

RESPONSE ACTION CONTRACT
by and between
SOUTHEAST ALASKA PETROLEUM RESOURCE ORGANIZATION, INC.
AND
«CompanyName»

This Response Action Contract is entered into this 22 day of May, 2013, by and between Southeast Alaska Petroleum Resource Organization, Incorporated ("SEAPRO"), a nonprofit corporation organized and existing under the laws of the State of Alaska, and «CompanyName» ("Member"), an Alaska corporation.

WHEREAS, Member may request from time to time response equipment and services from SEAPRO, as a response action contractor, in the event of a release or threatened release of petroleum products ("discharge"), or for a discharge exercise conducted by any authorized governmental agency ("drill"); and

WHEREAS, SEAPRO and Member desire to enter into a contract covering services, equipment, materials, and supplies that may be provided to Member by SEAPRO;

NOW, THEREFORE, in consideration of the premises, and in further consideration of the promises below, the parties agree as follows:

1. Term of Agreement. This agreement is effective the date first written above, and shall continue in force until terminated as provided below.

2. Payment Due Dates. An invoice rendered by SEAPRO to Member shall be due and payable not more than thirty days after the date the invoice is transmitted to Member, and amounts due shall bear interest at the rate of one percent per month or portion thereof from the due date until paid. SEAPRO may request and receive from Member adequate security for payments, such as a cash deposit or an irrevocable letter of credit in amount equal to the anticipated charges, or other security satisfactory to SEAPRO.

In the event SEAPRO and Member cannot agree on any charge or charges made by SEAPRO to Member under this Response Action Contract, Member may hold back the disputed portion of such charges, only, pending resolution of the dispute. Any amount withheld pending resolution of a billing dispute may not exceed ten percent of the entire invoice.

Any and all third party interest or late charges incurred by SEAPRO on account of failure by Member to pay an invoice when due shall be for the account of Member.

3. Equipment and Services to be Provided. Schedule "A" shows the response equipment and personnel authorized by SEAPRO to be listed for SEAPRO in Member's contingency plan. SEAPRO shall use due diligence continuously to maintain such equipment in a state of readiness, in accordance with industry standards, and to ensure that SEAPRO personnel are trained and ready to assist Member. In the event of a discharge or a drill, Member may notify SEAPRO of the fact of such discharge or drill and request that SEAPRO provide such equipment and personnel. SEAPRO is obligated to provide such equipment and personnel to Member under the terms and conditions of this response action contract. SEAPRO shall notify Member in writing immediately if SEAPRO cannot carry out response action specified in this response action contract.

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Member will compensate SEAPRO for such response equipment and personnel according to the schedule attached hereto as Schedule "A". SEAPRO may, upon 30 days' written notice to Member, amend the contents of Schedule "A", including rates to be charged by SEAPRO.

All response equipment and personnel provided to Member by SEAPRO shall be under Member's direction. As soon as practicable after SEAPRO commences providing response equipment and personnel to Member, SEAPRO and Member shall agree upon the duration of services and nature of the response equipment and personnel to be provided by SEAPRO, and such agreement shall be reflected in a completed copy of Schedule "A".

In addition to providing equipment and personnel, SEAPRO may, at the direction of Member, participate in Member's Incident Command System and provide response services to Member. Further, SEAPRO will exercise due diligence to contact, on behalf of Member, other SEAPRO members and contractors who may have available equipment and other resources suitable for use in responding to the discharge or drill. Member is responsible to contract independently with any supplier, other than SEAPRO, for goods or services to be used in the discharge response or drill. In the event Member directs SEAPRO to contract for such goods and services, SEAPRO shall enter into such contracts as the agent of Member.

Except as expressly provided above, SEAPRO shall not assume operational or other responsibility for response to the discharge, which responsibility shall remain the Member's obligation.

4. Controlling Documents. Member shall not direct SEAPRO, nor shall SEAPRO be under any obligation, to undertake response actions that are inconsistent with the terms and conditions of:

- 4.1. this response action contract,
- 4.2. any applicable remedial action plan approved by the Alaska Department of Environmental Conservation or other authority having jurisdiction over the applicable remedial action plan, or
- 4.3. any applicable order, direction or requirement by a State or Federal agency asserting jurisdiction over the discharge or drill.

In the event of a dispute as to whether a particular direction from Member is consistent with the above, the parties shall promptly meet and confer in an effort timely to resolve such dispute.

5. Spill Notification. Member shall notify the Alaska Department of Environmental Conservation (or other authority required by law) of any discharge. Member shall confirm such notification to SEAPRO.

6. Member Warranty. Member warrants that all directions and mandates given by Member to SEAPRO in connection with any drill or discharge of liquid hydrocarbons will be consistent with Paragraph 4, above.

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7. Indemnification.

7.1. Special Recitals. Member acknowledges that:

7.1.1. Neither this agreement nor any other instrument requires Member to use SEAPRO equipment or personnel or to utilize SEAPRO for response action in connection with any discharge or drill;

7.1.2. Member is solely responsible for all planning, preparation, equipment acquisition, contracting and operations in connection with response action necessitated by a discharge or drill involving Member's equipment or facilities;

7.1.3. For the purposes of any dispute related to the enforceability of these indemnification provisions, Member waives any claim that:

7.1.3.1. it did not have adequate opportunity to participate in decisions made by or on behalf of SEAPRO with regard to planning, equipment and materials acquisition and maintenance, operations, and other functions;

7.1.3.2. it did not have adequate opportunity to inspect the equipment, materials and supplies that have been acquired by SEAPRO and to evaluate their condition and usefulness to Member in the event of a discharge or drill;

7.1.3.3. it did not have adequate opportunity to evaluate the ability of personnel and contractor(s) engaged by SEAPRO to be of assistance to Member in the event of a discharge or drill;

7.1.4. Any and all equipment, supplies, materials and services provided by SEAPRO to Member are provided "as is, where is," and neither SEAPRO nor any member of SEAPRO makes any representation as to the merchantability or fitness for any particular purpose of the same.

7.1.5. If these indemnification provisions were not included in this agreement, SEAPRO would be unwilling to enter into this agreement.

7.2. Indemnification. It is the intent of the parties that Member shall assume all indemnification responsibilities provided herein. Member hereby agrees to indemnify, defend, and hold harmless SEAPRO, its members, directors, officers, managers, executive committee, contractors and employees, together with all officers, directors, contractors, employees and affiliates of each of the members of SEAPRO, and each of them, from and against any and all claims, demands, causes of action, damages, costs, fees (including reasonable attorneys' fees), expenses, penalties, losses or liabilities, in law or in equity, of every kind and nature whatsoever, arising out of or in any way connected with:

7.2.1. Any and all actions, or failures to act, on the part of Member, its contractors, or SEAPRO, its members, staff, and contractor(s), carried on under or in connection with response action requested by Member, including, without limitation, the

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activities of members of SEAPRO as participants in business entities providing vessels, equipment, and materials to SEAPRO;

7.2.2. Any and all penalties, fines, or other liability imposed on SEAPRO on account of the violation of any law or regulation, compliance with which is left by law to Member, if such penalties, fines, or other liability arise out of or are in any way connected with response action requested by Member; and

7.2.3. Any and all liens, claims, assessments, levies and stop notices of labor, and any other liens or claims on account of overdue or other deficient handling of charges for labor or materials, if such liens, claims, assessments, levies, and stop notices of labor, or other liens or claims arise out of or are in any way connected with response action requested by Member.

7.3. Extent of Indemnification. The indemnification obligations of Member are fully effective to the extent allowed by law even if such claims, demands, causes of action, damages, costs, expenses, penalties, losses, or liabilities were caused or contributed to, in whole or in part, by:

7.3.1. The active or passive negligence or other fault, including gross negligence, of SEAPRO or its members, or their staff, contractor(s), agents, representatives, or employees;

7.3.2. Any equipment or materials supplied to Member by SEAPRO, howsoever caused, whether by failure, malfunction or defect, latent or otherwise, in said equipment or materials, or by the maintenance thereof; or

7.3.3. The liability without fault of SEAPRO or its members, or their contractor(s), agents, representatives or employees.

The obligations of indemnification are not limited, restricted, or in any way affected by the amount of insurance carried by Member, or by any terms or conditions of any insurance policies. The obligations of indemnification shall survive the termination of this agreement, the dissolution of SEAPRO and the withdrawal of any member from SEAPRO.

7.4. Indemnification Duties. Member assumes, without limitation, the following obligations with respect to services requested by Member:

7.4.1. At its own cost, expense, and risk, to accept and conduct the defense of any and all suits, actions, and other legal proceedings that may be brought or instituted against the indemnitees, or any of them, and prosecute any appeals;

7.4.2. To pay and satisfy any and all settlements, final judgments, and decrees that may be paid by, or enforceable against, the indemnitees, or any of them;

7.4.3. To reimburse the indemnitees, and each of them, for any and all reasonable attorneys' fees, costs and expenses incurred by the indemnitees, or any of them, in order to enforce the provisions of this agreement;

7.4.4. To reimburse the indemnitees, and each of them, for any and all reasonable attorneys' fees, costs, and expenses incurred by the indemnitees, or any of them, prior to

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the assumption of indemnification responsibilities by Member in connection with any and all suits, actions, and other legal proceedings described above; and

7.4.5. After Member has assumed such responsibility, any and all indemnitees are entitled to participate at its or their sole cost and expense in the defense of any suit, action, or other legal proceeding without affecting the indemnity obligations of Member under this agreement.

7.5. Administration.

7.5.1. In requesting that SEAPRO furnish response action, and in utilizing and receiving the benefits of response action, Member reaffirms thereby its commitment to perform its obligations as provided herein.

7.5.2. SEAPRO may, if it so elects, pay and discharge any liens or overdue charges for labor, equipment, or materials incurred by Member as may be reasonably necessary to protect the interests of SEAPRO. Any and all such payments shall be for the account of Member.

7.5.3. The provision of response action by SEAPRO to Member does not constitute or affect any construction contract under AS 45.45.900.

8. Insurance. At all times during the term of this agreement, Member shall carry and maintain in force with carriers approved to do business in Alaska, as follows:

Workers' Compensation or Protection and Indemnity, as appropriate (including coverage for US Longshore and Harbor Workers and maritime acts, as applicable) and Employers' Liability Insurance in accordance with the law that may be applicable to its employees,

Comprehensive General Liability Insurance covering bodily and personal injury or death of persons and property damage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, which insurance shall be endorsed to provide contractual coverage specifically covering Member's obligations of indemnity under this Agreement,

Automobile Liability insurance in an amount not less than \$1,000,000, and

Aviation Liability insurance in an amount not less than \$1,000,000, covering owned, contracted, and borrowed aircraft.

Pollution Liability in the amount of \$**Merge Amount of Member Pollution Insurance.**

Member shall provide certificates of insurance for each of these policies at the request of SEAPRO. No such insurance will be materially changed or canceled during the term of this agreement without at least thirty days' written notice to SEAPRO. Nothing contained in this clause shall limit or waive Member's legal or contractual responsibilities to SEAPRO or others.

8.1. Member agrees to obtain waivers of its insurers' rights of subrogation against the indemnitees.

8.2. In the event Member elects to self-insure, SEAPRO reserves the right to approve such self-insurance and to request and receive such information, as SEAPRO deems necessary to evaluate the self-insurance provided by Member. In any case, if Member elects to self-insure,

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Member hereby waives any rights of subrogation against SEAPRO and SEAPRO's members and their employees.

8.3. SEAPRO maintains property insurance on its equipment, and agrees to obtain a waiver of subrogation under its property insurance policy in favor of any SEAPRO member using the equipment.

9. Accounting and Audit.

9.1. SEAPRO agrees that all financial settlements, billings, and reports rendered to Member, as provided for in this agreement, and/or any amendments to it, will reflect properly the facts about all activities and transactions handled for the account of Member, which data may be relied upon as being complete and accurate in any further recording and reporting made by Member for any purpose.

9.2. Member's duly authorized representatives shall have access during normal business hours and upon reasonable notice during the term of this agreement to SEAPRO's books, records, pricing manuals, receipts, vouchers, and similar documents for the purpose of verifying invoice prices or other charges billed in connection with this contract. Such representatives shall have the right to reproduce any of the aforesaid documents. SEAPRO agrees to preserve all such documents for a period of two years after completion of any services under this contract as described in any completed Schedule "A", and to make all such documents available to Member's representatives during such period. Member shall notify SEAPRO of any erroneous billings made by or paid to SEAPRO, and SEAPRO shall promptly make appropriate adjustments and reimburse Member the amount of any agreed overpayment.

10. Confidentiality. SEAPRO and Member agree that they and their employees will treat as proprietary all information and materials developed or acquired in the course of its services for Member, including business, operational, mechanical, technical, and financial data and reports. SEAPRO or Member will disclose such information and materials only to those of its employees who must receive it for the efficient performance of this agreement. The provisions of this paragraph shall remain binding on the parties and shall survive the completion or termination of this agreement.

11. Independent Contractor Status.

11.1. The parties intend that an independent contractor relationship shall be created by this agreement. Each party agrees to take all reasonable actions so that the public and all governmental agencies are given no reasonable basis to believe that the parties are engaged in a single business, partnership or other combination.

11.2. SEAPRO shall pay all applicable taxes imposed by reason of the work to be performed by SEAPRO hereunder (except for sales and use taxes, which shall be the sole responsibility of Member) and any and all employment-related taxes. SEAPRO shall timely file

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all reports and information required by law to be filed by SEAPRO and covering the time SEAPRO is engaged in performance of this contract.

11.3. SEAPRO shall own exclusively the rights to any and all inventions, methods, and other intellectual property that it develops in the course of performance of work and services under this agreement.

12. Notices. All notices, requests, and/or other communications provided for or permitted to be given by any party hereunder shall be made in writing and delivered in person or by mail, facsimile, telegraph or telex, properly addressed to each party to whom given, with postage and charges prepaid. Notices by facsimile, telegraph or telex shall be promptly confirmed by mail. A notice shall be deemed given only when received by the party to whom such notice is directed. Notices shall be sent to the following addresses:

If to SEAPRO:

General Manager
SEAPRO
540 Water Street, Suite 201
Ketchikan, Alaska 99901
Phone: 907-225-7002
Fax: 907-247-1117

If to Member:

«CompanyName»
«cAddress»
«cCity», «State», «ZipCode»
«cPhone»
Fax:

13. Termination. Either party may terminate this agreement upon thirty days' written notice. Upon termination, SEAPRO will be paid according to this contract's compensation terms for any and all services SEAPRO performed up to the date of termination and in carrying out Member's termination instructions. Termination shall not affect the rights and responsibilities of the parties under this agreement with regard to insurance, indemnification, audit, records maintenance, confidentiality, choice of law, or venue.

14. Miscellaneous Provisions.

14.1. Reference to SEAPRO in Contingency Plans. Member is a member in good standing of SEAPRO. Only members in good standing of SEAPRO shall be entitled to make reference to SEAPRO, its equipment or its services in any contingency plan filed with any governmental agency, as being obligated to provide response action to Member. SEAPRO is not, and shall not under any circumstances be referred to by Member as Member's primary response action contractor, unless Member is a member of SEAPRO in good standing. SEAPRO shall be entitled to provide information to any governmental agency regarding Member's relationship to SEAPRO.

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14.2. SEAPRO is, and will remain certified as, an “oil spill primary response action contractor” under Alaska law, and an “oil spill removal organization” under the Oil Pollution Act of 1990.

14.3. Assignment. No rights under this Response Action Contract shall be assigned or transferred without written consent of SEAPRO and Member.

14.4. No Third Party Beneficiary. No governmental agency or private party, including any subcontractor, is intended to be a third party beneficiary of any rights or obligations under this agreement.

14.5. Choice of Law; Venue. This agreement shall be construed in accordance with the General Maritime Law of the United States, to the extent applicable, otherwise under the laws of the State of Alaska. The parties agree that all matters involving interpretation or enforcement of this agreement will be referred to the United States District Court for the District of Alaska, in Juneau, Alaska, or, if and only if the United States District Court does not have jurisdiction over any such matter, to any other court of competent jurisdiction in Ketchikan, Alaska.

IN WITNESS WHEREOF, the parties have signed this agreement, effective the date first written above.

SEAPRO
Southeast Alaska Petroleum Resource
Organization, Incorporated

Member Company
«CompanyName»

By 

By _____

Its General Manager

Its

**SCHEDULE "A"
EQUIPMENT REQUESTED**

Member Name: «CompanyName»

Address: «cAddress»

«cCity», «State» «ZipCode»

Date: _____

Tel. No: «cPhone»

Fax. No: _____

THE CONTRACTING PARTY ACCEPTS THE RESOURCES DESCRIBED IN SCHEDULE "A" SUBJECT TO THE TERMS AND CONDITIONS DESCRIBED IN THE RESPONSE ACTION CONTRACT. RESOURCES WILL NOT BE RELEASED WITHOUT A SIGNATURE BELOW.

ITEM NUMBER	QUANTITY	EQUIPMENT DESCRIPTION	TIME & DATE OF RELEASE	TIME & DATE OF RETURN	TOTAL

**Southeast Alaska Petroleum Resource Organization
SEAPRO**

Signature

Title

Company Authorized Signature

Print Full Name

**SCHEDULE "A"
PERSONNEL REQUESTED**

Member Name: «CompanyName»
 Address: «cAddress»
 «cCity», «State» «cCountry» «ZipCode»

Date: _____
 Tel. No: «cPhone»
 Fax. No: _____

THE CONTRACTING PARTY ACCEPTS THE TERMS AND CONDITIONS DESCRIBED IN THE RESPONSE ACTION CONTRACT. PERSONNEL WILL NOT BE ACTIVATED WITHOUT A SIGNATURE BELOW.

ZONE	LOCATION	PERSONNEL REQUESTED	TIME DATE	TOTAL
1	Metlakatla/Ketchikan			
2	Craig/Klawock			
3	Petersburg/Wrangell			
4	Kake			
5	Sitka			
6	Pelican/Hoonah			
7	Juneau			
8	Haines/Skagway			
9	Yakutat			
	Other			

**Southeast Alaska Petroleum Resource Organization
SEAPRO**

Signature

Title

Company Authorized Signature

Print Full Name