

184268

**AMENDED AND RESTATED PORTLAND HARBOR  
ALLOCATION PROCESS COST TRUST**

**PARTICIPANTS IN THE PORTLAND HARBOR FEDERAL SUPERFUND SITE  
PARTICIPATION AND COMMON INTEREST GROUP, Grantors**

**and**

**JEFFERY W. RING AND JOHN P. ASHWORTH, Original Trustees**

**and**

**JPMORGAN CHASE BANK, N.A., as Trustee**

**Dated: November 5, 2010**

**AMENDED AND RESTATED PORTLAND HARBOR  
ALLOCATION PROCESS COST TRUST**

184268

THIS AMENDED AND RESTATED PORTLAND HARBOR ALLOCATION PROCESS COST TRUST (this "Agreement") dated November 5, 2010 amends and restates in its entirety that Trust Agreement dated November \_\_ 2009, (the Original Trust Agreement) and is entered into by and among the entities identified on Exhibit A attached hereto ("Participants") whose authorized representatives have executed this Agreement as grantors (referred to herein individually as a "Grantor" and collectively as "the Grantors"), and any other Grantor who from time to time becomes a party to this Agreement by executing a Joinder Agreement (attached hereto as Exhibit B), individual trustees Jeffrey W. Ring and John P. Ashworth ("Original Trustees"), and JPMorgan Chase Bank, N.A., ("Trustee" as referred to herein, together with any person or entity who hereafter becomes a successor trustee). (Each of the Grantors, the Original Trustees and the Trustee are a "Party" to this Agreement and are collectively referred to herein as "the Parties".) The trust governed by this Agreement shall be called "The Portland Harbor Allocation Process Cost Trust" and is sometimes simply referred to herein as the "Trust."

**RECITALS**

A. The Portland Harbor Superfund Site in Portland, Oregon ("Portland Harbor Site" or "Site") was placed on the National Priorities List by the United States Environmental Protection Agency ("EPA") in December 2000, pursuant to its authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601, et seq. The Participants have been notified by one or more of the following: the EPA; the Oregon Department of Environmental Quality; and/or tribal, federal, and state natural resource trustees and/or other potentially responsible parties; of their potential liabilities with respect to the Portland Harbor Site, and/or have received requests for information from EPA under Section 104(e) of CERCLA regarding the Site.

B. The Participants have entered into an agreement entitled "The Portland Harbor Federal Superfund Site Participation and Common Interest Agreement" dated April 10, 2009, as amended, supplemented or otherwise modified from time to time ("Participation Agreement"), which memorializes the Participants' formation of a group to prepare for and to conduct future cooperative activities and to develop procedures for the allocation of certain costs associated with the investigation and remediation of the Portland Harbor Site. In the event that the Participation Agreement is amended, all references herein to the Participation Agreement shall mean the operative, amended Participation Agreement.

C. On November \_\_, 2009, the Grantors and Original Trustees entered into a Trust Agreement ("Original Trust Agreement") to create a trust to hold funds contributed by the Participants for the payment of "Allocation Process Costs" as defined in the Participation Agreement. By this Agreement, the Grantors and Original Trustees desire to amend and restate in its entirety the Original Trust Agreement to revise certain provisions and appoint a new financial Trustee to replace the Original Trustees.

**TERMS AND CONDITIONS**

Therefore, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Appointment.

A. The Original Trustees hereby resign as trustees and the Grantors accept such resignation. The Original Trustees shall provide a final accounting of the trust assets to the Grantors and shall promptly deliver the original trust documents, assets and any other property of the Original Trust to the Trustee. The Grantors understand and agree that Trustee shall have no responsibility to Grantors for any acts or omissions of the Original Trustees, and Grantors expressly waive and release any claims, demands, and liabilities against Trustee for any such acts or omissions. Without limitation of, and in addition to Grantors' indemnity of Trustee provided in Section 13 of this Agreement, the Grantors expressly agree to indemnify, defend, and hold Trustee harmless from and against any and all claims, demands, or suits that may be made against Trustee by any Grantors, persons related to Grantors, or third parties, for any acts or omissions of the Original Trustees arising out of or in any way related to the Original Trust Agreement.

B. The Grantors hereby appoint JPMorgan Chase Bank, N.A., as the trustee for the purposes set forth herein ("Trustee"), and the Trustee hereby accepts such appointment under the terms and conditions set forth herein.

C. In accordance with the Participation Agreement, certain individuals and committees have been established to carry out the terms of this Trust on behalf of the Grantors. The Grantors hereby authorize the Treasurer and Participants Liaison Committee to act on behalf of the Grantors in accordance with the terms set forth in this Trust. The Treasurer and the initial members of the Participants Liaison Committee are set forth in Schedule 1 attached hereto. The Treasurer shall promptly provide the Trustee written notice of any changes in the individuals and parties comprising Participants Liaison Committee originally listed in Schedule 1.

2. Creation and Purpose of the Trust. As and when required by the Participation Agreement each Grantor shall transfer to the Trustee, to be held by it in trust for the purpose stated herein, the funds required to be paid by each Grantor to meet each Grantor's obligations as a Participant under the Participation Agreement, less the amount of any funding previously paid by the Grantor to the Original Trustees or to the Trustee to meet the Grantor's obligations as a Participant under the Participation Agreement. The Trustee further agrees to keep confidential, and not disclose to any person other than a Grantor or another Trustee, information about the amount or timing of any funding received from any Grantor. The Grantors are the sole beneficiaries of the Trust, and the sole purpose of the Trust is to receive, hold, administer, invest, reinvest, and disburse funds as necessary or appropriate to satisfy the obligations of the Grantors to fund Allocation Process Costs under the Participation Agreement and as such the Trustee does not owe any separate duty of loyalty to the interests of the beneficiaries pursuant to ORS 130.655. All funds deposited in the Trust shall be deposited by check or wire transfer to the account or accounts established in accordance with this Agreement. Unless otherwise instructed by the Participation Liaison Committee (As defined below), all

funds deposited in the Trust shall remain uninvested at all times, and the prudent investor rule set forth in ORS 130.755 shall not apply to the Trustee.

3. Additional Contributions to the Trust; Additional Grantors. Contributions of funds in addition to the amounts that Participants previously determined are to be paid by the Grantors shall be transferred by the Grantors to the Trustee, in trust, at such times and in such amounts as determined in accordance with the Participation Agreement. The Trustee agrees to receive and to accept any such additional contributions, as Trustee, and to hold, administer, and disburse any such additional contributions in accordance with all of the provisions of this Agreement. Any additional funds contributed to the Trust shall be deposited by check or wire transfer to the account or accounts established in accordance with this Agreement. Any person that becomes a Participant under the Participation Agreement after the date of this Agreement may also become a party to this Agreement, as a Grantor, by delivering a signed and dated Joinder Agreement in the form of Exhibit B to the Trustee along with the funds to be contributed to the Trust by such additional Participant as determined by the Participants pursuant to the terms of the Participation Agreement. Any such addition of a new Participant as a Grantor shall be effective upon such delivery. No new execution or delivery of this Agreement by any Trustee or by any other Grantor shall be required in order for any such new Participant to become a party to this Agreement.

4. Withdrawal and Removal. Each Grantor who withdraws from the Participation Agreement in accordance with the terms thereof shall also concurrently withdraw from this Agreement as it applies to such Grantor by providing written notice to the other Grantors and the Trustee. Each Grantor who is deemed to have withdrawn or is removed from the Participation Agreement in accordance with the terms thereof shall also be deemed concurrently to have withdrawn or been removed from this Agreement as it applies to such Grantor upon written notification thereof from the Treasurer to the Trustee. No such withdrawal or removal shall affect the existence of the Trust or the validity of this Agreement as it applies to any other Grantor. Each Grantor's power to withdraw from this Agreement as it applies to such Grantor is personal to the Grantor and shall not be exercisable on its behalf by any other person, including any creditor, lien-holder, or assignee of the Grantor. Except as provided in Section 5, any Grantor that withdraws or is removed from this Agreement shall concurrently be deemed to have relinquished any ownership interest in, or right to reimbursement of, any of its unexpended funds remaining in the Trust at the time of such withdrawal or removal. Any such funds relinquished by any Grantor shall be retained in the Trust, and the ownership of any such funds shall, upon relinquishment, be deemed to transfer to the remaining Grantors in proportion to the total amount each remaining Grantor has paid into the Trust as of that date.

5. Bankruptcy. In the event that, during the term of this Agreement, any Grantor files a petition for relief or is the subject of an involuntary petition under the United States Bankruptcy Code and has not, prior to that date, withdrawn or been removed from the Participation Agreement and this Agreement, the Treasurer, shall, as of the date on which notice of the bankruptcy filing is first received, identify, calculate and record the amount then in the Trust, if any, attributable to payments previously made by such Grantor. Upon receipt of written notification of such amount from the Treasurer, the Trustee shall then set aside such amount (either in a separate account or by reserving sufficient funds in the existing account or accounts) and not thereafter apply them toward any Trust expenditures pending either receipt of

authorization for use from the applicable Bankruptcy Court or a determination by the Participants under the voting provisions in the Participation Agreement as to the proper disposition of those funds. If funds set aside under this Section 5 are released such that they may, once again, be used for Trust expenses, the Treasurer shall calculate the amount owed by such Grantor for expenditures paid during the period of the hold and the Trustee shall apply such Grantor's funds toward the Trust's subsequent expenses until such Grantor has fully paid its appropriate share of expenses or such funds are fully expended.

6. Distributions from the Trust. During the term of the Trust, the Trustee shall make payments from the Trust only as authorized in accordance with the following procedures:

A. The Treasurer, who has been appointed by Voting Participants of the Participation Agreement, together with four (4) representatives of the Grantors, shall serve as members of a Participants Liaison Committee to review and approve requests for payments from the Trust funds. The Participants Liaison Committee shall be deemed a committee formed pursuant to Section 4.1 and other applicable provisions of the Participation Agreement and also shall be deemed as an advisor to the Trustee appointed pursuant to the terms of this Agreement as contemplated by ORS 130.735.

B. The Treasurer or his/her designee shall maintain a list of all payees approved by the Grantors to receive payment of authorized costs under the Participation Agreement and this Trust. Any such payee who has incurred authorized costs shall submit invoices for such costs to the Treasurer or his/her designee, who shall promptly review and confirm the amount of all such invoices and distribute them to the members of the Participants Liaison Committee. Within twenty-one (21) days after receipt of such invoice, each member of the Participants Liaison Committee shall inform the Treasurer or his/her designee if such member does not approve payment of an invoice or portion thereof. The Treasurer, and one additional authorized signor of the Participants Liaison Committee, shall in writing direct the Trustee to pay such invoice unless the Treasurer is directed in writing not to do so by one or more members of the Participants Liaison Committee within twenty-one (21) days after each Participants Liaison Committee member's receipt of such invoice. The Trustee shall make payment within fourteen (14) days of receipt of such written direction approved by the Treasurer, and one additional authorized signor of the Participants Liaison Committee.

C. If a member of the Participants Liaison Committee for good cause informs the Treasurer or his/her designee not to pay an invoice or portion thereof within twenty one (21) days after receipt of such invoice, that member shall at the same time inform all other members of the Participants Liaison Committee of such member's position. The Participants Liaison Committee shall meet or confer within fourteen (14) days of the Treasurer's (or his/her designee's) receipt of such notice not to pay the invoice or portion thereof in an effort to reach consensus. If no consensus is reached, then the matter shall be decided by majority vote of the Participants Liaison Committee. The action of the Participants Liaison Committee resolving such dispute shall be recorded by the Treasurer or his/her designee, and distributed in writing to all members of the Participants Liaison Committee. The Treasurer, and the Participants Liaison Committee shall not direct the Trustee to pay the disputed invoice or portion thereof unless and until the matter is

resolved by consensus or majority vote of the Participants Liaison Committee and written notice of such action is distributed to all members of the Participants Liaison Committee. Upon such resolution, the Treasurer, and the one additional authorized signor of the Participants Liaison Committee shall give written direction to the Trustee to pay all or a portion of such invoice.

D. Notwithstanding anything to the contrary in this Agreement, the Trustee shall act in accordance with any written instruction signed by the Treasurer, and one additional authorized signor of the Participants Liaison Committee.

E. Directions to and other communications with the Trustee shall be served in accordance with the notice provisions of Section 20 hereinbelow. In addition to the means of serving written notice provided in Section 20, the Treasurer and members of the Participants Liaison Committee may transmit written communications among themselves by e-mail.

7. Taxes. The Trustee shall have no tax reporting or tax filing responsibilities of any kind. Any tax returns required to be filed will be prepared and filed by the Grantors. The Grantors agree to make sure that all federal and state tax or information returns required to be filed by the Trust are in fact prepared and filed on time; and the Grantors agree that based on a majority vote of the Participants Liaison Committee, the Treasurer may be authorized to hire (at the expense of the Trust) an outside accounting firm to prepare and file any such returns for the Trust. The Trust is to be treated as a grantor trust for federal income tax purposes (with each Grantor being treated as the owner of the funds contributed to the Trust by it), and the Treasurer shall by February 15 of each calendar year provide each Grantor with all of the information reasonably needed to allow that Grantor to calculate the amount of income or loss earned by it during the preceding year on the Trust property deemed owned by it under the grantor trust rules of the Internal Revenue Code. Each Grantor agrees to report its income or loss on its income tax returns in a manner that is consistent with such notice by the Treasurer.

8. No Authority to Conduct Business. The purpose of the Trust is limited to the purposes and matters set forth herein. This Agreement does not confer upon the Trustee any authority to conduct business.

9. Establishment of and Type of Account. Two authorized signatories, the Treasurer, and one additional authorized signor of the Participants Liaison Committee, as initially set forth in Schedule 1, are required to open any accounts to be maintained pursuant to this Agreement. During the term of this Agreement, the Trust shall be held in a non interest bearing account.

10. Account Reconciliation and Audit.

A. Trust accounts shall be reconciled quarterly by the Treasurer's designee and reports of such quarterly reconciliation shall be distributed to members of the Participants Liaison Committee. The Treasurer or his/her designee shall also distribute to Grantors summary financial reports semi-annually (as of June 30 and December 31). The Grantors reserve the right to have access to examine, reproduce and retain copies of Trust account documentation including, without limitation, statements of accounts, canceled checks, balances, deposits,

disbursements, and reconciliation reports; and to confirm that all disbursements were authorized and made per the terms of this Agreement.

B. Trustee shall maintain true and complete records of its actions and communications relating to the Trust, the services provided under this Agreement and all transactions related thereto and shall retain all such records for at least 24 months after the first to occur of (a) replacement of the Trustee, or (b) termination of this Agreement. Grantors or their representatives may from time to time and at any time during the foregoing period of record retention make an audit of all records of Trustee relating to the Agreement.

11. Responsibilities and Reliance. The Trustee shall not have any duties or responsibilities except those expressly set forth herein and no implied covenants, functions, responsibilities or duties on the part of the Trustee shall be read into this Agreement or otherwise exist against the Trustee. The Trustee shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between the Grantors, in connection herewith, if any, including without limitation the Participation Agreement (the "Underlying Agreement"), nor shall the Trustee be required to determine if any person or entity has complied with any Underlying Agreement, nor shall any additional obligations of the Trustee be inferred from the terms of any Underlying Agreements, even though reference thereto may be made in this Agreement. In the event of any conflict between the terms and provisions of this Agreement, those of any Underlying Agreement, any schedule or exhibit attached to this Agreement, or any other agreement among the Parties, the terms and conditions of this Agreement shall control. Subject to compliance with the applicable security procedures as may be required by Section 21, the Trustee may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper Party or Parties without inquiry and without requiring substantiating evidence of any kind. The Trustee shall not be liable to any Party, any beneficiary or other person for refraining from acting upon any instruction setting forth, claiming, containing, objecting to, or related to the transfer or distribution of the Trust funds, or any portion thereof, unless such instruction shall have been delivered to the Trustee in accordance with Section 21 and the Trustee has been able to satisfy any applicable security procedures as may be required thereunder. The Trustee shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Trustee shall have no duty to solicit any payments which may be due it or the Trust, nor shall the Trustee have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder.

12. General Duties of Trustee. As required by ORS 130.650, the Trustee shall act in good faith at all time in accordance with terms, conditions and provision of this Agreement and no other duties or obligations shall be implied. The Trustee shall hold, manage and deal with the Trust in whatever form it may take, pay all costs and other expenses incidental to the Trust as approved in writing by Treasurer, his/her designee, and the one additional authorized signor of the Participants Liaison Committee, and dispose of the funds of the Trust, in all respects as directed in accordance with the provisions of this Agreement. For purposes of this Agreement, a thing is done "in good faith" when it is in fact done honestly, whether it be done negligently or not.

13. Indemnification, Waiver and Release of Liability.

A. The Trustee acting on behalf of the Trust shall not be liable to any Grantor for any claims alleged, incurred or arising as a result of any action taken, suffered, or omitted to be taken by the Trustee in good faith and not contrary to the express provisions of this Agreement, except to the extent that a final adjudication of a court of competent jurisdiction determines the Trustee's breach of this Agreement was due to its lack of good faith, fraud, gross negligence, reckless indifference or willful misconduct, and was the primary cause of any loss to any Party. In addition, no Trustee acting on behalf of the Trust shall be considered to be acting as an attorney for any other Grantor or for the Trust with respect to activities undertaken for the Trust. The Trustee may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Trustee may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon the advice or opinion of any such counsel, accountants or other skilled persons. In the event that the Trustee shall be uncertain or believe there is some ambiguity as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, the Trustee shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be given a direction in writing by the Parties which eliminates such ambiguity or uncertainty to the satisfaction of Trustee or by a final and non-appealable order or judgment of a court of competent jurisdiction. The Parties agree to pursue any redress or recourse in connection with any dispute without making the Trustee a party to the same except with respect to claims or disputes related to the Trustee's actions, or as may be necessary to secure complete relief.

B. Notwithstanding the provisions of ORS 130.805, the Grantors agree to indemnify, defend, release and hold harmless the Trustee and its affiliates and their respective successors, assigns, directors, agents and employees (the "Indemnitees") from any and all losses, damages, claims, demands, liabilities, judgments, settlements, litigations, legal fees, penalties, costs or expenses (including, without limitation, the reasonable fees and expenses of outside counsel and experts and their staffs and all expense of document location, duplication and shipment)(collectively "Losses") in any way related to, arising out of, or in connection with (i) the Trustee's execution and good faith performance of this Agreement, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnitees, except to the extent that such Losses are finally determined by a court of competent jurisdiction to have resulted from the Trustee or any Indemnitees' breach of this Agreement due to the Trustee's or such Indemnitee's lack of good faith, fraud, gross negligence, reckless indifference or willful misconduct or (ii) its following any instructions or directions, whether joint or singular, from the Parties, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. Each Trustee and Grantor's rights and obligations under this Section 13 shall survive the termination of this Agreement and such Trustee's or Grantor's withdrawal or removal as a Party to this Agreement, except no Grantor shall be required to indemnify, defend, release, or hold harmless the Trustee for any Losses arising out of or relating to any act or omission that occurred during any period when such Grantor was not a Party to this Agreement.



C. The Parties hereby grant the Trustee a lien on, right of set-off against and security interest in, the Trust funds for the payment of any claim for indemnification, fees, expenses and amounts due and owing to the Trustee or an Indemnitee pursuant to Section 13(B). In furtherance of the foregoing, upon thirty days prior written notice to Grantors, the Trustee is expressly authorized, but shall not be obligated, to charge against and withdraw from the Trust for its own account or for the account of an Indemnitee any amounts due and owing to the Trustee or to an Indemnitee under Section 13(B) of this Agreement.

14. Resignation and Removal of Trustee; Appointment of Successor Trustee.

A. Any Trustee under this Agreement may resign at any time, without stating or giving any reason for such resignation, by giving thirty (30) days advance written notice to the Grantors, specifying a date when such resignation shall take effect. If the Parties have failed to appoint a successor Trustee prior to the expiration of thirty (30) days following receipt of the notice of resignation, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee or for other appropriate relief, and any such resulting appointment shall be binding upon all of the Parties hereto. The Trustee's sole responsibility after such thirty (30) day notice period expires shall be to hold the Trust (without any obligation to reinvest the same) and to deliver the same to a designated successor Trustee, if any, or in accordance with the directions of a final order or judgment of a court of competent jurisdiction, at which time of delivery Trustee's obligations hereunder shall cease and terminate, subject to the provisions of Section 13. In accordance with Section 13(B), the Trustee shall have the right to withhold an amount equal to any amount due and owing to the Trustee, plus any costs and expenses the Trustee shall reasonably believe may be incurred by the Trustee in connection with the termination of the Agreement; provided, however, that if the Trustee voluntarily withdraws, its annual fee shall be prorated based on the effective date of such resignation.

B. At any time and from time to time the Grantors may remove any Trustee by written notice to the Trustee, with or without cause by providing written direction to the Trustee, signed by or on behalf of a majority of the Grantors, to transfer the Trust to such successor Trustee at which time of delivery the Trustee's obligations hereunder shall cease and terminate, subject to the provisions of Section 13.

C. Upon resignation or removal of any Trustee, the vacancy shall be filled by a majority vote of the Grantors, in accordance with the following specifications, or such other specifications as a majority of the Grantors may establish at the time such vacancy is filled: Any successor Trustee shall be a financial institution with at least two long term credit ratings of A+ (S&P or Fitch)/A1 (Moody's) or better. Any financial institution selected by the Grantors to act as a successor Trustee shall become a Trustee by delivering a signed and dated signature page of this Agreement to the Grantors. Said person shall then become a successor Trustee of the Trust and shall be entitled to exercise the powers and discretion conferred on a Trustee in this Agreement. A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Agreement in the custody of the Treasurer or his/her designee and shall be effective to amend this Agreement.

D. Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the Trustee's business may be transferred, shall be the Trustee under this Agreement without further act.

15. Termination. This Agreement shall terminate upon the earliest of the following occurrences: (a) the revocation of this Agreement by every Grantor; (b) the termination of the Participation Agreement as noticed to the Trustee in writing by the Treasurer and one additional authorized signor of the Participants Liaison Committee.; or (c) approval of such termination by a vote of the Participants at a duly-noticed meeting of the Participants at which a quorum of Participants was present, all consistent with the terms of the Participation Agreement as noticed to the Trustee in writing from the Treasurer, and one additional authorized signor of the Participants Liaison Committee. Upon a termination of this Agreement pursuant to clause (b) or (c) of the preceding sentence, the Trustee shall, after payment of all Trust expenses, liquidate the assets of the Trust and distribute the remaining Trust property to the Grantors in proportion to their respective contributions to the Trust during the term of the Trust as provided by the Treasurer. In distributing any such property, however, the Trustee shall deduct from the reimbursement to any Grantor in default of any assessed contribution to the Trust the amount by which that Grantor is in default, which shall be provided to the Trustee at the time of termination by the Treasurer. Any Grantors who have withdrawn or been removed from the Participation Agreement prior to the termination of this Agreement shall not be entitled to any distribution upon termination of the Trust. Written directions signed by the Treasurer and one additional authorized signor of the Participants Liaison Committee, as initially set forth in Schedule 1, are required to close the trust accounts to be maintained pursuant to this Agreement.

16. Nature of Relationship. This Agreement is entered into for the purposes set forth above, and shall not be deemed to create a partnership, joint venture or principal/agent relationship between or among the Grantors.

17. Waiver and Release of Liability. No Grantor or its representative acting on behalf of the Grantors, collectively, as Treasurer or a member of the Participants Liaison Committee shall be liable to any other Grantor for any claims incurred or arising as a result of any good faith act or omission by such Grantor or its representative pursuant to this Agreement. In addition, no Grantor or its representative acting on behalf of the Grantors, collectively, as Treasurer or a member of the Participants Liaison Committee shall be considered to be acting as an attorney for any other Grantor or for the Grantors, collectively, with respect to activities undertaken for the Trust. To the extent permitted by law, each of the other Grantors agrees to indemnify, defend, release and hold harmless each Grantor and its representatives acting as Treasurer or a member of the Participants Liaison Committee from any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment in any way related to or arising out of such Grantor's or its representative's good faith actions or omissions on behalf of the Grantors, collectively. Each Grantor's rights and obligations under this Section 17 shall survive the termination of this Agreement and any Grantor's withdrawal or removal as a Participant, except no Grantor shall be required to indemnify, defend, release or hold harmless the other Grantors or their representatives acting as Treasurer or a member of the Participants Liaison Committee for any Losses arising out of or relating to any act or omission that occurred during any period when such Grantor was not a Party to this Agreement..

18. Choice of Law; Arbitration. This Agreement shall be construed and interpreted in accordance with Oregon law. Each Party and the Trustee irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably

consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the State of Oregon. To the extent that in any jurisdiction any Grantor may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution attachment (before or after judgment), or other legal process, such Grantor shall not claim, and it hereby irrevocably waives, such immunity. The Trustee and the Grantors further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

19. Modifications; Interpretation. No modification or amendment of this Agreement shall be valid and effective unless it has been approved in writing by the Grantors and Trustee. In addition, in the event of any inconsistency between any provision of this Agreement respecting the rights and obligations of the Trustee and any provision of the Participation Agreement, the terms of this Agreement shall control.

20. Notices. All notices under this Agreement must be in writing and except for communications from the Parties setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of funds, including but not limited to funds transfer instructions (all of which shall be specifically governed by Section 11), shall be deemed to be duly given after it has been received (and it is further understood that the receiving party shall have a reasonable time to act upon such communication after it is received):

- (a) by facsimile;
- (b) by overnight courier; or
- (c) by prepaid registered mail, return receipt requested;

to the appropriate notice address set forth below or at such other address as any Party hereto may have furnished to the other Parties in writing by registered mail, return receipt requested.

If to Grantors: per Exhibit A

If to Trustee: JPMorgan Chase Bank NA  
Escrow Services  
420 W Van Buren, Mail Code, IL1-0113  
Chicago, IL 60606  
Attn: Kevin Binninger  
Facsimile: 312-954-0430

Notwithstanding the above, in the case of communications delivered to the Trustee, such communications shall be deemed to have been given on the date received by an officer of the Trustee or any employee of the Trustee who reports directly to any such officer at the above-referenced office; provided, however, that the timing of the Trustee's receipt of any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of funds shall be governed by the terms of Section 21. In the event that the Trustee, in its sole discretion, shall determine that an emergency exists, the Trustee may use such other means of communication as the Trustee deems appropriate. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or any other day

on which the Trustee located at the notice address set forth above is authorized or required by law or executive order to remain closed.

21. Security Procedures. Notwithstanding anything to the contrary as set forth in Section 20, any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of funds, including but not limited to any such funds transfer instructions that may otherwise be set forth in a written instruction permitted pursuant to Section 6 of this Agreement, may be given to the Trustee only by confirmed facsimile and no instruction for or related to the transfer or distribution of the Trust, or any portion thereof, shall be deemed delivered and effective unless the Trustee actually shall have received such instruction by facsimile at the number provided to the Parties by the Trustee in accordance with Section 20 and as further evidenced by a confirmed transmittal to that number.

A. In the event funds transfer instructions are so received by the Trustee by facsimile, the Trustee is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule 1 hereto, and the Trustee may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Trustee. The Trustee and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by each of the Grantors, Treasurer, or Participants Liaison Committee to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Trustee may apply any of the Trust funds for any payment order it executes using any such identifying numbers, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated.

B. The Parties acknowledge that the security procedures set forth in this Section 21 are commercially reasonable.

22. No Admission of Liability or Responsibility. No term, recital and/or provision in this Agreement shall be construed as an admission of liability or responsibility relating to the Portland Harbor Site.

23. Effective Date. This Agreement shall be effective upon execution by all the Grantors, the Original Trustees and the successor Trustee. Until this Agreement has been executed by all such Parties, the terms of the Original Trust Agreement shall continue to apply.

24. Supersession of the Original Trust Agreement. Upon execution by all Grantors, the Original Trustees and the successor Trustee, this Agreement shall constitute a modification of the Original Trust Agreement in accordance with Section 19 of the Original Trust Agreement, and shall amend, restate, replace and supersede the Original Trust Agreement in its entirety.

25. No Bearing on Allocation. No term, recital and/or provision in this Agreement shall be construed as having any bearing on any allocation of liability relating to the Portland Harbor Site.

26. Counterparts and Signatures. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document by all the Grantors and Trustee. Signatures by facsimile or e-mail shall be binding and treated as though they were originals.

27. Scope and Assignment. This Agreement shall inure to the benefit of, and be binding upon, the Trustee and each Grantor and its successors in interest, and cannot be assigned by any Party without the consent of the other Parties. With the exception of successors of Grantors, no other persons or entities shall be bound by, or deemed to be beneficiaries of, this Agreement. A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement.

28. Headings. The headings and titles used in this Agreement are for convenience only, are not themselves terms, and have no effect on the meaning or interpretation of any of the terms herein.

29. Good Faith. All the Grantors shall exercise their utmost good faith and diligence in cooperating to carry out the provisions of this Agreement.

30. Severability. If any term or provision in this Agreement is determined to be illegal or unenforceable, all other terms and provisions in this Agreement shall remain effective and shall be enforced to the full extent permitted by law. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written.

31. Jointly Drafted. The Grantors agree that this Agreement was jointly drafted by the Grantors, and no inference or rule of construction shall be applied based on the assumption that any individual Grantor or subset of the Grantors drafted any provision in this Agreement. Each Grantor hereby waives the doctrine of *contra proferentem* as it may otherwise apply to the interpretation of this Agreement.

32. Authority. The undersigned individuals each represent that they are authorized to execute this Agreement on behalf of their respective Grantor.

33. Compliance with Court Orders. In the event that any Trust property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Trustee is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Trustee obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

34. Force Majure. No Party to this Agreement is liable to any other Party for Losses due to, or if it is unable to perform its obligations under the terms of this Agreement

because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

35. Consequential Damages. Anything in this Agreement to the contrary notwithstanding or in ORS 130.805, in no event shall the Trustee or Grantors be liable to each other for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee or Grantors have been advised of the likelihood of such loss or damage and regardless of the form of action.

36. Patriot Act Disclosure. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") requires the Trustee to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the Grantors, and any Grantor executing a Joinder Agreement, acknowledge that Section 326 of the USA PATRIOT Act and the Trustee's identity verification procedures require the Trustee to obtain information which may be used to confirm the Grantors identity including without limitation name, address and organizational documents ("identifying information"). The Grantors agree to provide the Trustee with and consent to the Trustee obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Trustee.

37. Compensation. The Grantors agree jointly and severally to pay the Trustee upon execution of this Agreement and from time to time thereafter reasonable compensation for the services to be rendered hereunder, along with any fees or charges for accounts, including those levied by any governmental authority which the Trustee may impose, charge or pass-through, which unless otherwise agreed in writing shall be as described in Exhibit C attached hereto. Any changes to Exhibit C must be approved in writing by a majority of Grantors. The Grantors also agree jointly and severally to pay or reimburse the Trustee upon request, for all reasonable expenses, disbursements and advances, including, without limitation reasonable attorney's fees and expenses, incurred or made by it in connection with the performance, modification and termination of this Agreement. The obligations contained in this Section 37 shall survive the termination of this Agreement and the resignation, replacement or removal of the Trustee.

38. Conflict of Interest. Neither Trustee nor any officer, employee or agent of Trustee shall give to or receive from any officer, employee or agent of any Grantor any gift or entertainment of significant value or any commission, fee or rebate in connection with this Agreement. In addition, neither Trustee nor any officer, employee or agent of Trustee, shall enter into any business arrangement with any officer, employee or agent of any Grantor relating to the Portland Harbor Superfund Site, other than this Agreement, without prior written notification thereof to Grantors. In the event that Trustee's policy on conflict of interest, as modified from time to time, is more stringent than the provisions of this paragraph 38, then the provisions of Trustee's policy shall control.

[Signature pages follow.]

WHEREFORE, the party below has executed and entered into this Trust Agreement on the date indicated.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffery W. Ring, as Original Trustee

address:

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.  
888 S.W. Fifth Avenue, Suite 1250  
Portland, OR 97204



WHEREFORE, the party below has executed and entered into this Trust Agreement on the date indicated.

Dated: \_\_\_\_\_

\_\_\_\_\_  
John P. Ashworth, as Original Trustee

address:

Bullivant Houser Bailey PC  
888 S.W. Fifth Avenue, Suite 300  
Portland, OR 97204-2089

WHEREFORE, the party below has executed and entered into this Trust Agreement on the date indicated.

Dated: \_\_\_\_\_

---

JPMorgan Chase Bank, N.A, as Trustee

address:

JPMorgan Chase Bank, N.A  
420 W Van Buren Street,  
Chicago, IL 60606

WHEREFORE, the party below has executed and entered into this Trust Agreement as of the date indicated.

Dated: \_\_\_\_\_, as Grantor

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

*Sandra Neugebauer*  
CITY ATTORNEY  
*by Jan V. Bartz*