

## Appendix A

### Alyeska Consent Decree

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Juneau, Alaska 99811

Attorney for Plaintiff State of Alaska

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By \_\_\_\_\_ Deputy

UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

In re: )  
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the EXXON VALDEZ )  
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No. A89-095 Civil  
(Consolidated)

Re: Case No. A92-175 Civil

AGREEMENT AND  
CONSENT DECREE

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& KURTZ  
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AGREEMENT AND CONSENT DECREE  
(52946.1)

ACE 10720R74

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING  
COMPANY, EXXON PIPELINE COMPANY,  
ALYESKA PIPELINE SERVICE  
COMPANY, AMERADA HESS PIPELINE  
CORPORATION, ARCO PIPE LINE COMPANY,  
MOBIL ALASKA PIPELINE COMPANY,  
PHILLIPS ALASKA PIPELINE CORPORATION,  
BP ALASKA PIPELINES, INC., and  
UNOCAL ALASKA PIPELINE  
COMPANY, in personam, and the  
T/V EXXON VALDEZ, in rem,

Defendants.

Case No. A91-082 CIV

AGREEMENT AND  
CONSENT DECREE

AGREEMENT AND CONSENT DECREE

This Agreement and Consent Decree (this "Agreement") is made and entered into by the State of Alaska (the "State") and the United States of America (the "United States") (collectively referred to as the "Governments"), on the one hand, and Alyeska Pipeline Service Company ("Alyeska"), Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., formerly known as ARCO Pipe Line Company, BP Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company (collectively, except for Alyeska, referred to as the "Alyeska Owner Companies"), on the other hand.

Introduction

Late in the evening of March 23 or early in the morning of March 24, 1989, the T/V EXXON VALDEZ, owned by Exxon Shipping

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2Company, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation spilled into Prince William Sound (hereinafter as further defined in Paragraph 6(g), the "Oil Spill").

Alyeska responded to the Oil Spill pursuant to its 1987 Contingency Plan. Prior to the Oil Spill, Alyeska's 1987 Contingency Plan had been submitted to and approved by the State as being in compliance at the time of approval with all applicable statutes and regulations, including without limitation AS 46.04, and the Right-Of-Way Lease for Trans-Alaska Pipeline with the State, including all Stipulations thereto. In addition, prior to the Oil Spill, Alyeska's 1987 Contingency Plan had been submitted to and approved by the United States as being in compliance at the time of approval with all applicable federal statutes and regulations, including without limitation 43 U.S.C. §§ 1651 et seq., and the Grant and Agreement of Right-of-Way for Trans-Alaska Pipeline with the United States, including the Stipulations thereto.

In August 1989, the State filed an action in the Superior Court for the State of Alaska, Third Judicial District, identified as State of Alaska v. Exxon Corporation, et al., Civil No. 3AN-89-6852, against, inter alia, Alyeska and the Alyeska Owner Companies, asserting claims arising from the Oil Spill. Alyeska and the Alyeska Owner Companies asserted counterclaims

against the State in that action. Exxon Pipeline Company subsequently stipulated to the dismissal with prejudice of its counterclaim. In February 1992, that action was removed to the United States District Court for the District of Alaska, and in August 1992, the State's motion to remand was denied except with regard to the remaining counterclaim filed against the State, which was remanded to the Superior Court. Thus, with the exception of the counterclaim filed against the State (hereinafter the "Alyeska Counterclaim"), the action now is pending in the United States District Court for the District of Alaska, where it has been assigned Case No. A92-175 CIV (hereinafter the "State Action").

On March 13, 1991, the United States filed a complaint in the United States District Court for the District of Alaska against, inter alia, Alyeska and the Alyeska Owner Companies, asserting civil claims relating to or arising from the Oil Spill (hereinafter the "U.S. Action"). Exxon Pipeline Company asserted counterclaims against the United States in its response to the United States' complaint in the U.S. Action. The counterclaim of Exxon Pipeline Company was dismissed with prejudice on January 15, 1992. The U.S. Action remains pending against Alyeska and the Alyeska Owner Companies.

The parties to this Agreement recognize and acknowledge (1) that the payments called for in this Agreement are compensatory and remedial in nature and do not include any payment for or in consideration of claims for punitive damages, the Governments

having concluded, based on consideration of their claims, that an award to the Governments of punitive damages would not be sought, (2) that the payments are made to the Governments in response to their pending civil claims for compensatory damages and other civil relief against Alyeska and the Alyeska Owner Companies arising from the Oil Spill, (3) that the monies paid by Alyeska pursuant to this Agreement are to compensate the State for damages suffered as the result of the Oil Spill, and (4) that the projects to be funded with these monies are not undertaken to fulfill requirements of state law.

NOW, THEREFORE, the parties hereto agree and stipulate, and it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

#### Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the State Action and the U.S. Action and over the parties to this Agreement pursuant to, among other authorities, 28 U.S.C. §§ 1331, 1333 and 1345. This Court has personal jurisdiction over the State of Alaska, which solely for the purposes of this Agreement, waives all objections and defenses that it may have to the jurisdiction of this Court, including all objections and defenses to the jurisdiction of this Court it may have asserted previously.

#### Parties

2. "United States" means the United States of America, in all its capacities, including as public trustee and parens patriae, and including all departments, divisions, independent

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boards, administrations, natural resource trustees, and agencies of the federal government.

3. "State" means the State of Alaska, in all its capacities, including as public trustee and parens patriae, and including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the state government.

4. "Alyeska" means Alyeska Pipeline Service Company.

5. "Alyeska Owner Companies" means Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., formerly known as ARCO Pipe Line Company, BP Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company.

#### Definitions

6. Whenever the following capitalized terms are used in this Agreement, they shall have the following meanings:

(a) "TAPL Fund" means the Trans-Alaska Pipeline Liability Fund, a federally chartered corporation, organized and existing under the laws of the State of Alaska.

(b) "Joint Trust Fund" means the trust fund established by the Memorandum of Agreement and Consent Decree between the State and the United States entered in August 1991 in United States of America v. State of Alaska, Civil Action No. A91-081 CIV.

(c) "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and

other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801 et seq.), the State, or both the United States and the State.

(d) "Natural Resource Damages" means compensatory and remedial relief recoverable by the Governments in their capacity as trustees of Natural Resources on behalf of the public for injury to, destruction of, or loss of any and all Natural Resources resulting from the Oil Spill, whether under the Clean Water Act, 33 U.S.C. §§ 1251, et seq., the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651, et seq., or any federal or state statute or maritime or common law relating to the environment, including (1) costs of damage assessment, (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources, and (3) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources.

(e) "Party" or "Parties" means Alyeska, the Alyeska Owner Companies and each of them, the United States, and the State, or any of them.



(f) "Exxon Consent Decree" means the Agreement and Consent Decree entered in State of Alaska v. Exxon Corporation, et al., Case No. A91-083 CIV, and in United States of America v. Exxon Corporation, et al., Case No. A91-082 CIV, and approved by this Court on October 8, 1991.

(g) "Oil Spill" means the occurrence described in the first paragraph of the Introduction above, and all consequences caused by or arising from that occurrence, including, without limitation, response, cleanup, damage assessment and restoration activities.

(h) "Effective Date" shall mean the earliest date on which all Parties have signed this Agreement.

(i) "Final Approval" shall mean the earliest date on which all of the following have occurred: (1) the Court has approved and entered this Agreement as a judgment, without modification materially adverse to any Party prior to or at the time of approval; and (2) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

(j) "Funding Date" means the later of (1) 10 days after Final Approval, or (2) 10 days after the receipt by Alyeska of both (i) written instructions as to payment consistent with Paragraphs 11 - 14 of this Agreement signed jointly by the Attorney General of the State of Alaska and the Assistant

Attorney General, Civil Division, of the United States Department of Justice, and (ii) written certification by the Attorney General of the State of Alaska of the establishment of a separate expendable trust fund within the State's Treasury ("Alyeska Settlement Fund") to receive and hold those settlement proceeds designated by Paragraphs 11 and 12 of this Agreement to be paid into this separate fund pending disbursement pursuant to the terms of this Agreement.

Effect of Entry of Decree

7. Upon approval and entry of this Agreement by this Court, this Agreement and Consent Decree constitutes a final judgment between the Governments, on the one hand, and Alyeska and the Alyeska Owner Companies, on the other hand, in accordance with its terms.

Description of Projects and Establishment of Separate Fund

8. The State shall establish the Alyeska Settlement Fund for the purpose of receiving, holding and disbursing certain of the settlement proceeds to be paid hereunder. The monies shall be deposited into the Alyeska Settlement Fund pursuant to the terms of this Agreement and shall be disbursed solely for the following purposes and subject to the following allocations:

(a) \$14,500,000 for the construction of response storage facilities and docks at Tatitlek and Chenega and the pre-positioning of oil spill response equipment at both locations, as described in more detail in Appendix A hereto;

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(b) \$6,000,000 for the construction of a road from Cordova to Shepard Point and, when appropriate, for work related to the construction of a response storage facility and the re-positioning of oil spill response equipment at that location, as described in more detail in Appendix B hereto;

(c) \$7,500,000 for the acquisition of land to be included in and made a part of the Kachemak Bay State Park, as described in more detail in Appendix C hereto; and

(d) \$200,000 for the acquisition and installation by the State of communications equipment to be owned by the State, and to be used by the United States Coast Guard and the State and to be installed at the Valdez Emergency Operations Center ("VEOC") when it is constructed, with \$120,000 of the \$200,000 allocated for equipment to be selected and used by the United States Coast Guard and \$80,000 of the \$200,000 allocated for equipment to be selected and used by the State, as described in more detail in Appendix D hereto.

9. (a) The projects described in subparagraphs (a) and (b) of the preceding paragraph ("response projects") are intended to enhance the capability to respond in the event of future oil spills or other catastrophic events in Prince William Sound, as is the project described in subparagraph (d) of the preceding paragraph.

(b) The allocations of settlement proceeds to the response projects as described in the preceding paragraph are based on good faith estimates and are preliminary only. If the

actual costs of a specific response project are less than the allocated sum, together with interest, if any, earned on the allocated sum after monies are received by the State, the excess funds may be used to pay for any of the other response projects whose actual cost may exceed the initial estimate. If the actual costs of the response projects are less than the combined allocation of \$20,500,000, then the excess funds will be paid into the Joint Trust Fund.

(c) The response projects will require further detailed planning and are subject to various land acquisition issues and state and federal permitting requirements that have yet to be resolved. Subject to an appropriation by the Alaska State Legislature, the State will make a good faith effort to design, construct and complete the response projects. If the Attorney General of the State of Alaska determines that either of the response projects is impossible or impracticable for any reason, including the fact that the revised estimated cost would exceed the allocation (and other identified sources of funding, if any) or that the State is unable to obtain appropriate permits or acquire appropriate sites, the funds allocated for that particular response project will be treated as excess funds under subparagraph (b) above. If either of the response projects is rendered impossible because appropriations from the Alyeska Settlement Fund for the purposes specified are not enacted on or before September 15, 1993, then the monies not appropriated will be treated as excess funds under subparagraph (b) above.

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(d) If the acquisition of land described in subparagraph (c) of the preceding paragraph is rendered impossible either because of the inability of the interested parties to finalize a purchase and sale, the lack of sufficient additional sources of funding, or otherwise, the funds allocated for this project will be paid into the Joint Trust Fund. If the acquisition is rendered impossible because these funds have not been appropriated for the purpose specified by December 31, 1993, the funds allocated for this project will be paid into the Joint Trust Fund.

(e) If the acquisition and installation of communications equipment described in subparagraph (d) of the preceding paragraph costs less than the money allocated for that project, the balance remaining shall be paid into the Joint Trust Fund. If the acquisition and installation is rendered impossible because these funds have not been appropriated for the purpose specified by December 31, 1995, the funds allocated for this project will be paid into the Joint Trust Fund.

(f) The State will have final authority and responsibility for the design, specification and implementation of the response projects. The State will have final authority to utilize the funds allocated to the acquisition project described in subparagraph (c) of the preceding paragraph. The United States will have final authority to select communications equipment for use by the United States Coast Guard, as described in subparagraph (d) of the preceding paragraph, up to \$120,000;

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and the State will have final authority to select communications equipment for use by the State, as described in subparagraph (d) of the preceding paragraph, up to \$80,000.

Payment Terms

10. The payments to be made by Alyeska pursuant to the terms of this Agreement total \$31,700,000. The payments shall be made in accordance with the provisions and schedules set forth below.

11. Payments with respect to the projects described in Paragraphs 8(a), 8(b) and 8(c) above shall be made in accordance with the following provisions:

(a) Alyeska shall pay \$28,000,000 into the Alyeska Settlement Fund in accordance with the following schedule:

- (1) \$4,500,000 shall be paid on the Funding Date;
- (2) \$10,500,000 shall be paid on the first anniversary of the Funding Date; and
- (3) \$13,000,000 shall be paid on the second anniversary of the Funding Date.

(b) If, at any time prior to the second anniversary of the Funding Date, there should be insufficient funds in the Alyeska Settlement Fund to enable payments to be made which are necessary in order for these projects to proceed, the State may give written notice to Alyeska of the amount of the shortfall and Alyeska shall, within 30 days of its receipt of that notice, deposit in the Alyeska Settlement Fund the amount of that

shortfall; provided, however, that in no event shall Alyeska be required to contribute more than \$28,000,000 to the Alyeska Settlement Fund with respect to these particular projects. In the event any accelerated payments are requested and made pursuant to the provisions of this subparagraph, Alyeska shall be entitled to deduct the amount of each accelerated payment from the next payment due under the payment schedule set forth in subparagraph (a) above.

12. Upon the Funding Date, Alyeska shall pay into the Alyeska Settlement Fund the sum of \$200,000 to be used as described in Paragraph 8(d) above.

13. Upon the Funding Date, Alyeska shall pay to the State the sum of \$1,500,000 for 1989 tax revenues under AS 43.75 (Fisheries Business Tax), which would be refunded to local governments under AS 43.75.130. This sum shall be in addition to any amount which has been or will be allowed to any party by the TAPL Fund and shall not be used by the TAPL Fund as an offset against claims by any party for such tax revenues.

14. Upon the Funding Date, Alyeska shall pay to the United States, or to such other person or persons as the United States may direct, the sum of \$2,000,000 for expenses incurred by the United States in response to the Oil Spill which would have been subject to reimbursement from the Joint Trust Fund.

Other Consideration

15. Alyeska and the Alyeska Owner Companies previously have committed to build the VEOC either within the City of Valdez at

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the Valdez Port or at the Alyeska Terminal. Alyeska and the Alyeska Owner Companies hereby reaffirm that commitment. In addition to that undertaking, Alyeska and the Alyeska Owner Companies commit as follows:

(a) Subject to Alyeska obtaining the necessary permits, approvals and leases, and subject to Alyeska being able to obtain a suitable parcel of real property, the VEOC will be constructed in the City of Valdez, at a presently estimated approximate cost of \$14,000,000, and not at the Alyeska Terminal;

(b) The VEOC will include a reasonable amount of space for the United States Coast Guard and State of Alaska communications center in which the equipment to be purchased by the Governments as contemplated by Paragraph 8(d) will be located;

(c) The VEOC will be designed to support the Ship Escort Response Vessel System ("SERVS"), which will remain based in Valdez;

(d) The VEOC will be designed so that it can be used to provide oil spill response training; and

(e) Subject to Alyeska obtaining the necessary permits, approvals and leases, and subject to Alyeska being able to obtain a suitable parcel of real property, the construction of the VEOC will begin no later than June 1, 1994.

Releases and Covenants Not to Sue by the Governments

16. Effective upon Final Approval, the Governments, in addition to the releases contained in Paragraphs 15 and 23 of the



Exxon Consent Decree, release and covenant not to sue or to file any administrative claim against Alyeska, the Alyeska Owner Companies, or their parents or affiliates with respect to any and all civil claims relating to or arising from the Oil Spill, including claims for any civil relief of a compensatory and remedial nature which have been or may be asserted by the Governments, or either of them, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on: (1) any of the civil claims asserted in the State Action, including a claim for tax revenues which would have been or would be collected under existing AS 43.75 but for the Oil Spill, (2) any of the civil claims asserted in the U.S. Action, or (3) any other civil claims that could be asserted by either or both of the Governments against Alyeska, the Alyeska Owner Companies, or their parents or affiliates relating to or arising from the Oil Spill; provided, however, that nothing in this Agreement shall affect or impair the following:

(a) claims by either Government to enforce this Agreement;

(b) claims by the State against the TAPL Fund for tax revenues which would have been or would be collected under existing AS 43.75 (Fisheries Business Tax) but for the Oil Spill;

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(c) exclusively private claims, if any, by Alaska Native Villages and individual Alaska Natives, other than claims for Natural Resource Damages, seeking damages for private harms to Native subsistence well being, community, culture, tradition and way of life resulting from the Oil Spill, including private claims for private harms to Alaska Native Villages and individual Alaska Natives resulting from the impairment, destruction, injury or loss of Natural Resources caused by the Oil Spill and any other exclusively private claims that are available to Alaska Native Villages and individual Alaska Natives; and

(d) exclusively private claims, if any, by Alaska Native Corporations, other than claims for Natural Resource Damages, seeking damages for private harms resulting from injuries caused by the Oil Spill to lands in which a Native Corporation holds any present right, title, or interest, including private claims for lost or diminished land values, for preservation, protection and restoration of archaeological or cultural resources and archaeological sites found on the lands described in this subparagraph, for private harms resulting from injuries to Natural Resources found on lands described in this subparagraph, for impairment of riparian or littoral rights, if any, and any other claims that are available to Alaska Native Corporations as private landowners; provided, however, that such claims shall not include any claims based upon injuries to tidelands or submerged lands.

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17. The State acknowledges that certain entities in addition to the State have asserted a right to recover tax revenues which would have been or would be collected under existing AS 43.75. However, it is the State's legal position that it is the only entity which possesses any claim under existing AS 43.75 and that it is the only entity which is authorized or entitled to pursue a claim under existing AS 43.75.

18. Effective upon Final Approval, each of the Governments covenants not to sue any present or former director, officer, or employee of Alyeska or the Alyeska Owner Companies with respect to any and all civil claims or other civil remedies of a compensatory or remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Oil Spill, including, without limitation, claims arising from any of the subject matter underlying the civil claims asserted in the State Action or the U.S. Action; provided, however, that if any such present or former director, officer, or employee brings any action against the Governments, or either of them, for any claim whatsoever arising from or relating to the Oil Spill (or if an action against the Governments is pending at the time of Final Approval, and the director, officer, or employee fails to dismiss the action within 15 days of Final Approval), this covenant not to

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sue shall be null and void with respect to the director, officer, or employee bringing such action. In the event either Government obtains a judgment against any present or former director, officer, or employee of Alyeska or the Alyeska Owner Companies for liability relating to or arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Alyeska or the Alyeska Owner Companies, personally or through insurance policies purchased by the individual or individuals.

Releases and Covenants Not To Sue

by Alyeska and Alyeska Owner Companies

19. Effective upon Final Approval, Alyeska and the Alyeska Owner Companies release and covenant not to sue or to file any administrative claim against each of the Governments and their current or former employees with respect to any and all claims relating to or arising from the Oil Spill, including without limitation, claims for Natural Resource Damages and cleanup costs, under federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on: (a) the Alyeska Counterclaim; or (b) any other civil claims that have been or could be asserted by Alyeska or the Alyeska Owner Companies against either of the Governments relating to or arising from the Oil Spill, except that nothing in

this Agreement shall affect or impair the rights of Alyeska or the Alyeska Owner Companies to enforce this Agreement.

Dismissal of Actions and Claims

20. Not later than 15 days after Final Approval, each of the claims relating to or arising from the Oil Spill and asserted by the State and/or the United States against Alyeska, the Alyeska Owner Companies, Exxon Corporation or Exxon Shipping Company, including the claims asserted in the State Action, the U.S. Action and as third-party claims in various other lawsuits, and all claims relating to or arising from the Oil Spill and asserted by Alyeska and the Alyeska Owner Companies against the State, including the Alyeska Counterclaim, shall be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Alyeska, the Alyeska Owner Companies, the United States, and the State shall enter into and execute all Stipulations of Dismissal, with prejudice, necessary to implement the provisions of this paragraph.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 19 shall not be construed to bar any claim by Alyeska or the Alyeska Owner Companies against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska or the Alyeska Owner Companies by the TAPL Fund, Alyeska and the Alyeska Owner Companies agree to indemnify and hold the Governments harmless from any liability that they have to the

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TAPL Fund based on such claims. However, the foregoing indemnity (a) shall not be enforceable with respect to any amount in excess of value actually received by Alyeska or the Alyeska Owner Companies from the TAPL Fund, and (b) shall be enforceable only if the Governments assert in good faith all defenses they may have to such claims.

Third Party Litigation

22. (a) Except as provided in subparagraph (b) of this paragraph, if any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the Oil Spill in any present or future litigation against Alyeska or the Alyeska Owner Companies and the Governments, or against Alyeska or the Alyeska Owner Companies and either the United States or the State, each of these sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party. However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between or among the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases. Further,

notwithstanding any other provision of this Agreement, the Sued Parties may seek indemnification or contribution from any other party to the action or from any third party (including Exxon Corporation and Exxon Shipping Company), other than one of the Sued Parties, and the rights of the Alyeska Owner Companies to reallocate costs among themselves or to seek indemnification or contribution from each other shall not be affected in any way by this Agreement.

(b) If any person or entity, other than the TAPL Fund, asserts claims against the Governments, or either of them, that are based upon contribution or indemnity or any other theory of recovery over against the Governments arising from any liability of or payment by said person or entity to Alyeska or the Alyeska Owner Companies relating to or arising from the Oil Spill, or based upon subrogation rights arising from any monies paid to Alyeska or the Alyeska Owner Companies, Alyeska shall indemnify and hold the Governments harmless from any liability that the Governments have to such person or entity based on such claims. The foregoing indemnity (i) shall not be enforceable with respect to any amount in excess of value actually received by Alyeska or the Alyeska Owner Companies, and (ii) shall be enforceable only if the Governments assert in good faith all defenses they may have to such claims.

23. Neither Alyeska nor the Alyeska Owner Companies shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil

Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Alyeska or the Alyeska Owner Companies in any action relating to or arising from the Oil Spill where Alyeska or the Alyeska Owner Companies are not parties, except that either Government may assert against Alyeska and the Alyeska Owner Companies the rights to indemnification as expressly provided in Paragraph 21.

24. Any liability which Alyeska or the Alyeska Owner Companies incur as a result of a suit by a Third Party, as described in Paragraphs 22 or 23, shall not be attributable to or serve to reduce the payments required to be paid by Alyeska pursuant to Paragraphs 11 - 14.

25. The Parties agree that they will not tender each other to any Third Party as direct defendants in any action relating to or arising from the Oil Spill pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

26. If a Third Party, which previously has reached or hereafter reaches a settlement with Alyeska or the Alyeska Owner Companies, brings an action against the Governments, or either of them, the sued Government(s) shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of Alyeska or the Alyeska Owner Companies, and shall assert that joinder of Alyeska or the Alyeska Owner Companies is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if



the court rejects the sued Government(s)' efforts to obtain a proportional allocation of fault without Alyeska or the Alyeska Owner Companies' joinder, the sued Government(s) may institute third-party actions against Alyeska or the Alyeska Owner Companies solely for the purpose of obtaining allocation of fault. The Governments in such third-party actions shall not enforce any judgment against Alyeska or the Alyeska Defendants.

27. If a Third Party, which previously has reached or hereafter reaches a settlement with the Governments, or either of them, brings or pursues an action against Alyeska or the Alyeska Owner Companies, or any of them (collectively, the "Alyeska Defendants"), the Alyeska Defendants shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of either of the Governments, and shall assert that joinder of the Governments, or either of them, is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if the court rejects the Alyeska Defendants' efforts to obtain a proportional allocation of fault without joinder of the Governments, or either of them, the Alyeska Defendants may institute third-party actions against the Governments, or either of them, solely for the purpose of obtaining allocation of fault. The Alyeska Defendants in such third-party actions shall not enforce any judgment against the Governments.

Effect on TAPS Tariff

28. Solely for the purpose of resolving the issues in dispute in this litigation over the Oil Spill and without in any way conceding that the monies paid pursuant to this Agreement are not properly included in the tariff rates charged for the use of the Trans-Alaska Pipeline System, the Alyeska Owner Companies agree that the payments made under the terms of this Agreement shall not be included, directly or indirectly, in the tariff rates charged by the Alyeska Owner Companies for the use of the Trans-Alaska Pipeline System. Notwithstanding the foregoing, the Alyeska Owner Companies reaffirm that it is their belief that such amounts would properly be included in the tariff rates charged and that they are agreeing not to include such amounts only as part of the compromise and settlement reflected in this Agreement. The State acknowledges that the compromise and agreement set forth in this paragraph will not be used in any other action or proceeding or otherwise urged as precedent that monies paid in settlement of litigation are not properly included in the tariff rates charged for the use of the Trans-Alaska Pipeline System.

Interest for Late Payments

29. If the payments required by Paragraphs 11 - 14 of this Agreement are not made by the dates specified, Alyeska shall be liable to the Governments for interest on the overdue amount, from the time payment was due until full payment is made, at the rate established by the Department of the Treasury under 31

U.S.C. § 3717(a)(1) and (2). Interest on an overdue payment shall be paid in the same manner as the payment on which it accrued.

Reservations of Rights

30. This Agreement is the result of a compromise and does not constitute an admission of liability by any Party to this Agreement. Except as expressly stated in this Agreement, each Party reserves against all persons or entities all rights, claims or defenses available to it relating to or arising from the Oil Spill. Except as expressly stated in this Agreement, nothing in this Agreement is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement.

31. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Agreement.

32. Except as explicitly stated herein, nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties of the Governments, on the one hand, and Alyeska or the Alyeska Owner Companies, on the other hand, under the Exxon Consent Decree.

33. Nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties under the following judgments or agreements:

(a) the Memorandum of Agreement and Consent Decree entered into between the United States and the State in United

States of America v. State of Alaska, Civil Action No. A91-081 CIV and approved by this Court in August 1991;

(b) the Agreement between the State of Alaska, the United States and Plaintiffs entered in The Native Village of Chenega Bay, et al. v. State of Alaska, 3AN-91-2344 Civil and approved and entered as a Final Judgment by the Alaska Superior Court in February 1992;

(c) the Consent Decree and Stipulation of Dismissal entered into between Alaska Natives and Native Interests, the United States and the State of Alaska in The Native Village of Chenega Bay, et al. v. The United States of America and The State of Alaska, Case No. A91-454 CIV and approved by this Court on January 17, 1992;

(d) the Agreement between the TAPL Fund and the State made on February 24, 1992 which contains mutual releases and covenants not to sue subject to an exception for AS 43.75 revenues specified therein and the Stipulation of Dismissal with Prejudice and Order executed by the United States and the TAPL Fund on February 13, 1992; and

(e) the State's Right-of-Way Lease for Trans-Alaska Pipeline and the United States' Grant and Agreement of Right-of-Way for Trans-Alaska Pipeline.

34. Except as explicitly stated herein, nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties of the Governments, on the one hand, and

Exxon Corporation or Exxon Shipping Company, on the other hand, under the Exxon Consent Decree.

Notices and Submittals

35. Whenever, under the terms of this Consent Decree, written notice is required to be given by one Party to another, it shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice of changes to the other Parties in writing.

As to the State of Alaska:

Attorney General  
State of Alaska  
Pouch K  
Juneau, Alaska 99811

Supervising Attorney  
Environmental Section  
Department of Law  
1031 W. Fourth Street, Suite 200  
Anchorage, Alaska 99501

As to the United States:

Chief, Admiralty and Aviation Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 14271  
Washington, D.C. 20044-4271

As to Alyeska and the Alyeska Owner Companies:

Office of the President  
Alyeska Pipeline Service Company  
1835 South Bragaw Street  
Anchorage, Alaska 99512

General Counsel  
Alyeska Pipeline Service Company  
1835 South Bragaw Street  
Anchorage, Alaska 99512

To each of the Alyeska Owner Companies, at addresses to be supplied by Alyeska.

### Election to Terminate

36. Any Party may elect to terminate this Agreement if: (a) a final judicial determination is made by any court of competent jurisdiction that this Agreement will not be approved and entered without modification; or (b) such court modifies this Agreement in a manner materially adverse to that Party prior to or contemporaneously with a final judicial determination approving this Agreement as modified. A Party electing to terminate this Agreement pursuant to this paragraph must do so within 10 days after an event specified in the preceding sentence, and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile, or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph, "termination" and "terminate" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, covenants, and indemnities under this Agreement.

### Entry of Final Judgment

37. This Court finds that this Agreement is fundamentally fair, just and reasonable and directs that this consent decree be entered as a final judgment with respect to the claims against Alyeska, the Alyeska Owner Companies, Exxon Corporation and Exxon Shipping Company in State of Alaska v. Exxon Corporation, et al., Case No. A92-175 CIV. This Court directs that this consent

decree be entered as a final judgment in United States of America  
v. Exxon Corporation, et al., Case No. A91-082 CIV.

Retention of Jurisdiction


38. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Agreement.

Miscellaneous

39. This Agreement can be modified only with the express written consent of the Parties to the Agreement and the approval of the Court.

40. Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

THE FOREGOING Agreement and Consent Decree between the United States of America and the State of Alaska, on the one hand, and Alyeska and the Alyeska Owner Companies, on the other hand, is hereby APPROVED AND ENTERED THIS 25 DAY OF November, 1992.

  
Honorable H. Russel Holland  
United States District Judge  
District of Alaska

PEASE  
JRTZ  
M. C. PROCTOR  
SECRET  
L. AK. DISTRICT  
70-8103

AGREEMENT AND CONSENT DECREE  
(S-10-1)

30

ACE 10720903

FOR THE STATE OF ALASKA

Date: 11-25-92 Walter Hickel  
WALTER J. HICKEL  
Governor  
State of Alaska

Date: 11.25.92 Charles E. Cole  
CHARLES E. COLE  
Attorney General  
State of Alaska  
Pouch K  
Juneau, Alaska 99811

FOR THE UNITED STATES OF AMERICA

Date: Nov 25, '92 Stuart M. Gerson  
STUART M. GERSON  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530

BURR, PEASE  
& KURTZ  
A PROFESSIONAL CORPORATION  
N STREET  
ANCHORAGE, AK 99501  
(907) 276-6100



FOR ALYESKA AND THE ALYESKA OWNER COMPANIES

Date: November 25, 1992

ALYESKA PIPELINE SERVICE COMPANY

By: James W. Mangano  
Its: General Counsel

Date: November 25, 1992

AMERADA/HESS PIPELINE CORPORATION

By: Gregory C. Stone  
Its: Attorney in Fact

Date: November 25, 1992

ARCO TRANSPORTATION ALASKA, INC.

By: Gregory C. Stone  
Its: Attorney in Fact

Date: November 25, 1992

BP PIPELINES (ALASKA), INC.

By: Gregory C. Stone  
Its: Attorney in Fact

Date: November 25, 1992

EXXON PIPELINE COMPANY

By: Robert J. Huddlestone  
Its: Attorney in Fact

Date: November 25, 1992

MOBIL ALASKA PIPELINE COMPANY

By: Gregory C. Stone  
Its: Attorney in Fact

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ANCHORAGE, AK 99501  
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AGREEMENT AND CONSENT DECREE  
[52946.1]

Date: November 25, 1992

PHILLIPS ALASKA PIPELINE CORPORATION

By: *Keryon P. Stone*  
Its: Attorney in Fact

Date: November 25, 1992

UNOCAL PIPELINE COMPANY

By: *Keryon P. Stone*  
Its: Attorney in Fact

Date: November 25, 1992

*Keryon P. Stone for*  
RONALD L. OLSON  
Munger, Tolles & Olson  
355 South Grand Avenue  
Los Angeles, California 90071  
Attorney for Alyeska and  
Alyeska Owner Companies  
(except Exxon Pipeline Company)

Date: November 25, 1992

*Randall J. Weddle*  
RANDALL J. WEDDLE  
Faulkner, Banfield, Doogan &  
Holmes, P.C.  
550 W. 7th Avenue, Suite 1000  
Anchorage, Alaska 99501  
Attorney for Exxon Pipeline  
Company

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## APPENDIX A

The settlement provides for the construction of docks and response storage facilities at Tatitlek and Chenega and the pre-positioning of oil spill response equipment at both locations. The exact nature of these projects cannot be known without more investigation and planning. Nevertheless, it is intended that these facilities be constructed in such a way as to facilitate the effective response to an oil spill in Prince William Sound.

As currently proposed, the docks at Tatitlek and Chenega would be constructed on land acquired from the villages, with title to the land and facilities and the responsibility for maintenance given to the villages or State as deemed appropriate by the State. The docks would be suitable for oil spill response use as well as limited use by the ferry MV Bartlett and would permit the loading and unloading of passengers, light cargo and, if appropriate, vehicles. The facilities should be designed to support oil spill response vessels, including the new oil spill response ferry vessel now being designed.

The proposed docks consist of a pier head platform and 12 foot wide causeway and would be lighted for nighttime operations. Berthing and mooring dolphins and fenders would be provided. The dock would be useable throughout the tidal range. A one acre gravel pad would be created at the base of the dock. The total combined estimated cost of these projects would be about \$14.5 million, including the cost of constructing and stocking associated storage facilities with spill response equipment (e.g. boom and absorbent pads). Ownership of this response equipment would reside with Alyeska.

**a. Tatitlek:** The dock at Tatitlek would be located at the east end of the village and would require construction of a one quarter mile access road.

**b. Chenega:** The dock at Chenega would be located at the west end of the village and could use existing roads. The Chenega dock would be in the vicinity of the old saltery which is a major environmental concern of the people of Chenega, the State and the United States. The saltery contains asbestos and partially filled abandoned fuel oil storage tanks. It is in complete disrepair. The proximity of the saltery, coupled with the environmental hazard it presents, mandates that strong consideration be given to removal in conjunction with construction of the dock or associated pad.

## APPENDIX B

In the event of a spill in Prince William Sound, particularly in the southwestern portion near Hinchinbrook, it would be useful to have the option of utilizing Cordova for staging response efforts. While Cordova has good air transport facilities, there is, at present, no available deep water port and little in available staging areas. Currently there is a proposal to create such a port at Shepard Point, about six miles outside of Cordova.

Connecting the port with Cordova requires rehabilitation of about two miles of existing road and construction of about 4.8 miles of new road, including a bridge across Humpback Creek. The road would run primarily across Eyak Corporation land. Eyak is supportive of the project. The proposed project includes the construction of the road to Shepard Point and a response staging area and the pre-positioning of boom and other response equipment.

In addition to the oil spill response benefits of this project, the proposed road would allow for the lightering of tourists into Cordova from tour vessels.

## APPENDIX C

Of all of the restoration projects considered for funding from the EXXON VALDEZ oil spill Joint Trust Fund, the most public support has been generated for the acquisition of in-holdings in Kachemak Bay State Park which are scheduled to be logged. A number of proposals have surfaced for financing such a buyout, but have fallen short of the amount needed to complete the purchase. It is believed that the sum proposed for this project, combined with funds from other sources, would eventually be sufficient to complete the transaction.

The proposed buyback includes lands surrounding Peterson, China Poot and Neptune Bays. Acquisition of these lands would provide a significant benefit to the natural resources and people affected by the spill. In particular, the lands acquired provide habitat for species which utilize old growth forests, such as marbled murrelets. The shorelines of these bays contain numerous archeological sites, including house pits, rock shelters and middens. More than 6000 bald eagles winter annually in Kachemak Bay, with many using the lands in question. The sand bars and islands of China Poot Bay are regularly utilized haul out sites for harbor seals. In addition, Kachemak Bay provides recreational opportunities for many Alaskans and tourists who visit the southern Kenai Peninsula and is the scenic background for the Homer area.

## APPENDIX D

In conjunction with creation of the Valdez Emergency Response Center, the United States Coast Guard and the Alaska Department of Environmental Conservation will be provided space for use as a communications center. This project will provide the funds to equip that space for the agencies so as to enhance the management of an oil spill response. The exact equipment to be purchased will be designated after further planning, but includes computer systems, software, facsimile machines, copier, communications console and miscellaneous furniture.

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