



# REQUEST FOR PROPOSALS

**CLEAN RIVERS COOPERATIVE, INC. and MARITIME FIRE & SAFETY ASSOCIATION**

Invite Proposals for each of these Components individually, or a combination of these Components:

|  |  |
|--|--|
| <b>Component 1: Oil Spill Response Services</b>          | <b>Zone 1:</b> The area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean and Columbia River Mile 0 to Columbia River Mile 75. |
| <b>Component 2: Oil Spill Response Services</b>          | <b>Zone 2:</b> Columbia River Mile 75 to Columbia River Mile 125 and the Willamette River from its confluence with the Columbia River up to Willamette Falls.                      |
| <b>Component 3: Wildlife Response and Rehabilitation</b> | Zones 1 and 2, as described above.   |
| <b>Component 4: Vessels of Opportunity Program</b>       | The Lower Columbia River, VOO Region 4.  |

**PROPOSALS DUE: Friday, November 27, 2024, 1700 PST**

**LATE PROPOSALS MAY NOT BE ACCEPTED**

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### **CLEAN RIVERS COOPERATIVE MISSION**

Clean Rivers Cooperative, Inc. is a Pacific Northwest member-based, not-for-profit organization dedicated to maritime petroleum spill prevention and response. Clean Rivers is committed to:

- Protect the water resources and the communities of the Pacific Northwest.
- Establish and maintain industry standards for spill prevention and response.
- Provide training and education programs with the purpose to prevent oil or other chemical spills.
- Support timely and effective response services of maritime spills.
- Coordinate spill response resources for our members.

### **MARITIME FIRE & SAFETY ASSOCIATION MISSION**

The leading provider and advocate of safe, environmentally responsible, and cost-effective response services to commercial vessels in the Columbia Willamette River Marine Transportation System.

## 0 DEFINITIONS

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“Annual Fee” means the amount paid annually by Customer to a Contractor for standard services under an agreement.

“Area of Interest” means the Snake River from the Idaho border to its confluence with the Columbia River; the Columbia River from its confluence with the Snake River to the mouth at River Mile 0; the area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean; and the Willamette River from its confluence with the Columbia River up to Willamette Falls. Also see “Zone”.

“Area of Coverage” means the geographic area covered by the MFSA Umbrella Oil Spill Response Contingency Plan, which consists of the Columbia River from its mouth (at River Mile 0) up to the Glenn Jackson Bridge (I-205) at River Mile 113, and the Willamette River from the confluence with the Columbia up to Willamette Falls. The Area of Coverage also includes the area from the mouth of the river (at River Mile 0) extending three (3) miles into the Pacific Ocean.

“Boat Crew” means one (1) qualified Operator and one (1) qualified Deck Hand.

“Bidder” means an experienced marine response company that has submitted a proposal to serve as primary response contractor to Customer in the conduct of oil spill responses from member facilities and enrolled vessels.

“Contractor” means a successful Bidder.

“Covered Vessel” means a tank barge or vessel required by law to have an oil spill contingency plan and which is enrolled in the MFSA Plan.

“Clean Rivers” means Clean Rivers Cooperative, Inc., an Oregon cooperative corporation whose membership is comprised of companies that own and/or operate facilities in the Area of Interest and store, transfer, handle or distribute petroleum products.

“Customer” means collectively, Clean Rivers Cooperative, Inc. and Maritime Fire & Safety Association.

“Customer Response Equipment”: means all equipment now or hereafter acquired by Clean Rivers and MFSA for oil spill response, including without limitation vehicles, vessels, boom, skimmers, skimming heads, pumps, wildlife care centers, and storage equipment. Customer Response Equipment is identified in Exhibit C to this RFP.

“Geographic Response Plans” means the area-specific response plans that are part of the Northwest Area Contingency Plan, commonly referred to as GRP’s; also known as “Geographic Response Strategies”.

“ICS” means the Incident Command System, a framework for managing emergency and non-emergency events, as stated by the National Incident Management System.

“Member” means a member company of Clean Rivers that owns and/or operates facilities in the Area of Interest and stores, transfers, handles or distributes petroleum products.

“MFSA” means Maritime Fire & Safety Association, an Oregon non-profit corporation that provides contingency planning services for the benefit of Covered Vessels in the Area of Coverage.

“MFSA Plan” means the MFSA Oil Spill Contingency Plan for the Columbia, and Willamette Rivers, a copy of which is located on the MFSA website at <https://mfsa.com/vessel-response-plan/> .

“Oil Spill Response” means response to spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum products by a Member or Covered Vessel, including the threat of an oil spill requiring a response.

“OSHA” means the Occupational Health and Safety Act of 1970 and all regulations and standards promulgated thereunder, and any applicable state versions of the Act and their related regulations and standards.

“Planned Services” means Contractor activity that does not take place as part of a response to an oil spill, such as trainings, drills, equipment movement, repair, inspection, and maintenance.

“Primary Response Contractor (PRC)” means a company or cooperative with equipment and trained personnel to respond to oil spills, and that are approved by the Washington State Department of Ecology to be cited in facility and vessel contingency plans.

“Required Contractor Equipment” means all equipment designated in Exhibit B to this RFP, owned, or leased by Contractor to augment the Customer supplied equipment.

“USCG” means the United States Coast Guard.

“Vessels of Opportunity (VOO) Program” means an organized training and communication platform for local commercial and recreational vessels that are pre-identified and equipped to assist in responding to oil spills, per WAC 173-182-317.

“Wildlife Response and Rehabilitation” means a plan to respond and care for wildlife injured or endangered by oil spills, per WAC 173-182-540.

“Zone” means one or both of the Zones identified by Customer under the combined “Area of Interest” as:

- Zone 1 = The area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean and Columbia River Mile 0 to Columbia River Mile 75.
- Zone 2 = Columbia River Mile 75 to Columbia River Mile 125 and the Willamette River Mouth to Willamette Falls

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# 1 OVERVIEW

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**THIS REQUEST FOR PROPOSAL (RFP) DOCUMENT AND ANY FUTURE ADDENDA MAY BE OBTAINED FROM THE CLEAN RIVERS COOPERATIVE WEBSITE AT: [HTTPS://CLEANRIVERSCOOPERATIVE.COM/BUSINESS-OPPORTUNITIES](https://CLEANRIVERSCOOPERATIVE.COM/BUSINESS-OPPORTUNITIES) .**

## 1.1 OVERVIEW OF THE REQUEST FOR PROPOSALS

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**1.1.1. OIL SPILL RESPONSE (Primary Response Contractor):** Customer provides an oil spill first-response system for Members and Covered Vessels on the Columbia and the Willamette Rivers in the Area of Interest. The Area of Interest, for this RFP and for contract purposes, will be divided into two (2) Zones as follows:

**Zone 1 =** The area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean and Columbia River Mile 0 to Columbia River Mile 75.

**Zone 2 =** Columbia River Mile 75 to Columbia River Mile 125 and the Willamette River Mouth to Willamette Falls.

Customer seeks to contract with marine oil spill response companies to serve as the primary response contractor for the Zones. Bidder may submit a proposal to provide Oil Spill Response for Zone 1, Zone 2, or a combination of Zones 1 and 2.

The selected Bidder will be expected to enter into an OSRO Service Agreement in the form of Exhibit D to this RFP.

**1.1.2. WILDLIFE RESPONSE AND REHABILITATION:** Customer maintains a plan to respond to and care for wildlife injured or endangered by oil spills for Members and Covered Vessels on the Columbia River and Willamette River. A Bidder may submit a proposal to provide wildlife response and rehabilitation, as defined in Washington Administrative code: WAC 173-182-540. This proposal may be submitted independent of, or in combination with an Oil Spill Response proposal and/or a Vessels of Opportunity (VOO) Program proposal.

The selected Bidder will be expected to enter into a Wildlife Resources Service Agreement in the form of Exhibit E to this RFP.

**1.1.3. VESSELS OF OPPORTUNITY (VOO) PROGRAM:** MFSA, as a contingency plan holder, must maintain a Vessels of Opportunity (VOO) program, to meet the planning standards for the Lower Columbia River, VOO Region 4. Bidder may submit a proposal to manage the VOO program, as defined in Washington Administrative code: WAC 173-182-317. This proposal may be submitted independent of, or in combination with an Oil Spill Response proposal, and/or a Wildlife Response and Rehabilitation Proposal.

The selected Bidder will be expected to enter into a VOO Program Service Agreement in the form of Exhibit F to this RFP.

## 1.2. RFP PROCESS SUMMARY:

Submission Deadline:                      Proposals are due **Wednesday, November 27, 2024, 1700 PST**; both a hard original and an electronic copy must be submitted as described in Section 2.4 of this RFP.

Evaluation Process: Customer will evaluate proposals based on the process described in Section 6 of this RFP.

Minimum Qualifications: Bidders must meet the minimum requirements as described in this RFP. Customer will determine whether Bidders meets the minimum requirements.

Interviews: Selected bidders may be invited to participate in an interview as part of the evaluation process.

Selection Date: Customer anticipates announcement of the selection of contractor(s) **on December 20, 2024**.

Contract Finalization: Selected Bidders will be expected to enter into contract(s) with Customer based on the forms of contracts provided as exhibits to this RFP, with such variable terms as were included in their respective proposals.

Contract Commencement: Contracts with selected Bidders will commence on **January 1, 2025**.

**Proposals received after the submission deadline may not be accepted.**

**1.3. RFP SCHEDULE OF EVENTS:**

The following schedule is tentative and subject to change at the sole discretion of Customer. Any changes will be posted to the Clean Rivers Cooperative website at <https://cleanriverscooperative.com/business-opportunities> and sent by email to the point-of-contact for Bidders that have sent a Notice of Intent to Submit.

|                                    |  |
|------------------------------------|--|
| <b>October 14, 2024</b>            | Issuance of RFP  |
| <b>October 21, 2024, 1700 PST</b>  | Notice of Intent to Submit due via email to:<br><a href="mailto:crc-mfsa@pdxmex.com">crc-mfsa@pdxmex.com</a>   |
| <b>October 25, 2024, 1700 PST</b>  | Pre-submittal questions / change requests due via email to:<br><a href="mailto:crc-mfsa@pdxmex.com">crc-mfsa@pdxmex.com</a>  |
| <b>October 30, 2024</b>            | Response to pre-submittal questions to be posted on the Clean Rivers Cooperative website at<br><a href="https://cleanriverscooperative.com/business-opportunities">https://cleanriverscooperative.com/business-opportunities</a>                 |
| <b>November 27, 2024, 1700 PST</b> | Proposals due  |
| <b>Early December</b>              | Bidder interviews and discussion of Service Agreements   |
| <b>December 20, 2024</b>           | Target date for execution of Service Agreements and announcement on the Clean Rivers Cooperative website at<br><a href="https://cleanriverscooperative.com/business-opportunities">https://cleanriverscooperative.com/business-opportunities</a> |
| <b>January 1, 2025</b>             | Anticipated commencement of contract activity  |

**1.4. PERIOD OF IRREVOCABILITY**

Proposals may be amended or withdrawn prior to the submission deadline, as described in Section 6.9. After the deadline, proposals will be considered as irrevocable offers through the remainder of the selection and contracting process.

## 2 REQUIREMENTS – OIL SPILL RESPONSE

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### 2.1. PURPOSE & SCOPE OF SERVICES

#### 2.1.1. PURPOSE

The Customer's oil spill first-response system provides immediate emergency response to Members and Covered Vessels that discharge oil into the waters of the Columbia and Willamette Rivers, meeting federal and state regulatory planning standards for the Area of Interest, including the Washington Administrative Code (WAC), the Oregon Administrative Rule (OAR), and the United States Environmental Protection Agency (EPA) regulations for Spill Prevention, Control and Counter Measures (SPCC).

In the event of an oil spill or threatened oil spill, this system must be able to provide a complete response for the first twenty-four (24) hours after the initial report, which may include response personnel, vessels, boom, skimmers, wildlife care centers, and other resources.

**This RFP solicits proposals from experienced marine oil spill response companies to serve as primary response contractor(s) to Customer in the conduct of oil spill responses for Members and Covered Vessels pursuant to an OSRO Service Agreement, the form of which is included in Exhibit D to this RFP.** This RFP includes only a summary of the requirements for the Contractor and is qualified by reference to the form of OSRO Service Agreement.

Separate contracts may be awarded for Zone 1 and Zone 2 or a single contract may be awarded covering both Zones. Contractor(s) will also be listed in the Customer and Members' contingency plans covering their facilities and vessels in the contracted Zone(s) and throughout the Area of Interest.

Bidder(s) must show their ability to meet all personnel, Required Contractor Equipment, training requirements, and additional duties and requirements as outlined in this RFP and in the form of OSRO Service Agreement included in Exhibit D to this RFP.

The selected Bidder(s) will be placed under contract to Customer for a period of three (3) years, subject to automatic one-year extensions unless either party gives notice of termination at least one calendar year prior to the end of the then effective term. Contracts will include an Annual Fee for certain specified services, paid in monthly installments, as well as contracted rates for personnel and equipment for certain Planned Services and oil spill response activities.

#### 2.1.2. OIL SPILL RESPONSE TIME

**Contracted Area.** Contractor(s) response must begin immediately upon notification and must be such that the first on site work at any location within the Zone(s) commences no later than two (2) hours after notification.

**Support of Non-Contracted Areas.** Customer may request Contractor(s) to provide response services and support in out-of-contract areas. Examples include but are not limited to the Columbia/Snake River system above River Mile 125 to the Idaho border, and spills in another contracted Zone if additional personnel, equipment and/or other services are required. If



Contractor accepts Customer's request, response must begin immediately upon notification, but is not included in two (2) hour response criteria.

Land-based Responses. Contractors may also be responsible for land-based responses to Members in their operating areas if the spill could impact waterways. Land-based responses not involving spills or threatened spills in the Zones are not included in two (2) hour response criteria.

### **2.1.3. PRIORITY AND PERFORMANCE**

Contractor(s) must assign the highest priority to the Customer operations, and must, upon notification, without hesitation perform the necessary services in a manner consistent with its contract.

### **2.1.4. MFSA UMBRELLA OIL SPILL CONTINGENCY PLAN**

Bidders to this RFP must certify that they are familiar and prepared to comply with the current version of the MFSA Plan for vessels transiting the lower Columbia and Willamette Rivers. The plan is included on the MFSA website <https://mfsa.com/vessel-response-plan/>

### **2.1.5. EQUIPMENT AND PERSONNEL**

Bidder(s) must show access to the equipment (owned, leased, contracted or otherwise available) and to personnel (employed, contracted or otherwise available) as required by Customer and available to respond promptly to an oil spill upon notification by Customer. Adequate equipment includes, at a minimum the Required Contractor Equipment listed in Exhibit B to this RFP, plus adequate skilled labor to contain and clean up a spill, and to operate Contractor and Customer equipment.

### **2.1.6 TRAINING**

The successful Bidder(s) will be required to hold and/or participate in readiness drills and training exercises as defined (in Section 2.4) and described in the form of OSRO Service Agreement in Exhibit D to this RFP.

## **2.2. BIDDER'S QUALIFICATIONS & EXPERIENCE REQUIREMENTS**

Only those Bidders who meet the minimum criteria and can provide the following are eligible to submit a proposal:

### **2.2.1 OVERVIEW OF RESPONSIBILITY FOR ZONES 1 AND 2**

Two (2) Hour Response. Contractor response must begin immediately upon notification and must be such that the first on-site work at any location within the Zone commences no later than two hours after notification. The (2) Hour Response personnel and equipment will be comprised of one (1) Contractor Response Manager to coordinate mobilization, and one (1) Boat Crew to operate one (1) Customer response vessel with 1000' of boom. The Customer's moored response vessel that is staged closest to the spill site will be activated first and will be designated to meet the two-hour requirement. Other vessel locations must be manned as needed with mobilization within one hour of notification.

Priority and Performance. The Contractor must assign the highest priority to Customer operations, and must, upon notification, without hesitation perform the necessary services in a manner consistent with the obligations under the OSRO Service Agreement.

**BIDDER(S) SUBMITTING PROPOSALS FOR BOTH ZONE 1 AND ZONE 2 MUST SUPPLY SEPARATE QUALIFICATIONS AND SUBMITTALS, AS SPECIFIED BELOW, FOR EACH ZONE.**

**2.2.2. PERSONNEL**

Bidder must provide a matrix identifying 24 individuals (per Zone) by job skill, training, and certification (the "Personnel List"), responsive to the requirements described below. Failure of Bidder to submit personnel qualifications that meet all oil spill response experience criteria described below will not invalidate the response to this RFP but will be considered in the overall evaluation of the Bidder's proposal. Such Bidder, if selected, will be required to identify individuals meeting these requirements in advance of contract execution.

**2.2.3. TWO (2) HOUR RESPONSE**

The Personnel List must include qualifications for two (2) Response Managers and a total of four (4) Boat Crews within the Zone.

Response Manager and one (1) Boat Crew must arrive at a designated spill site within two (2) hours of notification, utilizing the closest Customer moored response vessel. The remaining Boat Crews, Response Manager and Customer response vessels may also be required to be underway and transiting to a designated spill within one (1) hour of request based on the size of the spill and Customer needs.

**2.2.4. RESPONSE MANAGERS**

The Response Managers must:

- have at least five (5) years' experience working in oil spill responses on water with at least 10 documented responses to oil spills on water;
- be trained to operate within the ICS, with at least five (5) documented responses that involve the establishment of the ICS;
- have at least two (2) years' experience implementing Geographic Response Plans in Oregon and Washington either through drills, training, or actual spill events;
- must be experienced in all stages of project management and able to manage an incident from start to finish (which includes, but is not limited to emergency response, remediation, decontamination of equipment, waste management, documentation, and reports);
- must be knowledgeable of all phases of the MFSA Plan; and
- must be knowledgeable of the operations of all Customer Response Equipment listed in Exhibit C to this RFP.

All such personnel will be required to be completely trained in the operation of Customer Response Equipment as described in 2.4.1.

### **2.2.5. BOAT CREWS**

Four (4) Boat Crews (eight (8) personnel for each Zone) must each consist of one (1) qualified Operator and one (1) qualified Deckhand. The Boat Crew identified for each Zone must be capable of meeting the two-hour response requirement, accessing the following Customer vessels in the respective Zones that are closest to the spill location:

- Zone 1 - four (4) response vessel mooring locations: Longview, Rainier, Cathlamet, and Astoria.
- Zone 2 - three (3) response vessel mooring locations in Portland, one (1) trailered vessel in Portland; and one (1) vessel in St. Helens.

The mooring location of specific vessels may be changed or rotated by or at the request of Customer.

Boat Crews must be trained and competent to operate the Contractor's equipment and the Customer Response Equipment.

Operator. The Operator must:

- meet OSHA requirements for oil spill response as required by State and Federal agencies;
- possess an Oregon or Washington Boater Education Card or a USCG license; and
- have at least three (3) years vessel operation experience;
- have at least two (2) years of oil spill response experience; and
- have at least six (6) documented responses to oil spills or deployment drills on water.

Deckhand. The qualified Deckhand must:

- meet OSHA requirements for oil spill response as required by State and Federal agencies;
- have at least two years oil spill response experience; and
- have at least six (6) documented responses to oil spills or deployment drills on water.

All such personnel will be required to be completely trained in the operation of Customer Response Equipment as described in 2.4.1.

### **2.2.6 ACCOUNT MANAGER**

Contractor(s) will designate an Account Manager, approved by Customer, to administer the Agreement for Contractor and to serve as liaison to Customer. If both Zones are awarded to one Contractor, only one Account Manager will be required.

Account Manager will participate in Customer activities, such as meetings with members, and State or Federal regulators in the Area of Interest as requested by Customer.

### **2.2.7. SIX (6) HOUR RESPONSE**

Bidder's Personnel List must identify six (6) additional personnel, per Zone, that:

- meet OSHA requirements for oil spill response as required by State and Federal agencies;
- have at least two (2) years oil spill or hazardous materials response experience;
- have at least five (5) documented responses to oil spills or deployment drills on water; and

- are available to arrive at the scene of an incident within six (6) hours of notification.

All such personnel will be required to be completely trained in the operation of Customer Response Equipment as described in 2.4.1.

### **2.2.8. TEN (10) HOUR RESPONSE**

Bidder's Personnel List must identify eight (8) additional personnel, per Zone, that:

- meet OSHA requirements for oil spill response as required by State and Federal agencies; and
- Are available to arrive at the scene of an incident within ten (10) hours of notification.

All such personnel must be completely trained in the operation of Customer Response Equipment as described in 2.4.1.

### **2.2.9. CERTAIN ADDITIONAL REQUIREMENTS**

Contractor will be required to obtain and maintain certifications, approval, or appropriate designations under applicable federal and state laws as a qualified oil spill removal organization and primary response contractor. At a minimum, these shall include: the USCG OSRO rating and Washington Department of Ecology Primary Response Contractor Approval. Contractor must warrant and represent that Contractor will maintain its level of planned performance and capability consistent with such certifications, approvals, or designations.

Contractor personnel must be able to operate within the Incident Command System.

## **2.3. EQUIPMENT**

### **2.3.1. CUSTOMER RESPONSE EQUIPMENT**

The Customer Response Equipment listed in Exhibit C to this RFP will be available for use by Contractor in spill response services and will be expected to be used as requested by Customer.

Any repair or maintenance of Customer Response Equipment by Contractor must be expressly authorized in advance, except for emergency repairs. Customer may request movement, inspection, maintenance, and repair services, reimbursable at the contracted rates for Planned Services.

### **2.3.2. CONTRACTOR EQUIPMENT**

Contractor must provide and maintain the Required Contractor Equipment, listed in Exhibit B to this RFP in a proper condition at all times and operable within one hour after notification from Customer on a 24-hour basis. Contractor must list and regularly update the Required Contractor Equipment in the Worldwide Response Resource List (WRRL).

Contractor may provide additional equipment to augment Customer Response Equipment and the required Contractor Supplied Equipment in the specific Zone. Bidder will supply a list of equipment resident in the Northwest as part of their submission. Customer and its members will utilize the list of equipment provided by Contractor in state and federal contingency plans unless specific equipment in the list is excluded by Contractor.

Contractor will provide Required Contractor Equipment and other equipment at no additional cost (except consumables) for all Customer-initiated activities other than oil spill response,

response to threatened oil spills, or response to escort requirements. Examples of Customer-initiated activities include, without limitation: training, drills, drills by Members, drills under the MFSA contingency plan, repositioning of equipment and movement of equipment for repair.

Contractor may not relocate any Required Contractor Equipment from Customer-approved staging areas without written permission from Customer and the state and federal regulators having jurisdiction. Contractor may, with prior written notification and regulator approval, relocate any of the additional equipment submitted to Customer.

Customer, in its sole discretion, may reject any piece of Contractor equipment from being used to satisfy the requirements for Required Contractor Equipment.

### **2.3.3. TRAINING, CERTIFICATION, AND DOCUMENTS**

#### **2.3.3.1. HAZWOPER TRAINING**

Contractor will be responsible for ensuring all responding personnel will have completed initial 40-hour training and up-to-date 8-hour Annual Refresher Training, in accordance with 29 CFR 1910.120(e). Successful Bidder(s) must submit credentials upon selection.

#### **2.3.3.2. BOAT OPERATOR QUALIFICATIONS**

Contractor will be responsible for all Boater Education Cards or USCG licenses for all responding personnel. Successful Bidder(s) will submit credentials upon selection.

#### **2.3.3.3. SECURITY DOCUMENTS**

Contractor will be responsible for Transportation Worker Identification Credentials (TWIC) for all contractor personnel identified; successful Bidder(s) will submit credentials upon selection.

### **2.4. CUSTOMER RESPONSE EQUIPMENT TRAINING**

#### **2.4.1. INITIAL EQUIPMENT TRAINING**

Contractor must make available 24 individuals, per contracted Zone, for 24 hours of initial training on Customer Response Equipment, at Customer's expense at Planned Services rates. Contractor may receive credit toward this requirement for individuals previously trained on Customer Response Equipment.

#### **2.4.2. EQUIPMENT REFRESHER TRAINING**

Contractor must make available annually all 24 individuals that have received initial training for eight (8) hours of annual refresher training on Customer Response Equipment, at Contractor's expense. Contractor may receive credit toward this requirement for work on Customer Response Equipment used in documented Customer training exercises and spill responses.

#### **2.4.3. CUSTOMER NEW EQUIPMENT**

Personnel training on any new pieces of Customer Response Equipment would be billed at Planned Services rates. Customer will provide trainer(s) for initial training, equipment refresher training, and new equipment training.

Provision for and cost of all other trainers required under any contract resulting from this RFP will be at Contractors' expense.

#### **2.4.4. CUSTOMER DRILLS AND MEMBER TRAINING**

Contractor must provide personnel and equipment to assist Members in training exercises and/or readiness drills of Member personnel, as requested by Customer on behalf of a Member. Contractor will not charge Members for use of Contractor Equipment, excluding consumables, for up to ten events per year, per Zone. Contractor will not charge for the provision of up to three (3) personnel, which may include Account Manager, Response Manager, Operator, Deckhand, Safety Personnel, Field Clerks, Technicians, and other personnel as requested by Customer, for up to ten events per year, per Zone.

#### **2.5. CALL-OUT DRILLS AND FIELD TRAINING**

Customer will test all call-out procedures and log the amount of time it takes to respond, with an Operator and Deckhands responding. These call-out drills will occur, at a minimum, each month in which no other response or deployment drill has taken place. Customer reserves the right to conduct up to two drills per year at each of the four (4) vessel locations, per Zone. Contractor must participate in the call-out drills.

Contractor must participate in field training sessions covering a variety of scenarios, including active deployment of boom and equipment. Field training sessions will be conducted a maximum of 6 times per year, per Zone, with a minimum of 10 responders participating in each 8-hour session. This training is included within the Initial Equipment Training described in 2.4.1 and the Refresher Equipment Training described in 2.4.2. One training session should occur at each of the four (4) vessel locations at least once per year. If the field training is not included within initial training, equipment refresher training or new equipment training, the trainer(s) will be provided by Contractor(s). An annual schedule will be established by Customer and Contractor following Bidder selection. In the event of an emergency, a training may be rescheduled to accommodate either party, with as much advanced notice as possible.

Contractor would receive credit toward the field training requirements if Contractor is involved in a Customer incident requiring the deployment of boom and equipment; provided, the vessel and personnel come from the required vessel location, and the Contractor meets the two (2) hour response requirement.

#### **2.6. REPORTS**

Contractor must maintain records of all initial and refresher training on Customer Response Equipment. Records must be available for review upon Customer request.

Contractor must provide Customer with a written post-spill operating report and contingency plan review within 10 business days after the completion of each spill response involving a Member or Covered Vessel, or use of any Customer Response Equipment.

Contractor must allow, upon reasonable notice, representatives of Customer to examine and audit Contractor's records regarding usage and charges of Contractor(s) equipment and usage of Customer Response Equipment.

#### **2.7. EXCLUSIVE DEALINGS.**

Contractor must agree that during the term of the OSRO Service Agreement, neither the Contractor nor any affiliate or subsidiary of the Contractor will contract for or provide services as a designated primary or secondary oil spill response contractor or organization in or under any oil spill contingency plans maintained or held under applicable state law by a vessel or facility owner/operator for operations in the Area of Interest, except for (i) Customer, (ii) Members, (iii)

Covered Vessels, and (iv) vessels or facilities with or for which Contractor(s) or its affiliates or subsidiaries has existing contracts as of the date of the RFP response and which are identified to Customer in the OSRO Service Agreement, to provide services as a designated primary oil spill response contractor or organization under any oil spill contingency plans (“Existing Contractor Customers”).

Contractor must also agree that for a period of one year after expiration or sooner termination of the OSRO Service Agreement, neither the Contractor nor any affiliate or subsidiary of the Contractor will contract for or provide services as a designated primary or secondary oil spill response contractor or organization in or under any oil spill contingency plans maintained or held under applicable federal or state law by a vessel, including for any Member or Covered Vessel, for operations in the Area of Interest, except for Existing Contractor Customers.

### **3 REQUIREMENTS – WILDLIFE RESPONSE AND REHABILITATION**

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#### **3.1. PURPOSE & SCOPE OF SERVICES**

**This RFP solicits proposals from experienced wildlife response service providers to provide wildlife response and rehabilitation services in spill responses for Members and Covered Vessels pursuant to a Wildlife Response Service Agreement, the form of which is included in Exhibit E to this RFP.** This RFP includes only a summary of the requirements for the Contractor and is qualified by reference to the form of Wildlife Response Service Agreement.

Contractor will plan to respond to and care for wildlife injured or endangered by oil spills, within the Area of Interest (both Zone 1 and Zone 2), to meet the requirements of WAC 173-182-540. Contractor will have access to Customer-owned equipment and resources listed in the form of Wildlife Response Service Agreement, which is included in Exhibit E to this RFP, and shall provide and maintain additional personnel, equipment, and resources to meet the regulatory standard.

Customer will facilitate annual wildlife response and rehabilitation training for Contractor personnel. At least once every three (3) years, Customer will facilitate a comprehensive drill for Contractor personnel to train on and deploy all of the Customer-owned and Contractor-owned resources.

Contractor must submit and maintain a Washington State Department of Ecology Primary Response Contractor (PRC) Application (“Wildlife Resources”).

Customer will be authorized to reference Contractor’s PRC Application and Contractor annual drills of the Wildlife Resources for the purposes of meeting state and/or federal contingency planning requirements for access to wildlife rescue and rehabilitation equipment capabilities.

### **4 REQUIREMENTS – VESSELS OF OPPORTUNITY (VOO) PROGRAM**

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#### **4.1. PURPOSE & SCOPE OF SERVICES**

**This RFP solicits proposals from primary response contractors that maintain vessel of opportunity programs that may be mobilized in oil spill responses for Members and Covered Vessels pursuant to a VOO Program Service Agreement, the form of which is**

included in **Exhibit F** to this RFP. This RFP includes only a summary of the requirements for the Contractor and is qualified by reference to the form of VOO Program Service Agreement.

Contractor must maintain contracts with at least twelve (12) vessels that will, in the event of an oil spill, respond on a best efforts basis to provide on-water recovery in the nearshore environment, protection of sensitive areas, and logistical support. Contractor must provide education and training to meet the requirements for WAC 173-182-317 for Region 4, the Lower Columbia River.

#### **4.2. TRAINING AND DOCUMENTATION**

Contractor will provide training to all VOO crew members, including HAZWOPER certification/annual refresher training, instruction in basic Incident Command System (ICS) principles, and training in on-water response tactics appropriate for the tasks to which the vessel may be assigned during an actual spill response operation.

Contractor will facilitate tabletop drills and annual on-water training for each VOO. Contractor will facilitate deployment drills each year on a three-year cycle (4 vessels per drill).

Contractor will ensure that all contracted vessels are registered on the Washington State Department of Ecology website: [Vessels Of Opportunity – Oil Spills 101 \(wa.gov\)](https://www.ecy.wa.gov/Program/VesselsOfOpportunity).

## **5 ADMINISTRATION**

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### **5.1. CONTRACTOR INSURANCE**

#### **5.1.1. INSURANCE REQUIREMENTS – OIL SPILL RESPONSE**

The successful Bidder(s) must provide Customer with evidence of the insurance required as set forth in the form of OSRO Service Agreement in **Exhibits D** to this RFP.

#### **5.1.2. INSURANCE REQUIREMENTS – WILDLIFE RESPONSE AND REHABILITATION**

The successful Bidder must provide Customer with evidence of the insurance required as set forth in the form of Wildlife Response Service Agreement in **Exhibit E** to this RFP.

#### **5.1.3. INSURANCE REQUIREMENTS – VESSELS OF OPPORTUNITY (VOO) PROGRAM**

The successful Bidder must provide Customer with evidence of the insurance required as set forth in the form of VOO Program Service Agreement in **Exhibit F** to this RFP.

### **5.2. GENERAL INDEMNIFICATION**

All successful Bidder(s) must agree to certain indemnity obligations as set forth in the respective form of Service Agreement.

### **5.3. TERMINATION**

Each Service Agreement has a provision for termination for cause and remedies in the event of for cause termination. See the terms of the respective form of Service Agreement.

### **5.4. DRUG TESTING POLICY**



The successful Bidder(s) must maintain a drug testing policy for their employees that will meet Federal Department of Transportation and Pipeline and Hazardous Materials Safety Administration requirements for Pipeline Workers. Contractor(s) records must be available for review by Customer upon request. Drug testing must occur pre-contract and according to policy for the term of the respective Service Agreement, at Contractor's expense.

## **5.5. FINANCIAL STATEMENT**

Bidders must provide Customer with a current audited annual financial statement.

## **5.6. PRICING**

Bidder's proposal must include proposed pricing for the respective component of this RFP for which a bid is provided, as follows:

### **5.6.1. PRICING – OIL SPILL RESPONSE**

- A. Annual Fee. The annual contract fee to provide all services under the OSRO Service Agreement (per Zone), other than those specifically referenced as separately charged at stated rates.
- B. Planned Services Rates - By Item. An itemized price list for prices to be charged for use of personnel and equipment for Planned Services (i.e. training and drills requested by Customer and Members), including without limitation:
  - a. personnel hourly rates;
  - b. equipment use rates;
  - c. consumables costs; and
  - d. maintenance requests by Customer outside of those covered by Annual Fee.
- C. Oil Spill Response Services Rates – By Item. An itemized price list for prices to be charged for use of personnel and equipment in an oil spill response, including without limitation:
  - a. personnel hourly rates;
  - b. equipment use rates; and
  - c. consumables costs.

### **5.6.2. PRICING – WILDLIFE RESPONSE AND REHABILITATION**

- A. Annual Fee. The annual contract fee to provide all services under the Wildlife Response Service Agreement, other than those specifically referenced as separately charged at stated rates.
- B. Planned Services Rates - By Item. An itemized price list for prices to be charged for use of equipment and consumables for training and drills requested by Customer and Members.
- C. Oil Spill Response Services Rates – By Item. An itemized price list for prices to be charged for use of personnel and equipment in an oil spill response, including without limitation:
  - a. personnel hourly rates;
  - b. equipment use rates; and
  - c. consumables costs.

### **5.6.3. PRICING – VESSELS OF OPPORTUNITY (VOO) PROGRAM**

- A. Annual Fee. The annual contract fee to provide all services under the VOO Program Service Agreement, other than those specifically referenced as separately charged at stated rates.
- B. Oil Spill Response Services Rate. Rates to be charged upon mobilization of VOO.

## **6 PROPOSAL SUBMISSION & BIDDER SELECTION**

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### **6.1. OVERVIEW**

Responses to this RFP should be prepared simply and economically, providing a straightforward, concise description of Bidder's ability to satisfy the requirements of this RFP for each component on which Bidder is bidding. Submission of display charts, or other supplemental materials are the responsibility and within the discretion of the Bidder. Proposals should be organized in the order described in Section 6.2. below. An authorized representative with the authority to bind the Bidder must sign the proposal. All information requested should be submitted. Failure to submit all information requested may result in the selection committee requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Customer will not be liable for any expense incurred in the preparation of proposals.

### **6.2. PROPOSAL FORMAT**

The following is the Proposal format:

1. Cover Sheet: The Cover Sheet is attached to this RFP as Exhibit A. Bidders must complete the Cover Sheet and include it as the first page of their proposal.
2. Personnel List:
  - For Oil Spill Response (Zone 1 and/or Zone 2) - Include chart listing at least 24 personnel (per Zone), which includes the job title, experience, trainings, and certifications (as described in Sections 2.2.2 – 2.2.8 of this RFP)
  - For Wildlife Response and Rehabilitation – Include chart listing personnel that are appropriately trained to staff and manage the wildlife response within an IC structure and that are capable of satisfying the requirements of WAC 173-182-540.
  - For VOO Program – Not applicable.
3. Equipment list:
  - For Oil Spill Response, include Required Contractor Equipment, and additional equipment that is staged in the Pacific Northwest and available for use by Customer under the terms of the Service Agreement.
  - For Wildlife Response and Rehabilitation, include list of equipment available to meet the WAC 173-182-540 planning standards.
  - For VOO Program - include list of at least 12 vessels of opportunity (VOO) with whom Bidder has contract, including the names of vessel owners.
4. Describe two major oil spill projects and scope of services provided, in which identified Response Managers or Account Manager were involved. Provide references (with contact information) for third parties with whom the Response Managers or Account Manager interacted in the spill response.
5. Provide reference (with contact information) for two government and two private sector contracts related to projects in which the identified Response Managers or Account

Manager have been involved and describe scope of services for such projects and the role of the identified reference.

6. USCG OSRO rating and Washington Department of Ecology Primary Response Contractor approval
7. OSHA 300 logs for the most recent three (3) years and current year-to-date.
8. Experience Modification Rating (EMR) verification letter from your insurance carrier.
9. Sample of One Day "Tailgate" Site Safety Plan
10. Sample of Multiple Day/Extended Project Site Safety Plan
11. Other Certifications
12. Annual Fee
13. Planned Services Rates
14. Oil Spill Response Rate
15. Company Financial Statement
16. Contractor's form of Work Order
17. Sample Invoice
18. Confirm acceptance of the form of Service Agreement (or provide any comments).

Note: Bidder may submit standard Statements of Qualifications to support or supplement submittals.

### **6.3. PROPOSAL SUBMISSION**

Bidders should submit one (1) hard original (marked as such) and one digital copy of their proposal response to this RFP. If a Bidder is bidding on multiple components of the RFP, those bids should be separately compiled. The original proposal shall be bound or contained in a single volume where practical. Double-sided printing of the hard copy is encouraged. The complete proposal shall be placed in a sealed envelope or box having the name and address of the Bidder and the statement "Proposal in response to RFP". The sealed envelope or box shall then be placed in another outer sealed envelope or box which should be addressed to:

Clean Rivers Cooperative, Inc.  
c/o The Merchants Exchange  
Attention: Vanessa Green  
200 SW Market Street, Suite 190  
Portland, OR 97201

The outer envelope or box shall also bear the statement "Proposal Document Enclosed". Customer is not responsible for the timeliness of any parcel or mail delivery service. Proposals may be hand delivered to the address provided above or sent via Fed Ex or UPS. Do not send proposals via United States Postal Service.

The digital copy of the proposal response to this RFP shall be provided in the form of one (1) pdf document and shall be emailed to [crc-mfsa@pdxmex.com](mailto:crc-mfsa@pdxmex.com) . The digital copy may be sent as an attachment or provided through a link to a SharePoint drive.

All proposals must be received prior to the time specified herein. Customer, at its option, may decline to consider late submissions.

#### **6.4. SELECTION OF BIDDERS**

Customer will evaluate the proposals and assess whether or not any one or multiple proposals meets their goals. Bidders may be invited to participate in an interview as part of the evaluation process. Customer may then negotiate terms and enter into contracts with selected Bidders. Customer reserves the right to reject all proposals if they determine that none of the proposals are in their best interest. Customer will provide public notice announcing their decision to award by posting the Notice of Bidder Selection on the Clean Rivers Cooperative website at <https://cleanriverscooperative.com/business-opportunities> and by mailing the notice to all Bidders that submitted a proposal. The successful Bidder(s) may not commence work until the parties have entered into a fully executed agreement.

#### **6.5. PROPOSAL EVALUATION CRITERIA AND SELECTION PROCESS**

Bidder selection will be based upon review of the proposals with appropriate consideration given to operational, technical, cost, and management requirements. Customer may interview Bidder(s) as a part of the selection process. Submitting a proposal does not guarantee an interview. Bidders should be prepared to respond to questions related specifically to their proposals and other pertinent matters with respect to the RFP. Customer reserves the right to perform any due diligence necessary to ensure that the Bidder is capable of meeting obligations as specified in this RFP, and that is in the best interest of Customer.

Customer reserves the right to negotiate with Bidders. In the event negotiations of specific terms and conditions prove unsuccessful with the selected Bidder, the selection committee may choose another Bidder with which to begin negotiations.

In the event that no bidders align with the Customer needs for one or more of the components of this RFP, Customer reserves the right to not select any proposal for one or more components of this RFP.

#### **6.6. INFLUENCING THE PROCUREMENT PROCESS AND COLLUSION**

By submitting a proposal in response to this RFP, the Bidder represents that in the preparation and submission of this proposal, Bidder did not, either directly or indirectly, enter into any arrangement or agreement with any person or entity, participate in any collusion, or otherwise take any action in the restraint of free competitive bidding. In order to avoid an appearance of impropriety, Bidder and their agents are instructed not to contact any Clean Rivers/MFSA staff or Board member for purposes related to this RFP, except as provided in this RFP. Bidders will be disqualified for contacting Customer staff, Board members, or agents if Customer deems contact is for the purposes of influencing Customer's decision, or externally manipulating or influencing the procurement process in any way, other than through the instructions contained herein, from the date of the release of this RFP to the date of execution of the contract resulting from this solicitation. Customer, in its sole discretion may disqualify Bidders in violation of this section.

#### **6.7. CLARIFICATION**

All questions pertaining to this RFP must be directed to Vanessa Green, Project Manager for Oil Spill Response Services, at [crc-mfsa@pdxmex.com](mailto:crc-mfsa@pdxmex.com). Pre-submittal questions are due on the date and time listed in the RFP Schedule of Events described in Section 1.3. Customer will respond to all questions in a single document to be distributed to all prospective Bidders that have provided the Intent to Submit notification. The Intent to Submit can be emailed to [crc-mfsa@pdxmex.com](mailto:crc-mfsa@pdxmex.com). The formality of the notification is at the Bidder's discretion. Additionally,

Customer’s consolidated response to all questions may be obtained from the Clean Rivers website at: <https://cleanriverscooperative.com/business-opportunities> .

## 6.8. CHANGES TO RFP

Customer reserves the right to make changes to the RFP. Changes will be made by written numbered addendum, which will be issued to all prospective Bidders that have provided the Intent to Submit notification.

Prospective Bidders may request or suggest any change to the RFP by submitting a written request to the Project Manager. The request shall specify the provision of the RFP in question and contain an explanation for the requested change. The request must be received by the date and time listed in the RFP Schedule of Events. Customer will evaluate all requests submitted but reserves the right to determine whether to accept the requested change.

## 6.9. AMEND OR WITHDRAW

A Bidder may amend or withdraw a Proposal any time prior to the time and date established for submission of proposals.

# 7 BACKGROUND INFORMATION

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## 7.1. GENERAL

### 7.1.1. LOCATION – CUSTOMER ADDRESS

Clean Rivers Cooperative and Maritime Fire & Safety Association  
c/o the Merchants Exchange  
200 SW Market Street, Suite 190  
Portland, OR 97201

### 7.1.2. PROJECT POINT OF CONTACT

Vanessa Green  
Clean Rivers Cooperative General Manager  
200 SW Market Street, Suite 190  
Portland, OR 97201  
[crc-mfsa@pdxmex.com](mailto:crc-mfsa@pdxmex.com)

### 7.1.3. PROJECT ADVISORY TEAM – ROLES & RESPONSIBILITIES

| Advisory Team Members    | Role   | Responsibilities  |
|--------------------------|--|---|
| <b>Vanessa Green</b>     | Clean Rivers Cooperative General Manager, Project Manager                        | Project Manager and Administrator; RFP Proposal Reviewer. |
| <b>Curtis Cannizzaro</b> | Maritime Fire & Safety Association Executive Director, Authorizing Official (AO) | Signatory official; RFP Proposal Reviewer.                |
| <b>Carl Obermeier</b>    |  | RFP Proposal Reviewer.                                    |

|  |   |
|--|---|
|  | Maritime Fire & Safety<br>Association General<br>Manager                                  |
| <b>Key Staff; Members of the<br/>Boards of Directors</b> | Clean Rivers Cooperative, RFP Proposal Reviewers<br>Maritime Fire & Safety<br>Association |

**EXHIBIT A      COVER SHEET**

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**Cover Sheet**

**PROPOSAL SUBMISSION IN RESONSE TO RFP:**

**CLEAN RIVERS COOPERATIVE, INC. and MARITIME FIRE & SAFETY ASSOCIATION**

**Please check the applicable Components:**

|                          |  |  |
|--------------------------|--|--|
| <input type="checkbox"/> | <b>Component 1: Oil Spill Response Services</b>          | <b>Zone 1:</b> The area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean and Columbia River Mile 0 to Columbia River Mile 75. |
| <input type="checkbox"/> | <b>Component 2: Oil Spill Response Services</b>          | <b>Zone 2:</b> Columbia River Mile 75 to Columbia River Mile 125 and the Willamette River from its confluence with the Columbia River up to Willamette Falls.                      |
| <input type="checkbox"/> | <b>Component 3: Wildlife Response and Rehabilitation</b> | Zones 1 and 2, as described above.   |
| <input type="checkbox"/> | <b>Component 4: Vessels of Opportunity Program</b>       | The Lower Columbia River, VOO Region 4.  |

The undersigned Bidder submits this proposal in response to Customer’s Request for Proposal (RFP) for the project(s) named above.

The Bidder warrants that the Bidder has carefully reviewed the RFP and that this Proposal represents the Bidder’s full response to the requirements described in the RFP.

The Bidder warrants that they qualify as an experienced marine oil spill response organization, and that they have the ability to fulfill the minimum requirements described in this RFP and listed below:

The Bidder warrants that if this Proposal is accepted, the Bidder will negotiate in good faith with Customer for the terms of the Service Agreement(s) to be consistent with the proposal.

The Bidder hereby acknowledges receipt of Exhibits D, E, and F to this RFP, which are the respective forms of Service Agreements. The Bidder hereby acknowledges the requirement to



carry or indicates the ability to obtain the insurance as described in the RFP and the Service Agreement(s). Indicate the affirmative by initialing here: \_\_\_\_\_

Name of Proposer<sup>1</sup>: \_\_\_\_\_

Business Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DUNS Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_  
 \_\_\_\_\_

Email Address: \_\_\_\_\_

Authorized Signature<sup>2</sup>: \_\_\_\_\_

Printed/Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PROPOSAL MINIMUM REQUIREMENTS:**

This proposal includes:

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | Cover Page   |
| <input type="checkbox"/> | Personnel list <ul style="list-style-type: none"> <li>- For Oil Spill Response (Zone 1 and/or Zone 2) - Include chart listing at least 24 personnel (per Zone), which includes the job title, experience, trainings, and certifications (as described in Sections 2.2.2 – 2.2.8 of this RFP)</li> <li>- For Wildlife Response and Rehabilitation – Include chart listing personnel that are appropriately trained to staff and manage the wildlife response within an IC structure and that are capable of satisfying the requirements of WAC 173-182-540.</li> <li>- For VOO Program – N/A</li> </ul> |
| <input type="checkbox"/> | Equipment list: <ul style="list-style-type: none"> <li>- For Oil Spill Response, list Required Contractor Equipment (see Exhibit B to RFP), and additional equipment that is staged</li> </ul>   |

<sup>1</sup> Official registered company name (Corporate, D.B.A)

<sup>2</sup> Person authorized to contractually bind the organization for this bid for this RFP.

|                          |  |
|--------------------------|--|
|                          | <p>in the Pacific Northwest and available for use by Customer under the terms of the Service Agreement.</p> <ul style="list-style-type: none"> <li>- For Wildlife Response and Rehabilitation, include list of equipment available to meet the WAC 173-182-540 planning standards.</li> <li>- For VOO Program - include list of at least 12 vessels of opportunity (VOO) with whom Bidder has contract.</li> </ul> |
| <input type="checkbox"/> | Description of two major oil spill projects and scope of services provided, in which identified Response Managers or Account Manager were involved. Provide references (with contact information) for third parties with whom the Response Managers or Account Manager interacted in the spill response.   |
| <input type="checkbox"/> | References (with contact information) for two government and two private sector contracts related to projects in which the identified Response Managers or Account Manager have been involved and describe scope of services for such projects and the role of the identified reference.   |
| <input type="checkbox"/> | USCG OSRO rating and Washington Department of Ecology Primary Response Contractor approval   |
| <input type="checkbox"/> | OSHA 300 logs for the most recent three (3) years and current year-to-date   |
| <input type="checkbox"/> | Experience Modification Rating (EMR) verification letter from your insurance carrier.  |
| <input type="checkbox"/> | Sample of One Day "Tailgate" Site Safety Plan  |
| <input type="checkbox"/> | Sample of Multiple Day/Extended Project Site Safety Plan   |
| <input type="checkbox"/> | Other Certifications   |
| <input type="checkbox"/> | Fee Proposals:<br>Annual Fee<br>Planned Services Rates (by item)<br>Oil Spill Response Rates (by item)   |
| <input type="checkbox"/> | Company Financial Statement  |
| <input type="checkbox"/> | Form of Work Order   |
| <input type="checkbox"/> | Sample Invoice   |
| <input type="checkbox"/> | Confirmation of acceptance of form of Service Agreement (or provide comments)  |

## **EXHIBIT B      REQUIRED CONTRACTOR EQUIPMENT FOR COMPONENTS 1 & 2: OIL SPILL RESPONSE**

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### **VESSELS:**

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- Two (2) work boats, capable of towing 1000' 8"x12" contractor boom.
- Four (4) skiffs a minimum of 14 feet in length with a minimum of 15 hp engines.

### **VEHICLES:**

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#### **TRUCKS**

- Four (4) ¾ to 1 ton gear trucks to pull CRC response trailers and boats.
- One (1) Class 8 tractor to pull CRC semi-trailers.
- Two (2) Vac Trucks with 70 bbl or greater capacity.

### **SHORELINE CLEANUP TRAILER:**

Bidder will include an inventory list for evaluation. The list should include PPE, hand tools and other appropriate items. The trailer must include at a minimum the following sorbents:

- Five (5) bales sorbent pads
- Ten (10) bales sorbent sweep
- Ten (10) bales 5" sorbent boom
- Ten (10) bags of snare on a rope

### **MISCELLANEOUS:**

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- Ten (10) hand-held programmable VHF radios.
- Four (4) 5-Gas Air Monitors (O2, LEL, CO, H2S, VOC (PID))

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## EXHIBIT C CUSTOMER RESPONSE EQUIPMENT BY ZONE

NOTE: Customer has endeavored to accurately identify equipment in each Zone, small discrepancies may exist. *For a complete list of equipment by staging area, see attached.*

| Zone 1   |            |            |
|--|------------|------------|
| <b>Vessels</b>   | <b>Qty</b> | <b>UOM</b> |
| Oil Spill Recovery Vessel (OSRV) w/ portside mounted Marco Belt Skimmer-24 bbl (1008 gal.) capacity. | 3          | Each       |
| Shallow Water Recovery Barge (SWRB) w/ Marco Belt Skimmer.   | 3          | Each       |
| Fast Response Vessel (FRV) Workboat  | 5          | Each       |
| 20' Alumaweld Workboat   | 3          | Each       |
| 12' to 18' Skiff w/ outboard   | 5          | Each       |
| <b>Boom</b>  | <b>Qty</b> | <b>UoM</b> |
| 12" American Marine  | 8,600      | Ft         |
| 14" American Marine  | 1,000      | Ft         |
| 20" American Marine  | 24,800     | Ft         |
| Current Buster System  | 2          | Each       |
| Boom Vane  | 1          | Each       |
| Underflow Dam Water Barrier  | 2          | Each       |
| 32' to 53' Boom Trailers   | 8          | Each       |
| <b>Skimmers</b>  | <b>Qty</b> | <b>UoM</b> |
| Douglas 18000 Skimmer /Skimmer System  | 9          | Each       |
| Douglas 4200 Skimmer /Skimmer System   | 5          | Each       |
| Crucial 12" Skimming System  | 1          | Each       |
| 36" Drum Skimming System   | 3          | Each       |
| Elastec TDS 118G Skimmer System  | 3          | Each       |
| API Drum Skimmer   | 1          | Each       |
| RO Mop Skimmer   | 1          | Each       |
| 12" Drum Skimmer   | 2          | Each       |
| API Belt Skimmer   | 1          | Each       |
| Desmi Terminator Skimmer   | 2          | Each       |
| Slickbar "Duckbill Skimmer   | 5          | Each       |
| Slickbar "Manta Ray" Skimmer   | 1          | Each       |
| Coated Disc Skimmer 13/30  | 1          | Each       |
| <b>Storage</b>   | <b>Qty</b> | <b>UoM</b> |
| 2500 gal. Towable Bladder  | 2          | Each       |
| 1000 gal. Portable Fast Tank   | 5          | Each       |
| 1500 gal. Portable Fast Tank   | 2          | Each       |
| 2000 gal. Portable Fast Tank   | 2          | Each       |
| Shallow Water Barge (SWB) 100 bbl  | 3          | Each       |
| Tank Barge (Under Contract) 25k bbl  | 1          | Each       |
| <b>Response Trailers</b>   | <b>Qty</b> | <b>UoM</b> |

|   |     |      |
|---|-----|------|
| 24' – 32' Oil Spill / Shoreline Clean up Trailer            | 4   | Each |
| 53' Command & Communications Trailer                        | 1   | Each |
| Mobile Workstation Trailer                                  | 1   | Each |
| Wildlife  | Qty | UoM  |
| Wildlife Response & Rehabilitation Trailer (48')            | 1   | Each |
| Wildlife Transport Trailer (32')                            | 1   | Each |
| Wildlife Transport Trailer (20')                            | 1   | Each |
| Western Shelter System Wildlife Tent w/ XE 1200 HVAC System | 1   | Each |
| Wildlife Pool (3000 gallon)                                 | 2   | Each |
| Vehicles  | Qty | UoM  |
| 2010 Freightliner Tractor                                   | 1   | Each |
| F-550 STAKE BED Truck 4x4                                   | 1   | Each |
| F-350 Super Duty  | 2   | Each |
| Silverado Crew Cab 4WD                                      | 1   | Each |
| Ram 2500 Big Horn Crew Cab 4x4                              | 2   | Each |
| Pumps   | Qty | UoM  |
| CounterVac 3315   | 2   | Each |
| Float-O-Pump  | 3   | Each |
| DOP 160 Pump  | 2   | Each |
| Power Units   | Qty | UoM  |
| 7KW Generator   | 2   | Each |
| 25KW Generator  | 1   | Each |
| 35KW Generator w/ Trailer                                   | 1   | Each |
| Honda 2000W Generator                                       | 1   | Each |
| Honda 2200W Industrial Generator                            | 1   | Each |
| 58Kw Generator for Primary Facility Backup                  | 1   | Each |
| Diesel Heater (Frost Fighter) 500,000 BTU                   | 1   | Each |
| Other Equipment   | Qty | UoM  |
| Equipment Trailer   | 1   | Each |
| Utility (Dump) Trailer                                      | 1   | Each |
| Flat Bed Trailer (48')                                      | 1   | Each |
| Forklift  | 1   | Each |
| 3500 PSI Hot Pressure Washer                                | 1   | Each |
| Hypertherm Plasma Cutter                                    | 2   | Each |
| Personnel Decon Kit   | 1   | Each |
| MX6 LEL Air Monitor   | 8   | Each |
| FLIR Unit - Thermal Imager                                  | 2   | Each |
| Oil Spill Tracker GPS                                       | 3   | Each |
| Equipment Maintenance Trailer                               | 1   | Each |
| Communication Equipment                                     | Qty | UoM  |
| ICOM F 50 Handheld Radio                                    | 6   |      |
| Motorola XPR7550 Handheld Radio                             | 32  |      |
| Motorola XPR6550 Handheld Radio                             | 32  |      |
| ICOM IC-FR3000-2 Repeater                                   | 2   |      |
| Motorola R1225 Repeater                                     | 3   |      |
| Codan Repeater  | 3   |      |
| Motorola XPR 4550 Portable Base Units                       | 2   |      |

| Zone 2   |            |            |
|--|------------|------------|
| <b>Vessels</b>   | <b>Qty</b> | <b>UOM</b> |
| Oil Spill Recovery Vessel (OSRV) w/ portside mounted Marco Belt Skimmer-24 bbl (1008 gal.) capacity. | 2          | Each       |
| Shallow Water Recovery Barge (SWRB) w/ Marco Belt Skimmer.   | 3          | Each       |
| Fast Response Vessel (FRV) Workboat  | 1          | Each       |
| 12' to 18' Skiff w/ outboard   | 2          | Each       |
| <b>Boom</b>  | <b>Qty</b> | <b>UoM</b> |
| 12" American Marine  | 3,600      | Ft         |
| 20" American Marine  | 36,600     | Ft         |
| 30" American Marine  | 1,100      | Ft         |
| Underflow Dam Water Barrier  | 2          | Each       |
| 32' to 53' Boom Trailers   | 7          | Each       |
| <b>Skimmers</b>  | <b>Qty</b> | <b>UoM</b> |
| Douglas 18000 Skimmer /Skimmer System  | 7          | Each       |
| 36" Drum Skimmer   | 1          | Each       |
| Elastec TDS 118G Skimmer System  | 2          | Each       |
| API Drum Skimmer   | 1          | Each       |
| <b>Storage</b>   | <b>Qty</b> | <b>UoM</b> |
| 1000 gal. Portable Fast Tank   | 7          | Each       |
| Shallow Water Barge (SWB) 100 bbl  | 2          | Each       |
| Tank Barge (Under Contract) 30k bbl  | 1          | Each       |
| <b>Response Trailers</b>   | <b>Qty</b> | <b>UoM</b> |
| 24' – 32' Oil Spill / Shoreline Clean up Trailer   | 1          | Each       |
| <b>Pumps</b>   | <b>Qty</b> | <b>UoM</b> |
| CounterVac 3315  | 1          | Each       |
| <b>Power Units</b>   | <b>Qty</b> | <b>UoM</b> |
| Yanmar Diesel Hydraulic Power Unit   | 1          | Each       |
| <b>Other Equipment</b>   | <b>Qty</b> | <b>UoM</b> |
| Equipment Trailer  | 1          | Each       |
| Personnel Decon Kit  | 3          | Each       |
| MX6 LEL Air Monitor  | 2          | Each       |

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**EXHIBIT D      FORM OF OSRO SERVICE AGREEMENT**

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**[Drafting Note: References to Zones in this Agreement may be changed depending on whether contract awarded for one or both Zones].**

## OSRO SERVICE AGREEMENT

### (Downriver)

This OSRO Service Agreement (Downriver), dated \_\_\_\_\_ (“Effective Date”), is between Clean Rivers Cooperative, Inc. (“Clean Rivers”), Maritime Fire & Safety Association (“MFSA”), (Clean Rivers and MFSA are collectively referred to as “Customer”), and \_\_\_\_\_ (“Contractor”).

### RECITALS

- A. Clean Rivers is an Oregon nonprofit cooperative corporation whose membership is comprised of companies that own and/or operate facilities in the Area of Interest (defined below) and store, transfer, handle or distribute petroleum products.
- B. MFSA is an Oregon non-profit corporation that provides oil spill contingency planning services for the benefit of vessels enrolled in the MFSA Plan (defined below).
- C. Contractor is a US Coast Guard certified oil spill removal organization (OSRO).
- D. Customer desires to engage Contractor as the primary response contractor to provide initial response services to Clean Rivers’ Members and to Covered Vessels under the MFSA Plan.

### AGREEMENT

The parties agree as follows:

#### **1. Definitions**

- (a) “Additional Service Meetings” has the meaning given in Section 4(g).
- (b) “Annual Fee” means the basic amount paid per contract year in equal monthly installments by Clean Rivers to Contractor under this Agreement, as set forth in Section 2(c).
- (c) “Area of Interest” means the Snake River from the Idaho border to its confluence with the Columbia River; the Columbia River from its confluence with the Snake River to the mouth at River Mile 0; the area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean; and the Willamette River from its confluence with the Columbia River up to Willamette Falls.
- (d) “Certifications” has the meaning given in Section 2(h).
- (e) “Clean Rivers Equipment” means all equipment now or hereafter acquired by Clean Rivers or MFSA for oil spill response, including without limitation vehicles, vessels, skimmers, skimming heads, pumps, and storage equipment. Clean Rivers Equipment is identified in Schedule 6(a).



(f) “Contractor Equipment” means all equipment as designated in Schedule 5(a) owned or leased (other than from Customer) by Contractor.

(g) “Contractor Parties” includes Contractor and its directors, officers, managers, administrators, employees, borrowed servants and vessels.

(h) “Covered Vessels” means any vessel which is enrolled in the MFSA Plan or otherwise covered by Clean Rivers’ oil spill removal organization (OSRO) services.

(i) “CPI” means the Consumer Price Index, West Region.

(j) “Customer Parties” includes Clean Rivers, MFSA, Merchants Exchange and their respective directors, officers, managers, administrators, employees, borrowed servants and vessels.

(k) “Designated Spill Site” means the land or water site within the [Zone 1 or Zone 2] designated to Contractor by a Member or a Covered Vessel for which Pollution Control services are requested.

(l) “ICS” means the Incident Command System, a framework for managing emergency and non-emergency events, as stated by the National Incident Management System.

(m) “Initial Training Fee” has the meaning given in Section 2(d).

(n) “Member” means a member company of Clean Rivers.

(o) “MFSA Plan” means the MFSA Oil Spill Contingency Plan for the Columbia and Willamette Rivers.

(p) “Oil Spill” means any spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum products in the [Zone 1 or Zone 2], including the threat of an oil spill requiring a response.

(q) “OSHA” means the Occupational Health and Safety Act of 1970 and all regulations and standards promulgated thereunder, and any applicable state versions of the Act and their related regulations and standards.

(r) “Pollution Control” means pollution prevention, control, containment and cleanup of an oil spill or threat of an oil spill (as defined in the Federal Water Pollution Control Act) on land and water, in accordance with requirements set forth in the Oil Pollution Act of 1990 and applicable State rules and regulations within the Area of Interest.

(s) “Required Personnel Team” has the meaning given in Section 3(a).

(t) “Work Order” has the meaning given in Section 8(c).

(u) [“Zone” means one or both of the Zones identified by Customer under the combined “Area of Interest” as:

- Zone 1 = The area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean and Columbia River Mile 0 to Columbia River Mile 75
- Zone 2 = Columbia River Mile 75 to Columbia River Mile 125 and the Willamette River from its confluence with the Columbia River up to Willamette Falls]

## 2. Services; Term; Annual Fee; Invoicing.

(a) Engagement. Customer engages Contractor as the oil spill response contractor that is responsible for oil spill response duties within [Zone 1 and Zone 2], including “initial response” duties as defined under Member contingency plans and the MFSA Plan. Consistent with the terms of this Agreement, Contractor arranges for and directs the mobilization and deployment of equipment and other response assets within [Zone 1 and Zone 2], whether such equipment or assets are owned by Contractor, Customer, or other subcontractors. Contractor is responsible to Customer for operational and financial matters, and for strategic and tactical planning. Contractor must deploy personnel to meet the identified Washington and Oregon Oil Spill Response Planning Standards set forth on Schedule 2(a) to this Agreement and the MFSA Plan, a copy of which has been provided to Contractor (subject to amendment by MFSA in its sole discretion).

(b) Term. The term of this Agreement will commence as of \_\_\_\_\_ and will continue in effect for an initial three-year term. This Agreement will be subject to automatic one-year renewals thereafter unless either party gives the other party written notice of termination at least one calendar year prior to the end of then effective term.

(c) Annual Fee. Clean Rivers will pay Contractor an Annual Fee during the term of this Agreement for the services set forth in this Agreement in the amount of \$\_\_\_\_\_, to be paid in equal monthly installments. The Annual Fee would be prorated for any partial year at commencement or termination of this Agreement. The Annual Fee will be subject to annual increases at the lesser of (i) the CPI increase over the prior 12-month period, and (ii) 3%.

(d) Initial Training fees. (in addition to the Annual Fee) An initial training fee (the “Initial Training Fee”) in the aggregate amount of \$\_\_\_\_\_ will be paid by Clean Rivers to Contractor in equal monthly installments over the first 12 months of the term of the Agreement to compensate Contractor for certain up-front costs incurred in connection with having its personnel trained on Clean Rivers Equipment.

(e) Invoicing. Contractor will submit invoices for the Annual Fee and Initial Training Fee under this Agreement (excluding any Pollution Control services performed under a Work Order) to Clean Rivers. Clean Rivers will remit payment within 30 days of receipt of invoice. (Allocation of payment obligations under this Agreement between Clean Rivers and MFSA is controlled by a separate agreement between Clean Rivers and MFSA.

(f) Examination/Audit by Clean Rivers. Upon reasonable notice, Clean Rivers may examine and audit Contractor’s records relating to charges to Clean Rivers, any of its Members and any Covered Vessel for Pollution Control services and related to usage of Contractor Equipment and Clean Rivers Equipment. If Clean Rivers determines that there is any discrepancy between the charges and the terms under this Agreement, Clean Rivers (on its behalf or on behalf of any of its Members or Covered Vessels) may request an adjustment to the charges or reimbursement related to the adjustment if charges were previously paid.

Contractor will respond in writing to Clean Rivers within 30 days of such request, including providing such adjustment or reimbursement to the extent Contractor agrees. If there is any dispute between Clean Rivers and Contractor related to charges, either party may submit the dispute to arbitration pursuant to Section 20 of this Agreement.

(g) Annual Performance Review: Customer will provide annual written evaluations of Contractor's compliance with the performance standards stated in this section and Contractor's performance under this Agreement in general. Such annual performance reviews may also identify areas of Contractor's performance in need of improvement. Contractor will provide Customer with a written response to the evaluation within thirty (30) days of receipt of such evaluation.

(h) Certifications. Contractor, either directly or through its affiliates, will obtain and maintain all licenses, certifications, approvals, or other designations required under applicable federal and state laws for operation as a qualified oil spill removal organization and primary response contractor to such an organization ("Certifications"). Contractor will provide documentation of all such Certifications to Customer as of the Effective Date and will provide documentation for any updates or changes to such Certifications no less frequently than quarterly. Contractor will maintain its level of planned performance and capability consistent with its Certifications. Customer may audit Contractor's records as reasonably necessary to verify compliance.

### 3. **Minimum Personnel.**

(a) Personnel. At all times during the term of this Agreement, Contractor must have the ability to deploy a minimum of 24 individuals who meet all applicable training requirements under this Agreement to perform Pollution Control services, in accordance with the response time requirements set forth on Schedule 2(a), for Zone 1 and Zone 2, respectively] (the "Required Personnel Team").

(b) Roster of Qualified Responders. [For each of Zone 1 and Zone 2,] Contractor will identify and maintain a roster of the Required Personnel Team, including qualified personnel for the positions of Response Supervisor, Vessel Operation and Technician. The roster as of the Effective Date is attached as Schedule 3(b), which also identifies the skills and experience qualifications of each person in the table format set forth in subsection (c) below. Contractor will confirm the accuracy of the roster to Clean Rivers on a quarterly basis and will provide updates to the roster promptly following changes in personnel. Clean Rivers may request verification of the certifications at any time and Contractor will promptly provide to Clean Rivers. Contractor will maintain an on-call calendar with at least two (2) qualified Response Managers [per Zone], four (4) qualified Vessel Operators, [per Zone] and four (4) qualified Deckhands, [per Zone], and 14 otherwise qualified personnel scheduled for on-call duty to respond at a Designated Spill Site [in each of Zone 1 and Zone 2] within the response times required. Contractor will provide Clean Rivers with monthly updates to the on-call calendar in advance of the commencement of the time period covered by the on-call calendar.

(c) Responder Qualifications. The identified Responders must have the following skills and experience, which requirements Clean Rivers' General Manager may waive in whole or in part, in its sole discretion:

| Name                 | Contingency Plan(s) | NWACP, GRPs | ICS/NIMS 100, 200, 700, 800 | ICS 300 | Operations Section Chief | OSHA 40 Hour HAZWOPER | RCRA | First Aid & CPR Training | TWIC Card | DOT Regulations Training | CDL/Medical Card | State Boaters License |
|----------------------|---------------------|-------------|-----------------------------|---------|--------------------------|-----------------------|------|--------------------------|-----------|--------------------------|------------------|-----------------------|
| Response Supervisors | Annual              | Annual      | X                           | X       | X                        | X                     | X    | X                        | X         | X                        | X                | X                     |
| Vessel Operators     | Annual              | Annual      | X                           |         |                          | X                     | X    | X                        | X         | X                        | X                | X                     |
| Other Personnel      | Annual              | Annual      | X                           |         |                          | X                     | X    | X                        | X         | X                        | X                | X                     |

(d) Account Manager. Contractor will designate an Account Manager to administer this Agreement for Contractor and to serve as a liaison to Customer. The initial Account Manager under this Agreement is \_\_\_\_\_. Contractor will advise Clean Rivers in writing within 14 days of any change to the designated Account Manager. Clean Rivers’ Board of Directors has the right to consent to any replacement Account Manager and may require a replacement Account Manager if replacement is necessary or prudent.

(e) Additional Personnel. Contractor will maintain such additional trained Pollution Control personnel as may be required to operate the Contractor Equipment and the Clean Rivers Equipment. Contractor acknowledges that its pool of trained workers may need to be larger than the minimum personnel set forth in Schedule 3(b) in order to effectively fulfill the requirements of this Agreement.

(f) Personnel Contact Information. Contractor will supply Clean Rivers with contact information for Contractor's key personnel (Account Manager and identified Response Supervisors), including email, 24-hour telephone contacts, pagers, etc. Contractor will immediately notify Clean Rivers in writing of any personnel changes affecting this Agreement.

**4. Training and Drills.**

(a) Training on Clean Rivers Equipment. At all times during the term of this Agreement, Contractor will maintain the Required Personnel Team, each member of which is fully trained on Clean Rivers Equipment. [Individuals may be identified for both Zones if the person is capable of responding in the Zone within the required response time.]

(i) Initial Training. Within one year from the effective date of this Agreement, each member of the Required Personnel Team will receive at least 24 hours of initial training per individual on Clean Rivers Equipment. Training hours accrued attending Clean Rivers, MFSA or training exercises may be applied by Customer toward this requirement. Contractor’s charge for initial training is in accordance with Section 2(d) above.

(ii) Refresher Training. After the initial training, Contractor will make each member of the Required Personnel Team available for 8 hours (192 total training man-hours) of annual refresher training on all aspects of oil spill response and operation of Clean Rivers Equipment during each year of this Agreement. Refresher training is included in the Annual Fee and is in addition to the field training events described in Section 4(a)(ii) below.

(iii) Training Costs. Contractor's wages and expenses (excluding Contractor's equipment and consumables) for training are for Contractor's account and are included in the Annual Fee. If Clean Rivers adds any vessels or oil recovery devices to the Clean Rivers Equipment during the term of this Agreement requiring specialized training, Clean Rivers may, at its option, include training on the new equipment in the refresher training, or Clean Rivers may require Contractor to make each member of the Required Personnel Team (or more if applicable) available for additional training beyond that provided in the refresher training.

(iv) Trainers. Any trainers provided by Clean Rivers for initial training, refresher training or new equipment training will be at Clean Rivers' expense. Costs of all other trainers required by Contractor to maintain the training and responsiveness levels required under this Agreement will be at Contractor's expense, including any Clean Rivers-provided trainers required to provide initial training for any workers added by Contractor to replace a member of Required Personnel Team during the term of this Agreement. There will be no charge by Contractor for use of Clean Rivers Equipment.

(b) Customer Drills and Member Training. Contractor will provide personnel and equipment to assist Members in training exercises and/or readiness drills of Member personnel, as requested from time to time by Clean Rivers or a Member. Contractor will not charge for the provision of up to three (3) personnel, which may include an Account Manager, Response Manager, Vessel Operator, Deckhand, and other personnel as requested by Customer for up to ten (10) Member or Clean Rivers events per year [per Zone]. Contractor may charge for additional Contractor labor beyond the three personnel for Member training or Clean Rivers events that is in addition to services performed under the Annual Fee, in accordance with Contractor's fee schedule (Exhibit B). If requested, Contractor will participate in a Member's critique following the completion of any training. Any Contractor charges for Customer drills and Member training will exclude critique time to the limit identified in Section 3(g) for Additional Service Meetings.

(c) Call-Out Training and Field Training. As part of the services provided for the Annual Fee, Contractor will:

(i) participate in tests of call-out procedures and log the amount of time it takes to respond with a crew consisting of Operator and Deckhand. These call-out drills will occur, at a minimum, each month in which no other response or deployment drill has taken place. Clean Rivers reserves the right to conduct up to two drills per year at each of the four (4) vessel locations, [per Zone]. Clean Rivers will initiate call-out drills, designating the drill location and the vessel or vehicle to be mobilized. Contractor will document the date, response time and the name and title of each person in attendance for each call-out drill, and will report the information to Customer at the conclusion of each training;

(ii) participate in field training sessions covering a variety of scenarios, including active deployment of boom and equipment. Field training sessions will be conducted a maximum of 6 times per year [per Zone], with ten (10) responders participating in each 8-hour session. A field training session should occur at each of the four (4) vessel locations at least once per year. Trainer(s) for field training are to be provided by Contractor. An annual

schedule will be established by Customer and Contractor upon award. In the event of an emergency, the training may be rescheduled to accommodate either party, with as much advanced notice as possible.

(iii) notify Customer a minimum of two weeks in advance of all scheduled field training sessions. Upon such notice Customer, a Member, or a Covered Vessel will not be additionally charged for conducting a joint training exercise with Contractor, so long as the joint training exercise can be reasonably coordinated with Contractor's training session.

(d) Incident Credit. Contractor will receive credit toward the call-out drill requirements for a vessel location if Contractor is involved in a Customer incident requiring the deployment of boom and equipment. The vessel and personnel must come from the required vessel location, and the Contractor must have met the two (2) hour response requirement. Field training and incident credit under this section will not be counted toward initial or refresher training requirements under Section 4(a)(ii).

(e) Contractor Equipment and Consumables for Training and Drills. Contractor may charge time and material rates per Exhibit B for Contractor Equipment and consumables utilized in all types of training or drills (Member, Call-out, Drills, & Field trainings, etc), excluding use of vehicles for personnel transport only, excluding radios, and excluding food.

(f) Training Records. Contractor will maintain records of all initial and refresher training under this section and for such additional personnel as Contractor may utilize under this Agreement. Contractor will provide all training records to Customer no less frequently than quarterly.

(g) Additional Service Meetings. At no additional cost to Customer, Contractor will perform the services described below ("Additional Service Meetings") upon Customer request. The Annual Fee includes up to five (5) Additional Service Meetings per contract year. Services for Additional Service Meetings may include:

- (i) Participating in Customer activities, including regular meetings, planning meetings, and project meetings in concert with State and Federal regulators, as requested by Customer;
- (ii) Making a representative available upon Customer's request to attend Customer safety meetings; and
- (iii) Meeting with Customer and/or Members or Covered Vessels to advise on meeting statutory goals, as requested by Customer.

(h) Account Manager Attendance at Member Events. As requested by Customer, the Account Manager will attend Member events, such as Member drills and training exercises. Up to one event per Member per year will be at no charge to the Member.

## 5. Contractor Equipment.

(a) Minimum Equipment Provided. Contractor will provide the equipment described in Schedule 5(a) (or equivalent replacement equipment satisfactory to Clean Rivers) at the locations specified in that schedule as part of the Annual Fee. Customer and Clean Rivers

Members may list all of Contractor's Schedule 5(a) equipment in oil spill response contingency plans maintained by Customer or Clean Rivers Members.

(b) Minimum Maintenance Requirements. Contractor will maintain all Contractor Equipment in a properly maintained and operable condition at all times. On a daily, 24-hour basis during the term of this Agreement, all Contractor Equipment must be operable in a timeframe required to comply with response time requirements set forth in Schedule 2(a) after notification from Clean Rivers, MFSA, a Member, or a Covered Vessel of an oil spill. Designees from Clean Rivers, MFSA, or any Member may inspect Contractor Equipment or Clean Rivers Equipment at any reasonable time.

(c) Condition Reports. Contractor will maintain vessel and equipment condition reports for Contractor Equipment, noting any hazardous or dangerous conditions existing and/or any repairs or replacements required. Contractor will file such reports with the Clean Rivers General Manager on the following schedule:

- (i) monthly, under normal equipment usage; and
- (ii) immediately (but no later than 24 hours) after discovering any mechanical failures, needed repairs, or dangerous or hazardous conditions, including without limitation drydock service.

(d) Contingency Plan Listing. Contractor maintains a pool of spill response equipment in Oregon and Washington in addition to the required equipment under Schedule 5(a). Contractor's additional equipment as of the Effective Date is listed in Schedule 5(e) attached hereto. MFSA, Clean Rivers and Clean Rivers Members may list all of Contractor's Schedule 5(e) equipment in oil spill response contingency plans maintained by MFSA, Clean Rivers or Clean Rivers Members. Such listing may only be on an "as available" basis and Contractor may alter, replace, delete, or modify the Schedule 5(e) equipment at Contractor's sole discretion.

## 6. **Clean Rivers Equipment.**

(a) Equipment Provided. Clean Rivers will provide the equipment described in Schedule 6(a) (or equivalent replacement in Clean Rivers' sole discretion) at the locations specified in that schedule.

(b) Liability for Damage or Loss. At Contractor's expense, Contractor will repair or replace all Clean Rivers Equipment damaged or lost during use under this Agreement due to negligent acts or omissions of Contractor and Contractor will assist Clean Rivers in identifying the cause of any damage or loss. Clean Rivers will pay for repair or replacement of Clean Rivers Equipment due to reasonable and ordinary wear in normal use, provided that such repair or replacement is not chargeable by Contractor to a responsible party obligated to Contractor for Pollution Control services.

(c) Condition Reports. Contractor will submit vessel and equipment condition reports for Clean Rivers Equipment on a form provided by Clean Rivers when any hazardous or dangerous conditions exist and/or any repairs or replacements are required. Contractor will file such reports with the Clean Rivers General Manager immediately (but no later than 24 hours) after discovering any mechanical failures, needed repairs, or dangerous or hazardous conditions.

(d) Rates. Clean Rivers may set rates for use of Clean Rivers Equipment by Members, Covered Vessels, on work performed for governmental entities, or for other permitted uses.

(e) First-Priority Usage. Contractor will use Clean Rivers Equipment on a first-priority basis on Pollution Control Services for Members and Covered Vessels except as requested by Clean Rivers, or the Member or Covered Vessel.

(f) Restrictions on Usage. Any use of Clean Rivers Equipment other than for Pollution Control services for Members and Covered Vessels requires Clean Rivers' prior consent. Clean Rivers Equipment may only be used in Pollution Control services for Clean Rivers, Members, and Covered Vessels, unless under federal regulators having jurisdiction in the event of a federalized spill and with Clean Rivers' consent.

## 7. Reports/Audits.

(a) Required Reports. Contractor will, as part of the Annual Fee services:

(i)

As soon as reasonably possible:

- notify Clean Rivers of any Contractor response activity;
- notify Clean Rivers of any conditions which may impair Contractor's ability to meet the response times and personnel minimums in Section 3(a);
- notify Clean Rivers of any changes to Schedule 3(b); and
- within 24 hours, notify Clean Rivers of any hazardous or dangerous conditions existing and/or any repairs or replacements required for Contractor Equipment.

(ii)

Monthly:

- maintain a record of all initial and refresher training as required under Section 4(a) and Section 4(c); and
- provide the vessel and equipment reports required by Section 5(c).

(iii)

Quarterly:

- provide personnel training and drill participation summaries to Clean Rivers required by Section 4(f);
- provide updates to the certification reports required by Section 2(f); and
- verify accuracy of Schedule 3(b).

(iv)

Annually:

- provide OSHA Form No. 300, the log and summary of all recordable occupational injuries required by Section 14(b) (iii).

(v)

Post-response:

- notify Clean Rivers of any spill response involving any required Contractor Equipment or Clean Rivers Equipment. Initial notification will occur as soon as practicable, but not later than 12 hours after Contractor's initiation of response. During such response, Contractor will continue to advise



Clean Rivers of the extent and duration of use of Contractor Equipment and Clean Rivers Equipment, or personnel impairment, for purposes of determining ongoing availability of equipment and personnel for service to Members and Covered Vessels; and

- provide Clean Rivers with a brief post-spill operating report within 10 business days after completion of each spill response involving a Member or Covered Vessel, or any use of Contractor Equipment or Clean Rivers Equipment, detailing the equipment involved, hours of use, rates and billing amounts for equipment used, and details of remobilization and supplies replenishment to return Contractor Equipment and Clean Rivers Equipment to full readiness.

(b) Post Spill Incident Regulatory Reporting. If requested, as part of the Annual Service Fee, Contractor will participate in a post-spill contingency plan review following a spill response for a Member or Covered Vessel, and assist with the production of information necessary to satisfy regulatory requirements for post-spill contingency plan reviews. Contractor may charge for personnel time and other services relating to such reviews for the responsible Member or Covered Vessel in accordance with the Contractor's fee schedule (Exhibit B).

## **8. Pollution Control Services.**

(a) Services Available. Contractor will make Pollution Control services available to Members and to Covered Vessels using equipment and resources designated in this Agreement and such other equipment and resources as determined appropriate by the Member or Covered Vessel, or the Incident Commander, if applicable.

(b) Work Authorization Procedure. Whenever a Member or Covered Vessel desires Pollution Control services, an authorized representative of the Member or Covered Vessel must verbally request such services to an authorized representative of Clean Rivers or Contractor. If such Pollution Control services are requested under a contingency plan required by statute or regulation, the notification procedures in such contingency plan will govern. Contractor will confirm the request for services with the Member or Covered Vessel in writing as soon as practicable after initial notification, using Contractor's Work Order form (Exhibit A).

(c) Terms for Pollution Control Services. Pollution Control services are not included in the Annual Fee. Pollution Control services provided by Contractor to Clean Rivers or any of its Members or Covered Vessels are subject to the terms of this Agreement. Contractor will provide such services under the standard terms of Contractor's Work Order (Exhibit A) ("Work Order"). Contractor will charge Clean Rivers, its Members and Covered Vessels (as applicable) for such services in accordance with Contractor's services rate schedule (Exhibit B). Contractor's services rate schedule will include rates for use of both Contractor equipment and personnel. Any other additional charges to Clean Rivers, any of its Members or any Covered Vessel which are not included in Exhibit B must be agreed upon in advance by the respective parties, in writing.

(d) Rate Increases. Contractor agrees not to request any rate changes to Exhibit B within the initial one-year term of this Agreement. Thereafter, Contractor may request rate increases based on increases in its expenses, provided Contractor provides Clean Rivers with information substantiating the additional expenses and the associated requested rate increase. Contractor may not request rate increases more frequently than annually and may not request a rate change after any notice of termination of the Agreement has been given; the requested rate increase may not increase the rate by more than the change in CPI from the date that the rate was previously set unless Contractor substantiates circumstances necessitating a higher rate increase; and the proposed effective date for the rate increase may not be earlier than 90 days from date the request is provided to Clean Rivers. Clean Rivers will accept requested rate changes that are substantiated and comply with the terms of this section. If Clean Rivers accepts changes to the service rate schedule (Exhibit B), such increased rates will not affect Pollution Control services that are in progress or were ordered prior to the effective date of such rate increase.

(e) Separate Contract. Pollution Control services performed under a Work Order will be considered a separate contract between Contractor and the Member or Covered Vessel receiving such services, and neither Clean Rivers nor MFSA will have any liability for fees incurred for such services.

(f) Notice of Equipment Usage. Contractor will advise Customer when any of the fast response boats listed in Schedules 5(a) or 6(a) are involved in response to a Member or Covered Vessel incident as soon as is practical after Contractor's initiation of response.

(g) Restrictions on Equipment Relocation. Contractor will not relocate any Contractor Equipment listed on Schedule 6(a) from the Area of Interest without notifying Clean Rivers in advance and, if applicable, without the approval of state or federal regulators having jurisdiction. Unless an exemption to the response capability is granted in advance by applicable regulators in writing and agreed to by Customer, should the Contractor move a vessel or any equipment out of the Area of Interest to respond to a non-member or non-Covered Vessel spill, Contractor will position equivalent backup equipment and/or vessels in order to maintain the response requirements as set forth in Schedule 2(a).

(h) Priority. Within the response time requirements in Schedule 2(a) of this Agreement, Contractor will first respond to Member or Covered Vessel calls in the order of the requests for assistance by such Members or Covered Vessels. Contractor will give first priority to Member or Covered Vessel calls over non-Member or non-Covered Vessel calls. If Contractor has responded to a prior non-Member or non-Covered Vessel call, Contractor's obligation to assign priority to Members or Covered Vessels will be deemed satisfied when Contractor responds to the subsequent Member or Covered Vessel call promptly upon the initial containment of the prior non-Member or non-Covered Vessel spill, provided, however, that Contractor will maintain the response time requirements in Schedule 2(a) of this Agreement at all times. Contractor is otherwise relieved of its obligation to assign priority to Member or Covered Vessel calls only by direct order of a governmental authority, such as the United States Coast Guard or Environmental Protection Agency. Any time response vessels or significant equipment are used on any incident or are otherwise unavailable for Pollution Control services under this Agreement, Contractor will remobilize and reposition equipment and/or vessels in order to maintain the highest level of response and readiness for Members and Covered Vessels within the Area of Interest. Any such repositioning or remobilization will be considered a cost chargeable to the incident or circumstance causing the repositioning or remobilization.

## 9. Contractor Insurance.

(a) Insurance Required. At Contractor's expense, Contractor will maintain the following insurance:

(i) Oregon and Washington State, as applicable, Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage, with statutory limits as required by law. Coverage must include employer's liability for limits of not less than \$1 million;

(ii) Protection and Indemnity Insurance applicable to any vessels owned, operated, chartered or rented by Contractor (other than Clean Rivers Equipment) for performance of this Agreement. Coverage must include third party bodily injury and property damage, collision liability, and tower's liability;

(iii) Extended P&I Cover on a "Non-Owned Vessels" basis ("Non-Owned Vessels\_P&I Insurance"), applicable to Clean Rivers Equipment when Contractor is operating Clean Rivers Equipment for performance of this Agreement. Coverage must include third party bodily injury and property damage, collision liability, and tower's liability and vessel pollution liability coverage (to the extent not included in the pollution coverage under Section 9(a)(v) hereof);

(iv) Protection and Indemnity Insurance or equivalent workers' compensation/longshoremen and harbor workers' compensation or Marine Employer's Liability insurance covering liability for injury, illness or death of Contractor's crew members and employees at all times applicable to this Agreement, including but not limited to working aboard any vessels owned, operated, chartered or rented by Contractor for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment while being operated by Contractor, but not including coverage for Customer's employees or borrowed servants at any time and not including coverage for legal liability arising out of Customer's operation of such vessels;

(v) Vessel Pollution Liability coverage on vessels owned, operated, chartered or rented by Contractor for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment while being operated by Contractor (to the extent not included in the Non-Owned Vessels P&I Insurance under Section 9(a)(iii) hereof), of a scope and limits necessary to comply with all State and Federal pollution liability laws pertaining to vessels, but not less than \$1 million;

(vi) Commercial General Liability insurance (on an occurrence form), including broad form contractual liability, broad form property damage, and Stop Gap Employer's Liability, specifically including coverage for all of the contractual liabilities of Contractor with respect to this Agreement, all with limits of \$2 million for any one accident or occurrence and general aggregate equal to \$4 million, with any watercraft exclusion deleted;

(vii) Auto Liability for any vehicle that may be used in the performance of this Agreement, including non-owned and hired auto coverage and with limits of not less than \$5 million for any one accident or occurrence. Such auto liability coverage must be designated as primary over other applicable types of insurance carried by Clean Rivers for all claims arising for a Clean Rivers-owned vehicle when driven by a Contractor employee or agent;

(viii) Umbrella Liability coverage with limits of \$10 million for any one accident or occurrence; and

(ix) Contractor's Pollution Liability in the amount of \$10,000,000 each claim.

(b) Policy Endorsements. Contractor's insurance policies will:

(i) contain a waiver of subrogation against Customer Parties;

(ii) name the Customer Parties as additional insureds (not applicable to Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage);

(iii) provide that Contractor's insurance is primary and excess coverage with respect to all insureds as respects Contractor's liability under this Agreement;

(iv) contain a standard cross-liability endorsement;

(v) include a requirement that the insurer provide Customer with thirty (30) days written notice prior to the effective date of any cancellation or material change of the insurance; and

(vi) Commercial General Liability coverage shall be evidenced by and in accordance with use of ISO Endorsements Form No. CG 20 10 12 19 "Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization" and Form No. CG 20 37 12 19 "Additional Insured - Owners, Lessees or Contractors – Completed Operations". Notwithstanding anything to the contrary herein, should Contractor maintain any insurance in amounts greater than that required herein or that indicated in any certificate of insurance furnished by Contractor, or any insurance in addition to that required herein or indicated in any certificate of insurance furnished by Contractor, such insurance shall be for the exclusive protection and benefit of Contractor and Customer Parties shall not be named an additional insured on such insurance and shall have no rights to the proceeds thereof as an additional insured except to the extent such liability arises out of the gross negligence or willful misconduct of Contractor.

(c) General Contractor Insurance Provisions.

(i) All costs of the insurance required in this section are at Contractor's expense.

(ii) Before commencing performance under this Agreement and within 30 days of any change to or replacement of an existing policy during the term of this Agreement, Contractor will provide Customer with copies of certificates evidencing the required insurance.

(iii) The liability and indemnity provisions of this Agreement may not be construed to limit Contractor's obligations under this section in any way except as respects waivers of subrogation in favor of Customer Parties and Customer's liability for Customer Parties.

(iv) If it is judicially determined that the monetary limits or other provisions of the insurance required in this section do not conform with applicable law, the insurance requirements of this Agreement will automatically be amended to conform to the maximum monetary limits or other provisions of such law.

(v) Contractor's insurance will be with underwriters reasonably satisfactory to Customer.

(vi) Contractor's insurance program will be free from self-insurance or co-insurance provisions, except to the extent of ordinary deductibles not to exceed \$25,000, for which Contractor shall be solely responsible.

#### 10. Clean Rivers Insurance.

(a) Insurance Required. At Customer's expense, Customer will maintain Protection and Indemnity insurance or equivalent coverage applicable to vessels leased or owned by Clean Rivers which are included in Clean Rivers Equipment. Such coverage will include third party bodily injury and property damage, collision liability, and tower's liability while such vessels are operated by Clean Rivers, but will not include coverage for Contractor Parties at any time and will not include coverage for legal liability arising out of Contractor's operation of such vessels. Customer shall also provide Protection and Indemnity Insurance or equivalent workers' compensation/longshoremen and harbor workers' compensation or Marine Employer's Liability insurance covering liability for injury, illness or death of Customer's crew members and employees working aboard any vessels owned, operated, chartered or rented by Customer for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment, but not including coverage for Contractor's employees or borrowed servants at any time and not including coverage for legal liability arising out of Contractor's operation of such vessels. Customer will also maintain the following additional insurance coverages:

(i) Vessel Pollution Liability coverage on vessels owned, operated, chartered or rented by Customer for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment while being operated by Customer, of a scope and limits necessary to comply with all State and Federal pollution liability laws pertaining to vessels, but not less than \$1 million;

(ii) Oregon and Washington State, as applicable, Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage, including compliance with laws of any other state (if applicable), with statutory limits as required by law. Coverage must include employer's liability for limits of not less than \$1 million;

(b) General Clean Rivers Insurance Provisions. Any hull and machinery, business personal property, equipment or other physical damage policies, Protection and Indemnity insurance, Vessel Pollution Liability insurance, workers' compensation and United States Longshoreman and Harbor Workers' Compensation, in place for Clean Rivers Equipment and Customer employees will be claused to waive subrogation in favor of Contractor. Clean Rivers may, at its option, elect to self-insure any of the Clean Rivers Equipment. Neither the waiver of subrogation against Contractor nor Clean Rivers's election to self-insure will affect Contractor's limited liability for equipment damages under Section 6(b). In addition, Customer's Protection and Indemnity insurance policies shall:

- (i) name Contractor, and its directors, officers, managers, administrators, as additional insureds (not applicable to Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage);
- (ii) provide that such insurance is primary and excess coverage with respect to all insureds as respects Customer's liability under this Agreement;
- (iii) contain a standard cross-liability endorsement; and
- (iv) include a requirement that the insurer provide Contractor with thirty (30) days written notice prior to the effective date of any cancellation or material change of the insurance.

#### **11. General Indemnification.**

(a) Personal Injury or Death Generally; Property Damage. Contractor will defend, indemnify and hold Customer Parties harmless from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys fees, investigation costs and other costs of litigation) to the extent arising out of, in connection with, or related in any way to violation of any statute, regulation or ordinance, breach of warranty, negligence, fault or omission of Contractor, its agents, employees or subcontractors in the performance of services under this Agreement or conditions created thereby, or to unseaworthiness or any other type of strict liability attributable to Contractor which results directly or indirectly in injury or death to any person or damage to any property, except for injury or death to Customer Parties for which Customer is responsible under Section 11(c).

(b) Contractor's Employees and Other Agents. Contractor will defend, indemnify and hold Customer Parties harmless from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys fees, investigation costs and other costs of litigation) arising out of, in connection with or related in any way to any injury, illness or death suffered by or occurring to any Contractor Parties resulting from any cause whatsoever, including unseaworthiness of any vessel, and excepting only intentional misconduct of a Customer Party.

(c) Clean Rivers/MFSA Employees and Other Agents. Clean Rivers and MFSA, respectively, will defend, indemnify and hold Contractor Parties harmless from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys fees, investigation costs and other costs of litigation) arising out of, in connection with or related in any way to any injury, illness or death suffered by or occurring to any of its Customer Parties resulting from any cause whatsoever, including unseaworthiness of any vessel, and excepting only intentional misconduct of a Contractor Party.

(d) The parties intend for the indemnities stated in Sections 11(a), (b) and (c) to apply to claims based on allegations of gross negligence to the extent permitted by applicable law, but claims based on willful or intentional misconduct of the indemnified party are excluded from the above stated indemnities.

(e) Contractor's employees and Customer's employees shall not be considered the loaned or borrowed servants of the other party.

(f) Notwithstanding any other provision of this Agreement, Contractor and Customer will have the benefit of all exemptions from and limitations of liability to which such persons or entities are entitled under applicable law, statute or regulation, including without limitation responder immunity provisions under federal law (33 USC § 1321(c)(4)) or state law (ORS 468B.425 and RCW 90.56.390), as amended, when engaged in responding to an incident involving an oil spill or the threat of an oil spill. Contractor and Customer expressly claim and preserve all rights and benefits under all such laws, statutes and regulations.

(g) The parties hereto acknowledge that under State and Federal Law, Contractor is afforded certain protections when it responds to spills and discharges of oil or other hazardous materials (“Responder Immunity”). In a response, rapid and decisive action is necessary to contain a spill and responders must initiate a response without prior notice based on limited information. Without Responder Immunity, the enormous financial and liability exposures associated with this work would make the business of responding to spills impracticable. Accordingly, the parties execute this Agreement with the intent of preserving Contractor’s statutorily conferred protections to the greatest extent possible.

## 12. Exclusive Dealings.

(a) During the term of this Agreement neither the Contractor nor any affiliate or subsidiary of the Contractor will contract for or provide services as a designated, primary, or secondary oil spill removal contractor or organization in or under any oil spill contingency plans maintained or held under applicable state law by a vessel or facility owner/operator for operations in the Area of Interest, except as a contractor for Covered Vessels and Members under the terms of this Agreement and except for vessels or facilities with or for which Contractor or its affiliates or subsidiaries has existing contracts as of the Effective Date as set forth on Schedule 12, to the extent of the scope of services in such existing contracts.

(b) For the one (1) year period following termination or expiration of this Agreement, neither the Contractor nor any affiliate or subsidiary of the Contractor will contract for or provide services as a designated, primary, or secondary oil spill removal contractor or organization in or under any oil spill contingency plans maintained or held under applicable state law by a vessel or facility owner/operator for operations in the Area of Interest, except for vessels or facilities with or for which Contractor or its affiliates or subsidiaries has existing contracts as of the Effective Date as set forth on Schedule 12, to the extent of the scope of services in such existing contracts.

13. **Non-Solicitation.** Clean Rivers, MFSA, and Merchants Exchange invest in the careers, talents, and experience of their employees (or borrowed servants from Merchants Exchange) (collectively, the “Protected Employees”). The Protected Employees are valuable to Customer’s business and the parties agree that it would be damaging to Customer’s business for the Protected Employees to be recruited or hired by Contractor or its affiliates or subsidiaries. Contractor therefore agrees that during the term of this Agreement and for a period of one (1) year following termination or expiration of this Agreement, that Contractor will not, and Contractor will cause its affiliates and subsidiaries to not, directly or indirectly solicit for hire or hire any Protected Employees. In the event Contractor violates this covenant, the parties agree that the damages would be difficult to measure and the parties therefore agree that Contractor will pay Customer liquidated damages in the amount of \$50,000 per Protected Employee that is solicited in violation of this covenant.

## 14. Compliance With Laws and Regulations.

(a) Generally. Each party will comply with all laws, regulations, decrees, codes, ordinances, resolutions and other acts of any governmental authority, as may be applicable, including but not limited to federal, state or other governmental acts setting forth any laws and regulations pertaining to:

- (i) operation of a qualified oil spill removal organization or acting as the primary response contractor to such an organization;
- (ii) equal opportunity;
- (iii) nonsegregated facilities;
- (iv) listing job openings for veterans; and
- (v) nondiscrimination against employees based on race, creed, sex or national origin.

(b) OSHA. Contractor will comply with OSHA, including but not limited to doing the following:

- (i) Contractor will establish and maintain an OSHA program. Contractor will promptly forward a copy of the program and any periodic updates to Clean Rivers.
- (ii) As required under OSHA, Contractor will train or verify training of all of its employees, crew members, agents, borrowed servants and subcontractors on OSHA rules, regulations and standards. Contractor will document all OSHA training sessions and provide copies of all updated training records to Clean Rivers on a monthly basis.
- (iii) As required by OSHA, Contractor will maintain OSHA Form No. 300, the log and summary of all recordable occupational injuries. Contractor will forward copies of Form No. 300 to Clean Rivers each year.
- (iv) Whenever Contractor employs eleven or more employees, Contractor will establish and maintain an OSHA safety committee, which committee will, when appropriate, interact directly with Customer and its employees regarding workplace safety issues.

(c) Drugs and Alcohol. Contractor will establish and maintain a drug and alcohol program that will apply to all workers identified to or used under this Agreement, regardless of title or duties. The program will require both pre-hire and post-hire drug and alcohol testing, at Contractor's expense. Contractor's drug and alcohol program will at all times be consistent with any drug and alcohol laws and regulations applicable to:

- (i) holders of merchant mariner documents and licenses;
- (ii) commercial truck transportation workers under Federal, Oregon, and Washington law; and
- (iii) Pipeline and Hazardous Materials Safety Administration.



(d) Indemnification. Contractor will indemnify, defend, and hold Customer harmless from and against any and all loss, damage, injury, liability and claims resulting directly or indirectly from Contractor's failure to meet the obligations in this section.

#### 15. Liens.

(a) Contractor will discharge at once, bond or otherwise secure against all liens and attachments which are filed in connection with work performed by Contractor, its subcontractors or other agents under this Agreement.

(b) Contractor will indemnify, defend and hold harmless Customer and the applicable responsible party (i.e. Member or Covered Vessel), and the owners of the premises on which the work of Contractor, its subcontractors, or agents is performed for, from and against any and all loss, damage, injury, liability and claims thereof resulting directly or indirectly from any liens and attachments filed in connection with work performed by Contractor, its subcontractors or other agents under this Agreement.

#### 16. Taxes; Vehicle Licenses

(a) Contractor will pay all state, federal and other payroll taxes, including contributions and taxes assessed against employees on wages earned in connection with the work, together with all taxes now or hereafter imposed by any governmental authority upon, measured by or incident to the performance of this Agreement or Contractor's purchase, storage, use, or consumption of materials, utilities, consumable supplies, tools or equipment used in the performance of this Agreement.

(b) Contractor will pay all sales or use taxes incurred as a result of replacement or replenishment of Clean Rivers Equipment and will charge all such sales or use taxes to the responsible party to whom services were provided requiring such replacement or replenishment.

(c) Contractor will make all tax reports required by governmental authorities.

(d) Nothing in this section may be construed to relieve Customer's obligation to pay all personal property and similar taxes relating to the ownership of Clean Rivers Equipment or to contest the assessment on such equipment.

(e) The cost of vehicle licenses for Clean Rivers Equipment will be for Customer's account.

#### 17. Termination.

(a) For Cause. Either party may cancel this Agreement due to material breach by the other party, provided such material breach is not cured within five (5) days of written notice to cure such breach, unless such breach requires additional time to cure, in which case the breaching party shall be entitled to additional time, not to exceed 90 days, so long as such party is diligently prosecuting such cure to completion and provided such breach does not cause either Contractor or Customer to not be in compliance with applicable law. Due to the statutory requirements imposed on Members and Covered Vessels, and the high standards for preparedness and response required of the Contractor, "material breach" includes any good faith determination by Customer that:

(i) a material adverse change has occurred in the business, operations or financial condition of the Contractor, any related party of the Contractor, or any subcontractor used by the Contractor to fulfill requirements under this Agreement;

(ii) the Contractor's interest in, use of or access to any of the equipment used by the Contractor to fulfill requirements under this Agreement has been adversely affected, impaired or diminished to a material extent;

(iii) Contractor's failure to maintain strict compliance with the requirements under this Agreement for provision of personnel, Contractor Equipment, reports, training and drills, performance standards, Certifications, restrictions on equipment, or insurance; or

(iv) the prospect of performance of any obligation required under this Agreement is materially impaired, whether or not the condition giving rise to such determination constitutes an event of default or breach under any other provision of the Agreement, and the condition continues to exist five (5) days after notice of such determination by Customer to Contractor.

(b) Additional Remedies – For Cause Cancellation. In addition to Customer's right of cancellation for cause as stated above, in the event of any material breach which is not cured within five (5) days of written notice, Customer may, at its option:

(i) withhold any payment then or thereafter due to Contractor or until such breach is cured;

(ii) hire, contract or purchase the services, equipment or insurance required to fulfill the obligations of Contractor which are the subject of the material breach, charging or setting off against sums due to the Contractor for the costs thereof; or

(iii) take such other steps as Customer deems reasonably necessary to obtain cover for Contractor's material breach in order to maintain compliance with the preparedness and response requirements imposed on Members and Covered Vessels.

**18. Examination of Records.** For three (3) years after the expiration or earlier termination of this Agreement, Customer or its authorized representatives may access and examine any records of Contractor relating to transactions under this Agreement.

### **19. Force Majeure.**

(a) Neither party will be liable to the other for failure to perform its obligations under this Agreement if the failure to perform arises from acts of God, acts of the public enemy, acts of a government in its sovereign or its contractual capacity, fire, flood, earthquakes, volcanic disturbances, epidemic, quarantines, strikes or labor disturbances of persons or entities other than Contractor and its employees, freight embargoes, or any other circumstances of like or different nature beyond the reasonable control of the party failing to perform, provided that, in the event of an occurrence of such an event, the parties will use their best efforts to perform their obligations. Notwithstanding the foregoing, Contractor will be responsible for maintaining the service levels required during any such event of force majeure.

(b) Nothing contained in this section may be construed to decrease the protection afforded the parties under policies of hull, fire or similar casualty insurance required to be maintained by Contractor under this Agreement.

## **20. Dispute Resolution**

(a) Mediation. Any dispute that may arise under this Agreement will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of arbitration. Such mediation will occur in Portland, Oregon and the mediator's fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in the mediation.

(a) Arbitration. The parties agree to submit all complaints, disputes and controversies that may arise out of or in connection with this Agreement or services provided, and which are not resolved through mediation, to binding arbitration under the laws of the State of Oregon, and in accordance with the rules promulgated by the Arbitration Services of Portland, Inc., or similar arbitration service selected by the parties, in effect at the time. Notwithstanding any rule to the contrary, either party will have the option to initiate arbitration according to the Arbitration Services of Portland, Inc.'s rules and subject to its administration, or to demand and compel arbitration according to Oregon law. The arbitrator may award all costs and expenses, including attorney fees, incurred in connection with any dispute hereunder to the prevailing party. The decision of the arbitrator(s) will be final and binding upon both parties. An award entered in an arbitration proceeding pursuant to this Agreement will be final and binding upon the parties, and judgment may be entered upon an award in any court having jurisdiction. Arbitration shall take place only in Portland, Oregon.

## **21. General Provisions.**

(a) Assignment. Contractor may not assign or delegate any of Contractor's rights or obligations under this Agreement to any person without Customer's prior written approval, which Customer may not withhold unreasonably.

(b) Binding Effect. This Agreement will be binding on the parties and their respective successors and permitted assigns and will inure to their benefit.

(c) Attachments. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement. The parties will review all attachments to this Agreement at least annually and will update or change such attachments as the parties may agree, except Schedule 5(a), which Customer may amend from time to time in its discretion.

(d) Third Party Beneficiaries. Members and Covered Vessels are intended to be third party beneficiaries of this Agreement. The parties do not intend to confer any right or remedy on any other third party.

(e) Amendment. This Agreement may be amended to reflect changes in statutes, regulations, Clean Rivers equipment, Members, or Covered Vessels. Amendments may only be made by a written agreement signed by both parties upon mutual agreement of the parties.

(f) Notices. Except for notice of oil spills (which must be communicated directly by telephone to Contractor), all notices or other communications required or permitted by this Agreement must be in writing; must be delivered to the parties at the addresses set forth below, or

any other address that a party may designate by notice to the other parties; and are considered delivered: (i) upon actual receipt if delivered personally or by fax, e-mail, or an overnight delivery service; and (ii) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To Clean Rivers:

Clean Rivers Cooperative, Inc.  
200 SW Market St., Suite 190  
Portland, Oregon 97201  
E-mail: [vgreen@pdxmex.com](mailto:vgreen@pdxmex.com)  
Attn: Vanessa Green, General  
Manager

To MFSA:

Maritime Fire & Safety Association  
200 SW Market St., Suite 190  
Portland, Oregon 97201  
E-mail: [cannizzaro@pdxmex.com](mailto:cannizzaro@pdxmex.com)  
Attn: Curtis Cannizzaro

To Contractor:

[Insert address information]

E-mail:

Attn:

(g) Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

(h) Waiver. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

(i) Signatures. This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, a party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

[Signature Page Follows]

This Agreement is effective as of the date first written above.

**Contractor:**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Clean Rivers:**

CLEAN RIVERS COOPERATIVE

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MFSA:**

MARITIME FIRE & SAFETY  
ASSOCIATION

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 2(a)**

**Washington and Oregon Oil Spill Response Planning Standards**

- Oregon Administrative Rules 340-141-0150
- WAC 173-182-232 through WAC 173-182-820

## **SCHEDULE 5(a)**

### **Contractor Equipment [Per Zone]**

#### **Vessels:**

- Two (2) work boats, capable of towing 1000' 8"x12" contractor boom.
- Four (4) skiffs a minimum of 14 feet in length with a minimum of 15 hp engines.

#### **Vehicles:**

- Four (4) ¾ to 1 ton gear trucks to pull Clean Rivers response trailers and boats.
- One (1) Class 8 tractor to pull Clean Rivers semi trailers.
- Two (2) Vac Trucks with 70 bbl or greater capacity

#### **Shoreline cleanup trailer:**

The trailer must include at a minimum the following sorbents:

- Five (5) bales sorbent pads
- Ten (10) bales sorbent sweep
- Ten (10) bales 5" sorbent boom
- Ten (10) bags of snare on a rope

Contractor inventory list is attached. The list will include PPE, hand tools and other appropriate items.

#### **Miscellaneous:**

- Ten (10) hand held programmable VHF radios.
- Four (4) 5-Gas Air Monitors (O2, LEL, CO, H2S, VOC (PID))

**SCHEDULE 5(e)**

**Other Contractor Equipment**

[To be inserted or attached]



**SCHEDULE 6(a)**

**Clean Rivers Equipment**

NOTE: Customer has endeavored to accurately identify equipment in each Zone, small discrepancies may exist. *For a complete list of equipment by staging area, see attached.*

| Zone 1   |            |            |
|--|------------|------------|
| <b>Vessels</b>   | <b>Qty</b> | <b>UOM</b> |
| Oil Spill Recovery Vessel (OSRV) w/ portside mounted Marco Belt Skimmer-24 bbl (1008 gal.) capacity. | 3          | Each       |
| Shallow Water Recovery Barge (SWRB) w/ Marco Belt Skimmer.   | 3          | Each       |
| Fast Response Vessel (FRV) Workboat  | 5          | Each       |
| 20' Alumaweld Workboat   | 3          | Each       |
| 12' to 18' Skiff w/ outboard   | 5          | Each       |
| <b>Boom</b>  | <b>Qty</b> | <b>UoM</b> |
| 12" American Marine  | 8,600      | Ft         |
| 14" American Marine  | 1,000      | Ft         |
| 20" American Marine  | 24,800     | Ft         |
| Current Buster System  | 2          | Each       |
| Boom Vane  | 1          | Each       |
| Underflow Dam Water Barrier  | 2          | Each       |
| 32' to 53' Boom Trailers   | 8          | Each       |
| <b>Skimmers</b>  | <b>Qty</b> | <b>UoM</b> |
| Douglas 18000 Skimmer /Skimmer System  | 9          | Each       |
| Douglas 4200 Skimmer /Skimmer System   | 5          | Each       |
| Crucial 12" Skimming System  | 1          | Each       |
| 36" Drum Skimming System   | 3          | Each       |
| Elastec TDS 118G Skimmer System  | 3          | Each       |
| API Drum Skimmer   | 1          | Each       |
| RO Mop Skimmer   | 1          | Each       |
| 12" Drum Skimmer   | 2          | Each       |
| API Belt Skimmer   | 1          | Each       |
| Desmi Terminator Skimmer   | 2          | Each       |
| Slickbar "Duckbill Skimmer   | 5          | Each       |
| Slickbar "Manta Ray" Skimmer   | 1          | Each       |
| Coated Disc Skimmer 13/30  | 1          | Each       |
| <b>Storage</b>   | <b>Qty</b> | <b>UoM</b> |
| 2500 gal. Towable Bladder  | 2          | Each       |
| 1000 gal. Portable Fast Tank   | 5          | Each       |
| 1500 gal. Portable Fast Tank   | 2          | Each       |
| 2000 gal. Portable Fast Tank   | 2          | Each       |
| Shallow Water Barge (SWB) 100 bbl  | 3          | Each       |

|   |            |            |
|---|------------|------------|
| Tank Barge (Under Contract) 25k bbl                         | 1          | Each       |
| <b>Response Trailers</b>                                    | <b>Qty</b> | <b>UoM</b> |
| 24' – 32' Oil Spill / Shoreline Clean up Trailer            | 4          | Each       |
| 53' Command & Communications Trailer                        | 1          | Each       |
| Mobile Workstation Trailer                                  | 1          | Each       |
| <b>Wildlife</b>   | <b>Qty</b> | <b>UoM</b> |
| Wildlife Response & Rehabilitation Trailer (48')            | 1          | Each       |
| Wildlife Transport Trailer (32')                            | 1          | Each       |
| Wildlife Transport Trailer (20')                            | 1          | Each       |
| Western Shelter System Wildlife Tent w/ XE 1200 HVAC System | 1          | Each       |
| Wildlife Pool (3000 gallon)                                 | 2          | Each       |
| <b>Vehicles</b>   | <b>Qty</b> | <b>UoM</b> |
| 2010 Freightliner Tractor                                   | 1          | Each       |
| F-550 STAKE BED Truck 4x4                                   | 1          | Each       |
| F-350 Super Duty  | 2          | Each       |
| Silverado Crew Cab 4WD                                      | 1          | Each       |
| Ram 2500 Big Horn Crew Cab 4x4                              | 2          | Each       |
| <b>Pumps</b>  | <b>Qty</b> | <b>UoM</b> |
| CounterVac 3315   | 2          | Each       |
| Float-O-Pump  | 3          | Each       |
| DOP 160 Pump  | 2          | Each       |
| <b>Power Units</b>  | <b>Qty</b> | <b>UoM</b> |
| 7KW Generator   | 2          | Each       |
| 25KW Generator  | 1          | Each       |
| 35KW Generator w/ Trailer                                   | 1          | Each       |
| Honda 2000W Generator                                       | 1          | Each       |
| Honda 2200W Industrial Generator                            | 1          | Each       |
| 58Kw Generator for Primary Facility Backup                  | 1          | Each       |
| Diesel Heater (Frost Fighter) 500,000 BTU                   | 1          | Each       |
| <b>Other Equipment</b>                                      | <b>Qty</b> | <b>UoM</b> |
| Equipment Trailer   | 1          | Each       |
| Utility (Dump) Trailer                                      | 1          | Each       |
| Flat Bed Trailer (48')                                      | 1          | Each       |
| Forklift  | 1          | Each       |
| 3500 PSI Hot Pressure Washer                                | 1          | Each       |
| Hypertherm Plasma Cutter                                    | 2          | Each       |
| Personnel Decon Kit   | 1          | Each       |
| MX6 LEL Air Monitor   | 8          | Each       |
| FLIR Unit - Thermal Imager                                  | 2          | Each       |
| Oil Spill Tracker GPS                                       | 3          | Each       |
| Equipment Maintenance Trailer                               | 1          | Each       |
| <b>Communication Equipment</b>                              | <b>Qty</b> | <b>UoM</b> |

|                                       |    |  |
|---------------------------------------|----|--|
| ICOM F 50 Handheld Radio              | 6  |  |
| Motorola XPR7550 Handheld Radio       | 32 |  |
| Motorola XPR6550 Handheld Radio       | 32 |  |
| ICOM IC-FR3000-2 Repeater             | 2  |  |
| Motorola R1225 Repeater               | 3  |  |
| Codan Repeater                        | 3  |  |
| Motorola XPR 4550 Portable Base Units | 2  |  |

| Zone 2   |            |            |
|--|------------|------------|
| <b>Vessels</b>   | <b>Qty</b> | <b>UOM</b> |
| Oil Spill Recovery Vessel (OSRV) w/ portside mounted Marco Belt Skimmer-24 bbl (1008 gal.) capacity. | 2          | Each       |
| Shallow Water Recovery Barge (SWRB) w/ Marco Belt Skimmer.   | 3          | Each       |
| Fast Response Vessel (FRV) Workboat  | 1          | Each       |
| 12' to 18' Skiff w/ outboard   | 2          | Each       |
| <b>Boom</b>  | <b>Qty</b> | <b>UoM</b> |
| 12" American Marine  | 3,600      | Ft         |
| 20" American Marine  | 36,600     | Ft         |
| 30" American Marine  | 1,100      | Ft         |
| Underflow Dam Water Barrier  | 2          | Each       |
| 32' to 53' Boom Trailers   | 7          | Each       |
| <b>Skimmers</b>  | <b>Qty</b> | <b>UoM</b> |
| Douglas 18000 Skimmer /Skimmer System  | 7          | Each       |
| 36" Drum Skimmer   | 1          | Each       |
| Elastec TDS 118G Skimmer System  | 2          | Each       |
| API Drum Skimmer   | 1          | Each       |
| <b>Storage</b>   | <b>Qty</b> | <b>UoM</b> |
| 1000 gal. Portable Fast Tank   | 7          | Each       |
| Shallow Water Barge (SWB) 100 bbl  | 2          | Each       |
| Tank Barge (Under Contract) 30k bbl  | 1          | Each       |
| <b>Response Trailers</b>   | <b>Qty</b> | <b>UoM</b> |
| 24' – 32' Oil Spill / Shoreline Clean up Trailer   | 1          | Each       |
| <b>Pumps</b>   | <b>Qty</b> | <b>UoM</b> |
| CounterVac 3315  | 1          | Each       |
| <b>Power Units</b>   | <b>Qty</b> | <b>UoM</b> |
| Yanmar Diesel Hydraulic Power Unit   | 1          | Each       |
| <b>Other Equipment</b>   | <b>Qty</b> | <b>UoM</b> |
| Equipment Trailer  | 1          | Each       |
| Personnel Decon Kit  | 3          | Each       |
| MX6 LEL Air Monitor  | 2          | Each       |

**SCHEDULE 12**

**Exceptions to Exclusive Dealings**

[Contractor to list, if any]

**EXHIBIT A**

**Contractor's Form of Work Order**

[To be inserted or attached]

**EXHIBIT B**

**Contractor's Services Rate Schedule**

[To be inserted or attached]

**EXHIBIT E      FORM OF WILDLIFE RESPONSE SERVICE  
AGREEMENT**

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## WILDLIFE RESOURCES SERVICE AGREEMENT

This Wildlife Resources Service Agreement, dated \_\_\_\_\_ (“Effective Date”), is between Clean Rivers Cooperative, Inc. (“Clean Rivers”), Maritime Fire & Safety Association (“MFSA”) (Clean Rivers and MFSA may be referred to collectively as “Customer”), and \_\_\_\_\_ (“Contractor”).

### RECITALS

- A. Clean Rivers is an Oregon nonprofit cooperative corporation whose membership is comprised of companies that own and/or operate facilities in the Area of Interest (defined below) and store, transfer, handle or distribute petroleum products.
- B. MFSA is an Oregon non-profit corporation that provides oil spill contingency planning services for the benefit of vessels enrolled in the MFSA Plan (defined below).
- C. Contractor is a wildlife response service provider, as defined in WAC 173-182-030, that maintains personnel who are qualified and capable of assuming the responsibilities of the wildlife branch and of staffing and managing the operational components of wildlife response activities during an oil spill. Contractor is approved by State of Washington Department of Ecology.
- D. Clean Rivers and MFSA desire to enter into this Agreement to provide wildlife response service capability to Members (defined below) and Covered Vessels (defined below).

### **1. Definitions**

(a) “Annual Fees” means the basic amount paid per contract year in equal monthly installments by Clean Rivers to Contractor under this Agreement, as set forth in Section 2(b).

(b) “Area of Interest” means the Snake River from the Idaho border to its confluence with the Columbia River; the Columbia River from its confluence with the Snake River to the mouth at River Mile 0; the area from the mouth of the Columbia River at River Mile 0 extending three (3) miles into the Pacific Ocean; and the Willamette River from its confluence with the Columbia River up to Willamette Falls.

(c) “Clean Rivers Wildlife Equipment” means all equipment now or hereafter acquired by Clean Rivers or MFSA for wildlife response operations. Clean Rivers Wildlife Equipment is identified in Schedule 5(a).

(d) “Contractor” means \_\_\_\_\_.

(e) “Contractor Equipment” means all equipment as designated in Schedule 4(a) owned or leased (other than from Customer) by Contractor.

(f) “Contractor Parties” includes Contractor and its directors, officers, managers, administrators, employees, and borrowed servants and vessels.

(g) “Covered Vessel” means any vessel which is enrolled in the MFSA Plan or otherwise covered by Clean Rivers’ oil spill removal organization (OSRO) services.



(h) “CPI” means the Consumer Price Index, West Region.

(i) “Customer Parties” includes MFSA, Clean Rivers, Merchants Exchange and their respective directors, officers, managers, administrators, employees, borrowed servants and vessels.

(j) “Designated Spill Site” means the land or water site within the Area of Interest designated to Contractor by a Member or a Covered Vessel for which Pollution Control services are requested.

(k) “Incident Command” means the Incident Command System, a framework for managing emergency and non-emergency events, as stated by the National Incident Management System.

(l) “Member” means a member company of Clean Rivers.

(m) “MFSA Plan” means the MFSA Oil Spill Contingency Plan for the Columbia and Willamette Rivers.

(n) “Oil Spill” means any spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum products in the Area of Interest, including the threat of an oil spill requiring a response.

(o) “OSHA” means the Occupational Health and Safety Act of 1970 and all regulations and standards promulgated thereunder, and any applicable state versions of the Act and their related regulations and standards.

(p) “Pollution Control” means pollution prevention, control, containment and cleanup of an oil spill or threat of an oil spill (as defined in the Federal Water Pollution Control Act) on land and water, in accordance with requirements set forth in the Oil Pollution Act of 1990 and applicable State rules and regulations within the Area of Interest.

(q) “PRC Application” means Contractor’s Washington State Department of Ecology Primary Response Contractor (PRC) Application

(r) “Required Personnel” has the meaning give in Section 3(b).

(s) “Wildlife Resources” has the meaning given in Section 3(a).

(t) “Wildlife Response” means the collection, treatment or care of oiled wildlife as per the Oil Pollution Act of 1990.

## 2. **Term; Fees; Invoicing.**

(a) Term. The term of this Agreement will commence as of \_\_\_\_\_ and will continue in effect for an initial three-year term. This Agreement will be subject to automatic one-year renewals thereafter unless either party gives the other party written notice of termination at least one calendar year prior to the end of then effective term.

(b) Annual Fee. Clean Rivers will pay Contractor an Annual Fee during the term of this Agreement for the services set forth in this Agreement in the amount of \$ \_\_\_\_\_, to be paid in equal monthly installments. The Annual Fee would be prorated for any partial year at commencement or termination of this Agreement. The Annual Fee will be subject to annual increases at the lesser of (i) the CPI increase over the prior 12 month period, and (ii) 3%. Contractor will submit invoices for the Annual Fee under this to Clean Rivers. Clean Rivers will remit payment within 30 days of receipt of invoice.

(c) Wildlife Response Fees. The rates to be charged by Contractor for Wildlife Response under this Agreement may not exceed the rates set forth in Exhibit B. All fees charged for Wildlife Response will be for the account of the responsible party (i.e. Member or Covered Vessel) involved in the Oil Spill and not for Customer. Contractor will invoice the responsible party directly, with a copy of such invoicing provided to Clean Rivers.

(d) Wildlife Response Fees Rate Increases. Contractor agrees not to request any rate changes to Exhibit B within the initial one-year term of this Agreement. Thereafter, Contractor may request rate increases based on increases in its expenses, provided Contractor provides Clean Rivers with information substantiating the additional expenses and the associated requested rate increase. Contractor may not request rate increases more frequently than annually and may not request a rate change after any notice of termination of the Agreement has been given; the requested rate increase may not increase the rate by more than the change in CPI from the date that the rate was previously set unless Contractor substantiates circumstances necessitating a higher rate increase; and the proposed effective date for the rate increase may not be earlier than 90 days from date the request is provided to Clean Rivers. Clean Rivers will accept request rate changes that are substantiated and comply with the terms of this section. If Clean Rivers accepts changes to the Exhibit B rate schedule, such increased rates will not affect Wildlife Response services that are in progress or were ordered prior to the effective date of such rate increase.

(e) Examination/Audit by Clean Rivers. Upon reasonable notice, Clean Rivers may examine and audit Contractor's records relating to charges to Clean Rivers, any of its Members and any Covered Vessel for Wildlife Response services and related to usage of Contractor Equipment and Clean Rivers Equipment. If Clean Rivers determines that there is any discrepancy between the charges and the terms under this Agreement, Clean Rivers (on its behalf or on behalf of any of its Members or Covered Vessels) may request an adjustment to the charges or reimbursement related to the adjustment if charges were previously paid. Contractor will respond in writing to Clean Rivers within 30 days of such request, including providing such adjustment or reimbursement to the extent Contractor agrees. If there is any dispute between Clean Rivers and Contractor related to charges, either party may submit the dispute to arbitration pursuant to Section 15 of this Agreement.

### 3. **Wildlife Response Resources**

(a) Required Resources. Contractor shall maintain resources, either owned or subcontracted, that meet the requirements of WAC 173-182-540 ("Wildlife Resources"). Contractor will include a detailed description of the resources provided to meet such requirements in its PRC Application.

(b) Required Personnel. Contractor shall maintain contracts with wildlife response service provider personnel that are appropriately trained to staff and manage the wildlife response within an Incident Command structure and that are capable of satisfying the requirements of WAC 173-182-540 (the "Required Personnel").

(c) Account Manager. Contractor will designate an Account Manager to administer this Agreement for Contractor and to serve as a liaison to Customer. The initial Account Manager under this Agreement is \_\_\_\_\_. Contractor will advise Clean Rivers in writing within 14 days of any change to the designated Account Manager. Clean Rivers' Board of Directors has the right to consent to any replacement Account Manager and may require a replacement Account Manager if replacement is necessary or prudent.

(d) Contact Information. Contractor will supply Clean Rivers with contact information for the Account Manager and Required Personnel, including email, 24-hour telephone contacts, pagers, etc. Contractor will immediately notify Clean Rivers in writing of any changes in Required Personnel or in the contact information for the Account Manager or any Required Personnel

(e) Training and Drills.

(i) Annual Drills. Contractor shall conduct annual drills such that substantially all of the Wildlife Resources are deployed at least once every three (3) years. Contractor's wages and expenses (excluding Contractor's equipment and consumables) for training are for Contractor's account and are included in the Annual Fee. If Clean Rivers adds any Wildlife Resources to the Clean Rivers Wildlife Equipment inventory during the term of this Agreement requiring specialized training, Clean Rivers may, at its option, include training on the new equipment in the annual drills, or Clean Rivers may require Contractor to make each member of the Required Personnel available for additional training beyond that provided in the annual drill training.

(ii) Trainers. Any trainers provided by Clean Rivers for annual drill training or new equipment training will be at Clean Rivers' expense. Costs of all other trainers required by Contractor to maintain the training and responsiveness levels required under this Agreement will be at Contractor's expense.

(iii) Contractor Equipment and Consumables for Training and Drills. Contractor may charge time and material rates per Exhibit B for Contractor Equipment and consumables utilized in all types of training or drills, excluding use of vehicles for personnel transport only and excluding radios.

(iv) Training Records. Contractor will maintain records of all initial and refresher training under this section and for such additional personnel as Contractor may utilize under this Agreement. Contractor will provide all training records to Customer no less frequently than quarterly.

(f) Mobilization of Wildlife Resources. With respect to an Oil Spill involving a Member or a Covered Vessel, an authorized representative of Clean Rivers, MFSA, the responsible party (i.e. the Member or Covered Vessel) or Incident Command may verbally contact Contractor to request mobilization of Wildlife Resources to provide Wildlife Response. Contractor will confirm the request for services with the Covered Vessel in writing as soon as practicable after initial notification, using Contractor's Work Order form (Exhibit A). Upon receipt of a request for Wildlife Resource mobilization, Contractor will use best efforts to coordinate mobilization of Resources in response to the request within twelve (12) hours of the call out with crew trained in accordance with VOO Requirements.

(g) Annual Performance Review: Customer will provide annual written evaluations of Contractor's compliance with the requirements of this Agreement and Contractor's performance under this Agreement in general. Such annual performance reviews may also identify areas of Contractor's performance in need of improvement. Contractor will provide Customer with a written response to the evaluation within thirty (30) days of receipt of such evaluation.

#### 4. **Contractor Equipment.**

(a) Minimum Equipment Provided. Contractor will provide the Wildlife Resources as described in Schedule 4(a) (or equivalent replacement equipment satisfactory to Clean Rivers).

(b) Minimum Maintenance Requirements. Contractor will maintain all Contractor Equipment in a properly maintained and operable condition at all times. On a daily, 24-hour basis during the term of this Agreement, all Contractor Equipment must be operable in a timeframe required to comply with response time requirements set forth in WAC 173-182-540 after notification from Clean Rivers, MFSA, a Member, or a Covered Vessel of an Oil Spill. Designees from Clean Rivers, MFSA, or any Member may inspect Contractor Equipment or Clean Rivers Wildlife Equipment at any reasonable time.

(c) Condition Reports. Contractor will maintain equipment condition reports for Contractor Equipment, noting any hazardous or dangerous conditions existing and/or any repairs or replacements required. Contractor will file such reports with the Clean Rivers General Manager on the following schedule:

- (i) monthly, under normal equipment usage; and
- (ii) immediately (but no later than 24 hours) after discovering any mechanical failures, needed repairs, or dangerous or hazardous conditions, including without limitation drydock service.

(d) Contingency Plan Listing. Customer and Members may list all of Contractor's Schedule 4(a) equipment in oil spill response contingency plans maintained by Customer or Clean Rivers Members. Customer is authorized to reference Contractor's PRC Application and Contractor annual drills of the Wildlife Resources for the purposes of meeting state and/or federal contingency planning requirements for access to wildlife rescue and rehabilitation equipment capabilities.

#### 5. **Clean Rivers Wildlife Equipment.**

(a) Equipment Provided. Clean Rivers will provide the equipment described in Schedule 5(a) (or equivalent replacement in Clean Rivers's sole discretion) stored at the locations specified in that schedule.

(b) Liability for Damage or Loss. At Contractor's expense, Contractor will repair or replace all Clean Rivers Equipment damaged or lost during use under this Agreement due to negligent acts or omissions of Contractor and Contractor will assist Clean Rivers in identifying the cause of any damage or loss. Clean Rivers will pay for repair or replacement of Clean Rivers Wildlife Equipment due to reasonable and ordinary wear in normal use.

(c) Rates. Clean Rivers may set rates for use of Clean Rivers Wildlife Equipment by Members, Covered Vessels, on work performed for governmental entities, or for other permitted uses.

(d) Restrictions on Usage. Any use of Clean Rivers Wildlife Equipment other than for Pollution Control services for Members and Covered Vessels requires Clean Rivers' prior consent. Clean Rivers Wildlife Equipment may only be used in Wildlife Response services for Clean Rivers, Members, and Covered Vessels, unless under federal regulators having jurisdiction in the event of a federalized spill and with Clean Rivers' consent.

## 6. Contractor Insurance.

(a) Insurance Required. At Contractor's expense, Contractor will maintain the following insurance:

(i) Oregon and Washington State, as applicable, Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage (if applicable), with statutory limits as required by law. Coverage must include employer's liability for limits of not less than \$1 million;

(ii) Protection and Indemnity Insurance applicable to any vessels owned, operated, chartered or rented by Contractor (other than Clean Rivers Equipment) for performance of this Agreement. Coverage must include third party bodily injury and property damage, collision liability, and tower's liability;

(iii) Extended P&I Cover on a "Non-Owned Vessels" basis ("Non-Owned Vessels P&I Insurance"), applicable to Clean Rivers Equipment when Contractor is operating Clean Rivers Equipment for performance of this Agreement. Coverage must include third party bodily injury and property damage, collision liability, and tower's liability and vessel pollution liability coverage (to the extent not included in the pollution coverage under Section 6(a)(v) hereof);

(iv) Protection and Indemnity Insurance or equivalent workers' compensation/longshoremen and harbor workers' compensation or Marine Employer's Liability insurance covering liability for injury, illness or death of Contractor's crew members and employees at all times applicable to this Agreement, including but not limited to working aboard any vessels owned, operated, chartered or rented by Contractor for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment while being operated by Contractor, but not including coverage for Customer Parties (as defined in Section 8) at any time and not including coverage for legal liability arising out of Customer's operation of such vessels;

(v) Vessel Pollution Liability coverage on vessels owned, operated, chartered or rented by Contractor for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment while being operated by Contractor (to the extent not included in the Non-Owned Vessels P&I Insurance under Section 6(a)(iii) hereof), of a scope and limits necessary to comply with all State and Federal pollution liability laws pertaining to vessels, but not less than \$1 million;

(vi) Commercial General Liability insurance (on an occurrence form), including broad form contractual liability, broad form property damage, and Stop Gap Employer's

Liability, specifically including coverage for all of the contractual liabilities of Contractor with respect to this Agreement, all with limits of \$2 million for any one accident or occurrence and general aggregate equal to \$4 million, with any watercraft exclusion deleted;

(vii) Auto Liability for any vehicle that may be used in the performance of this Agreement, including non-owned and hired auto coverage and with limits of not less than \$5 million for any one accident or occurrence. Such auto liability coverage must be designated as primary over other applicable types of insurance carried by Clean Rivers for all claims arising for a Clean Rivers-owned vehicle when driven by a Contractor employee or agent;

(viii) Umbrella Liability coverage with limits of \$10 million for any one accident or occurrence; and

(ix) Contractor's Pollution Liability in the amount of \$10,000,000 each claim.

(b) Policy Endorsements. Contractor's insurance policies will:

(i) contain a waiver of subrogation against the Customer Parties;

(ii) name the Customer Parties (as defined in Section 8 below) (not applicable to Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage);

(iii) provide that Contractor's insurance is primary and excess coverage with respect to all insureds as respects Contractor's liability under this Agreement;

(iv) contain a standard cross-liability endorsement;

(v) include a requirement that the insurer provide Customer with thirty (30) days written notice prior to the effective date of any cancellation or material change of the insurance; and

(vi) Commercial General Liability coverage shall be evidenced by and in accordance with use of ISO Endorsements Form No. CG 20 10 12 19 "Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization" and Form No. CG 20 37 12 19 "Additional Insured - Owners, Lessees or Contractors – Completed Operations". Notwithstanding anything to the contrary herein, should Contractor maintain any insurance in amounts greater than that required herein or that indicated in any certificate of insurance furnished by Contractor, or any insurance in addition to that required herein or indicated in any certificate of insurance furnished by Contractor, such insurance shall be for the exclusive protection and benefit of Contractor and Customer Parties shall not be named an additional insured on such insurance and shall have no rights to the proceeds thereof as an additional insured except to the extent such liability arises out of the gross negligence or willful misconduct of Contractor.

(c) General Contractor Insurance Provisions.

(i) All costs of the insurance required in this section are at Contractor's expense.

(ii) Before commencing performance under this Agreement and within 30 days of any change to or replacement of an existing policy during the term of this Agreement, Contractor will provide Customer with copies of certificates evidencing the required insurance.

(iii) The liability and indemnity provisions of this Agreement may not be construed to limit Contractor's obligations in any way except as respects waivers of subrogation in favor of Customer Parties and Customer's liability for Customer Parties.

(iv) If it is judicially determined that the monetary limits or other provisions of the insurance required in this section do not conform with applicable law, the insurance requirements of this Agreement will automatically be amended to conform to the maximum monetary limits or other provisions of such law.

(v) Contractor's insurance will be with underwriters reasonably satisfactory to Customer.

(vi) Contractor's insurance program will be free from self-insurance or co-insurance provisions, except to the extent of ordinary deductibles not to exceed \$25,000, for which Contractor shall be solely responsible.

## 7. **Clean Rivers Insurance.**

(a) Insurance Required. At Customer's expense, Customer will maintain Protection and Indemnity insurance or equivalent coverage applicable to vessels leased or owned by Clean Rivers which are included in Clean Rivers Equipment. Such coverage will include third party bodily injury and property damage, collision liability, and tower's liability while such vessels are operated by Clean Rivers, but will not include coverage for Contractor Parties at any time and will not include coverage for legal liability arising out of Contractor's operation of such vessels. Customer shall also provide Protection and Indemnity Insurance or equivalent workers' compensation/longshoremen and harbor workers' compensation or Marine Employer's Liability insurance covering liability for injury, illness or death of any Customer Party working aboard any vessels owned, operated, chartered or rented by Customer for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment, but not including coverage for Contract Parties (as defined in Section 8) at any time and not including coverage for legal liability arising out of Contractor's operation of such vessels. Customer will also maintain the following additional insurance coverages:

(i) Vessel Pollution Liability coverage on vessels owned, operated, chartered or rented by Customer for the performance of this Agreement, including all vessels forming a part of the Clean Rivers Equipment while being operated by Customer, of a scope and limits necessary to comply with all State and Federal pollution liability laws pertaining to vessels, but not less than \$1 million;

(ii) Oregon and Washington State, as applicable, Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage, including compliance with laws of any other state (if applicable), with statutory limits as required by law. Coverage must include employer's liability for limits of not less than \$1 million;

(b) General Clean Rivers Insurance Provisions. Any hull and machinery, business personal property, equipment or other physical damage policies, Protection and Indemnity insurance, Vessel Pollution Liability insurance, workers' compensation and United States

Longshoreman and Harbor Workers' Compensation, in place for Clean Rivers Equipment and Customer employees will be claused to waive subrogation in favor of Contractor. Clean Rivers may, at its option, elect to self-insure any of the Clean Rivers Equipment. Neither the waiver of subrogation against Contractor nor Clean Rivers's election to self-insure will affect Contractor's limited liability for equipment damages under Section 5(b). In addition, Customer's Protection and Indemnity insurance policies shall:

- (i) name Contractor, and its directors, officers, managers, administrators, as additional insureds (not applicable to Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage);
- (ii) provide that such insurance is primary and excess coverage with respect to all insureds as respects Customer's liability under this Agreement;
- (iii) contain a standard cross-liability endorsement; and
- (iv) include a requirement that the insurer provide Contractor with thirty (30) days written notice prior to the effective date of any cancellation or material change of the insurance.

#### **8. General Indemnification.**

(a) Personal Injury or Death Generally; Property Damage. Contractor will defend, indemnify and hold any Customer Party harmless for, from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys' fees, investigation costs and other costs of litigation) arising out of, in connection with, or related in any way to the performance of, or failure to perform, this Agreement by Contractor, its agents, employees or subcontractors, which results directly or indirectly in injury or death to any person or damage to any property, regardless of the negligence of a Customer Party or unseaworthiness of an Customer Party vessel, except for injury or death to a Customer Party for which Customer is responsible under Section 8(c).

(b) Contractor's Employees and Other Agents. Contractor will defend, indemnify and hold any Customer Party harmless from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys' fees, investigation costs and other costs of litigation) arising out of, in connection with or related in any way to any injury, illness or death suffered by or occurring to any Contractor Party resulting from any cause whatsoever, including the negligence of an Customer Party or unseaworthiness of any vessel, and excepting only willful or intentional misconduct of a Customer Party.

(c) Customer Employees and Other Agents. Each of MFSA and Clean Rivers, respectively, will defend, indemnify and hold Contractor Parties harmless from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys' fees, investigation costs and other costs of litigation) arising out of, in connection with or related in any way to any injury, illness or death suffered by or occurring to any of its Customer Parties, including the negligence of a Contractor Party or unseaworthiness of any vessel, and excepting only willful or intentional misconduct of a Contractor Party.

(d) The parties intend for the indemnities stated in Sections 8(a), (b) and (c) to apply to claims based on allegations of gross negligence to the extent permitted by applicable law, but



claims based on willful or intentional misconduct of the indemnified party are excluded from the above stated indemnities.

(e) Contractor's employees and the employees of its subcontractors shall not be considered the loaned or borrowed servants of Customer and Customer's employees shall not be considered the loaned or borrowed servants of Contractor.

(f) Notwithstanding any other provision of this Agreement, Contractor and Customer will have the benefit of all exemptions from and limitations of liability to which such persons or entities are entitled under applicable law, statute or regulation, including without limitation responder immunity provisions under federal law (33 USC § 1321(c)(4)) or state law (ORS 468B.425 and RCW 90.56.390), as amended, when engaged in responding to an incident involving an oil spill or the threat of an oil spill. Contractor and Customer expressly claim and preserve all rights and benefits under all such laws, statutes and regulations.

(g) The parties hereto acknowledge that under State and Federal Law, Contractor is afforded certain protections when it responds to spills and discharges of oil or other hazardous materials ("Responder Immunity"). In a response, rapid and decisive action is necessary to contain a spill and responders must initiate a response without prior notice based on limited information. Without Responder Immunity, the enormous financial and liability exposures associated with this work would make the business of responding to spills impracticable. Accordingly, the parties execute this Agreement with the intent of preserving Contractor's statutorily conferred protections to the greatest extent possible.

#### 9. Compliance With Laws and Regulations.

(a) Generally. Each party will comply with all laws, regulations, decrees, codes, ordinances, resolutions, and other acts of any governmental authority, as may be applicable, including but not limited to federal, state or other governmental acts setting forth any laws and regulations pertaining to:

- (i) operation of a qualified oil spill removal organization or acting as the primary response contractor to such an organization;
- (ii) equal opportunity;
- (iii) nonsegregated facilities;
- (iv) listing job openings for veterans; and
- (v) nondiscrimination against employees based on race, creed, sex or national origin.

(b) OSHA. Contractor will comply with OSHA, including but not limited to doing the following:

- (i) Contractor will establish and maintain an OSHA program. Contractor will promptly forward a copy of the program and any periodic updates to Clean Rivers.

(ii) As required under OSHA, Contractor will train or verify training of all of its employees, crew members, agents, borrowed servants and subcontractors on OSHA rules, regulations, and standards. Contractor will document all OSHA training sessions and provide copies of all updated training records to Clean Rivers on a monthly basis.

(iii) As required by OSHA, Contractor will maintain OSHA Form No. 300, the log and summary of all recordable occupational injuries. Contractor will forward copies of Form No. 300 to Clean Rivers each year.

(iv) Whenever Contractor employs eleven or more employees, Contractor will establish and maintain an OSHA safety committee, which committee will, when appropriate, interact directly with Customer and its employees regarding workplace safety issues.

(c) Drugs and Alcohol. Contractor will establish and maintain a drug and alcohol program that will apply to all workers identified to or used under this Agreement, regardless of title or duties. The program will require both pre-hire and post-hire drug and alcohol testing, at Contractor's expense. Contractor's drug and alcohol program will at all times be consistent with any drug and alcohol laws and regulations applicable to:

(i) holders of merchant mariner documents and licenses;  
and

(ii) commercial truck transportation workers under Federal, Oregon, and Washington law.

(d) Indemnification. Contractor will indemnify, defend, and hold Customer harmless from and against any and all loss, damage, injury, liability, and claims resulting directly or indirectly from Contractor's failure to meet the obligations in this section.

#### 10. Liens.

(a) Contractor will discharge at once, bond or otherwise secure against all liens and attachments which are filed in connection with work performed by Contractor, its subcontractors or other agents under this Agreement.

(b) Contractor will indemnify, defend and hold harmless Customer, the responsible party (i.e. the Member or Covered Vessel), and the owners of the premises on which the work of Contractor, its subcontractors, or agents is performed for, from and against any and all loss, damage, injury, liability and claims thereof resulting directly or indirectly from any liens and attachments filed in connection with work performed by Contractor, its subcontractors or other agents under this Agreement.

#### 11. Taxes; Vehicle Licenses

(a) Contractor will pay all state, federal and other payroll taxes, including contributions and taxes assessed against employees on wages earned in connection with the work, together with all taxes now or hereafter imposed by any governmental authority upon, measured by or incident to the performance of this Agreement or Contractor's purchase, storage, use, or consumption of

materials, utilities, consumable supplies, tools or equipment used in the performance of this Agreement.

(b) Contractor will pay all sales or use taxes incurred as a result of replacement or replenishment of Clean Rivers Equipment and will charge all such sales or use taxes to the responsible party to whom services were provided requiring such replacement or replenishment.

(c) Contractor will make all tax reports required by governmental authorities.

(d) Nothing in this section may be construed to relieve Customer's obligation to pay all personal property and similar taxes relating to the ownership of Clean Rivers Equipment or to contest the assessment on such equipment.

(e) The cost of vehicle licenses for Clean Rivers Equipment will be for Customer's account.

## 12. Termination.

(a) For Cause. Either party may cancel this Agreement due to material breach by the other party, provided such material breach is not cured within five (5) days of written notice to cure such breach, unless such breach requires additional time to cure, in which case the breaching party shall be entitled to additional time, not to exceed 90 days, so long as such party is diligently prosecuting such cure to completion and provided such breach does not cause either Contractor or Customer to not be in compliance with applicable law. Due to the statutory requirements imposed on Members and Covered Vessels, and the high standards for preparedness and response required of the Contractor, "material breach" includes any good faith determination by Customer that:

(i) a material adverse change has occurred in the business, operations or financial condition of the Contractor, any related party of the Contractor, or any subcontractor used by the Contractor to fulfill requirements under this Agreement;

(ii) the Contractor's interest in, use of or access to any of the equipment used by the Contractor to fulfill requirements under this Agreement has been adversely affected, impaired or diminished to a material extent;

(iii) Contractor's failure to maintain strict compliance with the requirements under this Agreement for provision of personnel, Contractor Equipment, reports, training and drills, performance standards, certifications, restrictions on equipment, or insurance; or

(iv) the prospect of performance of any obligation required under this Agreement is materially impaired, whether or not the condition giving rise to such determination constitutes an event of default or breach under any other provision of the Agreement, and the condition continues to exist five (5) days after notice of such determination by Customer to Contractor.

(b) Additional Remedies – For Cause Cancellation. In addition to Customer’s right of cancellation for cause as stated above, in the event of any material breach which is not cured within five (5) days of written notice, Customer may, at its option:

(i) withhold any payment then or thereafter due to Contractor or until such breach is cured;

(ii) hire, contract or purchase the services, equipment or insurance required to fulfill the obligations of Contractor which are the subject of the material breach, charging or setting off against sums due to the Contractor for the costs thereof; or

(iii) take such other steps as Customer deems reasonably necessary to obtain cover for Contractor's material breach in order to maintain compliance with the preparedness and response requirements imposed on Members and Covered Vessels.

**13. Examination of Records.** For three (3) years after the expiration or earlier termination of this Agreement, Customer or its authorized representatives may access and examine any records of Contractor relating to transactions under this Agreement.

#### **14. Force Majeure.**

(a) Neither party will be liable to the other for failure to perform its obligations under this Agreement if the failure to perform arises from acts of God, acts of the public enemy, acts of a government in its sovereign or its contractual capacity, fire, flood, earthquakes, volcanic disturbances, epidemic, quarantines, strikes or labor disturbances of persons or entities other than Contractor and its employees, freight embargoes, or any other circumstances of like or different nature beyond the reasonable control of the party failing to perform, provided that, in the event of an occurrence of such an event, the parties will use their best efforts to perform their obligations. Notwithstanding the foregoing, Contractor will be responsible for maintaining the service levels required during any such event of force majeure.

(b) Nothing contained in this section may be construed to decrease the protection afforded the parties under policies of hull, fire or similar casualty insurance required to be maintained by Contractor under this Agreement.

#### **15. Dispute Resolution**

(a) Mediation. Any dispute that may arise under this Agreement will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of arbitration. Such mediation will occur in Portland, Oregon and the mediator's fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in the mediation.

(b) Arbitration. The parties agree to submit all complaints, disputes and controversies that may arise out of or in connection with this Agreement or services provided, and which are not resolved through mediation, to binding arbitration under the laws of the State of Oregon, and in accordance with the rules promulgated by the Arbitration Services of Portland, Inc., or similar arbitration service selected by the parties, in effect at the time. Notwithstanding any rule to the contrary, either party will have the option to initiate

arbitration according to the Arbitration Services of Portland, Inc.'s rules and subject to its administration, or to demand and compel arbitration according to Oregon law. The arbitrator may award all costs and expenses, including attorney fees, incurred in connection with any dispute hereunder to the prevailing party. The decision of the arbitrator(s) will be final and binding upon both parties. An award entered in an arbitration proceeding pursuant to this Agreement will be final and binding upon the parties, and judgment may be entered upon an award in any court having jurisdiction. Arbitration shall take place only in Portland, Oregon.

**16. General Provisions.**

(a) Assignment. Contractor may not assign or delegate any of Contractor's rights or obligations under this Agreement to any person without Customer's prior written approval, which Customer may not withhold unreasonably.

(b) Binding Effect. This Agreement will be binding on the parties and their respective successors and permitted assigns and will inure to their benefit.

(c) Attachments. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement. The parties will review all attachments to this Agreement at least annually and will update or change such attachments as the parties may agree, except Schedule 5(a), which Customer may amend from time to time in its discretion.

(d) Third Party Beneficiaries. Members and Covered Vessels are intended to be third party beneficiaries of this Agreement. The parties do not intend to confer any right or remedy on any other third party.

(e) Amendment. This Agreement may be amended to reflect changes in statutes, regulations, Clean Rivers equipment, Members, or Covered Vessels. Amendments may only be made by a written agreement signed by both parties upon mutual agreement of the parties.

(f) Notices. Except for notice of oil spills (which must be communicated directly by telephone to Contractor), all notices or other communications required or permitted by this Agreement must be in writing; must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties; and are considered delivered: (i) upon actual receipt if delivered personally or by e-mail, or an overnight delivery service; and (ii) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To Clean Rivers:

Clean Rivers Cooperative, Inc.  
200 SW Market St., Suite 190  
Portland, Oregon 97201  
E-mail: vgreen@pdxmex.com  
Attn: Vanessa Green, General  
Manager

To MFSA:

Maritime Fire & Safety Association  
200 SW Market St., Suite 190  
Portland, Oregon 97201  
E-mail: cannizzaro@pdxmex.com  
Attn: Curtis Cannizzaro

To Contractor:

[Insert address information]

E-mail:  
Attn:

(g) Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

(h) Waiver. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

(i) Signatures. This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, a party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

[Signature Page Follows]

This Agreement is effective as of the date first written above.

**Contractor:**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Clean Rivers:**

CLEAN RIVERS COOPERATIVE

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MFSA:**

MARITIME FIRE & SAFETY  
ASSOCIATION

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULE 4(a)**

### **Contractor Equipment and Rehabilitation Facility**

Customer requires that Contractor provide the equipment listed below, to meet the minimum requirements of Wildlife Response and Rehabilitation Resources regulation WAC 173-182-540. This schedule to also include a diagram of the staging location for the rehabilitation facility and how the equipment could be configured.

- Field stabilization trailer:
  - 180 sq. ft.;
  - lighted and heated
  - capable of arriving on-scene within 12 hours of spill notification.
  
- Wildlife Rehabilitation facilities, space and equipment:
  - 2,400 sq. ft.;
  - 4 wash/rinse stations;
  - the ability to be configured to support intake, prewash stabilization, wash/rinse, drying, and isolation/intensive care activities as needed;
  - facilities shall meet the WDFW rehabilitation requirements detailed in WAC 220-450-100;
  - capable of supporting the response within 24 hours.
  
- Support space:
  - 1,000 sq. ft.
  - The ability to be configured to support animal food preparation, medical lab, dry storage, morgue and necropsy areas.
  
- Pools:
  - 1,200 sq. ft.
  - no point in a pool measuring greater than 8 ft. from a side;
  - the ability to be filled to a depth of 3 ft with freshwater.
  
- Access to laundry and cold/freezer storage capacity
  
- Various other equipment and supplies for mobile field stabilization activities, such as, conducting the initial health assessment and treatment of impacted wildlife prior to transport to an oiled wildlife facility.



**SCHEDULE 5(a)**

**Clean Rivers Equipment**

| Wildlife  | Qty | UoM  |
|---|-----|------|
| Wildlife Response & Rehabilitation Trailer (48')            | 1   | Each |
| Wildlife Transport Trailer (32')                            | 1   | Each |
| Wildlife Transport Trailer (20')                            | 1   | Each |
| Western Shelter System Wildlife Tent w/ XE 1200 HVAC System | 1   | Each |
| Wildlife Pool (3000 gallon)                                 | 2   | Each |

**EXHIBIT A**

**Contractor's Form of Work Order**

[To be inserted or attached]

**EXHIBIT B**

**Contractor's Services Rate Schedule**

[To be inserted or attached]

**EXHIBIT F      FORM OF VOO PROGRAM SERVICE  
AGREEMENT**

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THIS AREA INTENTIONALLY LEFT BLANK.

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## VOO PROGRAM SERVICE AGREEMENT

This VOO Program Service Agreement (this “Agreement”), dated \_\_\_\_\_ (“Effective Date”), is between Maritime Fire & Safety Association (“MFSA”) and \_\_\_\_\_ (“Contractor”).

### RECITALS

- A. MFSA is an Oregon non-profit corporation that provides oil spill contingency planning services for the benefit of vessels enrolled in the MFSA Plan (defined below).
- B. Contractor is a primary response contractor (PRC), as defined in WAC 173-182-030, that maintains contracts with vessels that are registered in the VOO program, pursuant to WAC 173-182-317.
- C. MFSA desires to enter into this Agreement to satisfy its requirements under WAC 173-182-317 as a contingency plan holder.

### AGREEMENT

The parties agree as follows:

#### **1. Definitions**

- (a) “Annual Fee” means the basic amount paid per contract year in equal monthly installments by MFSA to Contractor under this Agreement, as set forth in Section 2(b).
- (b) “Area of Coverage” means the Columbia River from River Mile 0 to Glenn Jackson Bridge (River Mile 113) and the Willamette River from its confluence with the Columbia River up to Willamette Falls. It also includes the area from the mouth of the Columbia River (river mile 0) extending three miles into the Pacific Ocean.
- (c) “Contractor Parties” includes Contractor, Resource Owners and their respective directors, officers, managers, administrators, employees, and borrowed servants and vessels.
- (d) “Covered Vessel” means any vessel that is enrolled in the MFSA Plan.
- (e) “CPI” means the Consumer Price Index, West Region.
- (f) “Designated Spill Site” means the land or water site within the Area of Coverage designated to Contractor by MFSA or a Covered Vessel for which Pollution Control services are requested.
- (g) “ICS” means the Incident Command System, a framework for managing emergency and non-emergency events, as stated by the National Incident Management System.
- (h) “MFSA Parties” includes MFSA, Clean Rivers, Merchants Exchange and their respective directors, officers, managers, administrators, employees, and borrowed servants and vessels.

(i) “MFSA Plan” means the MFSA Oil Spill Contingency Plan for the Columbia and Willamette Rivers.

(j) “Oil Spill” means any spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum products in the Area of Coverage, including the threat of an oil spill requiring a response.

(k) “Pollution Control” means pollution prevention, control, containment and cleanup of an oil spill or threat of an oil spill (as defined in the Federal Water Pollution Control Act) on land and water, in accordance with requirements set forth in the Oil Pollution Act of 1990 and applicable State rules and regulations within the Area of Coverage.

(l) “Resources” means vessels that are registered as Tier 1 VOO with the Washington State Department of Ecology and are under VOO Contracts with Contractor.

(m) “Resource Owners” means the owners of the Resources.

(n) “VOO” means Vessel of Opportunity as defined by WAC 173-182-317.

(o) “VOO Contracts” means the contracts between Contractor and VOO Owners, as required under WAC 173-182-317.

(p) “VOO Program” has the meaning given in Section 3(a).

(q) “VOO Requirements” means the requirements under WAC 173-182-317.

(r) “Washington Ecology” means the Washington State Department of Ecology.

## 2. **Term; Fees; Invoicing.**

(a) Term. The term of this Agreement will commence as of \_\_\_\_\_ and will continue in effect for an initial three-year term. This Agreement will be subject to automatic one-year renewals thereafter unless either party gives the other party written notice of termination at least one calendar year prior to the end of then effective term.

(b) Annual Fee. MFSA will pay Contractor an Annual Fee during the term of this Agreement for the services set forth in this Agreement in the amount of \$\_\_\_\_\_, to be paid in equal monthly installments. The Annual Fee would be prorated for any partial year at commencement or termination of this Agreement. The Annual Fee will be subject to annual increases at the lesser of (i) the CPI increase over the prior 12 month period, and (ii) 3%. Contractor will submit invoices for the Annual Fee under this to MFSA. MFSA will remit payment within 30 days of receipt of invoice.

(c) Pollution Control Fees. The rates to be charged for use of Resources in Pollution Control response for a Covered Vessel may not exceed the rates set forth in Exhibit B. All fees charged related to a Pollution Control response will be for the account of the Covered Vessel and not MFSA. Contractor will handle all invoicing for use of Resources in a spill response directly with the Covered Vessel, with a copy of such invoicing provided to MFSA.

(d) Pollution Control Fees Rate Increases. Contractor agrees not to request any rate changes to Exhibit B within the initial one-year term of this Agreement. Thereafter, Contractor may request rate increases based on increases in its expenses, provided Contractor provides MFSA with information substantiating the additional expenses and the associated requested rate increase. Contractor may not request rate increases more frequently than annually and may not request a rate change after any notice of termination of the Agreement has been given; the requested rate increase may not increase the rate by more than the change in CPI from the date that the rate was previously set unless Contractor substantiates circumstances necessitating a higher rate increase; and the proposed effective date for the rate increase may not be earlier than 90 days from date the request is provided to MFSA. MFSA will accept request rate changes that are substantiated and comply with the terms of this section. If MFSA accepts changes to the service rate schedule (Exhibit B), such increased rates will not affect Pollution Control services that are in progress or were ordered prior to the effective date of such rate increase.

(e) Examination/Audit by MFSA. Upon reasonable notice, MFSA may examine and audit Contractor's records relating to charges to MFSA and any Covered Vessel for usage of Resources for Pollution Control services. If MFSA determines that there is any discrepancy between the charges and the terms under this Agreement, MFSA (on its behalf or on behalf of any Covered Vessels) may request an adjustment to the charges or reimbursement related to the adjustment if charges were previously paid. Contractor will respond in writing to MFSA within 30 days of such request, including providing such adjustment or reimbursement to the extent Contractor agrees. If there is any dispute between MFSA and Contractor related to charges, either party may submit the dispute to arbitration pursuant to Section 14 of this Agreement.

### 3. Maintenance of VOO Program

(a) VOO Contracts. Throughout the term of this Agreement, Contractor shall maintain VOO Contracts with at least twelve (12) Resources registered as Tier 1 VOO with Washington Ecology for the Lower Columbia River (Region 4) pursuant to WAC 173-182-317 (collectively, the "VOO Program"). The VOO Contracts must include the requirements set forth on Exhibit A to this Agreement. The Resources will be considered subcontractors to Contractor; however, MFSA will be named and considered a third party beneficiary under the VOO Contracts. MFSA may reference the VOO Program within the MFSA Plan.

(b) Certifications. Contractor will ensure that Resources under contract are properly registered with Washington Ecology per VOO Requirements. MFSA may audit Contractor's records as reasonably necessary to verify compliance.

(c) Resource Qualifications. The Resources must be crewed by personnel who have the following skills and experience, which requirements MFSA Executive Director or General Manager may waive in whole or in part, in its sole discretion:

- HAZWOPER training must be appropriate to the tactics the vessel may be assigned as set forth in Title 29 of Code of Federal Regulations (C.F.R.) 1910.120
- ICS/NIMS 100/200/700/800
- Basic First Aid & CPR Training
- A state issued boaters education card or a valid USCG issued license (for vessel operator)

(d) Training and Drills. Contractor will ensure that Resources meet the training requirements of the VOO Requirements. Contractor will maintain records of all initial and refresher training for Resources. Contractor will provide all training records to MFSA no less frequently than quarterly. As part of the services provided for the Annual Fee, Contractor will ensure that all Resources and their crew participate in:

- (i) at least one on-water training event annually; and
- (ii) at least one on-water deployment drill every three years.

Contractor will notify MFSA and Washington Ecology a minimum of two weeks in advance of all scheduled training sessions to invite them to attend. If MFSA or a Covered Vessel desires to conduct an additional joint training exercise at the training session, neither MFSA nor a Covered Vessel will be additionally charged if the joint training exercise can be reasonably coordinated with Contractor's training session.

(e) Account Manager. Contractor will designate an Account Manager to administer this Agreement for Contractor and to serve as a liaison to MFSA. The initial Account Manager under this Agreement is \_\_\_\_\_. Contractor will advise MFSA in writing within 14 days of any change to the designated Account Manager. The MFSA Executive Director has the right to consent to any replacement Account Manager and may require a replacement Account Manager if replacement is necessary or prudent.

(f) Resource Contact Information. Contractor will supply MFSA with contact information for the Account Manager and Resource Owners, including email, 24-hour telephone contacts, pagers, etc. Contractor will immediately notify MFSA in writing of any changes in Resources or in the contact information for the Account Manager or any Resource Owner.

4. **VOO Pollution Control**. With respect to an Oil Spill involving a Covered Vessel, an authorized representative of MFSA, the Covered Vessel or ICS may verbally contact Contractor to request mobilization of Resources to the Designated Spill Site to provide Pollution Control Services, as needed. Contractor will confirm the request for services with the Covered Vessel in writing as soon as practicable after initial notification, using Contractor's Work Order form (Exhibit C). Upon receipt of a request for Resource mobilization, Contractor will use best efforts to coordinate mobilization of Resources in response to the request within twelve (12) hours of the call out with crew trained in accordance with VOO Requirements.

#### 5. **Reports/Audits.**

(a) Required Reports. Contractor will, as part of the Annual Fee services:

- (i) As soon as reasonably possible:
  - notify MFSA of any Resource response activity to Covered Vessels;
  - notify MFSA of any conditions which may impair Contractor's ability to meet the Resource minimums in Section 3; and
  - notify MFSA of any changes to contracted Resources.



- (ii) Monthly:
  - maintain a record of all initial and refresher training as required under Section 3(d).
- (iii) Quarterly:
  - provide Resource training and drill participation summaries to MFSA required by Section 3(d); and
  - verify accuracy of list of contracted Resources.
- (iv) Post-Spill Response Use Report:
  - provide MFSA with a brief post-spill operating report within 10 days after completion of each spill response by a Resource involving a Covered Vessel, detailing the Resource mobilized, the hours of use, the Resource's equipment used, hours, and details of remobilization and supplies replenishment to return Resource to full readiness.

(b) Post-Spill Response Regulatory Reporting. If requested, Contractor will participate, and cause any Resource that was mobilized to participate, in a post-spill contingency plan review following a spill response for a Covered Vessel, and assist with the production of information necessary to satisfy regulatory requirements for post-spill contingency plan reviews. Contractor may charge for personnel time and other services relating to such reviews for the responsible Covered Vessel in accordance with the Contractor's fee schedule (Exhibit B).

## 6. Insurance Requirements.

(a) Contractor Insurance. At Contractor's expense, Contractor will maintain the following insurance:

- (i) If required by applicable Oregon and Washington State law for the work of Contractor's employees providing services under this Agreement, Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage, with statutory limits as required by law. Coverage must include employer's liability for limits of not less than \$1 million;
- (ii) Commercial General Liability insurance (on an occurrence form), including broad form contractual liability, broad form property damage, and Stop Gap Employer's Liability, specifically including coverage for all of the contractual liabilities of Contractor with respect to this Agreement, all with limits of \$2 million for any one accident or occurrence and general aggregate equal to \$4 million, with any watercraft exclusion deleted;
- (iii) Auto Liability for any vehicle that may be used in the performance of this Agreement, including non-owned and hired auto coverage and with limits of not less than \$5 million for any one accident or occurrence; and
- (iv) Umbrella Liability coverage with limits of \$5 million for any one accident or occurrence.

(b) Resource Insurance. Contractor will ensure that each Resource carries:

(i) If required by applicable Oregon and Washington State law for the work of the Resource, Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage, with statutory limits as required by law. Coverage must include employer's liability for limits of not less than \$1 million;

(ii) Protection and Indemnity Insurance applicable to the Resource vessel, which coverage must include third party bodily injury and property damage, collision liability, and tower's liability not less than \$1 million;

(iii) Protection and Indemnity Insurance or equivalent workers' compensation/longshoremen and harbor workers' compensation or Marine Employer's Liability insurance covering liability for injury, illness or death of Resource's crew members and employees;

(iv) Vessel Pollution Liability coverage on the Resource vessel of a scope and limits necessary to comply with all State and Federal pollution liability laws pertaining to vessels, but not less than \$1 million;

(v) Commercial General Liability insurance (on an occurrence form), including broad form contractual liability, broad form property damage, and Stop Gap Employer's Liability, specifically including coverage for all of the contractual liabilities of Contractor with respect to the VOO Contract, all with limits of \$2 million for any one accident or occurrence and general aggregate equal to \$4 million, with any watercraft exclusion deleted; and

(vi) Auto Liability for any vehicle that may be used in the performance of this Agreement, including non-owned and hired auto coverage and with limits of not less than \$5 million for any one accident or occurrence.

(c) Policy Endorsements. Contractor's insurance policies will:

(i) contain a waiver of subrogation against MFSA, and to the extent of Contractor's liability under this Agreement, the Covered Vessels;

(ii) name the MFSA Parties as additional insureds (not applicable to Workers' Compensation and United States Longshoreman and Harbor Workers' Compensation coverage);

(iii) provide that Contractor's insurance is primary and excess coverage with respect to all insureds as respects Contractor's liability under this Agreement;

(iv) contain a standard cross-liability endorsement;

(v) include a requirement that the insurer provide MFSA with thirty (30) days written notice prior to the effective date of any cancellation or material change of the insurance; and

(vi) Commercial General Liability coverage shall be evidenced by and in accordance with use of ISO Endorsements Form No. CG 20 10 12 19 "Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization" and Form No. CG 20 37 12 19 "Additional Insured - Owners, Lessees or Contractors – Completed Operations". Notwithstanding anything to the contrary herein, should Contractor maintain any insurance in amounts greater than that required herein or that indicated in any certificate of insurance furnished by Contractor, or any insurance in addition to that required herein or indicated in any certificate of insurance furnished by Contractor, such insurance shall be for the exclusive protection and benefit of Contractor, and MFSA shall not be named an additional insured on such insurance and shall have no rights to the proceeds thereof as an additional insured except to the extent such liability arises out of the gross negligence or willful misconduct of Contractor.

(d) General Insurance Provisions.

(i) All costs of the insurance required in this section are at Contractor or Resource's expense.

(ii) Before commencing performance under this Agreement and within 30 days of any change to or replacement of an existing policy during the term of this Agreement, Contractor will provide MFSA with copies of certificates evidencing the required insurance.

(iii) The liability and indemnity provisions of this Agreement may not be construed to limit Contractor's obligations under this section in any way except as respects waivers of subrogation in favor of MFSA Parties and MFSA's liability for MFSA Parties.

(iv) If it is judicially determined that the monetary limits or other provisions of the insurance required in this section do not conform with applicable law, the insurance requirements of this Agreement will automatically be amended to conform to the maximum monetary limits or other provisions of such law.

(v) Contractor's insurance will be with underwriters reasonably satisfactory to MFSA.

(vi) Contractor's insurance program will be free from self-insurance or co-insurance provisions, except to the extent of ordinary deductibles not to exceed \$25,000, for which Contractor shall be solely responsible.

**7. General Indemnification.**

(a) Personal Injury or Death Generally; Property Damage. Contractor will defend, indemnify and hold any MFSA Party harmless for, from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys' fees, investigation costs and other costs of litigation) arising out of, in connection with, or related in any way to the performance of, or failure to perform, this Agreement by Contractor, its agents, employees or subcontractors (including Resources), which results directly or indirectly in injury or death to any person or damage to any property, regardless of the negligence of a MFSA Party or unseaworthiness of an MFSA Party vessel, except for injury or death to MFSA Party for which MFSA responsible under Section 7(c).

(b) Contractor's Employees and Other Agents. Contractor will defend, indemnify and hold any MFSA Party harmless from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys' fees, investigation costs and other costs of litigation) arising out of, in connection with or related in any way to any injury, illness or death suffered by or occurring to any Contractor Party resulting from any cause whatsoever, including the negligence of an MFSA Party or unseaworthiness of any vessel, and excepting only willful or intentional misconduct of a MFSA Party.

(c) MFSA Employees and Other Agents. MFSA will defend, indemnify and hold Contractor Parties harmless from and against any and all loss, damage, injury, liability and claims thereof, suits, judgments or expenses (including attorneys' fees, investigation costs and other costs of litigation) arising out of, in connection with or related in any way to any injury, illness or death suffered by or occurring to any MFSA Party, including the negligence of a Contractor Party or unseaworthiness of any vessel, and excepting only willful or intentional misconduct of a Contractor Party.

(d) The parties intend for the indemnities stated in Sections 7(a), (b) and (c) to apply to claims based on allegations of gross negligence to the extent permitted by applicable law, but claims based on willful or intentional misconduct of the indemnified party are excluded from the above stated indemnities.

(e) Contractor's employees and the employees of its subcontractors (including Resources) shall not be considered the loaned or borrowed servants of MFSA and MFSA's employees shall not be considered the loaned or borrowed servants of Contractor.

(f) Notwithstanding any other provision of this Agreement, Contractor and MFSA will have the benefit of all exemptions from and limitations of liability to which such persons or entities are entitled under applicable law, statute or regulation, including without limitation responder immunity provisions under federal law (33 USC § 1321(c)(4)) or state law (ORS 468B.425 and RCW 90.56.390), as amended, when engaged in responding to an incident involving an oil spill or the threat of an oil spill. Contractor and MFSA expressly claim and preserve all rights and benefits under all such laws, statutes and regulations.

(g) The parties hereto acknowledge that under State and Federal Law, Contractor is afforded certain protections when it responds to spills and discharges of oil or other hazardous materials ("Responder Immunity"). In a response, rapid and decisive action is necessary to contain a spill and responders must initiate a response without prior notice based on limited information. Without Responder Immunity, the enormous financial and liability exposures associated with this work would make the business of responding to spills impracticable. Accordingly, the parties execute this Agreement with the intent of preserving Contractor's statutorily conferred protections to the greatest extent possible.

## **8. Compliance With Laws and Regulations.**

(a) Generally. Contractor will, and will cause the Resources to, comply with all laws, regulations, decrees, codes, ordinances, resolutions and other acts of any governmental authority, as may be applicable, including but not limited to federal, state or other governmental acts setting forth any laws and regulations pertaining to:

(i) operation of a qualified oil spill removal organization or acting as the primary response contractor to such an organization;

- (ii) equal opportunity;
- (iii) nonsegregated facilities;
- (iv) listing job openings for veterans; and
- (v) nondiscrimination against employees based on race, creed, sex or national origin.

(b) Drugs and Alcohol. Contractor will establish and maintain a drug and alcohol program that will apply to all workers identified to or used under this Agreement, regardless of title or duties and will cause each Resource Owner to maintain a drug and alcohol program with respect to employees and crew members of the Resource vessel. The program will require both pre-hire and post-hire drug and alcohol testing, at Contractor's expense or Resource Owner's expense, as applicable. The drug and alcohol programs will at all times be consistent with any drug and alcohol laws and regulations required under the VOO Requirements, as well as those applicable to:

- (i) holders of merchant mariner documents and licenses; and
- (ii) commercial truck transportation workers under Federal, Oregon, and Washington law.

(c) Indemnification. Contractor will indemnify, defend, and hold MFSA harmless for, from and against any and all loss, damage, injury, liability, and claims resulting directly or indirectly from Contractor's failure to meet the obligations in this section.

## 9. Liens.

(a) Contractor will discharge at once, bond or otherwise secure against all liens and attachments which are filed in connection with work performed by Contractor, its subcontractors (including the Resources) or other agents under this Agreement.

(b) Contractor will indemnify, defend and hold harmless the MFSA Parties' and the owners of the premises on which the work of Contractor, its subcontractors, or agents is performed for, from and against any and all loss, damage, injury, liability and claims thereof resulting directly or indirectly from any liens and attachments filed in connection with work performed by Contractor, its subcontractors or other agents under this Agreement.

## 10. Taxes

(a) Contractor will pay all state, federal and other payroll taxes, including contributions and taxes assessed against employees on wages earned in connection with the work, together with all taxes now or hereafter imposed by any governmental authority upon, measured by or incident to the performance of this Agreement or Contractor's (or Resource's) purchase, storage, use, or consumption of materials, utilities, consumable supplies, tools or equipment used in the performance of this Agreement.

(b) Contractor will make all tax reports required by governmental authorities.

## 11. Termination.

(a) For Cause. Either party may cancel this Agreement due to material breach by the other party, provided such material breach is not cured within five (5) days of written notice to cure such breach, unless such breach requires additional time to cure, in which case the breaching party shall be entitled to additional time, not to exceed 90 days, so long as such party is diligently prosecuting such cure to completion and provided such breach does not cause either Contractor or MFSA to not be in compliance with applicable law. Due to the statutory requirements imposed on Covered Vessels, and the high standards for preparedness and response required of the Contractor, “material breach” includes any good faith determination by MFSA that:

(i) a material adverse change has occurred in the business, operations or financial condition of the Contractor, any related party of the Contractor, or any subcontractor (including any Resource) used by the Contractor to fulfill requirements under this Agreement;

(ii) Contractor’s failure to maintain strict compliance with the requirements under this Agreement for provision of Resources, reports, training and drills, performance standards, certifications, or insurance; or

(iii) the prospect of performance of any obligation required under this Agreement is materially impaired, whether or not the condition giving rise to such determination constitutes an event of default or breach under any other provision of the Agreement, and the condition continues to exist five (5) days after notice of such determination by MFSA to Contractor.

(b) Additional Remedies – For Cause Cancellation. In addition to MFSA’s right of cancellation for cause as stated above, in the event of any material breach which is not cured within five (5) days of written notice, MFSA may, at its option:

(i) withhold any payment then or thereafter due to Contractor or until such breach is cured;

(ii) hire, contract, or purchase the services, equipment or insurance required to fulfill the obligations of Contractor which are the subject of the material breach, charging or setting off against sums due to the Contractor for the costs thereof; or

(iii) take such other steps as MFSA deems reasonably necessary to obtain cover for Contractor's material breach in order to maintain compliance with the preparedness and response requirements imposed on Covered Vessels.

**12. Examination of Records.** For three (3) years after the expiration or earlier termination of this Agreement, MFSA or its authorized representatives may access and examine any records of Contractor relating to transactions under this Agreement.

### **13. Force Majeure.**

(a) Neither party will be liable to the other for failure to perform its obligations under this Agreement if the failure to perform arises from acts of God, acts of the public enemy, acts of a government in its sovereign or its contractual capacity, fire, flood, earthquakes, volcanic disturbances, epidemic, quarantines, strikes or labor disturbances of persons or entities other than Contractor and its employees, freight embargoes, or any other circumstances of like or different nature beyond the reasonable control of the party failing to perform, provided that, in the event of an occurrence of such an event, the parties will use their best efforts to perform their

obligations. Notwithstanding the foregoing, Contractor will be responsible for maintaining the service levels required during any such event of force majeure.

(b) Nothing contained in this section may be construed to decrease the protection afforded the parties under policies of hull, fire or similar casualty insurance required to be maintained by Contractor under this Agreement.

#### **14. Dispute Resolution**

(a) Mediation. Any dispute that may arise under this Agreement will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of arbitration. Such mediation will occur in Portland, Oregon and the mediator's fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in the mediation.

(b) Arbitration. The parties agree to submit all complaints, disputes and controversies that may arise out of or in connection with this Agreement or services provided, and which are not resolved through mediation, to binding arbitration under the laws of the State of Oregon, and in accordance with the rules promulgated by the Arbitration Services of Portland, Inc., or similar arbitration service selected by the parties, in effect at the time. Notwithstanding any rule to the contrary, either party will have the option to initiate arbitration according to the Arbitration Services of Portland, Inc.'s rules and subject to its administration, or to demand and compel arbitration according to Oregon law. The arbitrator may award all costs and expenses, including attorney fees, incurred in connection with any dispute hereunder to the prevailing party. The decision of the arbitrator(s) will be final and binding upon both parties. An award entered in an arbitration proceeding pursuant to this Agreement will be final and binding upon the parties, and judgment may be entered upon an award in any court having jurisdiction. Arbitration shall take place only in Portland, Oregon.

#### **15. General Provisions.**

(a) Assignment. Contractor may not assign or delegate any of Contractor's rights or obligations under this Agreement to any person without MFSA's prior written approval, which MFSA may not withhold unreasonably.

(b) Binding Effect. This Agreement will be binding on the parties and their respective successors and permitted assigns and will inure to their benefit.

(c) Attachments. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement. The parties will review all attachments to this Agreement at least annually and will update or change such attachments as the parties may agree.

(d) Third Party Beneficiaries. Covered Vessels are intended to be third party beneficiaries of this Agreement. The parties do not intend to confer any right or remedy on any other third party.

(e) Amendment. This Agreement may be amended to reflect changes in statutes, regulations, or Covered Vessels. Amendments may only be made by a written agreement signed by both parties upon mutual agreement of the parties.

(f) Notices. Except for notice of Oil Spills (which must be communicated directly by telephone to Contractor), all notices or other communications required or permitted by this Agreement must be in writing; must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties; and are considered delivered: (i) upon actual receipt if delivered personally or by e-mail, or an overnight delivery service; and (ii) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To Contractor:

[Insert address information]  
E-mail:  
Attn:

To MFSA:

Maritime Fire & Safety Association  
200 SW Market St., Suite 190  
Portland, Oregon 97201  
E-mail: cannizzaro@pdxmex.com  
Attn: Curtis Cannizzaro

(g) Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

(h) Waiver. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

(i) Signatures. This Agreement may be signed in counterparts. An electronic transmission of a signature page will be considered an original signature page.

[Signature Page Follows]



This Agreement is effective as of the date first written above.

**Contractor:**

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MFSA:**

MARITIME FIRE & SAFETY  
ASSOCIATION

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **VOO CONTRACT REQUIREMENTS**

The VOO Contract must include provisions requiring the Resource:

- to be registered and maintain registration as a Tier 1 VOO under WAC173-182-317;
- to be crewed by personnel who have the skills and experience required under Section 3(c) of this Agreement;
- to cause its crew to participate in the training and drills required in Section 3(d) of this Agreement;
- to agree to use best efforts to mobilize to the Designated Spill Site within 12 hours of call out;
- to maintain the insurance requirements in Section 6(b) of this Agreement; and
- to maintain a drug testing program;

The VOO Contract must name MFSA (or contingency plan holders with which Contractor contracts) as a third party beneficiary.

**EXHIBIT B**

**POLLUTION CONTROL FEES**

**[To be attached]**

**EXHIBIT C**  
**CONTRACTOR'S FORM OF WORK ORDER**

[To be inserted or attached]