

Spill Response Cooperative Agreement

This Spill Response Cooperation Agreement (“Agreement”) is entered into by and between St. Paul Fuel, LLC (“SPF”) and the City of Saint Paul, municipality and political subdivision of the State of Alaska (“City”).

1. **Parties.** Both SPF and the City operate on Saint Paul Island, Alaska and are regulated by and required to submit an oil spill response plan (“Plan”) to the Alaska Department of Environmental Conservation (“ADEC”), the United States Coast Guard (“USCG”) and the United States Environmental Protection Agency (“USEPA”).

Given the remote location of Saint Paul Island, and the absence of local oil spill response services, both parties wish to share, to the maximum extent practicable, their trained oil spill response personnel, and spill response equipment. For purposes of this Agreement, the party which discharges or has the threat of a discharge or is legally responsible for responding to a third-party discharge or threatened discharge, is referred to as the “Discharging Party” and the other party shall be the “Responding Party”. For purposes of this Agreement, “spill” or “Discharge” shall mean only those discharges or threatened discharges which require personnel or equipment beyond the capabilities of the Discharging Party. Neither the City nor SPF shall be obligated to respond to discharges which the Discharging Party is capable of responding to without assistance, as determined by the Discharging Party in their reasonable discretion.

2. **Spill Response Resources.** The response resources referenced in this Agreement (“Spill Response Resources”) are the equipment and number of personnel identified in **Attachment A** of this Agreement.
3. **Request for Spill Response Resources.** In the event of spill or the imminent threat of a Discharge requiring a response, the Responding Party shall upon request use its best efforts to provide Spill Response Resources to the Discharging Party. A request for Spill Response Resources shall be made by any reasonable means as circumstances allow to the authorized representatives listed below but confirmed in writing within three (3) days thereafter. The Spill Response Resources to be provided are limited to those described in **Attachment A** of this Agreement, as may be updated, and amended from time to time, and available trained personnel.

No party shall be required to provide Spill Response Resources which are unavailable due to their condition or because they are committed to or reserved for responding to a spill of their own. In performing this Agreement, the Responding Party shall be an oil spill response action contractor within the meaning of AS 46.03.825 and AS 46.03.826(11) and not a primary response action contractor within the meaning of AS 46.04.035. Neither party shall be required to obtain additional Spill Response Resources to meet the terms of this Agreement.

4. **Storage of Recovered Product.** If the Responding Party provides temporary storage of spilled product (fuel or oily water) in available contingency storage containers or empty tank ullage, the storage space made available under this Agreement will not exceed a period of 90 days and shall be subject to compensation as outlined in Part 6 of this Agreement. The Discharging Party shall be responsible for timely transportation and disposal of spilled product off-island and shall diligently arrange for cleaning of the tank the spilled product was stored in.
5. **Duties of Each Party.** Each party agrees, to the maximum extent practicable, to:
 - Make best efforts to coordinate any oil spill response training and drill programs, including ADEC conducted exercises, to minimize the cost to each party.

- Provide each other with a current copy of the response equipment listed in their approved plan, and any subsequent changes and/or additions on an annual basis or when changes occur, whichever is more frequent.
- Notify the other party in writing if they are unable to meet the terms of the Agreement within three days of determining they are unable to meet the terms of the Agreement.
- Ensure that all response personnel subject to this Agreement have current safety and oil spill response training in accordance with industry standards under applicable state and federal law. The parties agree to exchange certificates to verify such training upon reasonable request.
- Have in force at all times appropriate liability and accident insurance for all personnel identified in the Plans which would cover those employee's actions during a response to the other party's discharge including any injuries, death, or health problems arising as a result of a response.
- Have in force at all times appropriate liability insurance for all Spill Response Resources, vehicles and/or other equipment which may be used during a response to the other party's discharge, and.
- Ensure that personnel are not dispatched to respond to a spill if they are impaired in any way which would make it unsafe or illegal for them to conduct response operations.
- In the event that personnel are required by a Discharging Party, the Discharging Party will make all best efforts to obtain replacement responders as soon as practicable.

6. Compensation. There will be no compensation to either party for providing response resources, except as follows.

- All Spill Response Resources, and other equipment, including vehicles, will be returned in the condition in which received at the time of delivery to the Discharging Party, with the Discharging Party responsible for any expenses associated with the foregoing, including but not limited to cleaning, refurbishing, repackaging, replacing, and shipment costs.
- In the event either party needs to utilize any fuel or oily water storage, cost of the fuel storage shall be at the rate of fifteen cents (\$0.15) per gallon and at the rate of thirty cents (\$0.30) per gallon if not removed before the 90 days described above.
- Any dispute over the condition of the equipment returned by the Discharging Party will be submitted to a qualified equipment distributor selected by both parties, who will perform an evaluation in an attempt to appraise the value of the equipment as returned. The Responding Party bears the burden for demonstrating the condition of the Spill Response Resources prior to the Discharge.
- The Discharging Party will reimburse the Responding party for any reasonable costs incurred in providing response during a response, including, but not limited to, employee labor costs (including overtime), equipment rental fees, replacement or repair cost of any damaged equipment, utility and phone costs as stated in the published rates of each party, as may be amended by each party from time to time.

7. Default. In the event a party is in breach of this Agreement, the non-breaching party shall provide

written notice of the breach and a reasonable time to cure, which given the emergency nature of Discharge responses, may be less than 24 hours. The breaching party shall promptly cure or shall be in default of this Agreement. Each party expressly waives the right to claim punitive, special or consequential damages against the other party arising from or relating to this Agreement.

- 8. *Arbitration, Governing Law, Venue, Prevailing Party.*** Any dispute arising under this Agreement shall be submitted to arbitration in accordance with Alaska law to an arbitrator mutually acceptable to the parties or selected by a court from the submissions of the parties. This Agreement shall be governed by the laws of the State of Alaska with arbitration conducted under the Commercial Rules of the American Arbitration. Venue shall be at Anchorage, Third Judicial District, State of Alaska. However, the parties shall have the right to file an action in the state court of applicable jurisdiction in Anchorage, Alaska for the following matters: (i) actions for injunctive relief by a party for a breach of this agreement; or (ii) actions to enforce an arbitration award. Even though such causes of action may include matters otherwise subject to arbitration, the parties each waive the right to interpose an affirmative defense that the issue is reserved for arbitration for these listed causes of action. The prevailing party in any arbitration or litigation (if permitted above), concerning this Agreement shall be entitled to costs and reasonable attorney's fees in addition to any damages or relief granted.
- 9. *Term.*** The term of this Agreement shall be over five years commencing from the signature date. Any party may terminate this agreement at any time by giving written notice to the other party at least thirty (30) days prior to the desired termination date.
- 10. *Entire Agreement.*** The terms of this Agreement, inclusive of all attachments which are incorporated and made part by this reference, sets forth the full intent of the parties regarding the matters covered by this Agreement. Neither party is relying on or may rely on any written or oral collateral, prior, or contemporaneous agreement, assurances, representations, or warranties not set forth in this agreement. No modifications of this Agreement shall be implied in law or equity, nor may any part hereof be amended, supplemented, waived, or modified, termination excepted, without an instrument in writing signed by other parties.
- 11. *General.*** The Parties acknowledge they have fairly negotiated this Agreement and had the opportunity to consult with their own counsel and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement and any amendments. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect and the document modified as reasonably necessary to effectuate the intent of the Parties to the extent legally permissible. Section headings are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection of this Agreement. Nothing contained herein shall be construed or interpreted as creating a partnership, joint venture or similar relationship between the parties. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement. Either party's failure to declare a default immediately upon its occurrence, or delay in taking action for a default shall not constitute a waiver of the default, nor shall it constitute an estoppel. Either party's failure to enforce its rights for a default shall not constitute a waiver of its rights regarding any subsequent default.

City of Saint Paul



Name: Phillip A. Zavadil
Title: City Manager
Date: 10/11/2023

Saint Paul Fuel, LLC



Name: Paul Philemonoff
Title: General Manager
Date: 10/11/2023

Attachments:

A – Spill Response Resource Lists