

Funding and Participation Agreement  
Portland Harbor Injury Assessment Plan

In response to the Determination and Notice of Intent to Perform a Natural Resource Damage Assessment (NRDA) for the Portland Harbor site, this Funding and Participation Agreement (Agreement) is entered into by the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Siletz Indians of Oregon, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Nez Perce Tribe, U.S. Department of the Interior, National Oceanic and Atmospheric Administration, and the Oregon Department of Fish and Wildlife, collectively the Natural Resources Trustees (Trustees) and the party (Participant) whose signature appears below. Collectively, the Trustees and the Participant are the "Parties." The Parties agree to the following:

1. The NRDA for the Portland Harbor Site will likely be conducted in a three phase approach. Phase I is the development of an Injury Assessment Plan (IAP) and implementation of 3 initial studies. Phase II is the implementation of those portions of the IAP necessary to estimate liability for purpose of early settlements at the end of Phase II with potentially responsible parties (PRPs) who have cooperated with the Trustees during the NRDA process. Phase II involves the implementation of the IAP sufficient to evaluate the appropriateness of and eligibility for early settlements with Participants. Phase III involves the full implementation of the IAP and the final injury and damage determination. Participants who settle at the end of Phase II will not be responsible for funding Phase III.

2. This Agreement is for (a) Phase I, the development of the IAP described in paragraph 3, below; (b) the funding of three initial studies identified in paragraph 4, below; and (c) determination of the scope of Phase II. After completion of the IAP, all PRPs will be provided the opportunity to fund and participate in the implementation of Phase II. A separate funding and participation agreement will be prepared for Phase II.

3. The Injury Assessment Plan may include the following elements:

- a. An introduction
- b. Statement of trusteeship
- c. Evaluation of existing characterization information (which will include a compilation of existing literature, data and other information which would be relevant for all phases of the NRDA)
- d. Identification and evaluation of potential pathway, exposure and injury determination studies (including QA/QC), for:
  - i. Surface Water
  - ii. Groundwater
  - iii. Geologic resources

- iv. Air resources
- v. Biological resources (terrestrial and aquatic)
- vi. Natural resources with cultural values
- vii. Natural resources providing recreational services

e. References

The Trustees will determine the final content of the IAP. The Participant neither admits nor denies any finding or conclusion contained in the IAP.

4. In addition to the development of the IAP, the Trustees have identified several initial studies which 1) will ultimately be required under all possible assessment approaches and 2) currently can be done in a cost efficient manner with other planned work. These are:

- Lamprey pilot study
- Osprey eggs study
- Lower Columbia River Estuary Partnership (LCREP) juvenile salmon tissue analysis

The Trustees will provide the Participant with validated data from the studies and any reports developed by the Trustees related to these studies. Notwithstanding any other provision of this Agreement, the Participant's funding of the LCREP analysis will not be construed as agreement by the Participant that potential natural resource injuries in the Lower Columbia River are within the scope of the natural resource damage assessment for the Portland Harbor site. The Trustees will determine the scope of the NRDA for this site.

5. While final decisions on the IAP will be made by the Trustees, the Participant will have the following involvement in the process:

- Participation in a scoping meeting which will precede the initial draft IAP
- 15-day period to review and comment on the initial draft IAP prior to its preparation for release for public comment
- Conference call with Trustees to discuss how Participant comments will be addressed prior to the release of the draft IAP for public comment
- 15-day period to review public comments & participation in a conference call with Trustees to assess the public comments on the plan
- 15-day period to review and comment on the draft of the final plan prior to adoption by the Trustees

- Review and comment on the Proposed Work Plans for the initial studies, decision tree/road map document, and public participation plan
6. During performance of this Agreement, the Trustees and the Participants may also discuss and engage in other cooperative activities outside the scope of this Agreement, such as allocation of liability and restoration planning. Those activities will be funded under separate agreements.
  7. The Trustees will provide an accounting of the expenses of the IAP to the Participant at the conclusion of the activities covered by this Agreement. Due to differences among Trustee accounting procedures, the form of the accounting may differ among Trustees. The accounting will consist of a spreadsheet summarizing labor (hours and rates), travel costs, equipment costs, contractors' costs and miscellaneous expenses (e.g., supplies, overnight mail).
  8. In March 2008, the Trustees made a good faith effort to estimate the costs of Phase I accurately in the amount of \$2,162,381, but the Participant recognizes that the actual costs incurred may be more or less than that amount. If the actual costs are greater, the Trustees retain their rights to recover such costs in the future from PRPs. Any funds not expended under this Agreement will be credited toward future phases. If the Participant determines that it will not participate in future phases, its portion of any unexpended funds will be returned, to the extent permitted by law. If a trustee is barred by law from returning the unexpended funds, that amount will be credited against the Participant's remaining natural resource liability.
  9. The Participant will fund the activities to be performed under this Agreement by payment to the Department of the Interior Natural Resources Damage Assessment and Restoration Fund in accordance with the procedures outlined in Attachment 1. Payments shall be made as follows. General Notice Letter recipients will pay \$100,000 and non-General Notice Letter recipients will pay \$40,000. A Participant who contributed to funding the June 2008 Interim Funding and Participation Agreement (Interim Agreement) will receive a credit against the amounts listed in the previous sentence and will be responsible for paying the difference on the schedule listed below:
    - a. Seventy percent (70%) will be paid on August 29, 2008 and
    - b. Thirty percent (30%) will be paid on January 16, 2009.
  10. The Participant agrees to fund the activities to be performed under this Agreement with no admission of liability or responsibility. The Participant does not waive and reserves all rights to challenge the NRDA. All funding provided pursuant to this Agreement is on an interim basis and fully re-allocable in any subsequent settlement, allocation, litigation or other forum between or among any of the PRPs. The Trustees agree to credit costs paid under the Interim Agreement and this Agreement against the liability, if any, of the Participant for natural resource damage assessment costs or natural resource damages.
  11. To provide an incentive to early participation, PRPs who choose not to participate in this Agreement will not be allowed to participate in Phase II unless they pay (1) a portion of unreimbursed NRD costs in an amount to be determined by the Trustees and (2) a share of Phase

I costs, to be determined by the Trustees. This share will be applied as a credit against the Phase I Participants' share of Phase II costs.

12. Nothing in this Agreement shall be construed as obligating the Trustees, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

13. This Agreement does not release the Participant from any potential liability except for the liability for the costs provided under this Agreement. Such costs are considered reasonable damage assessment costs and will be credited against a Participant's natural resource liability.

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15. This Agreement will be effective when signed by the Participant and one Trustee.

**SIGNATURES:**

**For the Participant:**

Name of Company: Arkema Inc.  
By:  (Legacy Site Services LLC, agent for Arkema Inc.)  
Date: 8/12/08

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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15. This Agreement will be effective when signed by the Participant and one Trustee.

**SIGNATURES:**

**For the Participant:**

Name of Company: Union Pacific Railroad  
By: [Signature]  
Date: 8-11-08

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: GUNDERSON LLC  
By: *Adam Whitcomb*  
Date: 8/14/08

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_  
Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:** *Ashland FRC.*

Name of Company: \_\_\_\_\_

By: *[Signature]*

Date: *05/12/08*

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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15. This Agreement will be effective when signed by the Participant and one Trustee.

**SIGNATURES:**

**For the Participant:**

Name of Company: Bayer CropScience, Inc.

By: 

Date: August 13, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

I costs, to be determined by the Trustees. This share will be applied as a credit against the Phase I Participants' share of Phase II costs.

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15. This Agreement will be effective when signed by the Participant and one Trustee.

**SIGNATURES:**

**For the Participant:**

Name of Company: Port of Portland  
By: [Signature] Bill Wyatt, Executive Director  
Date: August 15, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: SUREY PUMPS (US) INC.  
By: [Signature]  
Date: 8-13-08

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: P. T. R. R.

By: Jeffrey B. Wight - President

Date: August 12, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: Portland General Electric Company

By: M. Schwartz

Date: 8/13/2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: Galbag Metals Co  
By: Chuck Gleason (Chuck Gleason, Director of Operations)  
Date: 8-15-2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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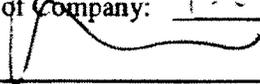
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**SIGNATURES:**

**For the Participant:**

Name of Company: TOC HOLDINGS Co. (formerly named TIME OIL Co.)  
By:  (Richard Gordon, Asst Secy)  
Date: 8/14/88

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: GOULD ELECTRONICS INC.  
By: Thomas N. Rich  
Date: August 15, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: NW Natural  
By: Margaret M. Kufalich  
Date: Aug 15, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_  
Date: \_\_\_\_\_

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**SIGNATURES:**

**For the Participant:**

Name of Company: BNSF Railway Company  
By: B. Sheppard  
Date: Aug. 8, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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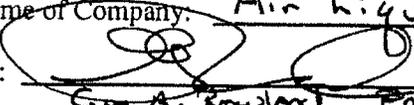
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**SIGNATURES:**

**For the Participant:**

Name of Company: Air Liquide America Specialty Gases.  
By:   
Guy A. Rowland, President.  
Date: August 14, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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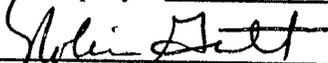
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**SIGNATURES:**

**For the Participant:**

Name of Company: Evraz Inc. NA dba Evraz Oregon Steel Mills

By: 

Date: August 12, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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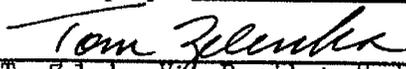
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**SIGNATURES:**

**For the Participant:**

Name of Company: Schnitzer Steel Industries, Inc.

By:   
Tom Zelenka, Vice President, Environmental & Public Affairs

Date: August 11, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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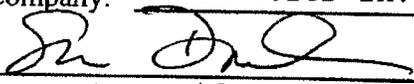
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**SIGNATURES:**

**For the Participant:**

Name of Company: Schnitzer Investment Corp.

By:   
Susan J. Davidson, Vice President

Date: August 13, 2008

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

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13. This Agreement does not release the Participant from any potential liability except for the liability for the costs provided under this Agreement. Such costs are considered reasonable damage assessment costs and will be credited against a Participant's natural resource liability.

14. It is recognized that each Party to this Agreement reserves all rights, powers and remedies. It is further recognized that except as provided in this Agreement, nothing in this Agreement or in the course of cooperation under this Agreement is intended nor shall be construed as a waiver by any Party of any rights, defenses, privileges or affirmative claims in any proceeding related to natural resource liability arising from the release of hazardous substances at the Portland Harbor site. Nothing in this Agreement is nor shall be construed to be a waiver of the sovereign immunity by any of the Trustees.

15. This Agreement will be effective when signed by the Participant and one Trustee.

**SIGNATURES:**

**For the Participant:**

Name of Company: Oregon Dept. of Transportation  
By: [Signature]  
Date: 10-10-08

**For the Trustees:**

National Oceanic and Atmospheric Administration  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

I costs, to be determined by the Trustees. This share will be applied as a credit against the Phase I Participants' share of Phase II costs.

12. Nothing in this Agreement shall be construed as obligating the Trustees, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

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15. This Agreement will be effective when signed by the Participant and one Trustee.

**SIGNATURES:**

**For the Participant:**

Name of Company: Department of State Lands  
By: Louise Soliday, Director  
Date: 10/10/08

**For the Trustees:**

National Oceanic and Atmospheric Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

I costs, to be determined by the Trustees. This share will be applied as a credit against the Phase I Participants' share of Phase II costs.

12. Nothing in this Agreement shall be construed as obligating the Trustees, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

13. This Agreement does not release the Participant from any potential liability except for the liability for the costs provided under this Agreement. Such costs are considered reasonable damage assessment costs and will be credited against a Participant's natural resource liability.

14. It is recognized that each Party to this Agreement reserves all rights, powers and remedies. It is further recognized that except as provided in this Agreement, nothing in this Agreement or in the course of cooperation under this Agreement is intended nor shall be construed as a waiver by any Party of any rights, defenses, privileges or affirmative claims in any proceeding related to natural resource liability arising from the release of hazardous substances at the Portland Harbor site. Nothing in this Agreement is nor shall be construed to be a waiver of the sovereign immunity by any of the Trustees.

15. This Agreement will be effective when signed by the Participant and one Trustee.

**SIGNATURES:**

**For the Participant:**

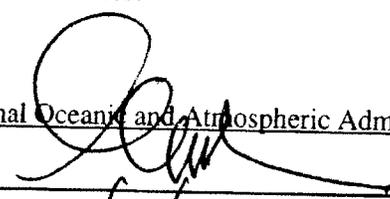
Name of Company: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**For the Trustees:**

National Oceanic and Atmospheric Administration

By:  \_\_\_\_\_

Date: 8/14/08 \_\_\_\_\_

Department of the Interior

By: \_\_\_\_\_

Date: \_\_\_\_\_

*David Wale*

11/21/08

Oregon Department of Fish and Wildlife

By: \_\_\_\_\_

Date: \_\_\_\_\_

Nez Perce Tribe

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Warm Springs Indian Reservation of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Umatilla Indian Reservation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of Siletz Indians of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Department of the Interior

By: \_\_\_\_\_

Date: \_\_\_\_\_

Oregon Department of Fish and Wildlife

By: Thomas A. Bell

Date: 8-25-08

Nez Perce Tribe

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Warm Springs Indian Reservation of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Umatilla Indian Reservation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of Siletz Indians of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Department of the Interior

By: \_\_\_\_\_

Date: \_\_\_\_\_

Oregon Department of Fish and Wildlife

By: \_\_\_\_\_

Date: \_\_\_\_\_

Nez Perce Tribe

By: Samuel N. Penney

Date: 8-14-08

Confederated Tribes of the Warm Springs Indian Reservation of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Umatilla Indian Reservation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of Siletz Indians of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Department of the Interior

By: \_\_\_\_\_

Date: \_\_\_\_\_

Oregon Department of Fish and Wildlife

By: \_\_\_\_\_

Date: \_\_\_\_\_

Nez Perce Tribe

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Warm Springs Indian Reservation of Oregon

By: Robert A. Brown

Date: 9-15-08

Confederated Tribes of the Umatilla Indian Reservation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of Siletz Indians of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Department of the Interior

By: \_\_\_\_\_

Date: \_\_\_\_\_

Oregon Department of Fish and Wildlife

By: \_\_\_\_\_

Date: \_\_\_\_\_

Nez Perce Tribe

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Warm Springs Indian Reservation of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Umatilla Indian Reservation

By: Les Min Dixon, Treasurer

Date: 8/25/08

Confederated Tribes of Siletz Indians of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Department of the Interior

By: \_\_\_\_\_

Date: \_\_\_\_\_

Oregon Department of Fish and Wildlife

By: \_\_\_\_\_

Date: \_\_\_\_\_

Nez Perce Tribe

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Warm Springs Indian Reservation of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Umatilla Indian Reservation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of Siletz Indians of Oregon

By: Markus L. Lyles

Date: 8/15/08

Confederated Tribes of the Grand Ronde Community of Oregon

By: Wynne A. Bandy

Date: 10-29-08

Confederated Tribes and Bands of the Yakama Nation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes of the Grand Ronde Community of Oregon

By: \_\_\_\_\_

Date: \_\_\_\_\_

Confederated Tribes and Bands of the Yakama Nation

By: Ralph Simpson Jr

Date: 9-10-08