record of documents and correspondence concerning this Agreement at a public repository in Anchorage, Alaska and provide copies to the Cities of St. George and St. Paul.

Permits

58. Nothing in this Agreement relieves NOAA from obtaining an applicable permit or other authorization when conducting work pursuant to this Agreement.

Closure of Sites or Operable Units

59. At any time while this Agreement is in effect, NOAA may request from ADEC written confirmation that all corrective action has been completed at a site(s) or operable unit(s) in accordance with this Agreement. Within thirty (30) Days of its receipt of such request, ADEC shall: (1) provide written confirmation that no further corrective action is required at the subject site(s) or operable unit(s); or (2) deny such request and provide a written explanation of the technical bases on which the request is denied. ADEC shall not deny certification that corrective action is complete at any site(s) or operable unit(s) solely on the basis that post-remedial measures, such as monitoring, shall remain in place for a period of months or years.

NEPA Compliance

60. NOAA agrees to evaluate its obligations under the National Environmental Policy Act, 42 U.S.C. § 4321 (NEPA) with respect to any action undertaken by NOAA that may significantly affect the environment. The schedules set forth in Attachment B may be adjusted as necessary to accommodate, performance of the appropriate level of environmental review required by NEPA.

Breach

61. Time is of the essence in this Agreement. NOAA understands that any deviation from the terms or deadlines set forth herein, other than extensions agreed to by the Parties, extensions invoked by NOAA pursuant to Paragraph 10, short term violations, or violations caused by Force Majeure, may at ADEC's option be deemed a breach of this Agreement and may result in prompt legal action to enforce the terms and deadlines of this Agreement as well as all other applicable legal and regulatory requirements.

Existing or Future Obligations

62. Nothing in this Agreement shall be construed as altering NOAA's existing or future obligations to monitor, record, or report information required under applicable environmental laws, statutes, regulations or permits, or to allow ADEC access to such information. Nothing in this Agreement shall alter ADEC's authority to request and receive any relevant information under applicable environmental laws or in administrative or judicial proceedings.

Extensions/Force Majeure

63. Any deadline or schedule established under this Agreement shall be extended upon receipt of a timely request for extension provided that good cause exists for the requested extension. A request for extension is timely if it is delivered to the other Party prior to expiration of the deadline or schedule sought to be extended. Any request for an extension by a Party shall be submitted to the Project Managers and shall specify:

a. The deadline or the schedule that is sought to be extended;

b. The length of the extension;

c. The good cause(s) for the extension; and

d. Any related deadline that would be affected if the extension were granted.

Good cause for an extension exists when the extension is sought in response to:

(1) An event of Force Majeure;

(2) A delay caused by another Party's failure to meet any requirement of this Agreement;

(3) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

(4) A delay caused, or that is likely to be caused by the grant of an extension in regard to another deadline or schedule;

(5) A delay caused by compliance with federal procurement regulations and the standard procurement lead times provided for under Department of Commerce directives;

(6) A delay caused by the failure of a government contractor to meet a contract deadline where the failure is not attributable to NOAA's lack of oversight of the contractor;

(7) A delay caused by lack of funding, subject to the provisions of Paragraphs 66-68;

(8) A delay caused by NOAA's inability to obtain applicable permits;

(9) NOAA and ADEC's inability to obtain access to the source area;

(10) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

64. Within seven (7) Days of receipt of a request for an extension of a deadline or a schedule, the other Party shall advise the requesting Party, in writing, of its position on the request. Any failure by the other Party to respond within seven (7) Days shall be deemed to constitute concurrence in the request for an extension. If a Party does not concur in the requested extension, either in whole or in part, it shall include in its statement of nonconcurrence an explanation of the basis for its position. If the requested extension is denied on the basis that good cause does not exist, the requesting Party immediately may seek, through the dispute resolution process of Paragraphs 38-40, a determination that good cause exists.

65. If there is agreement between the Parties that the requested extension is warranted, the affected deadline or schedule shall be extended. If there is not agreement between the Parties as to whether all or part of the requested extension is warranted, the deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process. An act of Force Majeure shall mean any event arising from causes beyond the control of NOAA that causes a delay in or prevents the performance of any obligation under this Agreement. Acts constituting Force Majeure include, but are not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment, or lines or pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at a reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than NOAA; delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and insufficient

availability of appropriated funds, if NOAA has made timely request for such funds as part of the budgetary process as set forth in Paragraphs 66-68 of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

Funding

66. It is the expectation of the Parties to this Agreement that all obligations of NOAA arising under this Agreement will be fully funded. NOAA shall request, through the normal Department of Commerce budget process, all funds and/or authorizations necessary to meet the conditions of this Agreement.

a. If sufficient funds are not appropriated by Congress as requested and existing funds are not available to achieve compliance with the schedules provided in this Agreement, and NOAA reports the lack of funds in accordance with Paragraph 67, then the compliance schedule shall be revised as necessary. If the Congressional budget appropriation available for the activities to be performed under this Agreement is lower than the budget request for such activities, and NOAA cannot mitigate the impact on its performance under this Agreement by seeking supplemental appropriations, NOAA may elect to reduce allocations for specific field projects based on the priorities identified by the Community Advisory Committee established under Paragraph 56 of this Agreement, and, if the Community Advisory Committee members agree, may re-allocate funds from one island to another. Re-allocations performed in response to a budget shortfall will be reflected by Remedial Action Plan modifications and appropriate modifications to Attachment B, in accordance with Paragraphs 81 & 82.

b. If appropriated funds are not available to fulfill NOAA's obligations under this Agreement in accordance with the schedules set forth in Attachment A, ADEC reserves the right to (1) initiate any action against any other person which would be appropriate absent this Agreement, or (2) where the delay caused by insufficient funds poses an imminent threat to human health, safety, or a threat of irreparable environmental harm, to take any response action which would be appropriate absent this Agreement. In the event that NOAA's obligations under this Agreement are not fulfilled for 12 consecutive months, ADEC shall have the option of terminating the provisions of this Agreement affecting its rights and obligations, and ADEC may thereafter seek any appropriate relief. However, in no case shall ADEC terminate the Agreement without providing twenty-one (21) Days notice of the intention to terminate to NOAA.

67. NOAA shall keep ADEC apprised of significant budget events related to this Agreement so that the Project Managers may assist in developing estimates of the resources needed to carry out this Agreement. If NOAA raises lack of funding as a basis for Force Majeure, NOAA will provide ADEC with budget documents demonstrating the lack of funding and NOAA's efforts to obtain all necessary funding to carry out the terms of this Agreement.

68. Not withstanding any other provision in this Agreement, no provision in this document shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. If payment or obligation of funds hereunder would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

Recovery of Expenses

69. NOAA agrees that it shall reimburse ADEC for reasonable oversight costs associated with compliance with this Agreement. Oversight costs shall be accounted for in a bill sent to NOAA's accounting office and shall include funding for personnel services, contractual services, travel, supplies and equipment necessary for ADEC to ensure compliance. NOAA may also provide for reasonable oversight costs through a grant or other form of forward funding to ADEC. ADEC agrees to provide a cost workplan and budget to NOAA annually, as well as quarterly reports describing the activities and expenditures made pursuant to the Agreement. NOAA may contest payment of any oversight costs if it determines that ADEC has made an accounting error, if the costs fall outside the scope of activities covered by the Agreement, if the costs are inconsistent with the terms of the cleanup, or where it appears the costs have been inflated or exacerbated due to ADEC's carelessness or delay. In the event of an objection, payment shall be withheld until the matter is resolved through the dispute resolution process outlined in Paragraphs 38-40.

Stipulated Penalties

70. If determined by ADEC to be appropriate, NOAA shall pay to ADEC a stipulated penalty of two thousand dollars ($2,000.00) for the first week (or portion thereof), and three thousand dollars ($3,000.00) for each additional week (or portion thereof) in the event that NOAA fails to meet any deadline relating to a regulated UST or solid waste disposal unit owned by NOAA and included in Attachment A.

71. Upon determining that NOAA has failed in a manner set forth in Paragraph 70, ADEC shall so notify NOAA in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, NOAA shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure

did. in fact. occur. NOAA shall not be liable for the stipulated penalty assessed by ADEC if the failure is determined, through the dispute resolution process. not to have occurred or is otherwise resolved through dispute resolution. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

72. Stipulated penalties assessed pursuant to Paragraph 70-72 shall be payable to the State of Alaska only in the manner and to the extent provided for in Acts authorizing funds for, and appropriations to, the U.S. Department of Commerce.

73. Nothing in this Agreement shall be construed to render any officer or employee of NOAA personally liable for the payment of any stipulated penalty assessed pursuant to Paragraph 70-72.

Covenant Not to Sue By ADEC

74. Subject to the provisions of Paragraphs 70-77, and in consideration of the actions that will be performed under this Agreement and payment to ADEC to be made under Paragraph 69, and provided that NOAA substantially complied with each and every term of this Agreement, ADEC shall not institute adminstrative or civil actions against NOAA for any work performed or any response actions related to the source areas in Attachment A. This covenant not to sue is also conditioned upon NOAA's compliance with applicable state and federal laws when carrying out these actions. This covenant not to sue extends only to NOAA and does not extend to any other person or entity. To the extent provided by law, ADEC agrees that NOAA is entitled to protection from contribution actions or claims for matters addressed in this settlement. The Parties, however, agree that this protection from contribution actions or claims shall not be construed to require the State of Alaska to defend or indemnify NOAA, or to otherwise require the State to compensate any person bringing such a contribution action or claim.

Effect of Settlement

75. Nothing in this agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. Except as provided in Paragraphs76-77, ADEC acknowledges that upon satisfactory completion of the work contemplated by this Agreement, NOAA shall be resolved of its obligations with respect to remedial action and site closure for the source areas in Attachment A.

Reservation of Rights

76. The execution of this Agreement is not an admission of liability of NOAA on any issue dealt with in this Agreement, nor shall anything in this Agreement be construed as

a waiver by NOAA of sovereign immunity. In signing this Agreement, NOAA and ADEC do not admit, and reserve the right to controvert in any subsequent proceedings, the validity of or responsibility for any of the factual or legal determinations made herein; provided, however, that NOAA shall not controvert or challenge, in any subsequent proceedings initiated by the State of Alaska, the validity of this Agreement or the authority of ADEC to enforce this Agreement. This Agreement does not affix or otherwise affect obligations, liabilities, claims, defenses, or rights as between NOAA and any other potentially responsible party for the source areas.

77. ADEC expressly reserves the right to initiate administrative or legal proceedings related to any violation not described in this Agreement. In addition, ADEC and the Department of Law expressly reserve the right to initiate administrative or legal proceedings related to violations described in this Agreement (1) if NOAA breaches this Agreement or if, in ADEC's opinion, subsequently discovered events or conditions constitute an immediate threat to public health, public safety, or threatens irreparable injury to the environment, or (2) if subsequently discovered events or conditions constitute an immediate threat to public health, public safety, or the environment whether or not ADEC may have been able to discover the event or conditions prior to entering into the Agreement. The State expressly reserves the right to initiate administrative or legal proceedings if NOAA does not comply with this Agreement. In addition, ADEC reserves its right to initiate administrative or legal proceedings for any natural resource damages, or for any response costs not reimbursed pursuant to Paragraph 69. The Parties agree to exhaust their rights under dispute resolution prior to exercising any rights to judicial review that they may have. Nothing in this Paragraph precludes the ADEC from invoking the provisions of AS 46.03.820.

Parties Bound

78. This Agreement shall apply to and be binding upon ADEC and NOAA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of ADEC or NOAA.

State Not A Party to Contracts

79. The State of Alaska shall not be held as party to any contract entered into by NOAA related to activities conducted pursuant to this Agreement.

Effective Date

80. The effective date of this Agreement shall be the date the Agreement is executed by both NOAA and ADEC and will continue in effect until an ADEC decision on NOAA's application for no further action is rendered.

Modification

81. Except as provided by Paragraph 82 and elsewhere in this Agreement, the terms of this Agreement may only be modified by the written agreement of the Parties.

82. Modifications, extensions, and/or actions taken pursuant to Paragraphs 6-13 (Review and Comment on Documents); 14-17 (Subsequent Modification); 41 (Briefings & Progress Reports); 50-53 (Sampling and Data/Document Availability); 63-65 (Extensions/Force Majeure) and Attachment B may be effected by the agreement of the Project Managers. Any modification approved orally under this Paragraph must be reduced to writing within ten (10) Days and signed by both Project Managers.

Property Transfer

83. If NOAA transfers, sells, or leases the property described in Attachment C to another party (including another agency or department of the United States Government) prior to NOAA's fulfillment of the provisions of this Agreement, NOAA shall incorporate a copy of this Agreement into the documents of transfer or lease, and shall provide in those documents that the new owner(s) or lessee(s) shall take or lease subject to the provisions of this Agreement. With respect to such transferred property on which monitoring wells, pumping wells, treatment facilities, or other response actions are located or will be located by NOAA, the transfer agreements should provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The conveyance agreements should also provide to the extent practicable that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify NOAA and ADEC by certified mail, at least thirty (30) Days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

Copies

84. Upon retention, NOAA shall provide a copy of this Agreement to all contractors, sub-contractors, and consultants retained to conduct any portion of the work performed pursuant to this Agreement.

Severability

85. It is the intent of the Parties hereto that the clauses of this Agreement are severable and should any part of it be declared by a court of law to be invalid and unenforceable, the other clauses shall remain in full force and effect.

Waiver

86. A failure to enforce any provision of this Agreement in no way implies a waiver of ADEC's right to insist upon strict performance of the same or other provisions in the future.

Definitions

87. Unless specified, capitalized terms used in this Agreement shall have the meaning specified in Alaska Statutes Title 46 and Alaska Administrative Code Title 18.

88. "ADEC" shall mean the Alaska Department of Environmental Conservation, its employees, and authorized representatives.

89. "Agreement" shall mean this document and shall contain all Attachments to this document. All such Attachments shall be incorporated by reference and are in integral and enforceable part of this document.

90. "The Pribilof Islands" shall mean St. Paul and St. George Islands.

91. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (" SARA").

92. "Containment and cleanup" shall have the meaning in AS 46.04.900 and AS 46.09.900.

93. "Days" shall mean calendar days, unless otherwise specified. Any submittal that under the terms of this Agreement would be due on a Saturday, Sunday, or federal or state holiday shall be due on the following business day.

94. "Hazardous Substance" shall have the meaning specified in CERCLA.

95. "Paragraph" shall mean a numbered paragraph of this Agreement, designated by an Arabic numeral.

96. "Parties" shall mean NOAA and ADEC.

97. "Petroleum" shall mean crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; "petroleum" includes petroleum-based substances comprised of a complex blend-of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and

finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

98. "RCRA" shall mean the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984.

99. "Release" shall have the meaning in AS 46.03.826.

100. "Site investigation" shall mean the investigation of suspected contamination resulting from an unpermitted release of oil or hazardous substance as further defined in 18 AAC 78.090.

101. "Source area" shall mean a distinct area of contamination or potential contamination.

102. "NOAA" shall mean the United States Department of Commerce, National Oceanic and Atmospheric Administration and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, agents, successors, assigns, and authorized representatives.

103. a. "Preliminary Source Evaluations" ("PSEs") refers to the following process for evaluating whether or not source areas pose and unacceptable potential risk to public health or the environment. The scope of the PSE is intended to be significantly less than that of a RI/FS under CERCLA or a site investigation under this Agreement.

b. PSE are primarily intended as screening tools to summarize and evaluate existing information. These evaluations may require data gathering efforts which require focused, but limited, field investigations. This information is used to determined qualitative risk.

c. Prior to performing a PSE, project managers will meet to scope and identify the pathways from suspected sources of contamination to potential receptors. Based on this scoping, a workplan will then be generated and submitted which establishes appropriate Data Quality Objectives (DQOs), and includes a field sampling plan (FSP) and QAPJP, as needed.

d. At completion of the PSE, a PSE report containing the findings of the investigation/evaluation shall be submitted to the agencies for review and comment. The Project Managers shall then determine, based on the information presented, the disposition of each of the identified sources, and particularly, which specific source areas (if any) require follow up action. The decision will be reflected in the administrative record.

e. There are three management options for sources reviewed in a PSE process: a) No Further Action (NFA); b) preparation of a site investigation and corrective action plan; or, c) recommendation for corrective action without further site investigation.

f. If agreement cannot be reached on source disposition for areas which have undergone the PSE process, those areas will be included in site investigation and made subject to dispute resolution. In such an event the rationale leading to the decision shall be documented in the administrative record.

104. "Corrective action Plan" refers to the documents prepared under Paragraphs 26-35 of this Agreement.

105. "QAPP" (Quality Assurance Program Plan) shall have the meaning specified in the Alaska Department of Environmental Conservation Standard Quality Assurance Program Plan, Draft 2, dated March 25, 1992.

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: _____
Michele Brown
Acting Commissioner

Dated: 1/26/96

ASSENT OF COUNSEL
Approved as to legality and form.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: _____
Breck C. Tostevin
Assistant Attorney General

Dated: 1/22/96

FOR THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

By: Diana H. Josephson
Title: Deputy Under Secretary

Dated: 1/18/96

ASSENT OF COUNSEL
Approved as to legality and form.

By: Terry D. Garcia
Title: NOAA General Counsel

Dated: 1/18/96

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