APPENDIX D
FORM OF ENVIRONMENTAL MITIGATION TRUST AGREEMENT

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The Settling Defendants and the Trustee hereby enter into this Environmental Mitigation Trust Agreement ("Trust Agreement") and establish the environmental mitigation trust herein described ("Mitigation Trust" or "Trust"). The Settling Defendants and the Trustee acknowledge that the purpose of the Mitigation Trust is to fulfill the Settling Defendants' environmental mitigation obligations under the Consent Decree. All payments to and expenditures from the Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants' environmental mitigation obligations under the Consent Decree. The Mitigation Trust shall be funded with Mitigation Trust Payments according to the terms of the Consent Decree.

PURPOSE AND RECITALS

Whereas, the Settling Defendants are required to establish this Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides ("NOx") where the 2.0 Liter Subject Vehicles were, are or will be operated ("Eligible Mitigation Actions"), and to pay for Trust Administration Costs as set forth in this Agreement;

Whereas, the funding for the Eligible Mitigation Actions provided for herein is intended to fully mitigate the total, lifetime excess NOx emissions from the 2.0 Liter Subject Vehicles where the 2.0 Liter Subject Vehicles were, are or will be operated;

Whereas, the Settling Defendants hereby establish this Mitigation Trust to provide funds for Eligible Mitigation Actions and Trust Administration Costs;

Whereas, the Trustee has been selected to be the trustee under this Trust Agreement in accordance with the requirements set forth in the Consent Decree; and

Whereas, the Trustee is willing to act as trustee;

Now, therefore, the Settling Defendants and the Trustee agree as follows:

I. DEFINITIONS

1.0 Unless otherwise defined in this Agreement, all capitalized terms used herein shall have the meaning set forth in the Consent Decree.

1.1 "Beneficiary" shall mean each governmental entity determined to be a Beneficiary pursuant to Section IV (Mitigation Trust Beneficiaries).

1.2 "Court" shall mean the United States District Court for the Northern District of California.

1.3 "DERA" shall mean the Diesel Emission Reduction Act, Title VII, Subtitle G, of the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16131-39).

1.4 "Eligible Mitigation Action" shall mean any of the actions listed in Appendix D-2 to this Trust Agreement.

1.5 "Eligible Mitigation Action Administrative Expenditure" shall mean those expenditures specified in Appendix D-2 to this Trust Agreement, and shall not include Trust Administration Costs.

1.6 "Federal agency" shall mean any agency of the United States government.

1.7 "Indian land" shall mean the lands of any Indian tribe or within Indian country.

1.8 "Trust Administration Costs" shall mean all expenditures of Trust Assets by the Trustee, other than for Eligible Mitigation Action Administrative Expenditures.

II. MITIGATION TRUST

2.0 Establishment of the Trust

2.0.1 Irrevocable Establishment. The Settling Defendants hereby and irrevocably establish this Mitigation Trust on behalf of the Beneficiaries. The Trustee hereby accepts and agrees to hold the assets owned by the Mitigation Trust ("Trust Assets") for the benefit of the Beneficiaries and for the purposes described herein and in the Consent Decree.

2.0.2 Trustee. In accordance with Paragraph 3.0 below, on the Trust Effective Date, the Trustee, not individually but solely in the representative capacity of trustee, shall be appointed as the Trustee in accordance with the Consent Decree to administer the Mitigation Trust in accordance with this Trust Agreement and the Consent Decree.

2.0.3 Trust Purpose. It shall be the purpose of the Mitigation Trust to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this Trust Agreement. The goal of each Eligible Mitigation Action shall be to achieve reductions of NOx emissions in the United States.

2.0.4 Creation and Use of Trust Account. Within 15 Days following the Trust Effective Date, the Trustee shall establish a trust account ("Trust Account"), and file with the Court a designation and identification of Trust Account. The purpose of the Trust Account shall be to receive deposits from the Settling Defendants, to receive income gains from any investment of Trust Assets (collectively, "Trust Funds"), and to make disbursements to fund Eligible Mitigation Actions and pay Trust Administration Costs, all in accordance with the Consent Decree and this Trust Agreement. Unless otherwise

agreed by the parties to the Consent Decree ("Consent Decree Parties"), the Trust Account shall be the only account that may be used for these purposes.

2.0.4.1 Trust Account Divisions. The Trust Account may be divided into such number of discrete trust subaccounts dedicated for specific purposes as may be deemed necessary in the discretion of the Trustee to comply with the terms of, and to implement, the Consent Decree and this Trust Agreement.

2.1 Funding of the Trust: The Settling Defendants shall fund the Mitigation Trust as required by the Consent Decree.

2.1.1 Funding and Use of Tribal Allocation Subaccount. As soon as practicable after the Trust Effective Date, the Trustee shall fund the Tribal Allocation Subaccount by transferring into it from the Trust Account the funds allocated to it as set forth in Appendix D-1. These funds may only be used to fund Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures in the United States, and for technical assistance as discussed below. After lodging the Consent Decree, the United States shall consult with interested federally-recognized Indian tribes for a 60-Day period, in order to establish a mechanism for allocating the funds in the Tribal Allocation Subaccount among those tribes that are deemed Beneficiaries hereunder, including allowing up to 5% of those funds to be directed towards technical assistance to enable tribes to prepare funding requests for Eligible Mitigation Actions. The United States may file a motion with the Court seeking approval of the allocation mechanism resulting from the consultation process ("Consultation Motion") by the later of: (i) 6 months after the date the Consent Decree is lodged; or (ii) 30 Days after the Trust Effective Date.

2.1.1.1 If no Consultation Motion is timely filed, the Trustee shall post on its public-facing website, within 30 Days of the final deadline for filing a Consultation Motion pursuant to the preceding subparagraph, a "Notice of Termination of Tribal Consultation Period," and implement the Tribal Allocation Instructions set forth at subparagraph 5.0.5.

2.1.1.2 If no Consultation Motion is timely filed that provides otherwise, any funding request submitted by an Indian tribe may include a request for an amount equaling up to 5% of the total funding request to be disbursed by the Trustee towards the reimbursement of documented costs incurred by the tribe for technical assistance in developing the funding request.

2.1.1.3 If a Consultation Motion is timely filed, the Trustee shall comply with the Court's order when issued.

2.1.1.4 In any case, prior to receiving any funds, each Indian tribe must establish Beneficiary status hereunder by filing with the Court, at the time it submits its first funding request, certifications consistent with subparagraph 4.2. Any funding request submitted by any Indian tribe

must comply with the requirements of subparagraphs 5.2.2 through 5.2.13 and 5.3, and each allocation given to any Indian tribe that is determined to be a Beneficiary shall be subject to subparagraph 5.4.

2.1.2 Funding of the Trust Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee shall fund a subaccount to pay for Trust Administration Costs ("Trust Administration Cost Subaccount") by transferring into it from the Trust Account the funds allocated to that subaccount in accordance with Appendix D-1. The Trustee may further subdivide the Trust Administration Cost Subaccount into such number of additional subaccounts as may be deemed necessary in the discretion of the Trustee to comply with the terms of, and implement, the Consent Decree and this Trust Agreement. No additional Trust Assets may be directed to the Trust Administration Cost Subaccount, or to the payment of Trust Administration Costs, absent further order of the Court.

2.1.2.1 Allocation of Trust Administration Costs. The funds in the Trust Administration Cost Subaccount shall be internally allocated in accordance with each Beneficiary's allocation rate. The Trustee shall debit those Trust Administration Costs associated with a particular Eligible Mitigation Action request against the Trust Administration Cost Subaccount allocation of the Beneficiary that requested the funds associated with that Eligible Mitigation Action. The Trustee shall debit all other Trust Administration Costs ("Shared Administration Costs") among all Beneficiaries, weighted in accordance with each Beneficiary's Trust Administration Cost Subaccount allocation.

2.1.2.2 Tribal Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee shall establish a Tribal Administration Cost Subaccount which shall be funded in accordance with the specific allocation in accordance with Appendix D-1. The funds in this subaccount shall be used exclusively to pay for the Trust's expenses relating to administering the Tribal Allocation Subaccount; provided, however, that the Trustee may also draw upon this account for a weighted portion of Shared Administration Costs in accordance with the preceding subparagraph. The funds in this subaccount shall be internally allocated and debited in the same fashion as described in subparagraph 2.1.2.1. Additionally, the consultation process required by Paragraph 2.1.1 may direct that a portion of the funds in this subaccount be used to fund a separate entity established in order to determine which Eligible Mitigation Actions to submit to the Trustee. Although the Tribal Administration Cost Subaccount shall be administered hereunder as a subaccount of the Trust Administration Cost Subaccount, it shall be funded separately in accordance with Appendix D-1. No additional Trust Assets may be directed to the Tribal Administration Cost Subaccount, or to the payment of Tribal Administration Costs, absent further order of the Court.

2.2 Trust Limitations

2.2.1 Beginning on the Trust Effective Date and for each twelve-month period thereafter, total Trust Administration Costs shall not exceed [##]% of the average value of Trust Assets during that period, absent further order of the Court.

2.2.2 No Consent Decree Party or Beneficiary, nor any of their components, agencies, officers, directors, agents, employees, affiliates, successors, or assigns, shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Mitigation Trust.

2.2.3 All Trust Assets shall be used solely for the purposes provided in the Consent Decree and this Trust Agreement.

2.2.4 This Mitigation Trust is irrevocable. The Settling Defendants (i) shall not retain any ownership or residual interest whatsoever with respect to any Trust Assets, including but not limited to the funds transferred by the Settling Defendants to fund the Trust pursuant to the terms of the Consent Decree, and (ii) shall not have any liabilities or funding obligations with respect to the Trust (to the Trustee, the Beneficiaries or otherwise) other than the funding obligations expressly set forth in the Consent Decree. Nor shall the Settling Defendants have any rights or role with respect to the management or operation of the Trust, or the Trustee's approval of requests for Eligible Mitigation Action funding.

2.2.5 Exculpation. The Mitigation Trust shall have no liability whatsoever to any person or party for any liability of the Settling Defendants; provided, however, that the Mitigation Trust shall be liable to the Beneficiaries for funding of Eligible Mitigation Actions in accordance with the terms of this Trust Agreement and the Consent Decree.

III. TRUSTEE RESPONSIBILITIES

3.0 Appointment: The Trustee, not individually but in his/her representative capacity as Trustee, is hereby appointed to serve as the Trustee to administer the Mitigation Trust in accordance with this Trust Agreement and the Consent Decree. The Trustee hereby accepts such appointment and agrees to serve, commencing on the Trust Effective Date, in such fiduciary capacity to the Mitigation Trust and the Beneficiaries.

3.1 Powers of the Trustee

3.1.1 Except as set forth in this Trust Agreement, the Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the Mitigation Trust, which shall be exercised in a fiduciary capacity and in furtherance of and in a manner consistent with the purposes of this Trust Agreement and the Consent Decree.

3.1.2 Upon the Trust Effective Date, the powers of the Trustee shall include the following:

3.1.2.1 To receive, manage, invest, supervise, and protect the Trust Assets as provided in this Trust Agreement;

3.1.2.2 To establish a public-facing website onto which it will post all materials as required hereunder;

3.1.2.3 To establish bylaws or other customary and necessary governance documents to provide for transparent and orderly trust administration, provided that any such bylaws or documents must be filed with the Court when adopted and posted to the Trust's public-facing website;

3.1.2.4 To incur, and pay from the Trust Administration Cost Subaccount, any and all customary and commercially reasonable charges, taxes, and expenses upon or connected with the administration of this Mitigation Trust in the discharge of its fiduciary obligations;

3.1.2.5 To engage and compensate professionals to assist the Trustee in accordance with this Trust Agreement, including but not limited to environmental, investment, accounting, tax and third-party auditing professionals. Such third-party auditing professionals may be used by the Trustee to audit and/or review expenditures to verify that they comport with the requirements and limitations on use of Trust Funds, as set forth herein. The Trustee may initiate such an audit and/or review on its own initiative or in response to credible reports or suggestions that such review or audit is appropriate;

3.1.2.6 To purchase any insurance policies as the Trustee may determine to be prudent to protect the Mitigation Trust, the Trust Assets, and the Trustee from any claims that might be asserted against each;

3.1.2.7 To distribute Trust Assets for the purposes contemplated in this Trust Agreement and the Consent Decree, including distributions of funds to Beneficiaries for approved Eligible Mitigation Actions; and

3.1.2.8 Subject to applicable requirements of this Trust Agreement, the Consent Decree, and other applicable law, to effect all actions and execute and deliver all contracts, instruments, agreements, or other documents that may be necessary to administer the Mitigation Trust in accordance with this Trust Agreement and the Consent Decree, each in accordance with its fiduciary duties to the governmental entities identified in Appendix D-1, the Indian tribes, and the Beneficiaries.

3.2 Investment of Trust Assets: The Trustee shall invest and reinvest the principal and income of the Trust Assets in those investments that are reasonably calculated to preserve the principal value, taking into account the need for the safety and liquidity of principal as may be required to fund Eligible Mitigation Actions and Trust Administration Costs.

3.2.1 Any investment income that is not reinvested shall be deposited into the Trust Account for distribution among the Beneficiaries or Supplemental Funding Eligible Beneficiaries, weighted in accordance with the allocation in place at the time of such deposit.

3.2.2 In investing, reinvesting, exchanging, selling, and managing Trust Assets, the Trustee must perform its duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which a prudent investor, acting in a like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with like aims; except that the right and power of the Trustee to invest and reinvest the Trust Assets shall be limited to: (i) demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured; (ii) U.S. Treasury bills, bonds and notes, including, but not limited to, long-term U.S. Treasury bills, bonds and notes; (iii) repurchase agreements for U.S. Treasury bills, bonds and notes; (iv) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); or (v) open-ended mutual funds owning only assets described in subparts (i) through (iv) of this subsection; *provided,* however, that the value of bonds of any single company and its affiliates owned by the Trust directly rather than through a mutual fund shall not exceed $10 million when purchased, but may be held, despite increase in value, so long as such amount does not exceed $16 million. Any such investments shall be made consistently with the Uniform Prudent Investor Act.

3.2.3 Nothing in this Section shall be construed as authorizing the Trustee to cause the Mitigation Trust to carry on any business or to divide the gains therefrom. The sole purpose of this Section is to authorize the investment of the Trust Assets or any portion thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Mitigation Trust.

3.3 Accounting: The Trustee shall maintain the books and records relating to the Trust Assets and income and the payment of expenses of and liabilities against the Mitigation Trust. The detail of these books and records and the duration the Trustee shall keep such books and records shall be such as to allow the Trustee to make a full and accurate accounting of all Trust Assets, as well as to comply with applicable provisions of law and standard accounting practices, including Generally Accepted Accounting Principles ("GAAP"). The United States, by and through the EPA, and each Beneficiary, shall have the right upon 14 Days' prior written notice to inspect such books and records, as well as all supporting documentation. Except as otherwise provided herein, the Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Mitigation Trust, or as a condition for making any payment or distribution out of the Trust Assets.

3.3.1 Semi-Annual Reporting. Within 180 Days of the Trust Effective Date in the first year, and thereafter by January 1 and July 1 of each year, and then at least 30 Days prior to the filing of a motion to terminate pursuant to subparagraph 6.7 hereof (each a "Financial Reporting Date"), the Trustee shall file with the Court and provide each Beneficiary and the Settling Defendants with:

3.3.1.1 A statement: (i) confirming the value of the Trust Assets; (ii) itemizing the investments then held by the Trust (including applicable ratings on such investments); and (iii) including a cumulative and calendar year accounting of the amount the Trustee has paid out from the Trust Account and all subaccounts to any recipient;

3.3.1.2 For each Beneficiary, cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) such Beneficiary's initial allocation of Trust Assets; (ii) any allocation adjustments pursuant to this Agreement; (iii) line item descriptions of completed disbursements on account of approved Eligible Mitigation Action; and (iv) such Beneficiary's remaining and projected allocation. Such accounting shall also include, for each Beneficiary, a balance statement and projected annual budget of disbursements taking into account those Eligible Mitigation Actions that have been approved as of the Financial Reporting Date;

3.3.1.3 For the Trust Administration Cost Subaccount, cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) line item disbursements of Total Administration Costs; (ii) balance statements; (iii) 3-year projected annual budgets of disbursements on account of Trust Administration Costs; and (iv) line by line accounting of Trust Administration Costs recorded against each Beneficiary's allocation pursuant to subparagraph 2.1.2.1;

3.3.1.4 For the Trust Account and all subaccounts, including but not limited to the Trust Administration Cost Subaccount, balance statements and 3-year projected annual budgets that itemize all assets, income, earnings, expenditures, allocations, and disbursements of Trust Assets by Trust Account and by each subaccount;

3.3.1.5 Third-party audited financial reports disclosing and certifying the disposition of all Trust Assets from the Trust Effective Date through the calendar quarter immediately preceding the Financial Reporting Date, specifically including reconciliations of prior budget projections to actual performance;

3.3.1.6 A description of any previously unreported action taken by the Trust in performance of its duties which, as determined by the Trustee,

counsel, accountants, or other professionals retained by the Trustee, affects the Trust in a materially adverse way;

3.3.1.7 A brief description of all actions taken in accordance with this Agreement and the Consent Decree during the previous year; and

3.3.1.8 On each Financial Reporting Date, the Trustee shall simultaneously publish on the Trust's public-facing website all information required to be provided under subparagraph 3.3.

3.4 Limitation of the Trustee's Authority: The Trustee is not authorized to engage in any trade or business with respect to the Trust Assets or proceeds therefrom.

3.5 Conditions of Trustee's Obligations: The Trustee accepts appointment as the Trustee subject to the following express terms and conditions:

3.5.1 No Bond. Notwithstanding any state law to the contrary, the Trustee, including any successor Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

3.5.2 Limitation of Liability. In no event shall the Trustee be held personally liable for any claims asserted against the Mitigation Trust except for actions or omissions that are determined by a court order to be fraudulent, negligent, or willful misconduct by the Trustee. Except as provided herein, the Trustee may consult with legal counsel, accounting and financial professionals, environmental professionals, and other professionals, and shall not be personally liable for any action taken or omission made by it in accordance with advice given by such professionals, except in the case of a court order determining fraud, negligence, or willful misconduct by the Trustee. In the absence of willful misconduct, negligence, or fraud by the Trustee, as determined by a court, the Trustee shall not be personally liable to persons seeking payment from or asserting actions against the Mitigation Trust. For the avoidance of doubt, this subparagraph does not create for the Trustee or Mitigation Trust any express or implied right to indemnification from any Consent Decree Party for any claims asserted against the Trustee or Mitigation Trust, and no Consent Decree Party shall be liable for any claims asserted against the Trustee or Mitigation Trust.

3.5.3 Reliance on Documentation. The Trustee may rely on, and shall be protected in acting upon, any notice, requisition, request, consent, certificate, order, affidavit, letter, or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

3.5.4 Right to Demand Documentation. Notwithstanding anything else in this Agreement, in the administration of the Trust Assets, the Trustee shall have the right, but shall not be required, to demand from the relevant Beneficiary before the disbursement of any cash or in respect of any action whatsoever within the purview of this Mitigation Trust, any showings, certificates, opinions, appraisals, or other information, or action or

evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

3.6 Payment of Trust Administration Costs: Subject to the limits set forth in subparagraph 2.2.1, the Mitigation Trust shall pay from the Trust Administration Cost Subaccount its own reasonable and necessary costs and expenses, and shall reimburse the Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Trustee in connection with the administration of the Trust. The Trustee also shall be entitled to receive reasonable compensation for services rendered on behalf of the Mitigation Trust, in accordance with the projected annual budgets for administration of the Mitigation Trust required under subparagraph 3.3.1.3 hereof, not to exceed ($[___]) per hour. Notwithstanding the foregoing, the total amount of allowable Trust Administration Costs shall not exceed the cost cap established under subparagraph 1.8. The Trustee shall include in its semi-annual reporting, and post on its public website, detailed invoices of all Trust Administration Costs (including but not limited to detailed invoices for the Trustee's services rendered on behalf of the Trust) at least 15 Days prior to the payment of any such expense. Such invoices shall remain available on the website until the Termination Date.

3.7 Termination, Resignation, and Removal of the Trustee

3.7.1 Termination of Trustee. The rights, powers, duties, and obligations of the Trustee to the Mitigation Trust and the Beneficiaries will terminate on the Termination Date.

3.7.2 Resignation of Trustee and Successor Trustee. Resignation of the Trustee shall only be effective upon: (i) selection of a successor pursuant to the procedures set forth in the Consent Decree; and (ii) order of the Court. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the appointment of a successor trustee or as otherwise ordered by the Court, the Trustee shall transfer all Trust records to the successor trustee, and shall take all actions necessary to assign, transfer, and pay over to the successor trustee control of all Trust Assets (including the public website maintained by the Trustee). In the event that the Trustee dies or becomes incapacitated, the Court may, upon motion by the United States or any Beneficiary, appoint an interim Trustee until such time as a successor trustee is appointed in accordance with the procedures set forth in the Consent Decree.

IV. MITIGATION TRUST BENEFICIARIES

4.0 Determination of Beneficiary Status: Each governmental entity identified in Appendix D-1 hereto may elect to become a Beneficiary hereunder by filing with the Court a single Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9, not later than 60 Days after the Trust Effective Date. Each entity that timely files such certifications shall be a "Certifying Entity." Each entity that fails to timely file such certifications shall be an "Excluded Entity," and shall be permanently enjoined from asserting any rights with respect to Trust Assets or any other matter relating to the implementation of this Trust. The Trustee shall be responsible for ensuring that the form of each

certification complies with the requirements hereof prior to deeming any Certifying Entity to be a Beneficiary hereunder. For the avoidance of doubt, the determination of Beneficiary status for each Indian tribe shall be governed by subparagraphs 2.1.1 and 5.0.5.

4.0.1 Notice of Objection. If the United States or the Trustee determines that a certification filed by any Certifying Entity fails to comply with the requirements of this Section, either may file with the Court a notice of objection within 30 Days after a Certifying Entity files its certifications with the Court. Such notice shall explain the basis of objection with specificity. Any such objections shall be resolved according to the procedures set forth in subparagraph 6.2.

4.0.2 Notice of Beneficiary Designation. Not later than 120 Days after the Trust Effective Date, the Trustee shall file with the Court, publish on its public-facing website, and serve on each Consent Decree Party and Certifying Entity lists indicating:

4.0.2.1 Which Certifying Entities filed certifications as to which no notice of objection has been filed. Upon the filing of this Notice of Beneficiary Designation, each such Certifying Entity shall be deemed a "Beneficiary" hereunder;

4.0.2.2 Which governmental entity identified in Appendix D-1 did not timely file the certifications pursuant to Paragraph 4.0. Each such Certifying Entity shall be deemed an "Excluded Entity" hereunder; and

4.0.2.3 Which Certifying Entities timely filed certifications as to which a notice of objection has been filed pursuant to subparagraph 4.0.1, together with an explanation of the status of any such objection. Each such Certifying Entity shall be a "Pending Beneficiary." Upon final resolution of each objection, the Pending Beneficiary shall either be deemed a Beneficiary or an Excluded Entity hereunder.

4.1 Beneficiary Mitigation Plan: Not later than 90 Days after being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, each Beneficiary shall submit and make publicly available a "Beneficiary Mitigation Plan" that summarizes how the Beneficiary plans to use the mitigation funds allocated to it under this Trust, addressing: (i) the Beneficiary's overall goal for the use of the funds; (ii) the categories of Eligible Mitigation Actions the Beneficiary anticipates will be appropriate to achieve the stated goals and the preliminary assessment of the percentages of funds anticipated to be used for each type of Eligible Mitigation Action; (iii) a description of how the Beneficiary will consider the potential beneficial impact of the selected Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction; and (iv) a general description of the expected ranges of emission benefits the Beneficiary estimates would be realized by implementation of the Eligible Mitigation Actions identified in the Beneficiary Mitigation Plan. The Beneficiary Mitigation Plan need only provide the level of detail reasonably ascertainable at the time of submission. This Plan is intended to provide the public with insight into a Beneficiary's high-level vision for use of the mitigation funds and information about the specific uses for which funding is expected

to be requested. Nothing in this provision is intended to make the Beneficiary Mitigation Plan binding on any Beneficiary, nor does it create any rights in any person to claim an entitlement of any kind. Beneficiaries may adjust their goals and specific spending plans at their discretion and, if they do so, shall provide the Trustee with updates to their Beneficiary Mitigation Plan. To the extent a Beneficiary intends to avail itself of the DERA Option described in Appendix D-2, that Beneficiary may use its Final Approved DERA Workplan as its Beneficiary Mitigation Plan as to those Eligible Mitigation Actions funded through the DERA Option. The Beneficiary Mitigation Plan shall explain the process by which the Beneficiary shall seek and consider public input on its Beneficiary Mitigation Plan.

4.2 Required Certifications

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Certification Form must include a designation of lead agency, certified by the Office of the Governor or (if not a state, the analogous chief executive) of the Appendix D-1 entity on whose behalf the Certification Form is submitted, indicating which agency, department, office, or division will have the delegated authority to act on behalf of and legally bind such Appendix D-1 entity. The Certification Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Certification Form; and (ii) it agrees, without limitation, to be bound by the terms of this Agreement, including the allocations of Trust Assets provided hereunder, and to be subject to the jurisdiction of the Court for all matters concerning the interpretation or performance of, or any disputes arising under, this Trust Agreement. The Certifying Entity's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

4.2.2 Consent to Trustee Authority. Each Certification Form must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this Agreement, including but not limited to the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds hereunder; and (ii) to implement this Agreement in accordance with its terms.

4.2.3 Certification of Legal Authority. Each Certification Form must certify that: (i) the laws of the Certifying Entity do not prohibit it from being a Beneficiary hereunder; (ii) prior to requesting any funds hereunder, the Certifying Entity shall obtain full legal authority to receive and/or direct payments of such funds; and (iii) if the Certifying Entity fails to demonstrate that it has obtained such legal authority within two years of submitting its Certification Form, it shall become an Excluded Entity hereunder and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1.

4.2.4 Certification of Legal Compliance. Each Certification Form must include a certification and agreement that, in connection with all actions related to this Trust, the Certifying Entity has followed and will follow all applicable law and that such Certifying Entity will assume full responsibility for its decisions in that regard.

4.2.5 Certification of Eligible Mitigation Action Accounts. Each Certification Form shall include a certification by the Certifying Entity that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trustee for credit to the allocation of such Certifying Entity.

4.2.6 Waiver of Claims for Injunctive Relief under Environmental or Common Laws. Each Certification Form shall include an express waiver by the Certifying Entity, on behalf of itself and all of its agencies, departments, offices, and divisions, in favor of the parties to the Consent Decree (including the Settling Defendants) of all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles, whether based on the environmental or common law within its jurisdiction. Such waiver shall be binding on all agencies, departments, offices, and divisions of such Beneficiary asserting, purporting to assert, or capable of asserting such claims. The waiver need not waive, and the Certifying Entities may expressly reserve, their rights, if any, to seek fines or penalties. California's entry in the Consent Decree shall satisfy its certification obligations under this subparagraph. No waiver submitted by any Indian tribe shall be effective unless and until such Indian tribe actually receives Trust Funds.

4.2.7 Publicly Available Information. Each Certification Form must include a certification by the Certifying Entity that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Certifying Entity, each until the Termination Date, unless the laws of the Certifying Entity require a longer record retention period. This certification shall include an explanation of the procedures by which the records may be accessed, which procedures shall be designed to support access and limit burden for the general public, and for the Beneficiary Mitigation Plan required under Paragraph 4.1, the procedures by which public input will be solicited and considered. This certification can be made subject to applicable laws governing the publication of confidential business information and personally identifiable information.

4.2.8 Notice of Availability of Mitigation Action Funds. Each Certification Form must certify that, not later than 30 Days after being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, the Certifying Entity will provide a copy of this Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Certifying Entity and has by then notified the Certifying Entity of its interest hereunder, explaining that the Certifying Entity may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including but not limited to Clean Air Act Class I and II areas), and setting forth the procedures by which the Certifying Entity will review, consider, and make a written determination upon each such request.

4.2.9 Registration of 2.0 Liter Subject Vehicles. Each Certification Form must state, for the benefit of the parties to the Consent Decree (including the Settling

Defendants) and the owners from time-to-time of 2.0 Liter Subject Vehicles, that the Certifying Entity:

(a) Shall not deny registration to any Subject Vehicle based solely on:

i. The presence of a defeat device or AECD covered by the resolution of claims in the Consent Decree; or

ii. Emissions resulting from such a defeat device or AECD; or

iii. The availability of an Approved Emissions Modification or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has received an Approved Emissions Modification based solely on:

i. The fact that the vehicle received the Approved Emissions Modification; or

ii. Emissions resulting from the modification (including but not limited to the anticipated emissions described in Appendix B to the Consent Decree); or

iii. Other emissions-related vehicle characteristics that result from the modification; or

iv. The availability of an Approved Emissions Modification or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(c) May identify 2.0 Liter Subject Vehicles as having received, or not received, the Approved Emissions Modification on the basis of VIN-specific information provided to the Certifying Entity by the Settling Defendants.

(d) Notwithstanding the foregoing, a Certifying Entity may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Certifying Entity's failure criteria for the onboard diagnostic (OBD) inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 4.2.9(a)-(b).

V. DISTRIBUTION OF MITIGATION TRUST ASSETS

5.0 Initial Allocation: Each governmental entity identified in Appendix D-1 hereto shall have the right under this Trust Agreement, upon becoming a Beneficiary pursuant to Section IV (Mitigation Trust Beneficiaries), to request its share of Eligible Mitigation Action funds in accordance with the allocation rates set forth in Appendix D-1 ("Initial Allocation Rates").

5.0.1 Together with the Notice of Beneficiary Designation required to be filed pursuant to subparagraph 4.0.2, the Trustee shall also file with the Court and serve upon each Consent Decree party, Beneficiary, and Pending Beneficiary, a corresponding recalculation of the Initial Allocation Rates to reallocate each Excluded Entity's share

among the Beneficiaries and Pending Beneficiaries, weighted in accordance with the Initial Allocation Rates ("Final Allocation Rates"). If any Pending Beneficiary is deemed an Excluded Entity hereunder, its share shall be reallocated among the Beneficiaries and remaining Pending Beneficiaries, weighted in accordance with the Final Allocation Rates. The Trustee shall file with the Court and serve upon each Consent Decree party, Beneficiary, and Pending Beneficiary a notice of reallocation in the event that the Final Allocation Rates are adjusted in accordance with this Trust Agreement.

5.0.2 Upon being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, each Beneficiary shall have the right under this Trust Agreement to request Eligible Mitigation Action funds up to the total dollar amount allocated to it. Provided, however, that no Beneficiary may request payout of more than (i) one-third of its allocation during the first year after the Settling Defendants make the Initial Deposit, or (ii) two-thirds of its allocation during the first two years after the Settling Defendants make the Initial Deposit.

5.0.3 Allocation of Appendix A Mitigation Trust Payments. Any "National Mitigation Trust Payment" made pursuant to Section VI (Recall Rate) of Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall Program) shall be allocated among all Beneficiaries other than California, weighted in accordance with the Final Allocation Rates. Any "California Mitigation Trust Payment" made pursuant to that Section shall be allocated exclusively to California.

5.0.4 Allocation of Appendix B Payments. Any Mitigation Trust Payments made pursuant to Appendix B (Vehicle Recall and Emissions Modification Program) or any Consent Decree provisions related thereto shall be allocated among all Beneficiaries, weighted in accordance with the Final Allocation Rates.

5.0.5 Distribution of Tribal Allocation Subaccount. If no Consultation Motion is timely filed pursuant to subparagraph 2.1.1 hereof, the Trustee shall, within 30 Days after the final deadline for filing a Consultation Motion pursuant to that subparagraph, promptly post on the Trust's public-facing website:

5.0.5.1 Notice: (i) that each Indian tribe may seek to become a Beneficiary hereunder by filing with the Court, at the time it submits its first funding request, certifications consistent with subparagraph 4.2; and (ii) of the date by which the Trustee will determine and post notice of the Beneficiary status of each certifying tribe, which determination shall be made in a manner consistent with the procedures set forth in Paragraph 4.0.2.

5.0.5.2 Notice that, commencing on the first September 1 after the Trust Effective Date and for five years thereafter (for a total of six September 1 funding request deadlines), each Indian tribe may submit to the Trustee funding requests that meet the requirements of subparagraphs 5.2.2 through 5.2.13. For funding requests that seek DERA funds, the DERA notice of intent to participate may be submitted for purposes of the

September 1 deadline, with the full DERA proposal to be submitted to the Trustee when it is submitted to EPA.

5.0.5.2.1 Regardless of the total amount of funding requests received on each of these six annual submission deadlines: (i) no more than one sixth of total remaining assets in the Tribal Allocation Subaccount may be committed during the first funding cycle; (ii) no more than one fifth of total remaining assets in the Tribal Allocation Subaccount may be committed during the second funding cycle; (iii) no more than one quarter of total remaining assets in the Tribal Allocation Subaccount may be committed during the third funding cycle; (iv) no more than one third of total remaining assets in the Tribal Allocation Subaccount may be committed during the fourth funding cycle; (v) no more than one half of total remaining assets in the Tribal Allocation Subaccount may be committed during the fifth funding cycle; and (vi) the remaining funds in the Tribal Allocation Subaccount may be committed during the sixth funding cycle. In the event uncommitted funds remain in the Tribal Allocation Subaccount or the Tribal Administration Subaccount after all funding requests have been approved or rejected during the sixth funding cycle, such funds shall be returned to the Trust Account and allocated among the non-tribal Beneficiaries, weighted in accordance with their allocation.

5.0.5.2.2 In the event that the total amount of the funding requests received on any submission deadline is less than the total amount of funds available to be committed during the corresponding funding cycle, the Trustee shall make no adjustments to the funding requests before approving approvable funding requests pursuant to subparagraph 5.2.15.

5.0.5.2.3 In the event that the total amount of the funding requests received on any submission deadline is more than the amount of funds available to be committed during the corresponding funding cycle, the Trustee shall not approve any funding requests pursuant to subparagraph 5.2.15, but rather shall: (i) allocate to each tribe that has been deemed a Beneficiary hereunder and has submitted a funding request during the funding cycle a share of the funds available during that funding cycle, weighted in accordance with the total population living within each tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas); and (ii) publish on its public-facing website the tribal allocation and a notice that the deadline for that funding cycle shall be pushed forward by one year. In this event: (i) the one year delay of any particular funding cycle shall not impact the deadline for subsequent funding cycles; and (ii) such tribal allocation shall only apply to the over-subscribed funding

cycle. To the extent a tribe has submitted a DERA notice of intent to participate, such notice shall be used to calculate the total amount of funds requested under this subparagraph.

5.0.5.3 Nothing herein precludes any Beneficiary from using any share of its allocation for Eligible Mitigation Projects on Indian land.

5.1 Eligible Mitigation Actions and Expenditures: The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified therein.

5.2 Funding Requests: Beneficiaries may submit requests for Eligible Mitigation Action funding at any time. Each request for Eligible Mitigation Action funding must be submitted to the Trustee in electronic and hard-copy format, and include:

5.2.1 An explanation of how the funding request fits into the Beneficiary's Mitigation Plan;

5.2.2 A detailed description of the proposed Eligible Mitigation Action, including its community and air quality benefits;

5.2.3 An estimate of the NOx reductions anticipated as a result of the proposed Eligible Mitigation Action;

5.2.4 A project management plan for the proposed Eligible Mitigation Action, including a detailed budget and an implementation and expenditure timeline;

5.2.5 A certification that all vendors were or will be selected in accordance with applicable state public contracting laws;

5.2.6 For each proposed expenditure exceeding $25,000, detailed cost estimates from selected or potential vendors;

5.2.7 A detailed description of how the Beneficiary will oversee the proposed Eligible Mitigation Action, including but not limited to:

5.2.7.1 Identification of the specific governmental entity responsible for reviewing and auditing expenditures of Eligible Mitigation Action funds to ensure compliance with applicable law; and

5.2.7.2 A commitment by the Beneficiary to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of Eligible Mitigation Action funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together

with an explanation of the procedures by which the Beneficiary shall make such documentation publicly available;

5.2.8 A description of any cost share requirement to be placed upon the owner of each NOx source proposed to be mitigated;

5.2.9 A description of how the Beneficiary complied with subparagraph 4.2.8;

5.2.10 A description of how the Eligible Mitigation Action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions; and

5.2.11 A detailed plan for reporting on Eligible Mitigation Action implementation.

5.2.12 DERA Option. To the extent a Beneficiary intends to avail itself of the DERA Option described in Appendix D-2, that Beneficiary may use its DERA proposal as its funding request for those Eligible Mitigation Actions funded through the DERA Option.

5.2.13 Joint Application. Two or more Beneficiaries may submit a joint request for Eligible Mitigation Action funds. Joint applicants shall specify the amount of requested funding that shall be debited against each requesting Beneficiary's allocation.

5.2.14 Publication of Funding Requests. The Trustee shall post each funding request on the Trust's public-facing website upon receipt.

5.2.15 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this Agreement and its Attachments, and furthers the purposes of this Trust. Within 60 Days after receipt of each Eligible Mitigation Action funding request, the Trustee shall transmit to the requesting Beneficiary and post on the Trust's public-facing website a written determination either: (i) approving the request; (ii) denying the request; (iii) requesting modifications to the request; or (iv) requesting further information. A Beneficiary may use such written determination as proof of funding for any DERA project application that includes Trust Funds as a non-federal voluntary match, as described in Appendix D-2. The Trustee shall respond to any modified or supplemental submission within 30 Days of receipt. Each written determination approving or denying an Eligible Mitigation Action funding request shall include an explanation of the reasons underlying the determination, including whether the proposed Eligible Mitigation Action meets the requirements set forth in Appendix D-2 and furthers the purposes of this Trust. The Trustee's decision to approve, deny, request modifications, or request further information related to a request shall be reviewable, upon petition of the United States or the submitting Beneficiary, by the Court.

5.2.15.1 Disbursement of Funds. The Trustee shall begin disbursing funds within 15 Days of approval of an Eligible Mitigation Action funding

request according to the written instructions and schedule provided by the Beneficiary.

5.2.16 Unused Eligible Mitigation Action Funds. Upon the termination or completion of any Eligible Mitigation Action, any unused Eligible Mitigation Action funds shall be returned to the Trust and added back to the Beneficiary's allocation.

5.3 Beneficiary Reporting Obligations: For each Eligible Mitigation Action, no later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 1 and July 1 of each year, each Beneficiary shall serve upon the Trustee, a semiannual report describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date (including a summary of all costs expended on the Eligible Mitigation Action through the reporting date). Such reports shall include a complete description of the status (including actual or projected termination date), development, implementation, and any modification of each approved Eligible Mitigation Action. Beneficiaries may group multiple Eligible Mitigation Actions and multiple sub-beneficiaries into a single report. These reports shall be signed by an official with the authority to submit the report for the Beneficiary and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. To the extent a Beneficiary avails itself of the DERA Option described in Appendix D-2, that Beneficiary may submit its DERA Quarterly Programmatic Reports in satisfaction of its obligations under this subparagraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Trust's public-facing website upon receipt.

5.4 Supplemental Funding for Eligible Beneficiaries and Final Disposition of Trust Assets

5.4.1 Estimate of Remainder Balance. On the tenth anniversary of the Trust Effective Date, the Trustee shall file with the Court, deliver to the United States, by and through the EPA, and to each Beneficiary, and publish on its public website, an accounting of all Trust Assets that have not by that date been expended on or obligated to approved Eligible Mitigation Actions or prior Trust Administration Costs, together with an estimate of funding reasonably needed to cover the remaining Trust Administration Costs. The difference between these two amounts shall be referred to as the "Remainder Balance."

5.4.2 Application for Supplemental Funding Eligible Beneficiary Status. On the tenth anniversary of the Trust Effective Date, each Beneficiary may seek to supplement its remaining allocation by filing with the Court and delivering to the Trustee a written report demonstrating that it has by that date obligated at least eighty percent (80%) of the funds allocated to it pursuant to the Final Allocation Rates calculated pursuant to subparagraph 5.0.1 (as determined with specific reference to the reports submitted pursuant to subparagraph 5.3).

5.4.3 Publication of Remainder Balance and Supplemental Funding Eligible Beneficiary Status. Within 90 Days after the tenth anniversary of the Trust Effective

Date, the Trustee shall file with the Court, notify the United States, by and through the EPA, and each Beneficiary, and publish on its website, a report indicating: (i) the Remainder Balance; and (ii) which of the Beneficiaries has demonstrated that it had in fact expended at least 80% of the funds allocated to it pursuant to the Final Allocation Rates calculated pursuant to subparagraph 5.0.1, each of which shall be deemed a "Supplemental Funding Eligible Beneficiary".

5.4.4 Distribution of Remainder Balance to Supplemental Funding Eligible Beneficiaries. On the later of (i) 180 Days after the tenth anniversary of the Trust Effective Date, or (ii) the resolution of any disputes arising from the Trustee's accountings or determinations pursuant to subparagraphs 5.4.1 or 5.4.3, the Remainder Balance shall be divided among the Supplemental Funding Eligible Beneficiaries in accordance with their weighted share of the Final Allocation Rates.

5.4.5 Final Disposition of Trust Assets. Not later than the fifteenth anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Trust. After the fifteenth anniversary of the Trust Effective Date, any Trust Assets held in the Trust Account or any subaccount (including but not limited to the Trust Administration Cost Subaccount, Tribal Allocation Subaccount, and the Tribal Administration Cost Subaccount) that are not needed for final Trust Administration Costs shall be deemed to have been donated by the Trust to fund Eligible Mitigation Actions administered by Federal agencies that have custody, control or management of land in the United States that is impacted by excess NOx emissions (including but not limited to Clean Air Act Class I and II areas) and that have the legal authority to accept such funds, in accordance with instructions to be provided by the United States. If no such agencies exist, then such funds shall be applied as otherwise directed by the Court on motion by one or more of the remaining Beneficiaries, with notice to the United States, the Settling Defendants, and the other remaining Beneficiaries.

VI. MISCELLANEOUS PROVISIONS

6.0 Correspondence with Trust: [Insert instructions for transmitting certifications, funding requests, and other correspondence to Trustee]

6.1 Jurisdiction: The U.S. District Court for the Northern District of California shall be the sole and exclusive forum for the purposes of enforcing this Mitigation Trust and resolving disputes hereunder, including the obligations of the Trustee to perform its obligations hereunder, and each of the Consent Decree Parties, the Mitigation Trust, the Trustee, and each Beneficiary, expressly consents to such jurisdiction.

6.2 Dispute Resolution: Unless otherwise expressly provided for herein, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve any dispute between or among the entities listed in Appendix D-1 hereto, the Consent Decree Parties, and the Trustee arising under or with respect to this Agreement.

6.2.1 Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the disputing party sends to the counterparty a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the disputing parties cannot resolve the dispute by informal negotiations, then the disputing party may invoke formal dispute resolution procedures as set forth below.

6.2.2 Formal Dispute Resolution. The disputing party shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the counterparty a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the disputing party's position and any supporting documentation and legal authorities relied upon by the disputing party. The counterparty shall serve its Statement of Position within 30 Days of receipt of the disputing party's Statement of Position, which shall also include, but need not be limited to, any factual data, analysis, or opinion supporting the counterparty's position and any supporting documentation and legal authorities relied upon by the counterparty. If the disputing parties are unable to consensually resolve the dispute within 30 Days after the counterparty serves its Statement of Position on the disputing party, the disputing party may file with the Court a motion for judicial review of the dispute in accordance with the following subparagraph.

6.2.3 Judicial Review. The disputing party may seek judicial review of the dispute by filing with the Court and serving on the counterparty and the United States, a motion requesting judicial resolution of the dispute. The motion must be filed within 45 Days of receipt of the counterparty's Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of disputing party's position on the matter in dispute, including any supporting factual data, analysis, opinion, documentation, and legal authorities, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly administration of the Trust. The counterparty shall respond to the motion within the time period allowed by the Local Rules of the Court, and the disputing party may file a reply memorandum, to the extent permitted by the Local Rules.

6.3 Choice of Law: The validity, interpretation, and performance of this Mitigation Trust shall be governed by the laws of the State of **[California] [Delaware]** and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. This Trust Agreement shall not be subject to any provisions of the Uniform Trust Code as adopted by any State, now or in the future. This Trust Agreement shall be interpreted in a manner that is consistent with the Consent Decree, provided, however, that in the event of a conflict between the Consent Decree and this Trust Agreement, this Trust Agreement shall control.

6.4 Modification: Material modifications to the Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions) may be made only with the written consent of the United States and upon order of the Court, and only to the extent that such modification does not change or inhibit the purpose of this Mitigation Trust. Minor modifications or clarifying amendments to the Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions) may be made upon written agreement between the United States and the Trustee, as necessary to enable the Trustee to effectuate the provisions of this Mitigation Trust, and shall be filed with the Court. To the extent the consent of the Settling Defendants is required to effectuate the modification or amendment, such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, without the express written consent of the Settling Defendants, no modification shall: (i) require the Settling Defendants to make any payments to the Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Settling Defendants than those set forth in the Trust Agreement that is being modified. The Trustee shall provide to the Beneficiaries not less than 30 Days' notice of any proposed modification to the Mitigation Trust, whether material or minor, before such modification shall become effective.

6.5 Severability: If any provision of this Agreement or application thereof to any person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

6.6 Taxes: If the Trustee determines, upon the advice of qualified tax professionals, that this Trust is a qualified settlement fund ("QSF") pursuant to 26 C.F.R. § 1.468B-1, then the Trustee shall be the "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of this Trust. Subject to definitive guidance from the U.S. Internal Revenue Service or a judicial decision to the contrary, the Trustee shall file tax returns and pay applicable taxes with respect to the Trust in a manner consistent with the provisions of the QSF regulations. All such taxes shall be paid from the Trust Administration Cost Account.

6.7 Termination: After all funds have been expended pursuant to subparagraph 5.4.5, and final reports have been delivered pursuant to subparagraph 3.3 and 3.3.1, the Trustee may file a motion with the Court requesting an order terminating this Trust. The United States and the Beneficiaries shall be given not less than 60 Days to oppose such motion. This Trust shall terminate upon approval by the Court of the Trustee's motion to terminate (the "Termination Date").

[Add Signatures for Settling Defendants and the Trustee]