# COMPLIANCE AND SETTLEMENT AGREEMENT

THIS COMPLIANCE AND SETTLEMENT AGREEMENT (**"AGREEMENT'**) is entered into and becomes effective as of the Date of Execution by and between **SCHNITZER STEEL INDUSTRIES, INC.** ("**SCHNITZER**") and the **BAY AREA AIR QUALITY MANAGEMENT DISTRICT** ("**DISTRICT**"), hereinafter sometimes individually referred to as a "**Party**" and collectively as the "**Parties**."

## RECITALS

1. The District is the regional agency with primary responsibility for the control of air pollution from stationary sources in the San Francisco Bay Area air basin. Pursuant to that responsibility, the District is authorized to regulate stationary sources, such as metal recycling facilities within the air basin, which authority includes the requirement that facilities obtain and maintain District permits to operate certain stationary sources. *See California Health & Safety Code Sections 40001, 40701, 40752, 42400-42421, and 42450-42454.*

2. Pursuant to that authority, the District has required and issued to Schnitzer a permit to operate the metal recycling facility that it owns and operates at 1101 Embarcadero West, Oakland, California 94607 (Permit to Operate No. 208) ("Facility").

3. In order to improve control over particulate emissions associated with its metal shredding operation, Schnitzer installed a fabricated steel enclosure around the shredder based on guidance published by the U.S. Environmental Protection Agency for Permanent Total Enclosures (EPA Test Method 204, Criteria for and Verification of a Permanent or Temporary Total Enclosure). Emissions from the S-6 Shredder and S-7 Infeed Conveyor are abated by a knock-out box, two Venturi Scrubbers and related ducting, fans and other abatement equipment. That project included installation of a new stack, P-15, serving Sources S-6 and S-7.

4. As required by its Authority to Construct for the new emission control system (Application No. 27762), Schnitzer conducted a series of source tests at the shredder stack (P-15) between October 2017 and January 2019 in order to establish emission standards for the newly-enclosed shredder.

5. Prior to construction of the enclosure of the shredder, the configuration of S-6 did not enable capture and quantification of actual fugitive precursor organic compound (POC) or other emissions associated with the shredder operations. Source tests conducted in 2007 had indicated compliance with the total carbon limits prescribed in District Regulation 8-2-301. The enclosure enabled Schnitzer and the District to quantify the actual (POC) emissions associated with the shredder's operations.

6. The District determined, based upon results of the January 21-23, 2019 P-15 stack emission source tests, that Source S-6 had been exceeding the total carbon emission limit prescribed in District Regulation 8-2-301. Total carbon emissions exceeded 15 pounds per day; the average carbon concentration from auto body shredding

operations was approximately 615 ppm, and the average carbon concentration from light iron shredding operations was approximately 316 ppm. (Source tests conducted in January 2018 had indicated total carbon emission exceedances also.) For the purposes of District Regulation 8-2-301, "total carbon" is "the sum of the total carbon of all of the individual organic compounds present in the effluent. 1,1,1 trichloroethane, methylene chloride, methane and chlorofluorocarbons shall not be included in the calculation of total carbon."

7. As a result of that determination, on July 2, 2019, the District issued Notice of Violation (NOV) No. A57682 to Schnitzer for violation of Rule 8-2-301. The average annual feeder rate of 639,670 tons/year (based on calendar years 2017 and 2018) resulted in estimated excess POC emissions of 47.3 tons/year, using EPA Method 25A and expressed as methane. The District has estimated excess POC emissions from the shredder, using EPA Method 25A and expressed as methane, to be 53.3 tons/year, based on an annual shredder feed rate of 720,000 tons/year.

8. Based on the calculated annual POC emissions measured at P-15, in October 2018, Schnitzer submitted to the District an application for an Operating Permit under Title V of the federal Clean Air Act (Application No. 29573). Schnitzer also submitted an application for an authority to construct two regenerative thermal oxidizers ("RTOs") with acid gas scrubbers, as part of the shredder emission control system, in order to abate shredder POC emissions (Application No. 30009). Schnitzer anticipates that installation of the RTOs will reduce POC emissions below the Title V threshold and anticipates further that the emission of all other criteria and hazardous air pollutants will be below their respective Title V thresholds. Given its expectations, Schnitzer has also submitted an application for Synthetic Minor Operating Permit (Application No. 30010) that would replace, or obviate the requirement for, a Title V Permit.

9. The updated 2019 Permit to Operate requires Schnitzer, within 180 days of permit issuance, to initiate quarterly monitoring of the carbon concentration in stack P-15 in order to determine the quantity of excess POC emissions.

10. Schnitzer represents there are no other POC emission control technologies or techniques, or best management practices that it can feasibly implement to reduce POC emissions prior to installation of the RTOs. Schnitzer represents that it has begun the engineering design work on the RTOs and will expedite completion of the engineering designs, permitting and installation of the RTOs.

11. Schnitzer seeks to modify its permit to assure a permitted metal shredding feed rate of 400 tons per hour, and the Parties agree that Schnitzer will submit an application to modify its permit to add that hourly metal shredding feed rate.

12. Schnitzer seeks a compliance and settlement agreement with the District to resolve all violations of Rule 8-2-301 that have occurred since at least January 2019 and that will occur until Schnitzer has installed the RTOs and obtained the permit to operate the equipment.

13. Schnitzer agrees that in order to obtain the proposed new POC emission limit of 90 tons/year for Sources S-6 and S-7, it must provide 42.006 tons of POC Emissions Reduction Credits (ERCs).

14. Schnitzer asserts that:

(a) Schnitzer would suffer severe economic hardship if it were forced to cease or curtail operations in order to comply with the provisions of Rule 8-2-301 and the corresponding emission limits in its updated Permit to Operate; and

(b) Temporary shutdown or curtailment of operations at the Facility until such time as the RTOs are installed and operational could result in the accumulation of very large quantities of processed or unprocessed scrap metal at the Facility, creating operational disruption and increasing the risk of fire.

15. In seeking a compliance and settlement agreement to address its violation of District Regulation 8-2-301 and installation of the RTOs to resolve that violation:

(a) Schnitzer shall provide all emission reduction credits required by Application Nos. 16721 and 27762 to offset POC emissions from Sources S-6 and S-7 in order to obtain the permit to operate.

(b) The District has considered relevant circumstances prescribed in California Health and Safety Code Section 42403(b) in assessing the amount of civil penalties in this matter including, but not limited to, Schnitzer's proactive decision to proceed with installation of the RTOs to reduce POC emissions once post-enclosure source tests had established actual POC emissions from Sources S-6 and S-7.

(c) Schnitzer agrees that by no later than December 31, 2022, it shall obtain an authority to construct the RTOs pursuant to Application No. 30009, it shall complete installation of the RTOs and any other equipment included in Application No. 30009, and it shall verify by District-approved source tests that Schnitzer has installed and is operating all such equipment in accordance with all conditions required to obtain the permit to operate. Delays attributable to the Port of Oakland's completion of the environmental review process, as lead agency under the California Environmental Quality Act, or to the District's completion of its own permitting process, shall be deemed force majeure events under Paragraph 10.b. of this Agreement.

(d) Schnitzer agrees to pay civil penalties to the District to settle NOV No. A57682 for violations of District Regulation 8-2-301 that may have occurred since at least January 2019 and that may or will occur through December 31, 2022, or such later date that is agreed to by the Parties, as the RTOs become operational in accordance with this Agreement.

16. Based on the foregoing, the District agrees to enter into a compliance and settlement agreement that commences as of the Effective Date of this Agreement.

NOW, THEREFORE, based on the foregoing recitals, and in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## TERMS OF AGREEMENT

1. Schnitzer agrees to, and shall, comply with all terms of this Agreement.

2. **Compliance Period**. From the Effective Date through December 31, 2022 (Compliance Period), Schnitzer shall be entitled to emit POCs through the P-15 stack at the rate established in accordance with the source testing program submitted in support of Application No. 27762. The Agreement shall terminate upon satisfactory completion of all Compliance Work, which shall be no later than December 31, 2022, unless that date is extended by operation of Paragraph 10.b. (Force Majeure) below or the Parties agree to modify the length of the Compliance Period in accordance with Paragraph 9.a. below. The Parties further agree that the Compliance Period shall not extend beyond December 31, 2023 unless Schnitzer demonstrates, and the District agrees, that Schnitzer's inability to complete the Compliance Work by December 31, 2023 is due to force majeure conditions beyond Schnitzer's reasonable control. Any delay in completion of the Compliance Work after December 31, 2022 that is not excused by force majeure shall subject Schnitzer to additional civil penalties prescribed under Paragraph 5.b below.

3. **Compliance Work.** Except as otherwise provided by Paragraph 2 above, by no later than December 31, 2022, Schnitzer shall obtain an authority to construct the RTOs pursuant to Application No. 30009, shall complete installation of the RTOs and any other equipment included in Application No. 30009, and shall verify by District-approved source tests that Schnitzer has installed and is operating all such equipment in accordance with all conditions required to obtain the permit to operate.

4. **Emission Offset**. Schnitzer shall provide 42.006 tons of POC ERCs required pursuant to Application Nos. 16721 and 27762, in accordance with the District Regulations and consistent with the provisions set forth in the Recitals of this Agreement.

5. **Civil Penalties.**

a. Schnitzer shall pay to the District civil penalties in the amount of Five Hundred Thousand Dollars ($500,000.00) in accordance with subparagraphs i. and ii. below, for operating in violation of District Regulation 8-2-301 prior to and from January 2019 through December 31, 2022 or thereafter in accordance with an extension of the Compliance Period pursuant to Paragraph 9.a. or Paragraph 10.b. below.

i. Within 30 days of the Effective Date of this Agreement, Schnitzer shall pay the District Four Hundred Thousand Dollars ($400,000.00) via certified check or cashier's check delivered in accordance with the Notice requirements of Paragraph 8.

ii. The balance of the civil penalty being One Hundred Thousand Dollars ($100,000.00) shall be suspended (the "Suspended Penalty"). If Schnitzer completes the Compliance Work by December 31, 2022, the Suspended Penalty shall be forgiven and Schnitzer shall not be liable for further civil penalties for violation of Rule 8-2-301 prior to operation of the RTOs. If Schnitzer does not complete the Compliance Work by December 31, 2022, it shall pay the Suspended Penalty to the District no later than January 31, 2023. Schnitzer's obligation to pay the Suspended Penalty shall be without regard to any force majeure events that may have prevented completion of the Compliance Work by December 31, 2022, with the sole exception of delay in the District's issuance of the authority to construct through no fault of Schnitzer.

b. In addition to the penalty described in subparagraph a. above, if Schnitzer fails to complete all work described in Paragraph 3 above by December 31, 2022, Schnitzer shall pay additional civil penalties of Ten Thousand Dollars ($10,000.00) per month for each month of non-compliance with this Agreement through December 31, 2023 if the delay is not attributable to a force majeure event under Paragraph 10.b. below and the Parties have not otherwise agreed to extend the Compliance Period under Paragraph 9.a. below. Schnitzer shall pay these additional civil penalties within 30 days of the conclusion of the period of non-compliance.

6. **Effect of Agreement**. The provisions of this Agreement shall be in full and final settlement of any and all other claims that have been or could have been asserted by the District arising out of or relating to Schnitzer's operation of the shredder in violation of Rule 8-2-301 that may have occurred prior to the Effective Date of this Agreement and continuing through the end of the Compliance Period and any extensions thereof.

7. **Compliance with District Regulations during the Compliance Period**.

a. Throughout the Compliance Period, Schnitzer shall remain in compliance with all applicable District Regulations and its updated Permit to Operate, except Permit Condition No. 27085, as it pertains to POC emissions, and Rule 8-2-301 as prescribed in this Agreement. Any violation of District Regulations or of the Permit to Operate, exclusive of the specific violations of Permit Condition No. 27085 or Rule 8-2-301 that are addressed in this Agreement, is a separate violation, subjecting Schnitzer to separate notices of violation and civil penalties.

b. The District reserves the right to take future enforcement actions arising out of violations not covered by this Agreement. Except as otherwise provided herein, nothing in this Agreement is intended to excuse Schnitzer from liability for penalties or other judicial or administrative remedies, including the imposition of a conditional or unconditional order for abatement.

8. **Notices**. All notices required pursuant to this Agreement shall be in writing and shall be served either by personal delivery; by overnight courier, postage prepaid; by facsimile (with proof of transmission); or by e-mail, to Schnitzer and the District at the respective addresses set forth below. Service shall be effective on the day of receipt, so long as delivery is made by no later than 5:00 P.M. local time.

To Schnitzer:

Scott B. Sloan
Vice President, Corporate, Environmental
Schnitzer Steel Industries, Inc.
23711 63rd Avenue SE
Woodinville, WA 98072
Telephone: (425) 420-1863
E-Mail: ssloan@schn.com

To the District:

Jeffrey Gove
Director of Compliance and Enforcement
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Telephone: (415) 749-4789
E-Mail: jgove@baaqmd.gov

With copies to:

Margaret Rosegay, Esq.
Partner
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 983-1305
E-Mail:
margaret.rosegay@pillsburylaw.com

With a copy to:

Brian C. Bunger
District Counsel
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Telephone: (415) 749-4920
Facsimile: (415) 749-5103
E-Mail, c/o Susan D. Adams, Assistant Counsel: sadams@baaqmd.gov

9. **Modification and Termination**.

a. **Modification**. This Agreement may be amended, supplemented, or extended only by a written instrument signed by Schnitzer and the District, or their successors-in-interest. However, such execution may be in counterparts and, when so executed, shall be deemed to constitute one and the same document.

b. **Termination**. This Agreement shall terminate upon a demonstration by Schnitzer that it has returned to compliance by the end of the Compliance Period, which shall be no later than December 21, 2022, except as otherwise specified in accordance with the provisions set forth in this Agreement.

10. **Breach of Agreement by Schnitzer and Force Majeure**.

a. **Breach**. If Schnitzer fails to perform or comply with any of the provisions of this Agreement, Schnitzer will be in breach of this Agreement. At its sole discretion, the District may seek civil penalties, or otherwise take any administrative or other action against Schnitzer.

b. **Force Majeure**. Schnitzer shall not be deemed in default for any delay to perform the Compliance Work by the end of the Compliance Period, or within the one-year period thereafter, as described in Paragraphs 2 and 3 of the Terms of Agreement,

that is caused by, or results directly or indirectly from, an event that is beyond the reasonable control of Schnitzer (force majeure event), provided Schnitzer complies with the provisions of this paragraph. Such force majeure events include the following: acts of God, enemy or hostile governmental action, or civil commotion; strikes, lockouts, or other labor disputes; fires or other casualties; judicial orders, or governmental controls, regulations or restrictions; inability to timely obtain required authorities to construct or other permits where the delay is attributable to the District or other permitting agency, including delay in completion of the CEQA process; the inability to timely obtain necessary labor or materials or to conduct work due to the coronavirus pandemic; delay in the delivery of equipment that is not attributable in any manner to action or inaction by Schnitzer; and delivery of damaged or off-specification equipment, all through no fault of Schnitzer. Financial hardship to Schnitzer, by itself, shall not be considered a force majeure event. To avoid a determination of default, Schnitzer must notify the District of the force majeure event within fifteen calendar days of its discovery or notification of the force majeure event, and must demonstrate that it has taken or is taking all reasonable action to mitigate any adverse consequences resulting from the delay to perform. If the District agrees, Schnitzer shall not be deemed in default for the length of time equal to the length of the force majeure event only. Delays that are due to Schnitzer's own action or inaction are not deemed force majeure events.

**Miscellaneous Provisions**.

11. This settlement, without litigation:

a. is fair, reasonable, and in the interests of the District, Schnitzer, and the public; and

b. precludes the District from seeking criminal or civil penalties under California Health and Safety Code Sections 42400 *et seq.*, or taking administrative action, for noncompliance with the requirements of the updated Permit to Operate or Rule 8-2-301, except as otherwise provided for in this Agreement.

12. The title headings of the respective articles of this Agreement are inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

13. **Successors Bound**. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective predecessors, successors, subsidiaries, partners, limited partners, agents, principals, and assigns.

14. **Severability**. If any provision of this Agreement or the application of this Agreement to either Schnitzer or the District is held by any judicial authority to be invalid, the application of such provision to the other Party and the remainder of this Agreement shall remain in force and shall not be affected thereby, unless such holding materially changes the terms of this Agreement.

15. **Authority to Execute**. Each of the undersigned represents and warrants that he or she has full and complete lawful authority to grant, bargain, convey, and undertake the rights and duties contained in this Agreement, and that he or she has full and complete



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lawful authority to bind any respective principals, successors, subsidiaries, partners, limited partners, agents, and assigns to this Agreement. Each of the undersigned understands and agrees that this representation and warranty is a material term of this Agreement, without which it would not have been executed.

16. **Opportunity to Consult with Counsel**. Schnitzer and the District hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and that they have signed it voluntarily and on the advice of counsel of their own choosing. The Parties have had the opportunity to consult with their attorneys and any other consultant each deemed appropriate prior to executing this Agreement.

17. **California Law and Venue**. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules. Venue shall be the County of San Francisco, California.

18. **Entire Agreement**. The mutual obligations and undertakings of Schnitzer, on the one hand, and the District, on the other hand, expressly set forth in this Agreement are the sole and only consideration for this Agreement, and supersede and replace all prior negotiations and proposed agreements between Schnitzer and the District, written or oral, on the specific matters addressed in this Agreement. Schnitzer and the District each acknowledges that no other party, nor the agents nor attorneys of any other party, has made any promise, representation, or warranty whatsoever (express or implied), not contained herein, to induce the execution of this Agreement. This Agreement constitutes the full, complete, and final statement of Schnitzer and the District on the matters addressed by this Agreement.

19. This Agreement may be executed in one or more counterparts, each of which shall have the same force and effect as an original, but all of which together shall constitute one and the same instrument.

20. This Agreement shall be deemed to have been jointly drafted by the Parties for the purpose of applying any rule of construction to the effect that ambiguities are to be construed against the party drafting the Agreement.

21. Any material breach of this Agreement by either Party shall make this Agreement subject to termination upon notice by the non-breaching Party, and the District may pursue further actions referred to and provided for under the terms of this Agreement.

22. **No Waiver**. The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

23. **Date of Execution**. The Effective Date of this Agreement shall be the Date of Execution. The Date of Execution of this Agreement shall be the date that the District's Executive Officer/Air Pollution Control Officer executes this Agreement.



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IN WITNESS WHEREOF, the Parties acknowledge and accept this Agreement, effective as of _____, 2020.

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

By: _____
Jack P. Broadbent
Air Pollution Control Officer/
Executive Officer

Dated: 9/22/20, 2020

Approved as to form:

By: _____
Brian C. Bunger
District Counsel

Dated: 9/9/2020, 2020

**SCHNITZER STEEL INDUSTRIES, INC.**

By: _____
Peter B. Saba
Senior Vice President, General Counsel
& Corporate Secretary
Schnitzer Steel Industries, Inc.

Dated: September 15, 2020

Approved as to form:

By: _____
Margaret Rosegay, Esq.
Pillsbury Winthrop Shaw Pittman LLP

Dated: September 15, 2020



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