

**MEMORANDUM OF AGREEMENT  
AMONG THE  
SOUTH CAROLINA OFFICE OF THE GOVERNOR  
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
AND  
UNITED STATES DEPARTMENT OF THE INTERIOR, ACTING THROUGH THE  
UNITED STATES FISH AND WILDLIFE SERVICE REGARDING COORDINATION OF  
NATURAL RESOURCE RESTORATION**

**I. INTRODUCTION and STATEMENT OF PURPOSE**

This Memorandum of Agreement (“Agreement”) is entered into by and between the South Carolina Office of the Governor (SCOG), the South Carolina Department of Health and Environmental Control (DHEC), the South Carolina Department of Natural Resources (DNR), the National Oceanic and Atmospheric Administration (NOAA) and the United States Fish and Wildlife Service (USFWS), on behalf of the United States Department of the Interior (DOI), collectively, “the Trustees.” The Trustees enter into this Agreement in recognition of their common interests and responsibilities as trustees of natural resources, on behalf of the public. The Trustees’ legal authorization to enter into this Agreement is referenced in Section III herein, “Authority”.

This Agreement is intended to provide a framework for continued cooperation and coordination among the Trustees in planning, implementing and overseeing the restoration, replacement, rehabilitation or acquisition of natural resources which have been injured, destroyed or lost as a result of hazardous substances releases at or from the Macalloy Corporation Site in Charleston, South Carolina, Superfund database identification number: SCD003360476. To the extent possible, and in order to maximize limited settlement funds, the Trustees’ goal is to make the public whole for ecological and groundwater losses suffered as a result of contaminant releases at the site with one or more sub-projects capable of restoring both injuries.

The Trustees additionally enter into this Agreement to provide for the use and expenditure of \$525,000 in natural resource damages, together with interest accruing following receipt, which the Trustees jointly recovered from parties responsible for resource injuries attributed to the Macalloy Site (“the Macalloy Settlement Funds”, “Settlement Funds” or “Funds”). These Funds were recovered in settlement of the Trustees joint claim for natural resource damages. The Funds are being held in DOI’s Natural Resource Damage Assessment and Restoration (NRDAR) Fund and are solely for use by the Trustees for the development, finalization, implementation, administration, and oversight of a Restoration Plan related to the Site.

**II. PARTIES**

The following officials, or their designees, are parties to this Agreement and act on behalf of the public as Trustees for natural resources under this Agreement:

1. The Commissioner of the South Carolina Department of Health and Environmental Control,
2. The Director of the South Carolina Department of Natural Resources,
3. The South Carolina Office of the Governor,
4. The Director of the National Oceanic and Atmospheric Administration's Office of Response and Restoration, and
5. The Regional Director, Southeast Region 4 of the United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior.

### **III. AUTHORITY**

The Trustees enter into this Agreement in accordance with the authorities provided for each Trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(l); the National Contingency Plan (NCP), 40 C.F.R. §§ 300.600 through 300.615; 43 C.F.R. Part 11; the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-200 and other applicable State and Federal laws.

### **IV. STATEMENT OF OBJECTIVES**

The Funds that the Trustees jointly recovered from parties responsible for resource injuries attributable to releases from the Macalloy Site, plus any interest accruing thereon, shall be used by the Trustees to plan, implement and oversee the creation or enhancement of estuarine wetlands and/or the restoration or enhancement of groundwater recharge areas in the Charleston Harbor area, in accordance with a Restoration Plan to be developed by the Trustees. The Trustees may utilize one or more sub-projects that may serve to increase ecological services in the area as well as provide for groundwater recharge and/or surface water management. In developing a Restoration Plan, the Trustees agree to:

- A. Develop and implement a Restoration Plan for the resources injured by hazardous releases at and from the Macalloy Site in an expeditious and efficient manner, and in accordance with federal and state law, including CERCLA, 43 C.F.R. Part 11, and the South Carolina Hazardous Waste Management Act;
- B. Provide an appropriate opportunity for public review and comment during development of the Restoration Plan through publication of a Draft Restoration and Compensation Determination Plan / Environmental Assessment (RCDP/EA). The Trustees agree to consider all public comments on the RCDP/EA before selection of restoration actions and finalization of the RCDP/EA;
- C. Consistent with the terms of the Consent Decree and this Agreement, provide for the expenditure of monies from the Settlement Funds, as necessary and appropriate, to develop and implement the final Restoration Plan; and
- D. Pay Trustee administrative costs associated with the development and implementation of the Restoration Plan, provided, however, that the payment shall be capped at 10% of Settlement Funds (\$52,500.00) and no more than half of that 10% shall be recovered by the Lead Administrative Trustee (LAT).

## V. FORMATION OF TRUSTEE COUNCIL

The Trustees agree to establish a Macalloy Site Restoration Trustee Council (“the Council”) to implement this Agreement. The Council shall be comprised of one representative of each State and Federal Trustee.

A. Designation of Representatives: Each Trustee hereby designates, respectively, the following person as their primary representative on the Council with responsibility for implementation of this Agreement:

For DHEC:

Julie E. Friddell, Ph.D., Project Manager  
Federal and Drycleaning Remediation Section  
Bureau of Land and Waste Management  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
803-896-4075  
1-866-343-2379 (1-866-DHEC-DRY)  
803-896-4292 (fax)  
FriddeJE@dhec.sc.gov

For DNR:

Priscilla Wendt  
Environmental Quality Manager  
South Carolina Department of Natural Resources  
P.O. Box 12559  
Charleston, SC 29422  
Phone: 843-953-9305  
Fax: 843-953-9399  
wendtp@mrd.dnr.state.sc.us

For NOAA:

Tom Moore  
USDOC/NOAA Southeast Regional Office  
Restoration/Damage Assessment Center  
263 13th Ave. South  
St. Petersburg, FL 33701  
Phone: 727-551-5716  
Fax: 727-824-5390  
Tom.Moore@noaa.gov

For USFWS:

Diane Duncan  
Environmental Contaminants Specialist  
Ecological Services Office  
U.S. Fish and Wildlife Service  
176 Croghan Spur Rd., Suite 200  
Charleston, SC 29407  
Phone: 843-727-4707  
Fax: 843-727-4218  
Diane\_Duncan@fws.gov

B. Alternate representatives: To ensure continuity in the Council's work, each Trustee shall designate an alternative representative to the Council and shall notify each of the other Trustees' designated primary Council representative of the alternate's name, address, e-mail address, telephone and facsimile numbers within 14 days of the execution of this Agreement.

C. Change of Representatives: A Trustee may change its primary or alternate Council representative by providing written notice to each of the other Trustees' primary Council designate. In the event that a Trustee's primary representative can no longer serve in that capacity, that Trustee must designate a new Council representative within 14 days.

D. Duties and Responsibilities: The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Actions taken by the Council may include, but are not limited to:

1. Overseeing the development and implementation of the Restoration Plan, and finalization of the Restoration Plan.
2. Establishing mechanisms to ensure that all actions within the scope of this Agreement are conducted in accordance with applicable administrative procedures and/or legal requirements.
3. Making decisions regarding the use and expenditure of the Macalloy Funds, in accordance with the terms of this Agreement and the Consent Decree.
4. Creating subcommittees, where appropriate, to facilitate any activities under this Agreement.
5. Taking such actions as the Council determines are necessary or appropriate to implement this Agreement, including seeking advisory participation from the United States Department of Justice, as necessary, or other agencies.

E. Decision making: All decisions by the Council shall be made by consensus. In the event that consensus cannot be reached, the matter in dispute will be elevated to the appropriate authorized officials. Any agency may abstain from voting, and an abstention from voting by any agency will not negate any decision that the rest of the Council reaches by unanimous consensus. Any Trustee who abstains from a vote on a decision shall not have the right to challenge this decision later. Formal, final decisions by the Council shall be documented by written Resolution, and signed by all of the members of the Trustee Council, or their alternates. Electronic documentation and

concurrence are acceptable means of participating in decision-making. The Lead Administrative Trustee will maintain records of all Resolutions and significant correspondence of the Trustee Council.

Among SCOG, DNR, and DHEC, it is agreed that DNR and DHEC will keep the SCOG timely apprised of all matters or issues arising in the normal and ongoing course of coordinating, planning, administering and implementing the restoration process contemplated by this MOA and that, on these matters, the agreement, vote or signature by the DNR and DHEC representatives on the Council will signify the concurrence of the SCOG. Key decisions involving State concurrence under this MOA, however, will require the participation and express agreement, vote or signature of the SCOG representative for "unanimous agreement" to occur under paragraph A of this Section. For purposes of this MOA, key decisions include approval of the final Restoration Plan.

F. Lead Administrative Trustee: DHEC will serve as the Lead Administrative Trustee ("LAT") for the Council under this Agreement. As LAT, DHEC will have no decision-making rights beyond those held and shared by all Trustees under this Agreement.

## **VI. USE OF MACALLOY SETTLEMENT FUNDS**

A. General Use: The Macalloy Funds, including all interest accruing thereon, may only be used by the Trustees to develop, implement and oversee the Restoration Plan. Such use includes payment or reimbursement of the administrative costs and expenses incurred by the Trustees during the development and implementation process. Administrative costs associated with the development and implementation of the RCDP/EA shall be capped at 10% of Settlement Funds (\$52,500.00) and no more than half of that 10% shall be recovered by the LAT. Trustee administrative costs or expenses include, but are not limited to, costs (both direct and indirect) associated with the preparation and review of documents pertinent to the development or implementation of the Restoration Plan, administration, management, or oversight of contracts or projects, and travel.

B. Procedures for Access to the Settlement Funds: The Council, in accordance with the decision-making process identified in Section V, shall identify protocols, standards, procedures, budgets, or other directions as necessary to support access to, or use of, the Macalloy Funds. The Council will coordinate the requests for withdrawal of monies from the Macalloy Fund. Disbursement of any monies from the Macalloy Fund, including for reimbursement of administrative costs and expenses incurred by the Trustees, will be by unanimous written agreement of all Council members, subject to the provisions of Section V.E. above. Electronic concurrence on any of the above is acceptable.

## **VII. CONFIDENTIALITY**

The Trustees agree herein that it is generally in the public interest that scientific information arising out of the Trustee's restoration activities, as a result of expenditure of the Funds, should be made public. This information shall be made available to the public in accordance with the South

Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* and applicable Federal law. The Trustees recognize that oral and written communications that are privileged attorney-client communications, attorney-work-product, or which may be characterized as confidential business information, or are otherwise protected by any other privilege, will be protected from disclosure to the extent possible under applicable Federal and/or State law.

The Trustees further agree that whenever a request for production of information that may constitute privileged communication is received by any Trustee, the request will be forwarded to all members of the Trustee Council for their review. Nothing contained herein shall be construed as prohibiting or restraining any member of the Trustee Council from agreeing to release of any information generated by that Trustee, nor shall anything contained herein be construed as requiring any Trustee to release information.

#### **VIII. RESERVATION OF RIGHTS**

Each Trustee has and reserves the right to take any action within the scope of its authority as a Trustee, including those actions that may be necessary to pursue and/or to preserve any legal rights or remedies available to it as a Trustee. Nothing in this Agreement is intended to waive or foreclose any such rights.

#### **IX. MODIFICATION OF AGREEMENT**

This Agreement may be modified by the unanimous consent of the Trustee Council. Any modification of this Agreement shall be in writing, executed by the Trustees. An electronic request for modification of this Agreement, or an electronic consent to modification of this Agreement, is acceptable.

#### **X. TERMINATION**

This Agreement shall remain in effect until completion of all work pursuant to the Restoration Plan, or at such other time as the Trustees, in their sole discretion, determine. In the event that any Trustee withdraws from this Agreement, such withdrawal must be in writing at least 30 days in advance of the withdrawal. Such withdrawing Trustee forfeits all rights pursuant to this Agreement including, without limitation, the right to decide how the Macalloy Funds are expended and to authorize any expenditure of Macalloy Funds. Such withdrawing Trustee may recoup, subject to availability of funds for Trustee administrative costs, the administrative costs it has incurred as of the date of its withdrawal from this Agreement. In the event of a withdrawal of a Trustee from this Agreement, this Agreement will remain in full force and effect for the remaining Trustees.

#### **XI. LIMITATION**

The responsibilities and commitments identified in this Agreement are wholly subject to the lawful availability of funds, including monies from the Macalloy Funds. Nothing in this Agreement shall be construed to obligate the United States, the State of South Carolina, DHEC, DNR or SCOG, USFWS or NOAA, or any other public agency, to expend any funds in excess of those reimbursable from the Funds, or authorized by law.

## **XII. EFFECTIVE DATE**

This Agreement may be executed in counterparts. A copy with all of the original executed signature pages affixed shall constitute the original Agreement. The date of execution shall be the latest date of the first two Trustees' representatives to sign.





IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:

FOR the South Carolina Office of the Governor

Henry White

Chief Legal Counsel

10-6-06  
Date



IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:

FOR the South Carolina Department of Health and Environmental Control

*C. Earl Hunter*  
C. Earl Hunter

10-3-06  
Date

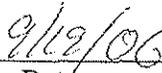
Commissioner



IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:

FOR the National Oceanic and Atmospheric Administration:

  
\_\_\_\_\_  
Captain Kenneth Barton

  
\_\_\_\_\_  
Date

Acting Director, Office of Response and Restoration  
NOS Agreement Code MOA-2006-085/7312