

**MEMORANDUM OF AGREEMENT BETWEEN  
THE NATURAL RESOURCE TRUSTEES  
AND  
KIRBY INLAND MARINE, LP  
TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT  
CONCERNING THE TEXAS CITY Y OIL SPILL**

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**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE NATURAL RESOURCE TRUSTEES**

**AND**

**KIRBY INLAND MARINE, LP**

**TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT**

**CONCERNING THE TEXAS CITY Y OIL SPILL**

This Memorandum of Agreement (“MOA”) is between the Texas Parks and Wildlife Department (“TPWD”), the Texas General Land Office (“GLO”), the Texas Commission on Environmental Quality (“TCEQ”), the National Oceanic and Atmospheric Administration (“NOAA”), the United States Department of the Interior (on behalf of the Fish and Wildlife Service (“USFWS”) and the National Park Service (“NPS”)) (collectively, “Trustees”), and Kirby Inland Marine, LP (“Agreeing Party”). The Trustees and Agreeing Party may hereinafter be collectively referred to as the “Parties” or individually as a “Party.”

**I. PURPOSE**

A. On March 22, 2014, a collision occurred between the bulk carrier M/V SUMMER WIND 9114129 and KIRBY BARGE 27706 (KIRBY BARGE 27705 AND KIRBY BARGE 27706 were both in tow by the M/V MISS SUSAN at the time of the collision). As a result of the collision, the #2 starboard tank of KIRBY 27706 was punctured discharging oil into the Houston Ship Channel and state and federal waters of the Gulf of Mexico (“Texas City Y Spill” or “Incident”).

B. Due to the discharge of oil from the Texas City Y Spill, there is a potential for injury to, destruction of, loss of, or loss of use of natural resources. This MOA provides the structure under which the Parties agree to conduct a cooperative natural resource damage assessment and identify actions that may be necessary or appropriate to provide for the restoration, rehabilitation, replacement, or acquisition of the equivalent of injured, destroyed, or lost natural resources and their services. The Parties desire to work in the most efficient and cost-effective manner reasonably practicable and hope to achieve settlement of the alleged natural resource damage claims without contested litigation. The Parties may jointly develop or discuss “debit” and “credit” estimates, but those estimates, and the underlying assumptions, are for settlement purposes only, and would not be binding on the Parties in any subsequent litigation, unless agreed to in writing by stipulation or otherwise, which would be binding on all of the Parties in any subsequent litigation. The Parties anticipate that implementation of any agreed actions will be undertaken pursuant to technical memorandum, early action agreements or other appropriate documentation. (See generally Section V. re: Stipulations and Other Agreements.)

## **II. TRUSTEE AUTHORITY**

A. The Trustees enter into this MOA in accordance with the legal authorities provided to each Trustee by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 *et seq.*; Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (also known as the Clean Water Act); Park System Resource Protection Act, 16 U.S.C. § 19jj, (PSRPA), Oil Spill Prevention and Response Act of 1991 (OSPRA), Texas Natural Resources Code Ch. 40; and any other applicable Federal and State laws, rules and regulations, including the OPA NRDA Regulations at 15 C.F.R. pt. 990; Subpart G of the National Oil and Hazardous Substances Contingency Plan at 40 C.F.R. §§ 300.600–300.615; and OSPRA Rules at 31 Texas Administrative Code Ch. 20.

## **III. ASSESSMENT AND RESTORATION PROCESS**

A. The Parties shall continue to work closely together to develop and implement a focused and expedited process for assessing natural resource damages and for identifying any necessary or appropriate restoration. The Parties agree that the process for cooperative natural resource damage assessment and restoration that will be undertaken pursuant to this MOA shall be comprised of and shall represent appropriate and reliable scientific methodologies for assessing natural resource damages and any corresponding lost services resulting from the Texas City Y Spill and for determining appropriate restoration measures.

B. The Parties have initiated and will continue technical discussions to identify natural resources and their services of potential concern and anticipate, without determining at this point, that the major focus of restoration will be to address potential injury through habitat creation, protection and/or enhancement, and through restoration actions that benefit human recreational use.

C. Upon completion of the cooperative natural resource damage assessment and restoration planning process, including the identification of actions that may be necessary or appropriate to provide for the restoration, rehabilitation, replacement, or acquisition of the equivalent of injured, destroyed, or lost natural resources and their services, the Parties will attempt to resolve any outstanding issues by entering into a final settlement agreement and consent decree concerning the natural resource damages resulting from the Texas City Y Spill.

D. The Parties will make all reasonable efforts to complete this cooperative assessment process, with a goal of settlement, except for the public input and any judicial approval requirements, as expeditiously as practicable, targeting the end of calendar year 2016. This target date shall not be construed to affect the determination of reasonableness of any Trustee assessment costs incurred after the target date. While the Parties agree to work expeditiously during the cooperative process, the Parties acknowledge that, if necessary, each is willing to enter into a separate written agreement to toll any applicable statute of limitations to accommodate settlement discussions.

#### **IV. TECHNICAL COMMITTEE**

A. To efficiently achieve the objectives of this MOA, a Technical Committee (“Committee”) shall be formed to implement the cooperative natural resource damage assessment and restoration identification process pursuant to this MOA. The Committee will be comprised of the designated representatives listed in Section XIV. Additionally, technical specialists and assessment/restoration contractors representing the Trustees and technical specialists and assessment/restoration contractors representing the Agreeing Party may participate on the Committee. Any technical specialist or assessment/restoration contractor representing the Agreeing Party on the Committee must be an employee of either the Agreeing Party or one of the Agreeing Party’s assessment/restoration contractors. The Parties shall designate representatives who are able to consistently attend or participate in the Committee meetings and telephone conferences and who have the appropriate type and level of expertise. Each Party shall designate a representative who will be the main point of contact on the Committee. The Parties agree that all representatives and technical representatives of any Party may be present at any and all locations where work undertaken pursuant to this MOA is being performed. For purposes of this MOA, “work” is any activity related to planning, conducting and implementing the cooperative natural resource damage assessment and restoration identification process for the Texas City Y Spill as determined by the Committee, including any activities agreed upon by the Parties. “Work” shall not include inter- or intra-agency meetings among the Trustees, including their assessment/restoration contractors, internal meetings of employees of and/or technical specialist(s) and/or assessment/restoration contractors retained by the Agreeing Party, meetings between a Party and its respective legal consultants or legal representatives or activities associated with independent studies.

B. In considering various potential cooperative activities, the Parties anticipate that the Committee will first discuss the work, then evaluate potential approaches to develop a study plan, and finally cooperatively develop appropriate work plans and work plan budgets. The Committee shall meet, as necessary, to determine appropriate cooperative actions; evaluate and analyze information; negotiate, review and approve any work plans or other necessary planning or implementation documents; decide upon appropriate documentation for the cooperative assessment; and seek resolution of disputes pursuant to Section XI. All of the following, when approved in writing by the Committee, will be considered “cooperative studies” under this MOA: (i) work plans; (ii) work plan budgets and supplemental budgets; and (iii) results from any study relevant to the cooperative assessment. All cooperative studies shall be reduced to writing.

#### **V. STIPULATIONS AND OTHER AGREEMENTS**

A. The Parties may enter into stipulations or other types of agreements, whenever appropriate, during the course of the cooperative natural resource damage assessment and restoration identification process governed by this MOA. Any stipulation or other agreement shall be agreed to by all the Parties, and shall be in writing and, if executed by all Parties, shall be binding on all of the Parties in any subsequent litigation, unless the stipulation or other agreement expressly states otherwise. The Trustees shall make any final stipulation or other final agreement executed by the Parties under the terms of this MOA available to the public. Further, the Trustees shall ensure that this MOA and related finalized documents are organized cohesively.

## **VI. PUBLIC PARTICIPATION**

A. The Trustees are required by law to give public notice and to solicit public review and comment during certain phases of the natural resource damage assessment and restoration process. The Agreeing Party shall provide reasonable and necessary information and assistance to the Trustees in their public participation obligations. For purposes of this MOA, “information” is defined in Section VIII.

B. The Agreeing Party shall prominently mark any documents provided to the Trustees that may contain “Confidential Business Information” (“CBI”) with the terms “Confidential Business Information” or “CBI.” The Agreeing Party shall make reasonable efforts to highlight the confidential nature of the contents of any document(s) prior to providing the marked documents to the Trustees. The obligation to assert CBI rests solely with the Agreeing Party. In the event the Trustees receive a request under the Public Information Act (Texas Government Code Chapter 552) or Freedom of Information Act (54 U.S.C. §552 (“FOIA”)) for information marked as CBI by the Agreeing Party, the Agreeing Party is responsible for submitting arguments in support of nondisclosure of the CBI to the Office of the Attorney General of Texas and/or the United States Department of Justice.

C. The Trustees may provide information about the Texas City Y Spill and the natural resource damage assessment process to the public.

## **VII. FUNDING**

A. Unless and until the Agreeing Party’s liability under OPA and OSPRA is determined to be limited, and the Agreeing Party’s expenditures under those statutes meet the statutory limits, the Agreeing Party agrees to reimburse or advance fund the Trustee’s reasonable costs associated with the natural resource damage assessment and restoration identification process and to finance cooperative studies in accordance with the process set forth in this Section of this MOA. Reimbursable costs and costs payable out of the Department of the Interior’s Natural Resource Damage Assessment Restoration (NRDAR) Fund Incident Account (the “Account”) shall include, but are not limited to, all reasonable costs and expenses incurred by the Trustees in conducting the natural resource damage assessment and restoration process for the Texas City Y Spill prior to the effective date of this MOA. Trustee costs and expenses reimbursable or to be funded under this MOA include costs for the following activities: Trustee coordination; public outreach and information dissemination; administrative tasks; restoration planning; legal work; salaries, indirect rates and overhead; travel, transportation, lodging and meals; equipment rental; printing; assessment support, data management and coordination; contractors, supplies and materials; and such other activities and costs that the Parties agree on. Costs associated with cooperative studies shall be financed pursuant to paragraph B of this Section of this MOA. Trustee costs and expenses shall be reimbursed pursuant to paragraph D of this Section of this MOA. Trustee requests for approval of charges against the Account shall be processed pursuant to paragraph E of this Section of this MOA. Costs incurred for independent studies are not reimbursable or recoverable under this MOA.

B. Advanced Funding

1. Advanced Funding prior to MOA. The Agreeing Party has deposited in the Account the sum of five hundred thousand dollars (\$500,000) to provide funds in advance to assure monies were and are available for the Trustees' reasonable costs associated with the natural resource damage assessment and restoration identification process for the Incident. The Account assures the availability of funds to reimburse Trustee costs associated with the Incident in satisfaction of the federal Antideficiency Act (31 U.S.C. §§ 1341 *et seq.*). The Parties acknowledge that this advanced funding has been and may be used by the Trustees to fund activities (including logistical, technical and data management support) associated with the natural resource damage assessment and restoration identification process pursuant to this MOA. For purposes of accounting under this MOA, the Trustees shall differentiate the monies in the Account between funds for cooperative studies and those for Trustee administrative costs and expenses.
2. Administrative funds for ongoing Trustee costs and expenses. Within ten (10) days of the effective date of the MOA, the Trustees shall provide the Agreeing Party written notice of the total money remaining in the Account, along with a statement identifying the amount of additional funding (the "true up amount") that will bring the Account balance for administrative costs and expenses to a total of two hundred and ninety thousand dollars (\$290,000.00). Within ten (10) days of receipt of this notice, the Agreeing Party shall deposit in the Account the true up amount. Additional advancements of monies to cover administrative costs and expenses shall be made by the Agreeing Party pursuant to paragraph E of this Section of this MOA.
3. Advanced Funding for Cooperative Studies. This Section applies to funding of cooperative studies. In order to provide monies for any cooperative study approved by the Committee, within seven (7) business days of the Committee's written approval of such study and its accompanying work plan budget or any supplemental budget, the Agreeing Party shall deposit into the Account (or alternate location pursuant to instructions from the Trustees) funds equal to the amount of the work plan budget or supplemental budget.
4. The Agreeing Party shall promptly provide the Trustees written notice of any deposit made into the Account.

C. Reimbursement or approval of pre-MOA Trustee costs and expenses. On or before September 1, 2015, each Trustee will provide an invoice to the Agreeing Party for all of that Trustee's costs and expenses incurred prior to the effective date of this MOA, including

costs charged against the Account. The Agreeing Party's consideration of any invoice submitted pursuant to this Section shall be in accordance with the process set forth in paragraph D or E of this Section. Any dispute concerning an invoice shall be resolved pursuant to the procedures set forth in paragraph D or E of this Section and Section XI below. The Agreeing Party shall not be required to reimburse any Trustee or to approve costs charged against the Account for any costs and expenses incurred by any Trustee prior to the effective date of this MOA that are not submitted for reimbursement by invoice on or before September 1, 2015.

D. Consideration of Trustee costs. Beginning on March 1, and then on September 1 of every year during the life of this MOA, the Trustees shall use reasonable efforts to submit to the Agreeing Party an invoice for costs and expenses incurred under this MOA. Late submittal (up to one year) of a Trustee invoice does not bar recovery of reasonable assessment costs incurred on the Texas City Y natural resource damage assessment and restoration identification. However, the Agreeing Party shall not be required to reimburse any Trustee for or approve any costs and expenses otherwise reimbursable under this MOA submitted to the Agreeing Party greater than one year after the costs and expenses were incurred.

1. Payment of Trustee invoices will be on a reimbursement basis to the individual Trustee or on an approval basis for costs and expenses charged against the Account. All Trustees will submit to the Agreeing Party invoices for costs and expenses incurred and for which reimbursement or approval is sought.
2. An invoice submitted under this MOA shall include only requests for reimbursement or approval of actual and reasonable expenditures incurred as part of the natural resource damage assessment and restoration identification process described by this MOA and shall be subject to the following provisions:
  - a. All invoices submitted under this MOA shall include the same detail as in the Trustees' regular cost documentation packages. This includes an itemization of Trustee staff costs, including: name, position, applicable date(s) or date range of service, number of hours worked, rate per hour, and total cost, along with a summary description of the tasks being performed by the Trustee in connection with the activities being carried out under this MOA. The invoice must also include appropriate documentation for all costs and expenses through receipts and other appropriate records, except that copying costs and routine office supplies need not be covered by receipts. Submission of invoices by facsimile or e-mail is acceptable. Invoices that do not contain the information described under this Section (VII.D.2.a) may be deemed incomplete and will not be paid in whole or in part or reviewed for approval in whole or in part until complete information is submitted.



substantiating third-party costs paid from the Account for work associated with any cooperative study. The invoices shall document all costs paid from the Account for the cooperative study including, unless agreed otherwise, (1) the name and position of each employee who charged billable time to the cooperative study; (2) the applicable date(s) or date range of service, number of hours worked, rate per hour, and total cost per employee for the period covered by the invoice; (3) the nature of the effort expended by each employee; and (4) detailed receipts for all expenses billed for the cooperative study.

- b. No later than thirty (30) days after receipt of a cooperative study invoice, the Agreeing Party shall notify the Trustee in writing to specifically identify any additional information needed to review and approve or object to the invoices in whole or in part and provide the Trustee an opportunity to complete the submission.
  - c. No later than sixty (60) calendar days after receipt of a completed cooperative study invoice, the Agreeing Party shall notify the Trustees in writing of any objections to any payments for cooperative studies made from the Account, specifying the basis for the objection, or approve the cooperative study invoice in whole or in part in writing. The Parties may attempt to resolve any dispute concerning a payment made from the Account for cooperative studies pursuant to the procedures set forth in Section XI below. An invoice under this MOA shall initiate the timeframe for approval only when the Agreeing Party is in receipt of a completed accounting and invoice that meets the minimum requirements of this Section.
2. Pursuant to Section VII.B.2 of this MOA, after payment of the true up amount, the corpus of the administrative funds deposited in the Account shall be two hundred and ninety thousand dollars (\$290,000.00). Accounting for Trustee costs and expenses (excluding direct costs of cooperative studies funded from the Account) after the effective date of this MOA against this portion of the Account will be required as follows:
    - a. Beginning on March 1, and then on September 1 through the life of this MOA, any Trustee that has charged costs and expenses against the administrative funds in the Account shall submit to the Agreeing Party an invoice documenting charges against the Account by that Trustee for its costs and expenses under this MOA. Each invoice shall reflect the total amount charged including: (1) the name and position of each employee who charged billable time to the Account; (2) the applicable date(s) or date range of service, number of hours worked, rate per hour, and total cost per employee for the period covered by the invoice; (3)

details for overhead and expenses; and (4) the general nature of the effort expended by the Trustee during the period covered by the invoice, including any unique activities performed by the Trustee.

- b. No later than thirty (30) days after receipt of an invoice of costs and expenses charged against the administrative funds in the Account, the Agreeing Party shall notify the Trustee in writing to specifically identify any additional information needed to review and approve or object to the invoice and provide the Trustee an opportunity to complete the submission.
  - c. No later than sixty (60) calendar days after receipt of a completed invoice, the Agreeing Party shall notify the Trustee in writing of any objections to any charges made against the administrative funds in the Account, specifying the basis for the objection, or approve in whole or in part the invoice in writing. The Parties may attempt to resolve any dispute concerning a charge against the Account pursuant to the procedures set forth in Section XI below. An invoice under this MOA shall initiate the timeframe for approval only when the Agreeing Party is in receipt of a completed accounting and invoice that meets the minimum requirements of this Section.
3. Replenishing administrative funds in the Account. After the payment of the true up amount, the Agreeing Party shall refurbish the administrative funds in the Account up to a total of two hundred and ninety thousand dollars (\$290,000.00) for charges both made against the Account by any Trustee after the effective date of this MOA and approved by the Agreeing Party as appropriate Trustee costs and expenses. The money refurbished as administrative funds in the Account shall not exceed two hundred and ninety thousand dollars (\$290,000.00), and in fact, after a deposit by the Agreeing Party, the administrative funds in the Account may be reconciled to less than two hundred and ninety thousand dollars (\$290,000.00), to the extent charges against the administrative funds in the Account are not approved by the Agreeing Party. The Agreeing Party shall make deposits to the Account as required under this subsection on June 1 and December 1 of each year during the life of this MOA. Approved charges against the Account shall only be refurbished once.

## **VIII. INFORMATION AND WORK**

A. The Parties shall fully and freely share all information related to the Texas City Y Spill, which is in their possession or to which they have access, for the purposes of cooperatively assessing injuries to natural resources or the services they provide and for identifying, choosing, and planning appropriate restoration actions for the Texas City Y Spill. To the extent that samples cooperatively collected can be shared without compromising the integrity of the samples, the Parties also agree to promptly share samples.

B. “Information” is data, documents, necropsy reports, animal counts (live and dead), photographs, videos, final reports and other similar items collected or generated during any response, removal or remedial process and the cooperative natural resource damage assessment and restoration identification process in the possession of the Trustees. Information from the cooperative natural resource damage assessment and restoration identification process shall be shared among the Parties as it is generated. For purposes of this MOA, “information” does **not** include data, documents, photographs, videos, samples reports, memoranda and other similar items constituting attorney-client communications, attorney work product, confidential business information that is clearly marked as CBI or that is otherwise considered confidential or privileged. Data from the cooperative natural resource damage assessment restoration identification process that is shared among the Parties shall be marked, as applicable, “Raw/Unvalidated Draft data” or “Final Validated Data.” Draft reports prepared during settlement discussions among the Parties or by the Technical Committee shall be marked “Draft Report for Settlement.”

C. The Parties will negotiate toward a consensus about the interpretation of information. The Parties will endeavor to jointly conduct all work related to assessing natural resource injuries and determining and identifying appropriate restoration actions for the Texas City Y Spill. However, unless otherwise agreed to and reflected by a stipulation or other written agreement pursuant to Section XII below, the Parties expressly reserve and maintain the right to join or not join in the interpretation of information and to produce separate and independent findings and conclusions. The Parties shall notify each other of the intent to conduct any separate and independent studies, and independent interpretations or findings and conclusions must be communicated in a timely manner to the other Parties. All independent studies and interpretations may be submitted to the Trustees for possible inclusion in the NRDA Administrative Record for this Incident. The decisions concerning what information, including interpretations, findings and conclusions, to include in the NRDA Administrative Record for this Incident rests solely with the Trustees.

## **IX. RESERVATION OF RIGHTS AND CLAIMS**

A. This MOA shall not be admissible as evidence of proof of liability or non-liability or as evidence of the validity or non-validity of any claim or defense in any proceeding relating to this matter. Nothing in this MOA abrogates the right of any Party to pursue contribution from another Party or third party. Nothing in this MOA is intended as a waiver by any of the Parties of any defenses or affirmative claims in any proceedings relating to the Texas City Y Spill or of any other rights or remedies. No Party is making an admission of fact or law by entering into this MOA.

B. Nothing in this MOA is intended to limit the scope of the natural resource damage assessment and restoration appropriate for the Texas City Y Spill or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment and restoration. The Trustees reserve the right to seek any assessment costs not reimbursed or approved pursuant to this MOA.

C. Nothing in this MOA is intended as a waiver of any attorney-client privilege, work product privilege, or any other privilege that has been or may be asserted in this or any

other matter. Validated data and factual information collected pursuant to this MOA shall not be considered privileged unless agreed to by the Parties in accordance with applicable laws and regulations.

D. This MOA does not release the Agreeing Party from any potential liability except for the liability for assessment costs and expenses that are reimbursed or funded pursuant to Section VII. The Trustees reserve all other claims, including claims for damage, injury, loss, or destruction of natural resources and/or their services; claims for the costs of assessing injury to, destruction of, loss of, or loss of use of natural resources and their services; claims for restoration, rehabilitation, replacement or acquisition of the equivalent of natural resources or lost services of those resources; or any other causes of action or requests for relief, either administratively or judicially, under either State or Federal law, as well as any claims, causes of action, or requests for relief in admiralty, arising from the Texas City Y Spill described above.

E. The Agreeing Party's agreement to fund activities and reimburse and approve Trustees costs pursuant to this MOA shall not act as a waiver of its right to seek to limit its liability pursuant to OPA and the OPA regulations. The Agreeing Party reserves its right to assert that:

(1) any costs and expenses incurred by Trustees and not reimbursed by the Agreeing Party under this MOA; or

(2) any payments made by the Trustees from the Account and subject to an objection by the Agreeing Party

do not constitute reasonable costs of natural resource damage assessment and restoration identification activities unless otherwise explicitly agreed to by the Parties in writing.

## **X. LAWS, RULES, REGULATIONS, AND PERMITS**

A. This MOA does not affect or relieve the Parties of their responsibility to comply with any applicable Federal, State, or local law, rule, regulation, or permit.

## **XI. PROCEDURE UPON DISPUTE**

A. The Parties will attempt to resolve all disputes arising out of this MOA through informal negotiations.

B. All disputes arising from planning, conducting or implementing work related to natural resource injury assessment and restoration identification process related to the Texas City Y Spill shall be addressed first by the Technical Committee responsible for the work.

C. The Parties agree that work that is not linked to or not affected by the dispute will continue uninterrupted during the informal negotiations.

D. If the dispute cannot be resolved through informal negotiations as set forth in this Section, the Parties shall attempt to resolve the dispute through discussions among senior representatives of the Parties. Should those discussions fail, any Party may request mediation to

resolve the dispute upon providing written notice to the remaining Parties. This written notice must contain the specific issue(s) in dispute and detailed facts and opinions relevant to resolution of the dispute. The Agreeing Party agrees to pay the reasonable costs associated with any such mediation proceedings and any mediator shall be selected by unanimous agreement of the Parties to the dispute.

## **XII. ATTACHMENTS**

Any modification or addition to this MOA must be in writing and signed by all of the Parties. Such modification or addition shall be an Attachment to this MOA and incorporated as part of this MOA for all purposes. Any references in this document to the “MOA” shall be deemed to include any such Attachments.

## **XIII. TERMINATION**

A. Any party may terminate its participation in this MOA at any time by giving thirty (30) days written notice to all Parties. Notice of intent to terminate participation in the MOA must be signed by an authorized official of the terminating Party. Termination by a single Trustee shall not void the agreement as to the remaining Parties. The decision of any Party to conduct independent work pursuant to Section VIII shall not, in and of itself, be deemed to constitute termination of participation in the MOA. Termination of this MOA by any Party is prospective only. Any stipulations or other agreement executed prior to the effective date of termination shall survive and remain in effect following termination, unless the stipulation or other agreement expressly states otherwise.

B. If the Agreeing Party terminates its participation in this MOA and work previously agreed to by the Agreeing Party is underway at the time of the Agreeing Party’s notice of intent to terminate and that work is being conducted pursuant to an approved work plan (and any agreed modifications thereto), the Agreeing Party shall continue to perform or fund such work plan through to completion, unless the Parties agree to the contrary or the work plan calls for discontinuation upon the occurrence of a specified event. However, the Agreeing Party will not be required to complete any work agreed to under this MOA that was scheduled to be initiated or performed and completed after the effective date of termination.

## **XIV. DESIGNATED REPRESENTATIVES**

A. This MOA establishes that the Department of the Interior will serve as Federal Lead Administrative Trustee (FLAT) and the Texas Parks and Wildlife Department will serve as the State Lead Administrative Trustee (SLAT) for this Incident. Duties of the FLAT and SLAT include the following: scheduling of meetings between the Parties; acting as the central point of contact for the Parties; maintaining records and documents relating to the assessment; and preparing, issuing, or arranging for public notices or reports as determined necessary by the Trustees or the Parties.

B. Each Trustee agency hereby designates the following person to act as its representative in implementing this MOA:

*Cooperative MOA for Texas City Y Oil Spill NRDA*

1. For TPWD:

Don Pitts  
Texas Parks and Wildlife Department  
Environmental Assessment, Response and  
Restoration Program  
4200 Smith School Road  
Austin, Texas 78744  
Phone: (512) 389-8754  
Fax: (512) 389-8160  
Email: don.pitts@tpwd.texas.gov

2. For TCEQ:

Richard Seiler  
Texas Commission on Environmental Quality  
Natural Resource Trustee Program, MC 142  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-2523  
Fax: (512) 239-4814  
Email: richard.seiler@tceq.texas.gov

3. For GLO:

Jane Sarosdy  
Texas General Land Office  
Oil Spill Prevention and Response  
Stephen F. Austin Bldg.  
1700 N Congress Avenue  
Austin, Texas 78701-1495  
Phone: (512) 475-4786  
Fax: (512) 475-0680  
Email: jane.sarosdy@glo.state.tx.us

4. For USFWS:

Chip Wood  
USFWS c/o TAMUCC  
6300 Ocean Dr., Unit 5837  
Corpus Christi, Texas 78412-5837  
Phone: (361) 994-9005  
Fax: (361) 994-8262  
Email: chip\_wood@fws.gov

5. For NPS:

Nancy Werdel  
National Park Service  
P.O. Box 25287  
Denver, CO 80225-0287  
Phone: (303) 969-2745  
Fax: (303) 987- 6782  
Email: nancy\_werdel@nps.gov

6. For NOAA:

Kevin Kirsch  
NOAA Office of Response & Restoration  
Assessment & Restoration Division, Southeast  
263 13<sup>th</sup> Ave S  
Saint Petersburg, FL 33701  
Phone: (727) 551-5619  
Fax: (727) 824-5390  
Email: kevin.kirsch@noaa.gov

C. The Agreeing Party hereby designates the following person to act as its representative in implementing this MOA:

Ralph Markarian, Ph.D.  
Technical Director - NRDA/Senior Principal  
Cardno ENTRIX  
504 Beechwood Drive  
Kennett Square, PA 19348  
Phone: (302) 395-1919  
Fax: (610) 444-3244  
Email: ralph.markarian@cardno.com

D. The Parties agree that a change in the designated person for the Technical Committee does not require the signature of all the Parties prior to taking effect. Rather, the affected Party shall notify the other Parties via electronic mail of the change in technical representative, including the date on which the change shall take effect. The e-mail notification to the Parties of a change in the Technical Committee representative shall become an Attachment to the MOA.

**XV. EFFECTIVE DATE**

This MOA shall become effective upon the date of last signature below.

**XVI. COUNTERPARTS**

This MOA may be signed in two or more counterparts which together shall constitute one and the same document.

**XVII. THIRD PARTY RIGHTS**

This MOA is not intended to create any rights or causes of action enforceable by third persons not Parties to this MOA. Nothing in this MOA may be the basis of any third party challenges or appeals. This provision does not affect the public participation provisions discussed in Section VI.

**XVIII. NOTICES**

A. This MOA contains requirements for notices to be provided by and among the Parties. All notices required by this MOA including approvals or objections to invoices, invocation of dispute resolution, deposits to the Account, execution of stipulations or other agreements shall be sent to all Parties. The Parties designate the following representatives to receive notices under this MOA:

1. For TPWD:

Don Pitts  
Texas Parks and Wildlife Department  
Environmental Assessment, Response and  
Restoration Program  
4200 Smith School Road  
Austin, Texas 78744  
Phone: (512) 389-8754  
Fax: (512) 389-8160  
Email: don.pitts@tpwd.texas.gov

2. For TCEQ:

Richard Seiler  
Texas Commission on Environmental Quality  
Natural Resource Trustee Program, MC 142  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-2523  
Fax: (512) 239-4814  
Email: richard.seiler@tceq.texas.gov

3. For GLO:

Jane Sarosdy  
Texas General Land Office  
Oil Spill Prevention and Response  
Stephen F. Austin Bldg.  
1700 N Congress Avenue  
Austin, Texas 78701-1495  
Phone: (512) 475-4786  
Fax: (512) 475-0680  
Email: jane.sarosdy@glo.state.tx.us

4. For USFWS:

Chip Wood  
USFWS c/o TAMUCC  
6300 Ocean Dr., Unit 5837  
Corpus Christi, Texas 78412-5837  
Phone: (361) 994-9005  
Fax: (361) 994-8262  
Email: chip\_wood@fws.gov

5. For NPS:

Nancy Werdel  
National Park Service  
P.O. Box 25287  
Denver, CO 80225-0287  
Phone: (303) 969-2745  
Fax: (303) 987- 6782  
Email: nancy\_werdel@nps.gov

6. For NOAA:

Kevin Kirsch  
NOAA Office of Response & Restoration  
Assessment & Restoration Division, Southeast  
263 13<sup>th</sup> Ave S  
Saint Petersburg, FL 33701  
Phone: (727) 551-5619  
Fax: (727) 824-5390  
Email: kevin.kirsch@noaa.gov

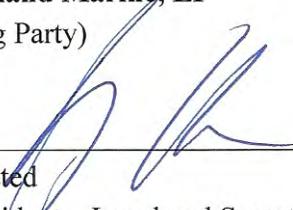
7. For Agreeing Party:

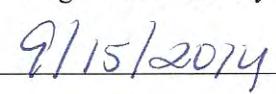
Amy D. Husted  
Vice President – Legal and Secretary  
Kirby Corporation  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
Phone: (713)435-1068  
Fax: (713)435-1408  
Email: amy.husted@KirbyCorp.com

B. The Parties agree that a change in the designated person for recurring notices under this MOA does not require the signature of all Parties prior to taking effect. Rather, the affected Party shall notify the other Parties via certified U.S. Mail and electronic mail of the change including the date on which the change shall take effect. The letter or email notification to the Parties shall become an attachment to this MOA.

**TEXAS CITY Y OIL SPILL: MEMORANDUM OF AGREEMENT TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT BETWEEN THE NATURAL RESOURCE TRUSTEES AND KIRBY INLAND MARINE, LP**

**Kirby Inland Marine, LP**  
(Agreeing Party)

  
\_\_\_\_\_  
Amy Husted  
Vice President – Legal and Secretary

  
\_\_\_\_\_  
Date

**TEXAS CITY Y OIL SPILL: MEMORANDUM OF AGREEMENT TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT BETWEEN THE NATURAL RESOURCE TRUSTEES AND KIRBY INLAND MARINE, LP**

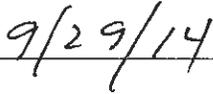
**Texas Commission on Environmental Quality**

Authorized Official



Richard A. Hyde, P.E.

Executive Director



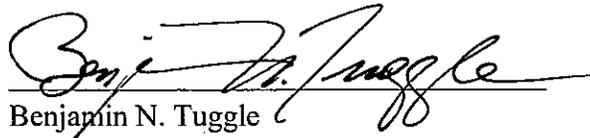
Date

*Cooperative MOA for Texas City Y Oil Spill NRDA*

**TEXAS CITY Y OIL SPILL: MEMORANDUM OF AGREEMENT TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT BETWEEN THE NATURAL RESOURCE TRUSTEES AND KIRBY INLAND MARINE, LP**

**United States Department of the Interior**

Authorized Official



Benjamin N. Tuggle

Authorized Official

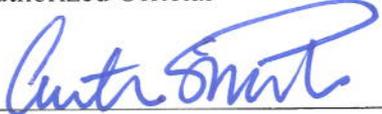
**NOV 12 2014**

Date

**TEXAS CITY Y OIL SPILL: MEMORANDUM OF AGREEMENT TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT BETWEEN THE NATURAL RESOURCE TRUSTEES AND KIRBY INLAND MARINE, LP**

**Texas Parks and Wildlife Department**

Authorized Official

  
\_\_\_\_\_

Carter Smith

Executive Director

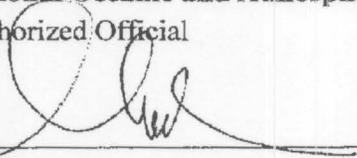
30 September 2014  
\_\_\_\_\_

Date

*Cooperative MOA for Texas City Y Oil Spill NRDA*

**TEXAS CITY Y OIL SPILL: MEMORANDUM OF AGREEMENT TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT BETWEEN THE NATURAL RESOURCE TRUSTEES AND KIRBY INLAND MARINE, LP**

**National Oceanic and Atmospheric Administration**  
Authorized Official

  
\_\_\_\_\_

[Name]

[Title]

9/19/2014  
\_\_\_\_\_

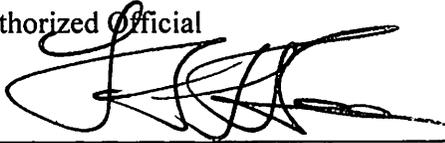
Date

*Cooperative MOA for Texas City Y Oil Spill NRDA*

**TEXAS CITY Y OIL SPILL: MEMORANDUM OF AGREEMENT TO CONDUCT A COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT BETWEEN THE NATURAL RESOURCE TRUSTEES AND KIRBY INLAND MARINE, LP**

**Texas General Land Office**

Authorized Official



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Larry L. Laine  
Deputy Land Commissioner and Chief Clerk

9/15/14

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Date