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4                   **IN THE CIRCUIT COURT OF THE STATE OF OREGON**

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6                                   **FOR THE COUNTY OF MULTNOMAH**

7   STATE OF OREGON, ex rel. RICHARD  
8   PEDERSON, DIRECTOR, DEPARTMENT  
9   OF ENVIRONMENTAL QUALITY,

10           Plaintiff,

11           v.

12   PORT OF PORTLAND, a port district of  
13   the State of Oregon,

14           Defendant.

Case No. 0712-15146

STIPULATED SUPPLEMENTAL  
JUDGMENT  
("Supplemental Judgment")

15           Pursuant to Section 4.R. of the Consent Judgment between the State of Oregon and the  
16   Port of Portland entered by this court on December 19, 2007 (the "Consent Judgment"), the  
17   Director, Oregon Department of Environmental Quality ("DEQ"), and the Port of Portland  
18   collectively, the "parties," submit this Stipulated Supplemental Judgment for the court's  
19   consideration.

20   **A. Recitals**

21           1. This court entered a Consent Judgment on December 19, 2007, recorded in  
22   Multnomah County Official Records on January 9, 2008, approving an agreement between DEQ  
23   and the Port of Portland under ORS 465.327 to release a person from potential liability to the  
24   state to facilitate cleanup and reuse of certain real property (the "Property") located at Troutdale,  
25   Oregon and also known as the Troutdale Reynolds Industrial Park (TRIP). A copy of this  
26   Consent Judgment is attached as Exhibit A.

1           2. At the time the Consent Judgment was entered, ORS 465.327 provided a release from  
2 liability to the State of Oregon for claims under ORS Chapter 465, the Oregon Removal and  
3 Remedial Action statutes, specifically, ORS 465.200 to ORS 465.545 and 465.900.

4           3. In 2011 the Oregon Legislature amended ORS 465.327 to broaden the liability release  
5 to include a release from liability to the State of Oregon under ORS Chapter 466, the Spill  
6 Response and Cleanup of Hazardous Materials statutes, specifically ORS 466.640, and ORS  
7 Chapter 468B, the Oil or Hazardous Materials Spillage statutes, specifically ORS 468B.310.  
8 The release from liability was also broadened to apply to claims by "any other person" when  
9 formalized via a consent judgment or an administrative consent order. The amendment became  
10 effective January 1, 2012.

11           4. The Port of Portland initiated discussions with DEQ in July 2014 about supplementing  
12 the Consent Judgment to broaden the liability protections as provided by the amended statute,  
13 noting that the Port is in the process of marketing parcels in the industrial park to potential  
14 purchasers and that broadening the liability protection scope will enhance the marketability of  
15 the parcels and reduce the likelihood that those potential purchasers would feel the need to  
16 negotiate and enter into new ORS 465.327 agreements with the State of Oregon, rather than take  
17 advantage of the protections available under the Port's Consent Judgment pursuant to 465.327(5)  
18 and Section 7 of the Consent Judgment.

19           5. The Port of Portland, DEQ and other interested parties researched legislative history  
20 from the 2011 session and found legislative intent that while the broader protections would not  
21 automatically become a part of all pre-existing agreements under ORS 465.327, that holders of  
22 such agreements could request modification, in coordination with DEQ, to expand the scope of  
23 the liability release.

24           6. The Port of Portland requested that DEQ move forward with supplementing the  
25 Consent Judgment in May 2015 on the basis that broadening the scope of liability protection  
26 through modification was contemplated when the legislation was passed; that the Port of

1 Portland established and has maintained its liability protection for pre-existing conditions at the  
2 Property; that the Port of Portland has complied with the Consent Judgment and associated  
3 obligations; and that the Port of Portland has maintained and documented continuing compliance  
4 with the conditions for liability protection at the Property. In addition, the Port requested that  
5 certain provisions of the Consent Judgment be clarified in light of subsequent developments in  
6 connection with TRIP, including clarification of the Consent Judgment's application to the land  
7 beneath Multnomah County's Sundial Road right of way for road purposes across TRIP,  
8 confirmation of the scope of the federal contribution rights of action extinguished by the Consent  
9 Judgment, and clarification of what certain future users of TRIP need to be notified relating to  
10 hazardous substance releases; clarification of the obligations under this Consent Judgment of  
11 transferees of portions of the Property.

12 7. DEQ reviewed the Port of Portland's request and concurs that broadening the scope of  
13 liability protection is appropriate upon request of the Port and confirming that the Port remains in  
14 compliance with the Consent Judgment and associated obligations. DEQ is also in agreement  
15 that the other clarifying changes to the Consent Judgment are appropriate.

16 8. On October 1, 2015, DEQ published notice of this proposed modification to the  
17 Consent Judgment and provided opportunity for public comment in accordance with ORS  
18 465.320(1) and 465.325(4)(d). The comment period ended November 9, 2015. No comments  
19 were received.

20 **B. Supplements**

21 1. Consent Judgment Section 2.B.2 is supplemented by adding the following sentence to  
22 the paragraph:

23 The Property includes the land under that portion of the Sundial Road right-of-  
24 way for road purposes that crosses the Property to the extent such portion of  
25 Sundial Road is adjacent to property owned by Reynolds Metals Company as of  
26 the December 17, 2007 entry date of this Consent Judgment.

1           2. Consent Judgment Section 4.I.3 is deleted in its entirety and replaced with the  
2 following:

3           The Port will notify occupants of the facility, site workers, and demolition,  
4 construction, remediation, and landscape workers of the presence of soil  
5 contamination in accordance with applicable state and federal law by providing  
6 them with a copy of the Contaminated Media Management Plan required by  
7 Section 3.4 of the Easement and Equitable Servitudes granted by Reynolds Metals  
8 Company to DEQ on December 18, 2007. Hazard Notification must be  
9 performed by the Port in accordance with applicable state and federal  
10 Occupational Safety and Health Administration (OSHA) regulations so that  
11 appropriate health and safety plans can be developed and implemented, if  
12 necessary.

13           3. The Consent Judgment Section 5 Release from Liability and Covenant Not to Sue is  
14 deleted in its entirety and replaced with the following:

15           5.       Releases from Liability and Covenant Not to Sue

16           A.       Pursuant to ORS 465.327(3), this Consent Judgment is a  
17 "prospective purchaser agreement" entered as a judicial consent judgment in  
18 accordance with ORS 465.325. Thus, this Consent Judgment contains related but  
19 independent liability provisions pursuant to both ORS 465.327 and 465.325. The  
20 ORS 465.327 liability provisions are set forth below in Subsections 5.B. and 6.B.  
21 The ORS 465.325 liability provisions are set forth below in Subsections 5.D.,  
22 6.A., and 6.C. In addition to these state law provisions, this Consent Judgment  
23 may affect the Port's rights and liabilities under federal and other laws, as  
24 described in Paragraph 4.N.(6) and Subsection 5.E.

25           B.       Pursuant to ORS 465.327, and subject to Subsection 5.C. and the  
26 satisfactory performance by the Port of its obligations under this Consent

1 Judgment, the Port is not liable to the State of Oregon or any other person under  
2 ORS 465.200 to 465.545 and 465.900, 466.640, or 468B.310 regarding any  
3 release of hazardous substances at or from the Property existing as of the date of  
4 the Port's acquisition of ownership or operation of the Property Existing  
5 Hazardous Substance Releases. The Port bears the burden of proving by a  
6 preponderance of the evidence that a hazardous substance release (for all  
7 hazardous substances, hazardous materials, and oil described in Paragraph  
8 2.B.(3)) existed as of the date of the Port's acquisition of ownership or operation  
9 of the Property. The Port's Environmental Site Assessment, RMC/Alcoa  
10 Facility, Troutdale, Oregon, dated August .16, 2005, as supplemented by the  
11 Supplemental Environmental Site Assessment, R.MC/Alcoa Facility, Troutdale,  
12 Oregon, dated December 13, 2007, ATC Associates, Inc.'s Reynolds Site Phase I  
13 Environmental Site Assessment dated August 15, 2007 and Phase II Site  
14 Assessment dated December 2007, and documents in the files of EPA and DEQ  
15 shall be reviewed by the Parties in determining whether later discovered  
16 contamination is an Existing Hazardous Substance Release.

17 C. The release from liability under Subsection 5.B. does not affect  
18 liability of the Port for claims arising from:

19 (1) A release of hazardous substances, spill or release of oil or  
20 hazardous material, or entry of oil into the waters of the state at or from the  
21 Property on or after the date of the Port's acquisition of ownership or operation of  
22 the Property;

23 (2) Contribution to or exacerbation, on or after the date of the Port's  
24 acquisition of ownership or operation of the Property, of a release of hazardous  
25 substance, spill or release of oil or hazardous material, or entry of oil into the  
26 waters of the state at or from the Property;

1           (3) Interference or failure to cooperate, on or after the date of the  
2 Port's acquisition of ownership or operation of the Property, with DEQ or other  
3 persons conducting remedial measures under DEQ's oversight at the Property;

4           (4) Failure to exercise due care or take reasonable precautions, on or  
5 after the date of the Port's acquisition of ownership or operation of the Property,  
6 with respect to any hazardous substance at the Property;

7           (5) Disposal or management of hazardous substances or solid waste  
8 removed from the Property by or on behalf of the Port;

9           (6) Criminal liability;

10          (7) Violation of federal, state, or local law on or after the date of the  
11 Port's acquisition of ownership or operation of the Property;

12          (8) Any matters as to which the State of Oregon is owed  
13 indemnification under Paragraph 4.O.(1); and

14          (9) Claims based on any failure by the Port to meet any requirements  
15 of this Consent Judgment.

16          D. Pursuant to ORS 465.325, subject to satisfactory performance by  
17 the Port of its obligations under this Consent Judgment, the State of Oregon  
18 covenants not to sue or take any other judicial or administrative action against the  
19 Port under ORS 465.200 to 465.545 and 465.900 regarding Matters Addressed,  
20 except that the State of Oregon reserves all rights against the Port with respect to  
21 claims and liabilities described in Subsection 5.C.

22          E. Subject to satisfactory performance by the Port of its obligations  
23 under this Consent Judgment, DEQ releases the Port from liability to DEQ under  
24 any federal or state statute, regulation, or common law, including but not limited  
25 to the Comprehensive Environmental Response, Compensation and Liability Act  
26 (CERCLA), 42 U.S.C. § 9601 *et seq.*, regarding the release or threatened release

1 of hazardous substances addressed in this Consent Judgment, except that DEQ  
2 reserves all rights against the Port with respect to claims and liabilities described  
3 in Subsection 5.C.

4 4. Consent Judgment Section 6.A. is supplemented by adding the following sentence to  
5 the paragraph:

6 DEQ and the Port have negotiated the terms of this Consent Judgment and intend  
7 for this Consent Judgment to be construed as a judicially approved settlement by  
8 which the Port has resolved its liability to the State of Oregon regarding matters  
9 addressed in this Consent Judgment, within the meaning of Section 113(f)(2), 42  
10 U.S.C. 9613(f)(2).

11 5. The first paragraph of Consent Judgment Section 7 is identified as paragraph "A." and  
12 the second paragraph of Consent Judgment Section 7 is deleted in its entirety and replaced with  
13 the following:

14 B. Whenever the Port transfers any subparcel of the Property to a transferee,  
15 such transferee may satisfy the requirements of ORS 465.327(5) by agreeing to  
16 assume and be bound by only such terms of the Consent Judgment as are  
17 applicable to the pertinent subparcel of the Property, including but not limited to  
18 the obligation to reimburse DEQ its costs of oversight of such transferee's  
19 compliance with such applicable Consent Judgment terms. In such  
20 circumstances, the Port, or in the event of any subsequent transfer the Port's  
21 subsequent transferee(s), remains responsible for compliance with the terms of the  
22 Consent Judgment in respect of the remaining parcels of the Property.

23 **C. Agreements**

24 1. Except as modified by this Supplemental Judgment, all other terms of the Consent  
25 Judgment remain in full force and effect.

26 2. The effective date of this modification is the date of judicial approval of the

1 Supplemental Judgment.

2 3. Within 14 days of the effective date, Purchaser will record this modification in the real  
3 property records of Multnomah County, Oregon. Purchaser will provide DEQ with written  
4 evidence of such recording within seven days of recording.

5 **D. Continuing Jurisdiction**

6 The Court retains jurisdiction over both the Parties to and the subject matter of the  
7 Consent Judgment and this Supplemental Judgment, regarding the surviving obligations  
8 hereunder.

9 DEC 22 2015

10 IT IS SO ORDERED AND ADJUDGED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

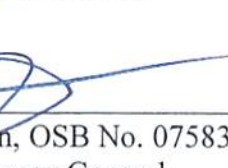
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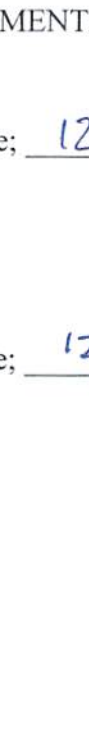
STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

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