

FINAL

**MEMORANDUM OF AGREEMENT BETWEEN
THE NATURAL RESOURCE TRUSTEES AND EXXONMOBIL PIPELINE COMPANY
GOVERNING COOPERATIVE TASKS RELATED TO
THE JULY 1, 2011 OIL SPILL ON THE YELLOWSTONE RIVER, MONTANA**

I. INTRODUCTION AND PURPOSE

This Memorandum of Agreement ("MOA") is between the State of Montana ("State"), by and through the Montana Department of Justice ("MDOJ") Natural Resource Damage Program; and the United States Department of the Interior ("DOI") (collectively, the "Trustees"), and ExxonMobil Pipeline Company ("EMPCo") under Section 1006 of the Oil Pollution Act (OPA) of 1990, 33 U.S.C. § 2706, and the OPA Natural Resource Damage Assessment Regulations, 15 C.F.R. §§ 990.10 *et seq.* ("Regulations"). Each Trustee executing this MOA and EMPCo is a "Party" hereto and are collectively referred to herein as the "Parties." All terms in this MOA shall have the same meaning as set forth in OPA, 33 U.S.C. §§ 2701, *et seq.*, and the Regulations.

This MOA arises from the July 1, 2011 discharge of crude oil from the ruptured Silvertip Pipeline in Yellowstone County, Montana ("Incident"), which discharged approximately 1,500 barrels of crude oil into the Yellowstone River and onto lands in and adjacent to the River. EMPCo is the owner/operator of the Silvertip Pipeline as defined by OPA § 1001(26) and the Trustees allege that EMPCo is a responsible party under OPA §1001(32)(E).

To provide coordination and cooperation among the Trustees regarding this Incident, the Trustees have established a Yellowstone River Oil Spill Trustee Council ("Trustee Council") pursuant to a Memorandum of Understanding. The Crow Tribe of Indians ("Tribe") may in the future become a Party to the Trustee MOU. The State of Montana and the United States Department of the Interior, represented by the Bureau of Land Management, co-serve as the Lead Administrative Trustee (LAT) for this Incident. The LAT will serve as the central point of contact between the Trustees and EMPCo. However, the LAT does not possess unilateral authority to represent all of the Trustees on all substantive matters.

This MOA provides the framework for cooperative tasks to facilitate resolution of the Trustees' natural resource damage ("NRD") claims arising from the Incident, to minimize the transaction costs associated with such claims, and to facilitate restoring lost or injured natural resources back to baseline conditions that would have existed but for the Incident. Nothing in this MOA is to imply in any way that any Trustee is abrogating or ceding to EMPCo any responsibility or authority inherent in its control or trusteeship over natural resources.

The Parties presently intend to use a restoration-based, natural resource damage assessment and restoration ("NRDAR") approach by proposing and conducting tasks that are consistent with 15 CFR 990.27 and the other Regulations for pre-assessment, the determination and quantification of injury to natural resources and/or lost services, and the development of restoration plans for such injured resources and/or lost services.

II. MEETINGS OF THE PARTIES

- A. The Parties will meet, as necessary, to discuss and review the conduct of NRDAR activities under this MOA. "Meetings of the Parties" under this MOA shall be meetings at which authorized representatives, which may include counsel, of the Trustees and EMPCo attend. Technical Work Group meetings do not constitute Meetings of the Parties. Final authority, however, to make determinations regarding injury and restoration rests solely with the Trustees, pursuant to 15 C.F.R. § 990.14(c) (4).
- B. Agendas for such meetings will be prepared by the LAT in consultation with EMPCo, or by a Trustee representative as designated by the LAT, and distributed to all Parties at least five working days in advance of a joint meeting between the Trustee Council members and EMPCo. Requests for additional agenda items will be honored if proposed in writing at least three full working days in advance of the meeting and if the additional items do not require extensive additional preparation for discussion toward implementation. Requests to change the joint meeting date will be honored if agreed upon by all Parties.
- C. Parties agree to reasonably restrict meeting attendance to personnel necessary or appropriate to accomplish the objectives of the agenda. The meeting location will rotate between Helena and Billings Montana unless otherwise agreed. Attendance may also be made telephonically. If practical, each Party shall be notified of changes in representatives attending meetings at least 3 working days before the meeting date.
- D. The LAT shall designate one of its representatives as the Secretary for each meeting, and the Secretary shall transcribe pertinent points, and any action items agreed upon by all in attendance. Such meeting notes shall be distributed in draft via e-mail to designated representatives of all Parties, whether or not they attended. The notes shall be reviewed and any comments on or questions about the notes by any Party shall be raised through e-mail within ten working days of distribution. If there is a dispute on the meeting notes, that dispute will become an agenda item for the next joint meeting and will be noted on the meeting notes.

III. EXCHANGE OF RAW DATA

The Parties agree that sharing raw data in a timely manner is important in the coordination between the Trustees and EMPCo. Therefore, within thirty (30) calendar days following execution of this MOA, each Party shall provide to the other Parties all raw data previously gathered for NRDAR purposes in connection with the Incident, in a useable manner, which have not previously been provided to or obtained by the other. In addition, each Party shall also identify and/or provide to the other Parties with the pertinent information regarding how such data were collected and/or derived and all supporting documentation, including, if applicable, Quality Assurance / Quality Control analyses on such raw data. The data to be shared will consist of all such data gathered relating to potential injuries to natural resources and their habitats, including lost use of such resources as a result of the Incident.

The sharing of raw data resulting from the completion of Cooperative Tasks pursuant to this MOA is a continuing obligation. However, these provisions do not apply to data obtained outside of this MOA, e.g., as a result of a Refused Task, Non-Party or Other Studies, or data obtained following termination of a joint effort for a particular task.

IV. COOPERATIVE TASKS

A. Technical Work Groups ("TWGs")

1. For purposes of implementing the cooperation purposes of this MOA, the Trustees and EMPCo will establish a steering committee (SC) comprised of three representatives of the United States and three representatives of the State of Montana to represent the Trustees and up to four representatives of EMPCo. The SC shall seek to work cooperatively to review and approve the recommendations of the TWGs. In addition, any technical issues / disputes shall be raised to the SC for discussion and resolution. The SC will meet at least quarterly and more frequently if agreed. Any approvals of the SC to become effective must be unanimous among the Parties.
2. The Trustees have established two TWGs, the Human Use TWG and the Ecological TWG, to address three distinct NRDAR areas of focus: Biological Resources, Habitats, and Human Uses. These TWGs are planning and conducting specific pre-assessment activities, and anticipate undertaking assessment and restoration planning activities.

B. Planning Cooperative Tasks for Pre-assessment and Restoration Planning

1. EMPCo will provide members to the two TWGs to assist with the development and implementation of Cooperative Tasks. The current chairman of each TWG shall continue as chairman and any change, in the future, shall be within the discretion of the Trustee Council
2. The Parties' TWG members will attempt to reach a consensus on the selection of, design of, and protocols for, performing Cooperative Tasks relating to pre-assessment and restoration planning related to the Incident. If, however, a consensus cannot be reached as to any proposed Cooperative Task, then the Trustee Parties, through their members of a TWG, may bring the proposed Cooperative Task to the SC for review and approval under Section IV.D.3, below.
3. Pursuant to 15 C.F.R. § 990.14(c)(3), the Parties' TWG and SC members shall discuss whether there are specific facts, data, or conclusions related to the Incident or the assessment on which the Parties can reach agreement and to which the Parties can stipulate, prior to planning or performing any Cooperative Task. Any such stipulations before they become effective must be approved by the SC. All such stipulations shall be part of the Administrative Record and shall be binding on the Parties in any civil judicial or administrative proceeding between or among the Parties relating to natural resource damages arising from the Incident. By agreeing to

make such stipulations a part of the Administrative Record, EMPCo does not waive its contention that judicial review of the Trustees' claims must be *de novo*.

4. The TWGs will meet, as necessary or appropriate, to plan and arrange to implement NRDAR activities, including but not limited to, work plans and quality assurance/quality control procedures for Cooperative Tasks, and to recommend who should implement Cooperative Tasks. Prior to any implementation of such activities and recommendations and before any such task shall be deemed a "Cooperative Task," it must be approved by the SC. In this process, TWGs shall not assume and may not accept any authorities vested in the Trustees or EMPCo.
5. A meeting agenda will be prepared by the TWG chairman in consultation with the EMPCo representative(s), approved by the Trustees and distributed to all Parties at least five working days in advance of a joint meeting between the Trustees' and EMPCo's TWG members. The TWG chairman shall designate one of the Trustee members as the Secretary for each meeting, and the Secretary shall transcribe pertinent points, and any action items agreed upon. The notes from such meetings shall be distributed via e-mail to all Parties, whether or not they attended. Any action items referenced in the notes shall be reviewed and approved/disputed by each Party in writing through e-mail within ten working days of distribution. If there is a dispute on any action item set forth in the meeting notes, that dispute will become an agenda item for the next joint TWG meeting and noted in the meeting notes. Disputes or issues needing resolution shall be brought to the SC for action. Each Party does not necessarily agree with or accept any statement in the meeting notes other than any action items to which it expressly agrees or to which it does not object.

C. Performance of Cooperative Tasks.

1. Cooperative Tasks shall be performed by one or more of the Trustees, or their contractors or consultants, EMPCo or its contractors or consultants or by neutral experts as the Parties mutually agree. Mutually agreed upon neutral experts undertaking Cooperative Tasks may be retained by either the Trustees or EMPCo, as determined by written agreement among the Parties. Any such experts must disclose to the Parties all potential conflicting relationships and any conflict that is unacceptable to a Party shall disqualify that expert. The failure of any such expert to disclose a material conflict shall be a basis for any Party to disqualify the expert's opinions, analyses and conclusions. A Party's agreement to the use of any contractors, consultants, or mutually agreed upon neutral experts for a Cooperative Task is not admissible in any proceeding as proof of their expertise to perform such tasks.
2. Cooperative Tasks that are planned and/or conducted by EMPCo, the Trustees, their mutually agreed upon consultants, contractors, or neutral experts pursuant to this section will be undertaken following the protocols for the data sharing, interpretation, and notices described in Section IV.D below.

3. If the Parties agree upon a Cooperative Task, but cannot agree upon who will perform a Cooperative Task, the Parties may separately conduct said task outside of the MOA as an Other Study, which is provided for in Section VI below.

D. Cooperative Tasks: Studies, Data Collection, Analysis

1. Cooperative Tasks may include, but are not limited to, studies, data and information collection, analysis, interpretation, new field inspection and evaluation, reporting of field evaluation results, and development of restoration alternatives. The Parties may propose tasks including those necessary for pre-assessment and the determination and quantification of injury to natural resources and/or lost services, and the development of restoration alternatives for such injured resources and/or lost services. A Cooperative Task may include a portion of a larger task. Cooperative Tasks shall not include Trustee determinations, including but not limited to, the Notice of Intent to Conduct Restoration Planning and selection of restoration alternatives within a Final Restoration Plan.
2. The work plan for each approved Cooperative Task will be incorporated by reference into this MOA, and will be subject to its terms and conditions. Each Cooperative Task work plan may typically consist of, but may not be limited to:
 - a. study objectives;
 - b. study design, including: types of data, sampling protocols, number of samples and sampling locations, sampling plan and protocols for storing and analyzing samples;
 - c. quality assurance/quality control plan, schedules, and deliverables;
 - d. identification of specific persons and affiliations of those who will collect data;
 - e. analysis plan, including description of any phased analyses, selection of samples for analysis, analytical methods (including anticipated detectability limits for laboratory analyses) and laboratories to be utilized;
 - f. report plan indicating how the data will be tabulated, summarized, and presented in report or other form;
 - g. procedures for dissemination, sharing and storing of data;
 - h. budget (including all laboratory analyses);
 - i. schedule and time table of the work;
 - j. a defined process for approval of any work scope / budget or schedule changes;
 - k. the requirements for cost tracking and documentation necessary for payment.
3. Proposed Cooperative Task work plans must be approved by the SC. Each Cooperative Task work plan developed by a TWG, or by the Trustees' TWG members, in accordance with Section IV.B.2, above, shall be submitted to the SC for its review and approval. The SC will have 14 calendar days to complete review of the work plan and indicate approval or disapproval; a failure of the SC to either disapprove or approve such work plan within such time period shall be deemed a disapproval of the proposed Cooperative Task work plan. Following approval, the Parties shall direct the TWG, or others identified in the work plan, to proceed with

implementing the Cooperative Task. Any substantive changes to a Cooperative Task work plan that may be needed because of unanticipated issues, as well as any changes that may potentially result in an increase in the estimated cost of greater than \$5,000 or 10% of the total budget, whichever is less, must be submitted to the Trustee Council and EMPCo for approval prior to proceeding. Cost differences less than that noted above of \$5,000 or less are not subject to new approval, if they are agreed to by the TWG chairman and EMPCo's technical lead for the work plan. Any proposed Cooperative Task work plan disapproved by EMPCo, or its representatives on the SC, becomes a Refused Task under Section V of this MOA.

4. Representatives of all Parties may be present on location, i.e. in the field or work area, during the performance of Cooperative Tasks. Safety limitations, if any, to the number of Party representatives shall be determined as applicable for each Cooperative Task. The Parties agree to give 10 working days advance notice, unless otherwise agreed, to the persons listed in the Notice section of this MOA, of data collection activities for Cooperative Tasks. All data collected for or through the implementation of Cooperative Tasks shall be fully and freely shared among the Parties as soon after collection as practicable, and in any event no later than it is transmitted to any single Party.
5. In the case of data collection from human respondents (such as surveys or interviews), the presence of all Parties and the sharing of complete data may impede the collection of accurate, complete and candid responses. In such cases, the Parties shall agree on procedures for the collection and sharing of such data that depart from the requirements of Section IV.D.4 (such as using neutral interviews and aggregating data prior to dissemination to protect the confidentiality of individual responses) to the extent necessary to promote the accuracy and candor of the responses.
6. The Trustee Council and EMPCo may agree to modifications of plans for Cooperative Tasks and, in such cases, the modified Cooperative Task work plan will be incorporated by reference into this MOA and will be subject to its terms and conditions. Proposed work plan modifications shall be provided to Party representatives for review and written approval prior to implementation. In such cases, if no objection to the proposed modification is made within 10 working days of receipt of the proposal, it shall be deemed approved. In such case when there is a need for a rapid decision telephonic discussion / approvals may be provided; however, in all such instances the work plan modification approval shall be provided in writing within 48 hours. For purposes of this section approval or objection provided to the other Parties by email to the representatives of the Parties listed in Section XIII.A, below, will satisfy the requirement that approval or objection be made in writing.

- E. **Data Interpretation.** The Parties will attempt to reach a consensus on the interpretation of, and conclusions drawn from, any Cooperative Task, including data collected during the Cooperative Task implementation. All matters to which the Parties stipulate shall be documented and made a part of the Administrative Record. Each Party expressly reserves the right to produce and present separate and independent interpretations and

conclusions for any Cooperative Task. All separate and independent interpretations and conclusions produced and presented pursuant to this paragraph shall be included in the Administrative Record. By agreeing that such separate and independent interpretations be placed in the Administrative Record, EMPCo does not waive its contention that judicial review of the Trustees' claims must be *de novo*. Parties submitting separate and independent interpretations and conclusions shall do so within a time frame set forth in the work plan for the Cooperative Task. Separate and independent interpretations and conclusions are not part of a Cooperative Task.

- F. Withdrawal of Funding for Cooperative Tasks. EMPCo shall not withdraw from its obligation to fund a Cooperative Task that it previously agreed to fund, including any agreed upon modifications thereto except in instances when willful Trustee actions, which have not been approved by EMPCo, result in material alterations in the work plan, significantly increased costs, or lengthy, material delays in the schedule for completion of the task that were not previously agreed to by the Parties.

V. REFUSED TASKS

The conditions, requirements, limitations, and prohibitions of this MOA shall not apply to any task proposed by the Trustee Council or a Trustee as a Cooperative Task that EMPCo does not approve pursuant to Section IV.D.3, and that the Trustees, or any one of them, undertake ("Refused Task"). In the event of a Refused Task, EMPCo shall be deemed to have denied liability for the claim and its associated cost reimbursement under OPA 33 U.S.C. § 2713(c)(2), and EMPCo's obligation under this MOA to fund Trustee direct and indirect costs associated with the Refused Task will cease upon EMPCo's or the SC's deemed disapproval of such task as to any such costs incurred after such disapproval. The Trustees also reserve the right to seek recovery of costs arising from or related to "Refused Tasks" to the extent permitted under law, including § 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A) and the Regulations.

VI. NON-PARTY AND OTHER STUDIES

"Non-Party" Study is any study that was not conducted directly or indirectly by, on behalf of, or with the input of any of the Parties. For purposes of this definition, agencies of government, other than the MDOJ, MDEQ, MDFWP and DOI Trustees, are not Parties to this Agreement. "Other Study" is any study conducted by a Party outside of this MOA. The Parties reserve the right to use Non-Party and Other Studies in any judicial or administrative proceeding, and to object to such use; and the Trustees reserve the right to seek recovery of costs arising from or related to Other Studies to the extent permitted under § 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A) and the Regulations.

VII. FUNDING AND REIMBURSEMENT OF TRUSTEES' PAST AND FUTURE COSTS

- A. Payment of Past and Future Costs - The Trustees and EMPCo have separately identified certain tasks that each believes may be subject to being performed cooperatively among the Trustees and EMPCo ("Potential Cooperative Tasks"). Subject to Section V of this

MOA, EMPCo shall fund each of the Trustees' reasonable past and future assessment costs in connection with the Potential Cooperative Tasks and the Cooperative Tasks costs, arising from or related to the Incident, as such terms are defined in 15 CFR §990.30, including, but not limited to, the costs incurred for the activities in Section IV, that are incurred prior to and through December 31, 2012, provided that such costs are consistent with and do not exceed the task descriptions and budget set forth in Exhibit A, attached hereto. It is understood that this budget was prepared by the Trustees based upon their expectations of future costs during calendar year 2012 prior to the execution of this MOA and that the need to incur additional assessment costs for unanticipated matters, including unanticipated costs for Cooperative Tasks, may arise during this calendar year. In such event, the Parties may agree to amend Exhibit A. EMPCo's payment of such costs shall be consistent with the terms of the September 30, 2011 Yellowstone River Oil Spill/Silvertip Pipeline letter agreement ("Letter Agreement"), attached hereto as Exhibit B.

- B. Expedited Payment of Certain Past Costs. Attached hereto as Exhibit C is a summary of, and documentation to support, certain unreimbursed pre-assessment and assessment costs incurred by the Trustees in connection with the Incident prior to July 1, 2012. EMPCo will have a period of twenty-one (21) calendar days following the Parties' execution this MOA to review and dispute any such costs under Section VII.E, below. EMPCo shall pay any undisputed costs within 45 days after the Parties' execution of this MOA. Costs incurred from July 1, 2012, throughout the term of this MOA are considered "Future Costs."
- C. However, notwithstanding the above provisions of this paragraph and any other provision of this MOU, the Trustees shall delay the release of their previously gathered raw data that is provided for in Section III, above, until such time as the Trustees receive reimbursement of past costs under Section VII.B, above.
- D. Cooperative Tasks and Potential Cooperative Tasks. Subject to the limitations of Sections V. and VII.A, above, EMPCo agrees to pay the costs of the Trustees' Cooperative Task and Potential Cooperative Task activities, as described in Sections IV. A, B, C, D and E, and Section VII.A above, on a reimbursable basis. Such activities and costs include the Trustees' costs for planning Potential Cooperative Tasks, implementing agreed-to Cooperative Tasks, for jointly implementing Cooperative Tasks with EMPCo or its agents or contractors, and for oversight of Cooperative Tasks conducted by EMPCo or its agents or contractors. In connection with Potential Cooperative Tasks and Cooperative Tasks, such activities and costs also include the Trustees' administrative activities, travel, participation in meetings with some or all of the Trustees and EMPCo, evaluation of pre-assessment and assessment proposals and projects, preparation for meetings, monitoring, oversight, internal legal costs, public outreach activities, and related consultant activities.
- E. Disputed Costs. EMPCo reserves its right to dispute the payment of the Trustees' costs which are provided for in this Section VII that are insufficiently or inaccurately documented under Section VIII below. However, such disputes are to be limited to contesting the costs alone and not the technical aspects of a task or study. EMPCo must

notify the Trustees of any disputed costs within 21 days of receipt as required in Section VIII.B. of this MOA.

- F. **Trustee Costs.** If the Trustees do not receive funding from EMPCo for any past or future costs of NRDAR activities as provided for in the September 30, 2011 Letter Agreement or this MOA, the Trustees reserve the right to seek funding from the National Pollution Fund Center for such costs. The Trustees also reserve their right to seek from EMPCo, or any other person or entity, their NRDAR costs relating to the Incident, including the costs of assessing and litigating any claims for natural resource damages and related costs, that are not paid by EMPCo as provided for in the September 30, 2011 Letter Agreement or this MOA.

- G. **Trustee Activities and Costs after Calendar Year 2012**

The Parties agree to meet and discuss the data gathered and analyzed by the Parties from the period beginning July 1, 2011 through December 31, 2012 for the purposes of determining whether such data is sufficient for the Parties to identify whether and to what extent natural resources were injured as a result of the incident. If the Parties conclude that such data is not sufficient for such purpose, or for any other reason determined by the Parties, then the Parties may consider extending the duration of this MOA to cover the Trustees' additional costs for Potential Cooperative Tasks and Cooperative Tasks after calendar year 2012.

VIII. COST DOCUMENTATION

- A. **Documentation.** The Trustees shall each separately provide EMPCo with documentation, consistent with the level of documentation specified in the September 30, 2011 Letter Agreement of all costs that are provided for in Section VII, above, excluding from that documentation, however, privileged or other confidential information withheld under State or federal law. In addition, the Trustees shall provide EMPCo:
- 1 For each individual for whose time EMPCo must reimburse the Trustees under this MOA, a summary description of the tasks being performed by such individual in connection with the activities being carried out under this MOA; and
 - 2 For any such costs incurred by the Trustees that are billed to the Trustees by a third party, copies of all invoices substantiating such costs.
- B. **Objections.** In the event that EMPCo objects to any claimed assessment costs, or alleges that a Trustee has made a mathematical error, EMPCo shall provide a written statement identifying with specificity the contested assessment costs, and the bases for its objections within 21 calendar days of receipt of the Trustee documentation, or EMPCo shall be deemed to have waived any objections. The parties agree to attempt to resolve cost objections through good faith informal negotiations between the parties within 21 days of EMPCo's notice of objection. EMPCo's objection to any claimed assessment cost shall not delay EMPCo's payment of undisputed assessment costs that have been submitted for payment in accordance with the provisions of this MOA.

IX. PUBLIC PARTICIPATION

- A. Consistency with Regulations.** The Trustees will compile an administrative record of the NRDAR process which will be available for review by the public. The Trustees may also provide public notice and solicit public review and comment on certain phases of the injury assessment process, and on any proposed settlement consistent with the Regulations.
- B. Cooperative Efforts for Public Involvement.** The Parties may, in their discretion, work cooperatively to identify opportunities for public involvement that may enhance the Parties' decision making, and develop and disseminate public information on damage assessment and restoration tasks related to the Incident.
- C. Initiation of Activities.** In the event of Cooperative Tasks with components that are subject to public notice, review and comment, the Parties agree that none of the task components subject to public notice, review and comment shall be initiated until the appropriate notice, review and comment activities are completed. However, if there is a time-sensitive, ephemeral data requirement, or an emergency situation exists, Cooperative Tasks components may go forward, at the discretion of the Trustee Council. EMPCo shall be informed of such action by telephone before such Cooperative Tasks components are initiated.

X. RESERVATION OF RIGHTS AND CLAIMS

- A. Except as specifically provided in this MOA, the Parties agree that:**
 - 1. No Party is making any admission of fact or law by entering into this MOA.
 - 2. This MOA shall not be admissible as to the validity or non-validity of any claim or defense in any proceeding relating to this matter.
 - 3. Nothing in this MOA is intended, nor shall be construed, as a waiver by any of the Parties of any defenses or affirmative claims in any proceedings relating to the Incident.
 - 4. Nothing in this MOA shall be construed as a waiver of attorney-client privilege, work product privilege, joint enforcement privilege, or any other privilege that has been or may be asserted in this or any other matter unless explicitly stated herein.
 - 5. Raw or factual data collected pursuant to the Cooperative Task studies provisions of this MOA shall not be considered work product or attorney-client privileged.
- B. EMPCo is not released from any liability, including but not limited to claims for injury, loss or destruction of natural resources or their services, claims for restoration, rehabilitation, replacement, or acquisition of the equivalent of natural resources or lost services of those resources, including all reasonable costs and unreimbursed costs of the**

Trustees' NRDAR activities not paid as provided for in the September 30, 2011 Letter Agreement or this MOA.

- C. This MOA does not affect in any way EMPCo's obligations under other agreements, unilateral orders, consent orders, permits, or any other instrument with or issued by any agency of the State of Montana or the Federal Government.
- D. Agreement by EMPCo to fund tasks and costs pursuant to this MOA shall not act as a waiver of EMPCo's right to seek to deny entirely or limit its liability pursuant to 33 U.S.C. § 2704.

XI. CONFIDENTIALITY

Subject to the terms of this MOA regarding documents which may be placed in the Administrative Record and to the requirements of any law and of any court order, the Parties agree:

- A. Written communications between any Trustee and EMPCo and/or any of its agents or employees, expressly submitted for purposes of settlement negotiations between the Parties pursuant to Federal Rule of Evidence, Rule 408, are not admissible, shall not be placed in the Administrative Record, and shall not be available to the public except to the extent required by applicable law. Other documents generated by the Parties that are subject to privilege, such as "attorney work product" or "attorney-client privilege," shall not be placed in the Administrative Record and shall be protected from disclosure to other Parties and the public to the maximum extent provided by applicable law.
- B. Maps, photographs, and raw data which have been compiled, verified, and validated by EMPCo or the Trustees, shall not be treated as confidential or privileged.
- C. Any Party who receives a request for documents pursuant to the federal Freedom of Information Act or applicable State Law, or who is served with a subpoena or discovery request for any document not placed in the Administrative Record, shall provide notice to the other Parties at the earliest opportunity so as to allow them, if they so choose, to assert a privilege or statutory exception seeking to prevent the release of such documents.

XII. PAYMENT OF FUNDS

- A. The Trustees' invoices and cost documentation will be submitted to EMPCo at the following address:

General Counsel
ExxonMobil Pipeline Company
800 Bell Street; PL-EMB-707C
P.O. Box 2220
Houston, TX 77252-2220

Kevin J. Vaughan
Exxon Mobil Corporation
3225 Gallows Road, Rm. 3D0212
Fairfax, VA 22037-0001

- B. Payment of funds to the Trustees by EMPCo shall be as follows:

U.S. Department of the Interior:

Payments shall be made by check payable to "Department of Interior" and reference Yellowstone River Oil Spill and "NRDAR Account Number 14X5198"

The check shall be mailed to:

U.S. Department of Interior
NBC/Divisions of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 W. Mansfield Ave.
Lakewood, CO 80235

A copy of the notification of payment and a copy of the check shall be sent to:

Ann Umphres
U.S. Department of the Interior
Office of the Solicitor
755 Parfet St. Suite 151
Lakewood, CO 80215

Bruce Nessler, Restoration Fund Manager
Office of Natural Resource Damage Assessment and Restoration
Mailstop 4449
1849 C Street, NW
Washington, D.C. 20240

State of Montana:

Payments shall be made by electronic funds transfer in accordance with instructions provided by the State of Montana.

Agency Name on Bank Account:	State of Montana
Account Number:	156041200221
Name of Bank/Financial Institution:	US Bank NA, Montana
302 North Last Chance Gulch	

Helena, MT 59601

Contact persons at bank for transaction: Terri Kuntz 406 447 5252
Kim Spiroff 406 447 5251

Bank ABA Number: 092900383

Federal ID number for State: 81-0302402

Addendum, third party record, or similar information field: "Yellowstone Oil Spill NRDA"

State contact person for transaction: Cindy Steinmetz
Central Services Division
Department of Justice
303 North Roberts
PO Box 201404
Helena, MT 59620
(406) 444 5713
csteinmetz@mt.gov

A copy of the notification of payment and a copy of the check shall be sent to:

Robert Collins,
Mary Capdeville
Montana Department of Justice
Natural Resource Damage Program
1301 East Lockett Avenue
P.O. Box 201425
Helena, Mt 59620-1425
(406) 444-0205
rcollins@mt.gov
mcapdeville@mt.gov

XIII. NOTICE

A. General. Unless otherwise stated, notice under this MOA shall be given to the following persons on behalf of the Parties:

1. As to EMPCo:

a. Kevin J. Vaughan
Exxon Mobil Corporation
3225 Gallows Road, Rm. 3D0212
Fairfax, VA 22037-0001
kevin.j.vaughan@exxonmobil.com

- b. Tom Henson
C/O Scott Davies
ARCADIS
801 Corporate Center Drive, Suite 300
Raleigh, NC 27607-5073
tom.s.henson@exxonmobil.com

2. As to the Trustees:

- a. For State of Montana:
 - (1) Rob Collins
Montana Department of Justice
Natural Resource Damage Program
1301 East Lockey Avenue
P.O. Box 201425
Helena, Mt 59620-1425
(406) 444-0205
rcollins@mt.gov
 - (2) Mary Capdeville
Montana Department of Justice
Natural Resource Damage Program
1301 East Lockey Avenue
P.O. Box 201425
Helena, Mt 59620-1425
(406) 444-0205
mcapdeville@mt.gov
 - (3) Doug Martin
Montana Department of Justice
Natural Resource Damage Program
1301 East Lockey Avenue
P.O. Box 201425
Helena, Mt 59620-1425
(406) 444-0205
dougmartin@mt.gov
 - (4) Larry Pederman
LP Consulting
1301 East Lockey Avenue
P.O. Box 201425
Helena, Mt 59620-1425
(406) 439-5605
larp406@hotmail.com

b. For U.S. Department of the Interior:

(1) Theresa Hanley, Deputy State Director for Resources
Bureau of Land Management
5001 Southgate Drive
Billings, Montana 59101-4669
thanley@blm.gov

(2) Ann Umphres, Office of the Solicitor
U.S. Department of the Interior
Office of the Solicitor
755 Parfet St. Suite 151
Lakewood, CO 80215
ann.umphres@sol.doi.gov

(3) Paul Meyer, NRDAR Program
Bureau of Land Management
NOC OC-580, Bldg 50, Denver Federal Center
Denver, Colorado 80225
pmeyer@blm.gov

(4) Amanda Koehler, Office of the Solicitor
U.S. Department of the Interior
Office of the Solicitor
755 Parfet St. Suite 151
Lakewood, CO 80215
amanda.koehler@sol.doi.gov

(5) Karen Nelson, US. Fish and Wildlife Service
Environmental Contaminants Program
585 Shepard Way
Helena, MT 59601
karen.nelson@fws.gov

- B. Notice will be considered to have been given to another Party when that Party first receives the notice in writing. Notice may be given by U.S. mail, delivery service, personal delivery, email or fax to each of the above representatives of the Parties.**

XIV. ASSIGNMENT OF RIGHTS.

This MOA shall be binding on successors in interest, representatives and assigns of the Parties.

XV. DURATION

The term of this MOA is from the Effective Date until the purposes set forth herein are accomplished unless the Parties agree otherwise in writing or it is terminated pursuant to the provisions of this MOA.

XVI. MODIFICATION AND TERMINATIONS

This MOA may be modified or supplemented upon agreement in writing by all Parties. Any Party may terminate this MOA by giving 30 days written notice to all Parties. In the event of termination, any obligations of or stipulations made by the Parties, or any one of them, under this MOA prior to the giving of such notice shall remain binding on the Parties to the extent provided for herein.

XVII. EXECUTION

This MOA may be executed in one or more counterparts, all of which shall be considered an original. The Effective Date of this MOA shall be the latter date of execution of any counterpart thereto.

EXXONMOBIL PIPELINE COMPANY

By: _____

Date: _____

Title: _____

STATE OF MONTANA:

By:  _____

Date: 8/9/12

Title: SUPERVISING ASSISTANT
ATTORNEY GENERAL

U.S. DEPARTMENT OF THE INTERIOR:

By: _____

Date: _____

Title: _____

The term of this MOA is from the Effective Date until the purposes set forth herein are accomplished unless the Parties agree otherwise in writing or it is terminated pursuant to the provisions of this MOA.


XVI. MODIFICATION AND TERMINATIONS

This MOA may be modified or supplemented upon agreement in writing by all Parties. Any Party may terminate this MOA by giving 30 days written notice to all Parties. In the event of termination, any obligations of or stipulations made by the Parties, or any one of them, under this MOA prior to the giving of such notice shall remain binding on the Parties to the extent provided for herein.

XVII. EXECUTION

This MOA may be executed in one or more counterparts, all of which shall be considered an original. The Effective Date of this MOA shall be the latter date of execution of any counterpart thereto.

EXXONMOBIL PIPELINE COMPANY

By: 
Title: Vice President

Date: 8-9-12

STATE OF MONTANA:

By: _____

Date: _____

Title: _____

U.S. DEPARTMENT OF THE INTERIOR:

By: _____

Date: _____

Title: _____

The term of this MOA is from the Effective Date until the purposes set forth herein are accomplished unless the Parties agree otherwise in writing or it is terminated pursuant to the provisions of this MOA.

XVI. MODIFICATION AND TERMINATIONS

This MOA may be modified or supplemented upon agreement in writing by all Parties. Any Party may terminate this MOA by giving 30 days written notice to all Parties. In the event of termination, any obligations of or stipulations made by the Parties, or any one of them, under this MOA prior to the giving of such notice shall remain binding on the Parties to the extent provided for herein.

XVII. EXECUTION

This MOA may be executed in one or more counterparts, all of which shall be considered an original. The Effective Date of this MOA shall be the latter date of execution of any counterpart thereto.

EXXONMOBIL PIPELINE COMPANY

By: _____

Date: _____

Title: _____

STATE OF MONTANA:

By: _____

Date: _____

Title: _____

U.S. DEPARTMENT OF THE INTERIOR:

By: Jamie E. Connell

Date: 8/14/2012

Title: State Director

Exhibit A

Budget for Trustees' 2012 Past and Future Costs of NRDAR Tasks to be Paid EMPCo Under the MOA							
Dates	DOI Agencies	Contractor	DOI Subtotals	Dates	State of Montana Agencies	Contractors	State Subtotals
1/1-3/31	\$51,600	\$27,340	\$78,940				
4/1-6/30	\$80,240	\$24,840	\$105,080	2/1*-6/30	\$44,000	\$186,000	\$230,000
7/1-12/31	\$125,100	\$49,720	\$174,820	7/1-12/31	\$77,000	\$323,000	\$400,000
Totals	\$256,940	\$101,900		Totals	\$121,000	\$509,000	
		DOI Total:	\$358,840			State Total:	\$630,000
Trustee's Total Costs:			\$988,840				

*The State was reimbursed by EMPCo for most of its January costs and for some of its February through April 6 costs under the Letter Agreement.

Task Descriptions

This budget is for the Trustees' costs of the NRDAR tasks conducted during calendar year 2012 to identify and evaluate the following: injuries to and losses of fish, birds, turtles, cottonwood regeneration and woody debris piles; residual oil in the environment and response activities resulting in injuries to ecological habitats; human uses that were lost along, and in the vicinity of, the Yellowstone River; and damages resulting from such losses and injuries that may be determined using habitat and/or resource-specific equivalency analyses or other economic methodologies. These costs include the Trustees' costs for planning, implementing and overseeing such tasks, and the costs of the Trustees' related administrative, travel, monitoring, legal and public outreach activities.

Exhibit B



United States Department of the Interior

OFFICE OF THE SOLICITOR

Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215
TELE. (303) 231-5353
FAX (303) 231-5363

September 30, 2011

Kevin J. Vaughan
Counsel, Environmental & Safety
Exxon Mobil Corporation
3225 Gallows Road, Rm. 3D0212
Fairfax, VA 22037-0001

Re: Yellowstone River Oil Spill, Silvertip Pipeline

Dear Mr. Vaughan:

This is to confirm that ExxonMobil Pipeline Company (hereinafter "ExxonMobil") has agreed to provide initial funding in the amount of \$500,000.00 for natural resource damage (NRD) preassessment and assessment costs to the United States Department of Interior, the State of Montana, and the Crow Tribe (the "Trustees") related to the July 1, 2011 Yellowstone River Oil Spill from the Silvertip Pipeline (the "Spill"). The parties may mutually agree to increase this funding amount at a later date. The Trustees reserve the right to seek recovery of any preassessment or assessment costs not paid by ExxonMobil under this letter agreement.

The Trustees will individually submit, to the address set forth below, periodic requests for reimbursement of NRD assessment and preassessment costs and expenses to ExxonMobil, along with the appropriate documentation supporting such costs and expenses.

ExxonMobil Address:

General Counsel
ExxonMobil Pipeline Company
800 Bell Street; PL-EMB-707C
P.O. Box 2220
Houston, TX 77252-2220

Copy To:

Kevin J. Vaughan
Exxon Mobil Corporation
3225 Gallows Road, Rm. 3D0212

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September 21, 2011
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Fairfax, VA 22037-0001

The level of documentation the Trustees will provide will be similar to EPA's SCORPIOS reports. ExxonMobil shall have a right to review such documentation and raise any objections to such costs within 14 days of receiving the Trustees' cost documentation. Unless it raises an objection to such costs, ExxonMobil will pay such costs and expenses up to a maximum of \$500,000.00, as provided below, within 30 days of receiving each invoice and accompanying cost documentation.

Each Trustee receiving such funds shall use the funds solely to reimburse statutorily authorized and recoverable NRD preassessment and assessment costs and expenses incurred in connection with the Spill. In accepting payments under this letter agreement, the Trustees each represent that their respective costs and expenses to which such funds will be applied are authorized by statute and have been incurred in performing statutorily authorized NRD preassessment and assessment activities pertaining to the Spill. All monies paid by ExxonMobil under this letter agreement shall be fully credited towards the alleged preassessment and assessment cost liabilities of ExxonMobil under applicable federal and state laws that permit the Trustees to recover such costs from responsible parties. The Trustees shall not seek from other sources monies paid by ExxonMobil under this letter agreement for documented costs and expenses.

This letter agreement only pertains to matters expressly identified herein, i.e. ExxonMobil payment of NRD preassessment and assessment costs up to \$500,000.00. With respect to all other matters, the United States, the State of Montana, and the Crow Tribe reserve, and this letter agreement is without prejudice to, all rights against ExxonMobil. Nothing herein shall limit ExxonMobil's alleged liability for damages for injury to, destruction of, or loss of, natural resources and for the costs of assessing and litigating any claims for natural resource damages, except to the extent ExxonMobil provides payment for documented costs and expenses of NRD preassessment and assessment costs and expenses pursuant to this letter agreement. With respect to all matters other than the \$500,000.00 of funding agreed to by ExxonMobil under this letter agreement, including without limitation ExxonMobil's right to challenge the alleged trusteeship of any entity, ExxonMobil reserves all of its rights and defenses concerning the Spill and any other matter. The Trustees agree that ExxonMobil's agreement to provide initial funding for NRD assessment and preassessment costs and expenses does not constitute an admission of fault or liability and it shall not be admissible in any proceeding for the purpose of establishing or imputing any liability to ExxonMobil, except for the limited purpose of enforcing the obligation to pay preassessment and assessment costs up to \$500,000.00.

The United States Department of the Interior, the State of Montana and the Crow Tribe shall each submit an initial invoice and cost documentation to ExxonMobil for preassessment costs incurred from July 1, 2011 through approximately August 31, 2011. Subsequent invoices shall be sent on a periodic basis for unreimbursed Trustee preassessment and assessment costs up to the \$500,000.00 reimbursement limit established by this letter agreement. Upon receipt of the initial payments from ExxonMobil for Trustee preassessment costs incurred from July 1 through approximately August 31, the Trustees will discuss a framework for negotiations with ExxonMobil to attempt to reach an agreement for a Cooperative Assessment between the parties

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should the Trustees determine that such an agreement would be beneficial in this matter.

Specific payment instructions are as follows:

U.S. Department of the Interior:

-Please make the check payable to "Department of Interior" and reference Yellowstone River Oil Spill and "NRDAR Account Number 14X5198"

-The check should be mailed to:

U.S. Department of Interior
NBC/Divisions of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 W. Mansfield Ave.
Lakewood, CO 80235

-A copy of the notification of payment and a copy of the check shall be sent to:

Ann Umphres
U.S. Department of the Interior
Office of the Solicitor
755 Parfet St. Suite 151
Lakewood, CO 80215

Bruce Nesslage, Restoration Fund Manager
Office of Natural Resource Damage Assessment and Restoration
Mailstop 4449
1849 C Street, NW
Washington, D.C. 20240

State of Montana:

Agency Name on Bank Account:	State of Montana
Account Number:	156041200221
Name of Bank/Financial Institution:	US Bank NA, Montana 302 North Last Chance Gulch Helena, MT 59601
Contact persons at bank for transaction:	Terri Kuntz 406 447 5252 Kim Spiroff 406 447 5251

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Bank ABA Number: 092900383

Federal ID number for State: 81-0302402

Addendum, third party record, or similar information field: "Yellowstone Oil Spill NRDA"

State contact person for transaction: Cindy Steinmetz
Central Services Division
Department of Justice
303 North Roberts
PO Box 201404
Helena, MT 59620
(406) 444 5713
csteinmetz@mt.gov

Crow Indian Tribe:

-Please make check payable to: Crow Agency Montana

-The check should be mailed to:

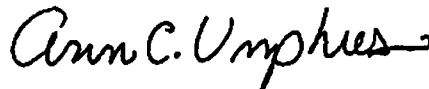
Kristin Johnson, Comptroller
P.O. Box 129
Crow Agency, Montana 59022

-A copy of the notification of payment and a copy of the check shall be sent to:

Heather Whiteman Runs Him
P.O. Box 340
Crow Agency, Montana 59022

Please confirm receipt and acceptance of this letter agreement on behalf of your client by signing in the space provided below and by returning a signed copy to me.

Sincerely,



Ann C. Umphres
Attorney Advisor
Office of the Solicitor

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Accepted and agreed to on behalf of ExxonMobil Pipeline Company.

By: 

Name: Kevin J. Vaughan

Title: Counsel

Date: 3 October 2011

cc:

Rob Collins, Montana Department of Justice Natural Resource Damage Program
Mary Capdeville, Montana Department of Justice Natural Resource Damage Program
Amanda Kochler SOL
James D. Freeman, U.S. Department of Justice
Heather Whiteman Runs Him, Crow Indian Tribe
Paul Meyer BLM
Andrew Archuleta BLM