

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR, On Behalf Of THE U.S. FISH AND WILDLIFE SERVICE, and TFI NORTHWEST, INC.

I. Introduction

AUG 01 2005

The United States Department of the Interior (DOI), through the U.S. Fish and Wildlife Service ("FWS"), and TFI Northwest Inc. ("TFI") (referred to collectively as the "Parties") enter into this Settlement Agreement to resolve, without litigation, the DOI's potential civil claims under the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a)(4)(C), for damages for injuries to natural resources resulting from the spill or release of oil or chemicals from TFI's facility on Foster Avenue in Portland, Oregon into Johnson Creek which occurred on March 15, 2004 (the "Incident").

II. Parties Bound

The provisions of this Settlement Agreement shall be binding upon the Parties and all of their officers, directors, agents, servants, employees, predecessors in interest, successors in interest, assigns, and all persons, firms, subsidiaries, divisions, or corporations acting under or for them relating to the Incident.

III. Definitions

Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in OPA or CERCLA or in the natural resource damage assessment regulations promulgated under OPA and CERCLA shall have the meaning assigned to them in OPA, CERCLA or in such regulations as applicable.

IV. Payment of Certain Costs and Conduct of Restoration

A. It is recognized that TFI has already paid, through invoices from FWS, a total of \$28,000.00 as reimbursement for preassessment costs.

B. TFI has entered into Plea Agreement No. CR 05-_____ with the United States through the United States Attorney for the District of Oregon pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). The Plea Agreement recognizes that TFI is funding two restoration projects described in

Attachments A and B to the Plea Agreement and to this Settlement Agreement. To carry out these two projects, TFI is providing \$58,728 in funding for the Johnson Creek Watershed Council's Environmental Education Project entitled "Watershed of 10,000 Stewards" (Attachment A) and TFI is providing \$144,650 in funding for the City of Portland, Bureau of Environmental Service's Project entitled "Restoration of Fish Habitat on Errol Creek" (Attachment B). The environmental education project will provide educational outreach concerning the ecology of the Johnson Creek watershed and will provide for citizen stewardship of the watershed including citizen restoration and planting events. The Errol Creek project will restore aquatic and riparian habitat in an area impacted by the incident and identified as a high priority for restoration in the *Johnson Creek Restoration Plan and Watershed Action Plan*. Because the two restoration projects were coordinated through the FWS, state and local agencies, and the Johnson Creek Watershed Council and because the two projects are anticipated to provide for the restoration of natural resources –including wildlife species – alleged to be potentially injured by the Incident, the FWS finds that further pursuit of a natural resource damage assessment is not necessary. Project funding will be accomplished through TFI providing the specified funds to the Financial Litigation Unit of the U.S. Attorney's Office. The U.S Attorney's Office will transmit the funds to the Johnson Creek Watershed Council and City of Portland, Bureau of Environmental Services, with the requirement that the funds be used to accomplish the above-mentioned restoration projects and the requirement that, if for any reason the projects cannot be accomplished, the funds will be used for similar restoration projects deemed suitable by the United States Fish and Wildlife Service.

**V. Covenants Not to Sue and Reservation of Rights
by the DOI**

In consideration of the reimbursement of FWS preassessment costs by TFI and the fact that the two projects are anticipated to provide for sufficient restoration of natural resources or the equivalent of such natural resources alleged to be damaged by the Incident, the Department of the Interior hereby releases and covenants not to sue TFI, its insurers, successors, and assigns, or its corporate officers, directors, or employees, acting in their capacities as such, for (i) damages for

injury to, destruction of, loss of, or loss of use of, natural resources arising from the Incident, including natural resource damage assessment and restoration monitoring costs associated with the Incident; and (ii) costs, attorneys' fees, other fees, or expenses incurred by DOI to recover such natural resource damages in connection with the Incident. The preceding sentence does not apply to any DOI costs paid by the United States Coast Guard or Environmental Protection Agency (EPA) which have not been reimbursed to the Coast Guard/EPA.

This covenant not to sue is not effective until, and is conditioned upon, complete and satisfactory performance by TFI of its obligation to fund the two projects.

VI. Covenant Not to Sue by TFI

TFI hereby covenants not to sue and agrees not to assert any claims or causes of action against the Department of the Interior, including any of its bureaus, agencies or instrumentalities, or its employees, agents, experts or contractors, for claims related to the Incident. Paragraphs V and VI shall not apply to any action by any Party to enforce or interpret this Settlement Agreement.

VII. Effective Date

The effective date of this Settlement Agreement shall be the date upon which the Department of the Interior issues written notice to TFI that all Parties have executed the Settlement Agreement.

VIII. Signatories

Each undersigned representative of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such party to this document.

IX. Entire Agreement

This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understandings, whether oral or written.

X. Modification

The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

XI. Execution

This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XII. Public Comment

Final approval of this Agreement by the Department of the Interior will be subject to public notice and comment. The Department of the Interior may withdraw or withhold its consent if public comments disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. TFI agrees not to withdraw its consent to this Agreement pending consideration of public comments and approval by the Department of the Interior. Should the Department of the Interior withdraw its approval, this Agreement shall be null and void.

FOR TFI NORTHWEST, INC.

_____ Date: _____

**FOR THE U.S. DEPARTMENT OF THE INTERIOR
on behalf of the U.S. FISH AND WILDLIFE SERVICE:**

_____ Date: _____
Regional Solicitor
U.S. Department of the Interior

_____ Date: _____
Regional Director, FWS
Authorized Official for the Department of the Interior

**APPROVED BY
THE UNITED STATES DEPARTMENT OF JUSTICE:**

_____ Date: _____