



harm or damage to the environment (including but not limited to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource).

- (2) Provide adequate and appropriate means and procedures for the repair and replacement of improved or tangible property and the rehabilitation of natural resources (including but not limited to revegetation, restocking fish or other wildlife populations and reestablishing their habitats) that shall be seriously damaged or destroyed if the immediate cause of the damage or destruction arises in connection with, or results from, the construction, operation, maintenance or termination of all or any part of the Pipeline System.
- (3) Provide for component and systems quality through adequate quality control management and planning, and inspection and test procedures.
- (4) Assure that the selection of Permittees' contractors, subcontractors and contract purchases of materials and services are based upon the above quality control procedures.
- (5) Determine quality performance by conducting surveys and field inspections of all of the facilities of Permittees' contractors and subcontractors.
- (6) Maintain quality determination records on all of the above procedures to insure satisfactory data identification and retrieval.

10. Compliance With Notices To Proceed

All construction of the Pipeline System undertaken by Permittees shall comply in all respects with the provisions of Notices to Proceed that are issued by the Authorized Officer.

11. Reservation of Certain Rights to the United States

A. The United States reserves and shall have a continuing and reasonable right of access to any part of the lands (including the subsurface of, and the air space above, such lands) that are subject to the Right-of-Way, and a continuing and reasonable right of physical entry to any part of

the Pipeline, for inspection or monitoring purposes and for any other purpose or reason that is reasonably consistent with any right or obligation of the United States under any law or regulation, this Agreement, or any other agreement, permit or authorization relating in whole or in part to all or any part of the Pipeline.

B. The rights of access and entry reserved in subsection A of this Section shall extend to and be enjoyed by any contractor of the United States, any subcontractors (at any tier) of the contractor and their respective agents and employees, as well as such other persons, as may be designated from time-to-time in writing by the Authorized Officer.

C. There is reserved to the United States the right to grant additional permits or easements for rights-of-way to third parties for compatible uses on, or adjacent to, the lands subject to the Right-of-Way. Before the United States grants an additional right-of-way or permit for a compatible use, the United States will notify Permittees of its intentions and shall consult with Permittees before taking final action in that regard.

12. Reimbursement of Department Expenses

A. Permittees shall reimburse the United States for all reasonable administrative and other costs heretofore or hereafter incurred directly or indirectly by the Department for: (1) processing applications filed by Permittees in connection with the Pipeline System; and (2) monitoring the construction, operation, maintenance, and termination of all or any part of the Pipeline System, including without limitation those portions of the System that shall be located on State-owned lands.

B. Subject to collection, receipt is hereby acknowledged by the Department of the sum of Twelve Million Two Hundred Fifty Three Thousand Seven Hundred Thirty and 00/100 Dollars (\$12,253,730) which has been paid to the United States by Permittees at the time of execution of this Agreement. Said sum represents the amount of the costs referred to in subsection A of this Section, which were incurred by the Department through September 30, 1973.

C. Permittees shall hereafter pay to the United States such sums as the Secretary shall determine to be required to reimburse the Department for the costs, referred to in subsection A of this Section, incurred or to be incurred by it subsequent to September 30, 1973. Such payments shall be made in



accordance with the provisions of subsection F of this Section.

D. Permittees acknowledge that the Department has employed or may employ one or more independent consultants, contractors and subcontractors and also has utilized and may utilize personnel and services of other agencies to assist it with: (1) processing applications heretofore or hereafter filed by Permittees in connection with the Pipeline System; and (2) monitoring the construction, operation, maintenance and termination of the Pipeline System. Before employing such consultants, contractors, or subcontractors, the Secretary shall notify Permittees of such employment and shall inform the Permittees of the purpose of employment, the scope of the work to be undertaken, the duration of the employment and the estimated cost thereof; *provided, however*, this notice requirement shall not limit the authority of the Secretary to enter into agreements with consultants, contractors or subcontractors. Costs incurred by the Department in connection with the employment of consultants, contractors and subcontractors and with respect to utilizing the personnel and services of other agencies shall be included in the costs for which the Department is to be reimbursed by Permittees under the provisions of subsection A of this Section.

E. Agreements entered into by the Secretary with respect to the Pipeline System which result in costs for which reimbursement is required by this Section shall be drawn to avoid unnecessary employment of personnel and needless expenditure of funds. The Department shall administer this Agreement and such other agreements to reasonably assure that unnecessary employment of personnel and needless expenditure of funds are avoided.

F. Reimbursement by Permittees, as provided for in this Section and Section 18 hereof, shall be made for each quarter ending on the last day of March, June, September and December. On or before the sixtieth (60th) day after the close of each quarter, the Authorized Officer shall submit to Permittees a written statement of the costs incurred by the Department during that quarter which are reimbursable.

G. Permittees shall have the right to conduct, at their own expense, reasonable audits by auditors or accountants, designated by Permittees, of the books, records and documents of the Department and of its independent consultants, contractors and

subcontractors relating to the items on any particular statement that shall be submitted in accordance with the procedure outlined in subsection F of this Section, at the places where such books, records and documents are usually maintained and at reasonable times; *provided, however*, that written notice of a desire to conduct such an audit must be given the Authorized Officer: (1) at least fifteen (15) days prior to such audit; and (2) by not later than the seventy-fifth (75th) day after the close of the quarter for which the books, records and documents are sought to be audited; and *provided further*, that any such audits shall be completed within ninety (90) days after receipt by Permittees of the statement containing the items to be audited.

H. Nothing herein shall be deemed to require the Department, its bureaus or offices, or its independent consultants, contractors and subcontractors to maintain books, records or documents other than those usually maintained by them, provided that such books, records and documents reasonably segregate and identify the costs for which reimbursement is required by this Section. Such books, records and documents shall be preserved or caused to be preserved for a period of at least two (2) years after the Department submits a statement for reimbursement based on such books, records and documents. The auditors or accountants designated by Permittees shall have reasonable access to, and the right to copy, at their expense, all such books, records and documents, including all audit reports prepared by or furnished to the Department, together with supporting documents in the possession of the Department, concerning agreements with other agencies employed by the Department and with its independent consultants, contractors and subcontractors, which result in costs for which reimbursement is required by this Section.

I. With respect to the audits by Permittees of any books, records and documents of the Department and its independent consultants, contractors or subcontractors under agreements which result in costs for which reimbursement is required by this Section, such audits shall be conducted by independent certified public accountants, designated by Permittees. Prior to conducting any such audits, such accountants shall confer with the auditors auditing such consultants, contractors or subcontractors for the Department for the purpose of coordinating and expediting their



respective audits. Any such audits by such accountants shall be conducted as supplementary audits, reviewing and spot checking the audits of the Department's auditors for the purpose of determining the accuracy of costs reflected in the billings of the Department which are reimbursable under subsection A of this Section, and auditing such other matters as may be appropriate in the circumstances. The Authorized Officer may designate a representative to observe any such audits by such accountants. The Authorized Officer shall have reasonable access to, and the right to copy, all such audit reports prepared by such accountants and furnished to Permittees, together with supporting documents in the possession of the Permittees. In the event that the Authorized Officer believes that the scope of any such supplementary audit is unreasonable, he shall promptly notify Permittees and such accountants, and such supplementary audit shall be suspended pending consultation by the Authorized Officer and the Permittees of the appropriate scope of audit in the circumstances. Any complaints which Permittees may have with respect to such agreements, their performance or the statement of the Department for the reimbursement of costs based on such agreements shall be made only to the Authorized Officer.

J. Permittees shall pay to the United States, through the Authorized Officer, the total amount as shown on each statement by not later than the due date thereof, namely the ninetieth (90th) day following the close of the quarter to which the statement relates; *provided, however*, that if any one or more of the Permittees decides to dispute or audit any item of a statement that shall be rendered in accordance with the provisions of this Section or Section 18 hereof, Permittees, on or before the said 90th day on which the statement is due and payable, shall give the Authorized Officer written notice of each item that is disputed, accompanied by a detailed explanation of their objection, or written notice of each item to be audited, and shall pay to the United States, through the Authorized Officer, those amounts for the items that are not disputed or are not to be audited. If any item of a statement is audited, Permittees shall give the Authorized Officer prompt written notice of the completion of the audit of all the items of a statement being audited. On a date fixed by the Authorized Officer, but in any event to be within thirty (30) days after notice of a disputed

statement or after notice of the completion of the audit, as the case may be, the Authorized Officer and Permittees shall meet to discuss, and attempt to resolve, all items which are disputed or which have not been resolved by the audit. If at that time they are unable to resolve all such items, Permittees may appeal any unresolved items to the Secretary in accordance with the provisions of subsection A of Section 26 of this Agreement. Any items resolved as being payable to the United States shall be paid within thirty (30) days after being resolved, together with interest thereon up to the date of payment at a total annual percentage rate equal to the discount rate of the Federal Reserve Bank for District 12 (San Francisco) in effect on the original due date of the statement, and such interest shall accrue and be computed from, and so as to include, the aforesaid due date. The items shown on any statement that are not the subject of both: (1) a notice to the Authorized Officer of a disputed item or notice of audit, and (2) a notice of appeal as provided for in subsection A of Section 26, shall be deemed conclusively to be payable to the United States by Permittee.

K. In addition to the right to audit quarterly statements as provided in subsection G of this Section, if Permittees believe that unnecessary employment of personnel or needless expenditure of funds has occurred or is likely to occur contrary to the provisions of subsection E of this Section, Permittees may request the approval of the Authorized Officer for Permittees to conduct promptly and at their own expense a full and complete audit by auditors or accountants designated by Permittees, of the books, records and documents concerning the matters to be audited, at the places where such books, records and documents are usually maintained and at reasonable times. Such request shall be in writing, shall specify the matters to be audited and shall state the information available to Permittees upon which the request is based. The Authorized Officer shall approve or deny such request promptly, and approval of any such request shall not be unreasonably withheld. If and to the extent that any such audit concerns any agreements of the Department with independent consultants, contractors or subcontractors which have resulted or may result in costs for which reimbursement is required by this Section, such audit shall be conducted by independent certified public accountants designated by Permittees. The Authorized Officer may designate a representative



to observe any audit allowed by this subsection and the Authorized Officer may have access to, and the right to copy, the audit report prepared by such accountants and furnished to Permittees. Any complaint which Permittees may have as a result of any audit under this subsection shall be made only to the Authorized Officer and shall be governed by the procedure set forth in subsection J of this Section, to the extent applicable.

13. Damage to United States Property; Repair, Replacement or Claim for Damages

A. Subject to the provisions of subsection 204 (a) (2) of the Trans-Alaska Pipeline Authorization Act, at the written demand of the Authorized Officer, Permittees:

- (1) shall repair or replace promptly, to the written satisfaction of the Authorized Officer, all improved or tangible property of the United States, whether real, personal or mixed, that has been seriously damaged or destroyed and is included in the demand, and
- (2) shall rehabilitate (including, but not limited to, revegetation, restocking fish or other wildlife populations and reestablishing their habitats), to the written satisfaction of the Authorized Officer, any natural resource that shall be seriously damaged or destroyed,

if the immediate cause of the damage or destruction arises out of, is connected with, or results from, the construction, operation, maintenance or termination of all or any part of the Pipeline System; *provided, however*, that Permittees shall not be obligated to repair or replace any property or to rehabilitate any natural resource that was damaged or destroyed: (a) by an act of war or (b) solely by (i) the negligence of the United States and/or (ii) the negligence or willful misconduct of Persons who are authorized to enter upon, use or occupy the damaged property or areas pursuant to any Federal lease, permit, or other written authorization that is issued for any use or purpose other than in connection with the construction, operation, maintenance or termination of the Pipeline.

B. The repair or replacement by the Permittees of any improved or tangible property of the United States, as provided for in subsection A of

this Section, shall operate to preclude the United States from asserting any claim for direct (as opposed to consequential) money damages with respect to the damage or destruction that was so repaired or replaced.

C. Except to the extent that a claim by the United States for money damages against any one or more of the Permittees shall be barred in accordance with the provisions of subsections A and B of this Section, Permittees shall be liable to the United States, with respect to improved or tangible property of the United States, whether real, personal or mixed, that is damaged or destroyed in connection with or resulting from activities along or in the vicinity of the Right-of-Way in accordance with the provisions of Section 204 of the Trans-Alaska Pipeline Authorization Act.

D. In the event that a Permittee shall be liable to the United States for any damage, destruction or loss of improved or tangible property of the United States whether real, personal or mixed, the collection by the United States of money damages on account of the particular loss, damage or destruction, shall to the extent collected operate to preclude the United States from enforcing the provisions of subsection A of this Section with respect to such loss, damage or destruction.

14. Indemnification of the United States

A. Permittees shall indemnify and hold harmless the United States, its agents and employees, against and from any and all liabilities or damages of any nature whatsoever which the United States, its agents, employees, contractors or subcontractors (at any tier) become legally obligated to pay, and which arise out of, or are connected with, any one or more of the following: (1) the construction, operation, maintenance or termination of the Pipeline System; (2) the approval (as distinguished from the ordering of a modification pursuant to Stipulation 1.3.2.) by the United States, its agents, employees, contractors or subcontractors (at any tier), of any design, plan, Construction Mode, construction or research pertaining to the Pipeline System or any part thereof; or (3) the physical entry by any Person upon, or the use or occupancy by any Person of, any Federal Land that is the subject of any use or right which is granted or afforded to Permittees, or to their respective agents, employees, contractors or subcontractors (at any tier) in connection with the



Pipeline System; *provided, however*, that the provisions of items (1) and (3) of this Section shall not be deemed to apply to liabilities or damages that are caused: (a) by an act of war; or (b) solely by (i) the negligence of the United States, and/or (ii) the negligence or willful misconduct of an agent, employee, contractor or subcontractor (at any tier) of the United States not acting within the scope of his authority or employment, and/or (iii) the negligence or willful misconduct of persons who are authorized to enter upon, use or occupy the damaged property or areas pursuant to any Federal lease, permit, or other written authorization that is issued for any use or purpose other than in connection with the construction, operation, maintenance or termination of the Pipeline System.

B. Permittees shall be notified in writing of any claim for which indemnity under the provisions of this Section is sought, and such claim shall not be compromised without the written consent of Permittees, which consent Permittees agree shall not be unreasonably withheld or delayed.

C. The regulations of the Department relating to indemnification of the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under a right-of-way (43 CFR 2801.1-5(f) (1972)) shall not be applicable to this Agreement.

15. Guaranty

A. Upon being notified by the Secretary to do so, each Permittee shall cause to be delivered to the Secretary a valid and unconditional guaranty of the full and timely payment of all liabilities and obligations of the Permittee to the United States under or in connection with this Agreement or any other agreement, permit or authorization to be issued or granted to the Permittees by the Secretary that relates in whole or in part to all or any part of the Pipeline System.

B. It is recognized that a proposed guarantor of a Permittee may be a corporation (or an individual stockholder thereof), a partnership (or an individual partner thereof), an association that is authorized and empowered to sue and be sued and to hold the title to property in its own name (or an individual associate thereof), a joint stock company that is authorized and empowered to sue and be sued and to hold the title to property in its own name (or any individual participant therein), or a business trust (or an individual settlor

thereof), and may or may not directly or indirectly own a legal or beneficial interest in the Permittee whose liabilities and obligations are sought to be guaranteed. In the case of multiple guarantors that are acceptable to the Secretary, each shall be severally liable for only its proportionate share of any sum or payment covered by the guaranty.

C. Each guaranty shall be satisfactory to the Secretary in all respects including, without limitation, the form and substance of the guaranty, the financial capability of a proposed guarantor, the availability of such guarantor to service of process, the availability of the assets of such guarantor with respect to the enforcement of judgments against the guarantor, and the number of guarantors that will be necessary to guarantee all of the liabilities and obligations which will be covered by a particular guaranty; *provided, however*, that the Secretary shall not unreasonably withhold his approval with respect to a guaranty or guarantor.

D. The Secretary shall have the right at any time, and from time to time, to require the substitution and delivery of a new form of guaranty in the event that an outstanding guaranty is held to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction or, that the controlling law shall, by statute or judicial decision, be so altered as to impair, prevent or nullify the enforcement or exercise of any right or option of the United States under an outstanding guaranty; *provided, however*, that the outstanding guaranty (to the extent of its validity or enforceability, if any) shall continue in full force and effect with respect to any claim, suit, accrued liability or defense thereunder that exists at the time of substitution; *provided further*, that the new form of guaranty, in each such case, shall be required as to all Permittees that at the time of substitution have delivered, or are required to deliver, a guaranty.

E. Each guaranty shall be accompanied by such certificates and opinions of legal counsel as the Secretary may require to establish its validity. The guaranty shall include an appointment of an agent for service of process that is satisfactory to the Secretary.

16. Laws and Regulations

A. Permittees, and each of them, shall comply with all applicable Federal laws and regulations, existing or hereafter enacted or promulgated.



B. In any event, Permittees, and each of them, shall comply with: (1) all regulations hereafter promulgated to implement the Trans-Alaska Pipeline Authorization Act, and (2) all applicable regulations hereafter promulgated to implement Section 28 of the Mineral Leasing Act of 1920, as amended.

17. No Right of Set Off

A. With respect to any sum now or hereafter owing, or claimed to be owing, to the United States and that arises out of or is connected in any way with the construction, operation, maintenance or termination of all or any part of the Pipeline System, Permittees, and each of them, shall not set off against, or otherwise deduct from, any such sum:

- (1) Any claim or judgment for money of any one or more of the Permittees against the United States not arising out of the construction, operation, maintenance or termination of all or any part of the Pipeline System;
- (2) Any claim or judgment for money of any one or more of the Permittees against the United States that arises out of the construction, operation, maintenance or termination of all or any part of the Pipeline System, if the sum now or hereafter owing, or claimed to be owing, to the United States is or shall be for any sum or charge required to be paid to the United States pursuant to Section 8, Section 12 or Section 18 hereof; or
- (3) Any claim or judgment for money of any one or more of the Permittees against the United States that arises out of, or pursuant to, any statute administered by any department or agency of the United States other than the Department.

18. Right of United States To Perform

A. If, after thirty (30) days, or in an emergency such shorter period as shall not be unreasonable, following the making of a demand therefor by the Authorized Officer, in the manner that is provided in Stipulation 1.6 for giving written notices, Permittees, or their respective agents, employees, contractors or subcontractors (at any tier), shall fail or refuse to perform any of the actions re-

quired by the provisions listed in subsection B of this Section, the United States shall have the right, but not the obligation, to perform any or all of such actions at the sole expense of Permittees. Prior to the delivery of any such demand, the Authorized Office shall confer with Permittees, if he deems it practicable to do so, regarding the required action or actions that are included in the demand. The Authorized Officer, following the procedure outlined in subsection F of Section 12 hereof, shall submit to Permittees a statement of the expenses incurred by the United States during the preceding quarter in the performance by the United States of any required action and, in the absence of a dispute, the amounts shown to be due on each such statement shall be paid by Permittees in accordance with the provisions of the said last mentioned subsection. If any one or more of the Permittees shall dispute the amount of any item in any statement that shall be rendered in accordance with the provisions of this Section, the procedures outlined in subsection J of Section 12 shall apply with equal force and effect to any such dispute. Permittees may dispute whether the work involved an action required by a provision listed in subsection B of this Section, whether Permittees' failure or refusal to perform any such action was justified, as well as the reasonableness of the specifications for, and the cost of, such work.

B. Required Action (In General) and Reference:*

- Survey, map and mark the Right-of-Way—Sec. 6.
- Repair, replace, rehabilitate property and natural resources—Sec. 13.
- Discharge liens—Sec. 19.
- Abate any condition causing or threatening to cause a hazard, harm or damage—Sec. 24.
- Provide emergency aid—Sec. 30.
- Provide an archeologist to perform certain duties—Stip. 1.9.
- Remove improvements and equipment and restore land—Stip. 1.10.1.
- Put areas "to bed"—Stip. 1.10.2.
- Protect certain improvements; remove obstructions; repair damage to public utilities and improvements—Stip. 1.11.
- Regulate public access—Stip. 1.12.1.
- Provide alternative routes for roads and trails—Stip. 1.12.2.

*"Sec." refers to Sections of this Agreement. "Stip." refers to the Stipulations, attached as Exhibit D hereto.