

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this "Agreement") is made as of _____, 2004 by and between the undersigned member (the "Member") and Clean Islands Council, Inc., a Delaware nonprofit, non-stock corporation (the "Corporation").

RECITALS

- A. The Corporation owns, maintains and operates certain vessels and equipment for use in the containment and cleanup of oil spills along the coastal portions of the following islands of the State of Hawaii: Hawaii, Maui, Kahoolawe, Molokai, Lanai, Oahu, Kauai and Niihau.
- B. The Member transports, uses, refines and/or stores oil and petroleum products in the State of Hawaii and/or its coastal waters.
- C. The Member is a member of the Corporation and as a member of the Corporation, is entitled and obligated to enter into this Agreement.
- D. The Member desires to contract with the Corporation to provide oil spill containment and cleanup services, and to provide for the standby availability of such services, on the terms and conditions set forth herein.

AGREEMENTS

In consideration of the premises and the mutual promises and covenants set forth in this Agreement, the parties hereby agree as follows:

ARTICLE I

Definitions

As used in this Agreement, the following terms shall have the following respective meanings:

"Affiliate" shall mean (i) if the Member is a corporation, the Parent of the Member and each company of which the Member or its Parent owns directly or indirectly 50% or more of the shares entitled to vote at an election of directors, or (ii) if the member is a partnership, any general partner in the Member.

"Area of Interest" shall mean the public and private properties, beaches, harbors and waters along the coastal portion of the following islands of the State of Hawaii: Hawaii, Maui, Kahoolawe, Molokai, Lanai, Oahu, Kauai and Niihau; provided that nothing herein shall preclude the parties from contracting or cooperating with persons or organizations in other geographical areas for the purposes set forth in the recitals above.

"Bylaws" shall mean the Bylaws of the Corporation as in effect from time to time.

"Designated Spill" shall have the meaning set forth in Section 3.2.

"Direct Costs" of a Designated Spill shall mean the aggregate of all expenditures by the

Corporation incurred in the cleanup or containment of such Designated Spill that would not have been incurred if such cleanup or containment were not undertaken, as determined by the Corporation, including but not limited to: (i) the cost of equipment not owned or leased on a regular basis by the Corporation; (ii) the cost of all materials, fuel and oil used during such cleanup or containment; (iii) the cost of additional employees or independent contractors engaged by the Corporation to assist with such cleanup or containment; (iv) overtime paid to regular employees of the Corporation as a result of such cleanup or containment; (v) the cost of subsistence and lodging required for personnel engaged in such cleanup or containment; (vi) additional insurance premiums reasonably required in order to perform such clean up or containment; (vii) the cost of repairs, maintenance and cleaning of equipment required as a result of such cleanup or containment; and (viii) the cost of returning the Equipment and unused supplies and materials to a condition which is as good as when called into service by the Member for such cleanup or containment, subject to ordinary wear and tear, if the Corporation has lent such Equipment to the Member and if the Corporation elects to charge such amounts pursuant to Section 3.2. The cost of acquiring, leasing, maintaining and improving the Equipment, except as specifically set forth above, shall not be included in Direct Costs, and straight time for regular employees of the Corporation working on a Designated Spill and the rental rate for any vessels used in responding to a Designated Spill, not owned or leased by the Corporation on a regular basis, shall not be included in Direct Costs.

"Equipment" shall mean the vessels (including their crews) and equipment owned, leased on a regular basis, or otherwise regularly used or operated by the Corporation in order to make available the Services.

"Losses" shall have the meaning assigned to that term in Section 6.1.

"Member Spill" shall mean a spill of Oil that has been included in the Member's performance statistics pursuant to Sections 3.3(b), 3.4(b), 8.1, 8.4(b) and 9.5(b) of the Corporation's Bylaws. Such a spill shall be a "Member Spill" hereunder, and the Member shall be entitled to request that the Corporation provide the Services to clean up and contain such spill and shall be entitled to the credit described in Article IV for payments made in connection with such cleanup and containment against other amounts payable to the Corporation, notwithstanding the fact that another person may also be jointly and severally liable with the Member for such costs.

"Non-counted Barrels" shall mean Oil that is owned, transported, used, refined or stored by the Member or an Affiliate, but that has not been included in the Member's performance statistics.

"Non-member" shall mean at any time any person who is not then a member of the Corporation.

"Paid-in Balance" shall have the meaning assigned to that term in Section 4.2.

"Parent" shall mean any company which owns directly or indirectly 50% or more of the shares entitled to vote at an election of directors of the Member, and shall include the Parent of a Parent.

"Oil" shall mean all substances included in the definition of "oil" in the Oil Pollution Act of 1990, as such statute may be amended or revised from time to time.

"Other Member" shall mean each member of the Corporation other than the Member, including persons who become members of the Corporation after the date hereof.

"Services" shall mean the standby availability and specific oil spill containment and cleanup services rendered by the Corporation as further described in Article III.

ARTICLE II

Term: Termination

2.1 Term. The term of this Agreement shall begin on the effective date hereof and end on December 31, 2003 and thereafter the term shall be renewed automatically, without notice, for successive one-year terms beginning on each January 1 and ending on each December 31, unless earlier terminated pursuant to Sections 2.2 or 2.3.

2.2 Termination Upon Termination of Membership. This Agreement shall terminate, without notice, automatically when the Member ceases to be a member of the Corporation as provided in the Bylaws.

2.3 Termination Upon Dissolution of the Corporation. This Agreement shall terminate, without notice, automatically upon dissolution of the Corporation.

2.4 Effect of Termination. Upon termination of this Agreement, the Corporation's obligation to provide Services as required by Article III, the mutual indemnities provided for by Article VI (but only with respect to Losses (as defined in Section 6.4.2) arising out of or connected with activities, acts and omissions taking place after such termination) and the obligations of the Corporation under Article VI, but only with respect to Losses resulting from failures to comply with Article VII after such termination) shall terminate and have no further force or effect. The remaining provisions of this Agreement, including without limitation the Member's obligations to pay fees and charges pursuant to Article IV and the indemnities provided for by Article VI (but only with respect to Losses arising out of or connected with activities, acts and omissions taking place before the termination or resulting from failures to comply with Article VII before such termination), shall survive the termination.

ARTICLE III

Services

3.1 General. The Corporation shall provide to the Member oil spill cleanup and containment services in the Area of Interest, using the Equipment and supplies available as set forth in Section 3.2. The Services shall be available on a standby basis for threatened spills and shall include actual cleanup and containment in the event of a Member Spill.

3.2 Designated Spills. In the event of an actual or threatened Member Spill originating within the Area of Interest, and if the Member desires Services with respect to such Member Spill, the Member shall notify the Corporation orally or in writing of such actual or threatened Member Spill (the "Designated Spill"). Such notification shall include the location and known nature and size of the Designated Spill and shall describe the Equipment, supplies and services that the Member anticipates will be required, if known. The Member agrees to confirm in writing all oral notifications within twelve (12) hours of giving such oral notice. Upon receipt of such notification, the Corporation shall endeavor to provide the requested Services to the Member, using the Equipment and supplies determined by the Corporation to be necessary or desirable, and, if so requested, the Corporation may, at its option and as permitted by applicable law, release the Equipment and supplies to the Member. During the time such Equipment and supplies are thus committed, complete possession and control thereof shall be maintained by the Corporation unless the Equipment and supplies have been released to the Member. So long as such Equipment is used at the request of, or lent to, the Member, no Other Member shall have any responsibility therefor, regardless of negligence, whether active or passive. If the Designated Spill originates within the Area of Interest, but the Containment and cleanup thereof requires cleanup or containment services or use of the Equipment and supplies outside of the Area of Interest, the Member may continue to receive the cleanup or containment services or use of the Equipment (if it has been lent to the Member) and supplies as reasonably

required and subject to meeting requirements of the Bylaws and applicable law, domestic or foreign. If the Corporation has lent the Equipment to the Member, the Member shall return the Equipment in a condition which is as good as when called into service by the Member, subject to ordinary wear and tear, or shall replace such Equipment or, at the discretion of the Corporation, the Member may pay the Corporation an amount of money equal to the cost which would have been incurred in complying with such requirement.

3.3 Priority. The Corporation agrees to respond to requests for Services by the Member hereunder on a first come, first served basis. The Member acknowledges that if, at the time it requests Services hereunder, the Corporation has responded to a prior request by any Other Member or a Non-member for services, except to the extent a responsible governmental agency exercising its lawful authority has expressly directed otherwise, the Corporation shall not be obligated to respond to the request of the Member for Services until the prior project, and any other project undertaken at the request of the Other Member or Non-Member received before the member's request, is completed to the extent necessary to allow the release of Equipment or supplies to the Member.

3.4 Contingency Plans. The Member, and any Affiliate whose performance statistics have been included in the Member's performance statistics pursuant to the Bylaws, may identify the Corporation in oil spill cleanup contingency plans filed by the Member or the Affiliate, as the case may be, with the United States Coast Guard or any other similar governmental authority as being available to provide oil spill assistance to the Member or the Affiliate, as the case may be, provided that such Member has included one hundred percent (100%) of its and its Affiliate's performance statistics in the Member's performance statistics.

3.5 Use of Additional Personnel. Nothing in this Agreement shall be construed to require that any Other Member provide oil spill response services to the Member in connection with any Member Spill. If any Other Member does provide personnel to assist with a Member Spill, the member and the Corporation shall neither request nor allow the personnel so provided to engage in any managerial or supervisory role, nor to advise the Member or the Corporation with respect to operational decisions in connection with the Member Spill. No Other Member providing additional personnel to the Member under the terms of this Section 3.5 shall be liable to the Corporation or the Member or any Other Member for any claims or penalties arising out of or resulting from the provision of such personnel, including without limitation, claims or penalties that arise out of or result from negligence, whether active or passive, but not including claims or penalties that arise out of or result from gross negligence, willful misconduct or intentional violation of any criminal law.

3.6 No Warranty. **The Corporation makes no representation or warranty, and disclaims any and all implied warranties, including, without limitation, any warranties of workmanlike performance, fitness for a particular purpose or merchantability with respect to the performance of its obligations under this Agreement, the safety, adequacy or effectiveness or any equipment, materials, or techniques used hereunder, or the training, ability, or adequacy in number of any personnel furnished hereunder. The Member's obligations under this Agreement are not dependent or conditioned upon the Corporation's success in containing or removing discharged oil.**

ARTICLE IV

Fees and Charges

4.1 Fees for Services. The Member shall pay to the Corporation, no later than fifteen (15) days after receiving an invoice therefor, the amount of the Direct Costs and other

charges, including without limitation the vessel rent, straight time for regular employees of the Corporation, mobilization and demobilization costs, any subcontractor and third party costs including an administration fee, as determined by the Corporation to be payable for Services rendered to the Member in connection with each Designated Spill. Such charges, fees and rent shall be at cost as determined by the Corporation, using the same rates and billed on the same terms used by the Corporation to determine and bill its charges, fees and rent for services rendered to Non-members (including interest on late payments). In addition, in the event of a request for Services for a spill event that may burden the ready cash reserves of the Corporation, the Board of Directors of the Corporation, at their discretion, may from time to time during a spill event, require payment in advance of such funds as may be necessary to cover the cost of the Designated Spill. This cost being reasonably estimated from the daily cost of the Services requested, projected forward to estimate the cost of the Designated Spill. The Member shall pay to the Corporation the requested advance payment amount no later than twenty four hours (24) after receiving an invoice for this estimated spill amount. The invoice request of advance payment for estimated costs shall be by its nature one form of demonstration of financial responsibility as provided for in Section 4.3. Failure to provide to the Corporation the requested estimated costs of a Designated Spill may, at the discretion of the Board of Directors of the Corporation, be grounds for the discontinuation of Services provided by the Corporation. Any invoices for Services rendered in connection with each Designated Spill shall separately state and separately total the Direct Costs of such Designated Spill, for the purpose of Calculating the credit set forth in Section 4.2.

4.2 Credit. Whenever the Member is required to pay any dues to the Corporation pursuant to the Bylaws, the amount owing by the Member shall be reduced (but not to less than zero) by the Member's Paid-in Balance at the time such payment is due. The Member's Paid-in Balance" at any time shall be calculated as follows:

The total of all amounts theretofore paid by the Member pursuant to Section 4.1 above for Designated Spills, less

- (a) any amounts paid with respect to any Non-counted Barrels, and less
- (b) the amount of Direct Costs set forth on all invoices so paid, and less
- (c) the amount of the Member's Paid-in Balance that has been previously applied to reduce dues payable by the Member.

The Member shall not receive a credit in connection with services provided by the Corporation in response to a spill outside the Area of Interest.

4.3 Whether the request for Services is made by a Member or a Non-Member The Corporation may elect, at its sole discretion, to invoice the Member or Non-Member for the direct costs only of the Services incurred by the Corporation, including the refurbishment or replacement of equipment used to perform the Services, in full compliance with Section 9.3 of the Bylaws, in lieu of the fee and payment process described in Sections 4.1, and 4.2 herein above.

4.4 Financial Responsibility. The Member hereby represents and warrants that it has sufficient funds to pay the fees as described above, and that the Member is capable of meeting the financial obligations arising from the indemnification set forth in Article VI. Without limiting the generality of the foregoing, the Member shall provide such financial responsibility assurances as requested by the Corporation from time to time and, at a minimum, it is understood that the Member shall maintain in place throughout the term of the Agreement third party insurance or some other acceptable evidence of financial responsibility in the amount required by the Oil Pollution Act of 1990, as amended, or \$1,000,000 whichever is greater.

ARTICLE V

Independent Cleanup Operations

5.1 Use of Independent Contractors. Nothing in this Agreement shall be construed as requiring the Member to request the Services or request the use of the Equipment or supplies of the Corporation in connection with oil spill cleanup or containment activities and the Member may, if it so desires, purchase or contract for its own cleanup equipment and materials, or engage any other person to assist it with the cleanup of spills. In addition, the member may employ its own or other equipment, materials, supplies and personnel in conjunction with those provided by the Corporation.

5.2 Disposal of Waste. The Member shall be solely responsible for the disposal, including but not limited to selection of the site for disposal and the means of transportation from the response area to any collection, storage or disposal site, of all substances collected by the Corporation or other individuals during any cleanup of a Designated Spill, including but not limited to all oil, petroleum, petroleum by products, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, oily debris, oil absorbents, dispersants, and any other waste materials, whether or not such materials are considered dangerous or hazardous. The Member shall be solely responsible for obtaining any permits required by the federal or state government prior to such disposal.

ARTICLE VI

Indemnification

6.1 Standard of Clean Island Council, Inc. Performance. The parties agree that the standard governing all of the Corporation's obligations under this Agreement will be to use commercially reasonable efforts consistent with Oil spill response industry practices considering available information and available resources under circumstances, conditions (including weather and sea conditions), and factors existing at any relevant time.

The Clean Islands Council, Inc. will provide the response Equipment and Services requested by a Member pursuant to this Agreement in a manner that attempts to mitigate, remove, or clean up the applicable Discharge as effectively as practicable under existing circumstances.

In conjunction with Section 3.2 of this Agreement, the CORPORATION EXPRESSLY DISCLAIMS AND EXCLUDES, AND THE MEMBER ACKNOWLEDGES AND AGREES (ON BEHALF OF ITSELF AND EACH COVERED ENTITY), TO THIS DISCLAIMER AND EXCLUSION AND WAIVES (ON BEHALF OF ITSELF AND EACH COVERED ENTITY) ALL WARRANTIES, STANDARDS, AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO ANY CORPORATION RESPONSE EQUIPMENT OR SERVICES.

6.2 Clean Islands Council Inc., Status and Employees. Notwithstanding the Member's right to direct the Corporations response Services and Equipment under this Agreement, the Corporation will be and will remain an independent contractor acting under the direction of the Member at all times during its provision of Equipment and Services under this Agreement. The parties do not intend this Agreement to create any other relationship between the Corporation and the Member or any Affiliate, including that of master/servant, employer/employee, partners, or joint venturers.

6.3 Equipment - Risk of Loss, The Clean Islands Council Inc. response Equipment at all times will be the sole and exclusive property of the Corporation. The parties to this Agreement acknowledge that the loss, theft, destruction, damage to the Clean Islands Council Inc. response Equipment, or any of component parts from any cause, the Member company bears the entire risk of loss, theft, destruction, or damage for the time that the Corporation's Equipment is provided to a Member or Affiliate member or Non-member as provided for by this Agreement. In compliance with Section 3.2 of this Agreement it is the intent of this Agreement, and the

parties agree that response Equipment provided for an Oil spill response is to be returned in new or new like condition subject to the sole acceptance of the Corporation.

6.4 Indemnification and Exclusive Remedy.

6.4.1 NATURE OF RELATIONSHIP. The Clean Islands Council, Inc. And the Member company recognize and agree that, in connection with providing the Corporation response Equipment and Services under this Agreement and in furtherance of the express public policy goals underlying the Oil Pollution Act of 1990 (hereinafter referred to as OPA '90) and other laws to facilitate prompt and effective response to discharges of Oil: (a) the Clean Islands Council, Inc. Is a nonprofit and tax-exempt corporation providing services to promote the welfare of the public; (b) any Clean Islands Council, Inc. response Equipment or Services provided under this Agreement are for the sole benefit of the Member requesting the Equipment or Services; (c) the extraordinary and emergency nature of providing the Clean Islands Council, Inc. Equipment or Services may require actions by the Corporation and the Corporation's integral subcontractors that may give rise to a variety of Claims; (d) the Clean Islands Council, Inc. has based the charges for and availability of the Corporation's response Equipment and Services to be provided under this Agreement on the premise that the Member, or anyone asserting rights on its behalf, will not challenge the Corporation's right to be indemnified as provided in this Section 6.4. Accordingly, the Clean Islands Council, Inc. and the Member fully understand and recognize and agree that the nature of the Clean Islands Council, Inc. Equipment and Services to be provided under the terms set forth in this Agreement make it appropriate, equitable and essential to provide for the allocation of the risks and liabilities, limitation of remedies, and the indemnification of the Clean Islands Council, Inc. and the Clean Islands Council, Inc. integral subcontractors as set forth in this Section 6.4.

THE MEMBER COMPANY EXPRESSLY RECOGNIZES AND ACCEPTS ITS OBLIGATIONS FOR INDEMNIFICATION ARISING UNDER THIS SECTION 6.4.

6.4.2 COVER INDEMNIFICATION. Subject to the provisions of Sections 6.4.3 and 6.4.4 below, it is agreed that the Member or Affiliate will defend, indemnify and hold harmless the Corporation and each Other Member and their respective agents, directors, officers and employees and each of them, (each an "Indemnified Party") against and from any and all losses, penalties, liabilities, damages, costs and expenses ("Losses") of any such indemnities related to any claim arising out of, or in any manner connected with, the Corporation's performance of or alleged failure to perform its obligations under this Agreement as a result of a discharge where the Entombed demonstrates that the Member company, or any applicable covered entity, could have been liable if sued directly or did or does have a liability for or with respect to such claim under OPA '90 or any other applicable Federal, State or local law (whether statutory or common) and irrespective as to whether such liability would be considered direct, indirect, concurrent, joint, primary, secondary, vicarious or derivative of the liability of any indemnity with respect to such claim. If the Member or Affiliate requesting the Equipment or Services of the Corporation is not the "responsible party" for the applicable discharge as defined in OPA '90, the liability of the Member or Affiliate for the purposes of this section 6.4 shall include the liability of such "responsible party".

6.4.3 INDEMNIFIED CLAIMS. Unless otherwise specifically excluded by Section 6.4.4, the obligations of the Member or Affiliate under this Section

6.4 shall include, without limitation, any claim arising out of, or in any manner directly or indirectly connected with, the following:

(i) The provision, mobilization, deployment or demobilization of Clean Islands Council, Inc. response Equipment or Services (including response personnel or Clean Islands Council, Inc. Equipment or both) under this Agreement or the failure to provide, mobilize, deploy or demobilize such Corporation response Equipment or Services (including Clean Islands Council, Inc. response personnel or Clean Islands Council, Inc. Equipment or both);

(ii) The permanent or temporary termination or suspension of the Corporation's performance of or provision of the Corporation's response Equipment and or Services (including Corporation or subcontractor personnel) or the termination of this Agreement by the Corporation, PROVIDED THAT such suspension or termination is in accordance with the terms of this Agreement;

(iii) The assertion or responder immunity by the Corporation or any other person;

(iv) The negligence or the Corporation or any indemnity, including a negligent default or breach by the Corporation of its obligations under this Agreement;

(v) Any claim for personal injury or wrongful death of persons who are employees or invitees of the Member or Affiliate, or any covered entity, on the vessel or facility that is the source of the discharge, or any designated subcontractors or associated subcontractors;

(vi) Any risks or liabilities concerning or related to the transportation, storage, treatment or disposal of recovered oil, hazardous substances or any waste when collected, recovered or generated as a result of, or when used in, providing the Corporation's response Equipment or Services, other than any garbage or refuse incidentally generated by the Corporation in its own operations; and

(vii) Infringement by the Member company or Affiliate (or the Corporation through the use of the Corporation's Equipment and Services, processes or other property owned or operated by or provided by or on behalf of the Member company or Affiliate but excluding the Corporation's own Equipment) of any patent, copyright, trademark, or service mark or misappropriation of any proprietary information or trade secrets.

6.4.4 EXCLUDED OBLIGATIONS. The obligations of the Member or Affiliate under this Section 6.4 shall not include and shall not apply to:

(i) the extent (but only to the extent) that applicable law would render such indemnity or hold harmless agreement void or unenforceable;

(ii) the extent that any claim is caused by any indemnity's gross negligence or willful, reckless, or criminal misconduct;

(iii) the portion of any claim for which an insurer of the Corporation recognizes or otherwise has an obligation to pay under the applicable policy or cover;

(iv) any portion of a claim arising from or related to services or equipment that were not provided by the Corporation pursuant to this Agreement including services or equipment provided by the Corporation to the Member or Affiliate, or some other person after the Member or Affiliate has, pursuant to this Agreement, terminated the Services of the Corporation at a discharge of Oil;

(v) any claim for personal injury or wrongful death of persons who are employees of the Corporation or its integral subcontractors;

(vi) any portion of a claim with respect to a discharge of Oil where the payment of such portion of the claim would cause the aggregate of (i) the amount of any payments actually made by or on behalf of the Member company or Affiliate to or on behalf of any indemnities under this Agreement or any integral subcontractors with respect to such discharge of Oil and (ii) the amount of any payments made by or on behalf of the Member company or Affiliate for removal costs or damages under OPA '90 with respect to such discharge of Oil, to exceed the "Cap" (as defined by OPA '90) with respect to such discharge of Oil, whether or not under OPA '90 or any other applicable law or regulation or in any proceeding the "Cap" can be maintained by the Member or Affiliate, provided that the restrictions of this Section 6.4.4(vi) shall not apply to any claim for which the Member company or Affiliate has previously assumed the defense of such claim under this Section 6.4.6; or

(vii) any portion of a claim with respect to which an indemnity has successfully maintained an immunity from liability under any applicable provision of OPA '90 or other Federal or State law; provided, however, that the exclusion under this Section 6.4.4(vii) shall not apply to costs (including attorneys' fees) incurred by the indemnity in asserting said immunity.

6.4.5 PROCEDURE FOR INDEMNIFICATION WITH RESPECT TO THIRD PARTY CLAIMS. The obligations and liabilities of the Member company or Affiliate with respect to claims resulting from the assertion of liability by a person other than a Member company or Affiliate (a "Third Party") against such Member or Affiliate (for the purposes of this Section 6.4, "Third Party Claims") shall be subject to the following terms and conditions:

(i) The Member company or Affiliate shall be obligated to give prompt (but in no event greater than sixty (60) days) written notice to the Member company or Affiliate (and the Corporation if the indemnity is not the Corporation) of any Third Party Claim which is subject to the indemnification of the Member company or Affiliate under this Section 6.4, stating the nature and basis of the claim, and the amount thereof, to the extent known. Within thirty (30) days of the giving of such notice, the Member company or Affiliate shall do one of the following: (a) satisfy the claim, (b) assume the defense of such claim by written notice to the indemnity (and the Corporation, if the indemnity is not the Corporation) and by executing a litigation indemnity in form and substance reasonably acceptable to the indemnity (including an acknowledgment of the waiver by the Member company or Affiliate of the applicability of Sections 6.4.4(vi) and (vii) with respect to such claim), or (c) request by written notice to the indemnity (and the Corporation, if the indemnity is not the Corporation) that either the Corporation or the indemnity assume the defense of the claim; provided, however, that the Member company or Affiliate shall not have the right to assume the defense of a Third Party Claim if the Member company or Affiliate does not perform the indemnification obligations under this Section 6.4 or the payment obligations under this Agreement, and the Member company or Affiliate shall not have the right to assume the defense of a Third Party Claim in the event of a breach or anticipatory breach by the Member company or Affiliate of the indemnification

obligations under this Section 6.4 or the payment obligations under this Agreement.

(ii) If the Member company or Affiliate has requested that the Corporation or the indemnity assume the defense of a Third Party Claim, the Corporation or the indemnity, as the case may be, shall be entitled to select its own counsel in connection with such claim. If the Member company or Affiliate elects to defend any such claim, the Member company or Affiliate shall make available to the Corporation all reports or other documents relating to the defense of the claim and allow the Corporation, at its cost, to participate in meetings or conversations relating to the defense of the claim; however, if the Corporation or the indemnity should elect to have its own counsel in connection with monitoring the defense of any such claim or otherwise to represent the interests of the indemnity, particularly with respect to the rights of the indemnity to be indemnified by the Member company or Affiliate under this Section 6.4, the costs of such counsel shall be borne by the Indemnity. If the Corporation or the indemnity assumes the defense of a Third Party Claim, for so long as the Member company or Affiliate has an obligation to indemnify the indemnity, the Corporation or the indemnity shall make available to the Member company or Affiliate, as the case may be, all reports or other documents relating to the defense of the claim and allow the Member company or Affiliate, at its cost, to monitor meetings and conversations relating to the defense of the claim. If there is more than one indemnity, the indemnities shall be entitled to have one joint counsel, at their cost, in connection with such claim to monitor the defense or otherwise represent the interests of all such indemnities, which counsel shall be selected by the Corporation. If the Corporation assumes the defense of a Third Party Claim, the Member company or Affiliate shall be obligated to pay the invoiced reasonable fees and expenses of counsel for the Corporation or the indemnity, as the case may be, as such fees and expenses are incurred. Unless otherwise required to protect the right of the indemnity to be indemnified by the Member company or Affiliate, the indemnity shall be obligated to cooperate fully in any defense to a claim conducted by the Member company or Affiliate. Any party defending any claim shall assert any exemption or immunity from liability that may be available, including, without limitation, any Responder Immunity as provided for by applicable Federal and or State law.

(iii) So long as the Member company or Affiliate is defending, the indemnity shall not compromise or settle any such claim without the prior written consent of the Member company or Affiliate, and, if the indemnity should object to any compromise or settlement of such a claim acceptable to the Member company or Affiliate, such indemnity shall thereafter assume the costs of defending the claim and the Member company's or Affiliate's obligations with respect to such claim shall be limited to the compromise or settlement that was acceptable to the Member company or Affiliate. If the Corporation or the indemnity is defending such claim, the party defending such claim shall consult with the Member company or Affiliate concerning any compromise or settlement but shall be entitled to compromise or settle such claim without the prior consent of the Member company or Affiliate, but if the Member company or Affiliate objects to that compromise or settlement, the Member company or Affiliate can assume the defense provided that the Member company or Affiliate secures its obligation to defend and pay such claim in a manner satisfactory to the Corporation, and Sections 6.4.4(vi) and (vii) are no longer applicable to such claim.

6.4.7 PROCEDURE FOR INDEMNIFICATION WITH RESPECT TO CLAIMS OTHER THAN THIRD PARTY CLAIMS. Any judicial or non-judicial application or proceeding for indemnification from the Member company or Affiliate under this Section 6.4 for any indemnity for a claim that is not a Third Party Claim can only be commenced, administered or processed by

the Corporation, for the account and benefit of the indemnity on whose behalf an application for indemnification under this Section 6.4 was submitted to the Member company or Affiliate by the Corporation; provided, however, that if the Corporation is legally or otherwise unable to commence, administer or process such application or proceeding on behalf of an indemnity, such indemnity may commence and process such proceeding against the Member company or Affiliate directly.

6.4.8 NO WAIVER. Nothing in this Agreement or this Section 6.4 shall constitute a waiver or limitation of the rights of the Corporation with respect to Responder Immunity or any other statutory or common law defense to or limitation of liability of the Member company or Affiliate resulting therefrom.

6.4.9 CLEAN ISLANDS COUNCIL, INC. INTEGRAL SUBCONTRACTORS AS INDEMNITIES. Subject to this Section 6.4, only the subcontractors having a current valid contract to perform the response Services of the Corporation and working on behalf of the Corporation on a Member company or Affiliate Oil spill are entitled to the benefits provided to indemnities pursuant to this Section 6.4.

The Member companies and or Affiliate Member companies hereby irrevocably designates, appoints and authorizes the Corporation, as its agent, to execute and deliver an indemnification agreement to any subcontractor, as part of any contractual arrangement between the Corporation and the subcontractor, contracted to perform the Services of the Corporation on behalf of a Member company or Affiliate.

6.5 NON-MEMBER INDEMNIFICATION. The Corporation shall not provide any Services to any Non-member until such Non-member has agreed to indemnify the Member, the Corporation, the Other Members, and the respective agents, directors, officers and employees of such persons against Losses in writing on substantially the same terms set forth in Section 6.4.

6.6 Survivability. All indemnities made under this Agreement shall survive the termination date.

ARTICLE VII

Compliance with Laws and Regulations

The Corporation shall comply with all laws, regulations, decrees, codes and ordinances, as well as all resolutions, official requests, directives and other acts of any government exercising lawful authority including without limitation, all federal state or other governmental laws and regulations pertaining to equal opportunity, non-segregated facilities, and listing of job openings for veterans. The Corporation further agrees not to discriminate against any employee because of race, creed sex or national origin, and the Corporation hereby indemnifies and agrees to defend and hold harmless the member from and against any and all Losses, including attorneys' fees and expenses, resulting from the Corporation's failure to do so.

ARTICLE VIII

Miscellaneous

8.1 Representatives of the Member. The representative(s) of the Member appointed from time to time pursuant to the Bylaws shall represent the Member in its communications and transactions with the Corporation under this Agreement. The Corporation and the Other Members of the Corporation shall be entitled to rely upon the power and authority of any such representative to represent and bind the Member in all matters pertaining to this

Agreement.

8.2 Press Releases. All information provided to the media shall be the responsibility of the Member, and the Corporation shall refer all media inquiries to the Member. Statements by the Corporation will be limited to indicating that Services are being performed on behalf of the Member, and to describing the Services being performed and the role of the Corporation.

8.3 Notices. Except for initial oral or telephone notification of Member Spill described in Section 3.2, any notice provided for by this Agreement and any other notice, demand or communication that any party may wish to send to another in connection with this Agreement shall be in writing and either delivered in person, sent via a nationally-recognized express mail service, sent via facsimile transmission with receipt confirmed or sent by registered or certified U.S. mail, first class postage prepaid, return receipt requested, and addressed as follows:

If to the Corporation at:

Clean Islands Council, Inc.
179 Sand Island Access Road
Honolulu, Hawaii 96819

Attention: Chairman

Telephone: (808) 845-8465
Facsimile: (808) 845-8457

If to the Member at the address or facsimile number set forth for the Member on the membership list maintained by the Corporation, or, in either case, such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party. Any notice, demand or other communication shall be deemed given and effective as of the date of delivery in person or by facsimile to the address or facsimile number set forth above, the second business day after the date of deposit with a nationally-recognized express mail service or upon receipt as set forth on the return receipt if sent through the U.S. mail. The inability to deliver because of changed address of which no notice was given, or the rejection or other refusal to accept any notice, demand or other communication, shall be deemed to be the receipt of the notice, demand or other communication as of the date of such inability to deliver or the rejection or refusal to accept.

8.4 Procedures Upon Receipt of Notice. Upon receipt of any notice, statement or other instrument received under any agreement to which the Corporation is a party or regarding any claim against the Corporation, the Corporation shall immediately relate the contents of such notice, statement or other instrument to the Member as described in Section 8.3. If the instrument is one which could reasonably be expected to have a material adverse effect upon the Corporation or its assets, the Corporation shall notify the Member by the quickest communication device reasonably available.

8.5 Governing Law, Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii. Terms and duties which are common to this Agreement and to the Certificate of Incorporation and Bylaws of the Corporation shall be interpreted in a manner consistent with their interpretation under those corporate documents.

8.6 Amendments. This Agreement may be amended by the approval of a majority of the voting members of the Corporation in accordance with the Bylaws, notwithstanding the Member's failure to join in such approval; provided, however, that any such amendment shall implement identical amendments to each Services Agreement between the Corporation and each

Other member. This Agreement may not otherwise be amended, modified, supplemented or altered.

8.7 Assignments. This Agreement and any rights or duties hereunder shall not be assigned by any party without the consent of the other party, except that the Member may assign all of its rights and delegate all of its duties hereunder to any person to whom the Member transfers its membership Interest as allowed by the Bylaws.

8.8 Binding on Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

8.9 Attorneys' Fees. If any legal action is instituted between the parties arising out of this Agreement, the prevailing party shall be entitled to recover a reasonable allowance for attorneys fees and court expenses, to be fixed and determined by the court in which such action is filed.

8.10 Severability. If any provision of this Agreement or portion thereof is declared invalid for any reason, the invalid provisions or portion thereof shall be deemed omitted and the remaining terms shall nevertheless be carried into effect.

8.11 No Third Party Beneficiaries. Neither Section 4.1 nor any other provision of this Agreement shall be for the benefit of or enforceable by any creditor of the Member or of the Corporation. Neither this Agreement nor any provision of this Agreement is intended to confer any rights or remedies under this Agreement upon any person other than the Corporation and the member, and, to the extent specifically set forth herein, to the Other Members and Affiliates, and the Respective successors and permitted assigns of such persons and their agents, directors, officers and employees.

8.12 Headings. The headings and titles to the Sections of the Agreement are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof.

8.13 Entire Agreement. This Agreement, including the Schedules and Exhibits hereto, supersedes all other agreements, oral or written, heretofore made with respect to the subject matter hereof and the transactions contemplated hereby, and contains the entire agreement of the parties.

8.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of such counterparts together shall constitute but one and the same instrument.

8.15 Arbitration. The parties hereto agree that, to the extent practicable, any controversy or claim arising out of or relating to this Agreement, or breach hereof, shall be settled by mediation or arbitration in Honolulu, Hawaii in accordance with the Commercial Arbitration Rules of the American Arbitration Association (or other form of arbitration proceedings with respect to which the parties agree in writing). Any award rendered in arbitration will be final and binding on the parties thereto, and judgment upon the award may be entered by any court having jurisdiction thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CLEAN ISLANDS COUNCIL, INC.

By

General Manager

Title

Name of the Member:

By

Name

Title