

Memorandum of Understanding Ocean Going Vessels At Berth: Remediation Fund Administrator



Exhibit A - MOU Terms and Conditions

RECITALS

- A. WHEREAS, on January 1, 2023, the Control Measure for Ocean-Going Vessels At Berth as set forth in Sections 93130 through 93130.22 (inclusive of Appendices) of Title 17 of the California Code of Regulations (the "Control Measure", which is incorporated by reference as if fully set forth herein) became effective.
- B. WHEREAS, the Control Measure includes an additional compliance option set forth therein that may be used under limited circumstances to remediate emissions from ocean-going vessels by making remediation payments into a remediation fund established pursuant to the Control Measure ("Remediation Fund").
- C. WHEREAS, the California Air Resources Board ("CARB") is required to ensure that entities it designates as responsible for administering the Remediation Fund comply with the applicable requirements of the Control Measure.
- D. WHEREAS, the purpose of this Memorandum of Understanding ("MOU"), inclusive of its Exhibits, is to fulfill and carry out the obligations, requirements, and responsibilities identified in the Control Measure relating to the administration of the Remediation Fund.
- E. WHEREAS, CARB desires to designate the San Joaquin Valley Air Pollution Control District as Fund Administrator as responsible for administering the Remediation Fund within the jurisdiction of Fund Administrator as provided in Section 93130.16 of the Control Measure.
- F. WHEREAS, Fund Administrator is willing to perform the duties and requirements set forth in this MOU and the Control Measure.

NOW THEREFORE, the Parties agree as follows:

I. THE PARTIES

This Memorandum of Understanding ("MOU") is entered into by and between the State of California acting by and through the California Air Resources Board (hereinafter referred to as "CARB" or the "Board" or the "State") and the San Joaquin Valley Air Pollution Control District (hereinafter referred to as the "Fund Administrator"). CARB and the Fund Administrator are each a "Party" and together the "Parties" to this MOU.

II. THE PURPOSE

The purpose of this MOU, inclusive of its Exhibits, is to fulfill and carry out the obligations, requirements and responsibilities identified in the Control Measure relating to the administration of the Remediation Fund. As explained in the Control Measure, a Remediation Fund is an account established by the Fund Administrator under the terms of this MOU to provide incentive monies to activities that achieve emission reductions, not otherwise required by law or regulation, in communities impacted by excess emissions from vessels at berth. A party receiving or applying incentive monies from the Remediation Fund for such activities ("Recipient") may receive money through a grant, voucher, contract, subcontract or agreement.

As stated in the Control Measure, the Remediation Fund must (1) fund incentive activities that comply with adopted CARB Guidelines on existing incentive programs; and (2) achieve emission reductions that are early or in excess of any other state, federal or international rule, regulation, statute, or any other legal requirement (including any requirement under a Memorandum of Understanding with a government entity) or an emission reduction strategy identified in an AB 617 Community Emissions Reduction Program (CERP) that has been approved by CARB's Board of Directors. For clarity, the Remediation Fund may only be used for CERP emission reduction strategies, measures, and actions that are underfunded, have not been awarded funding, or have not identified a source of funding. CERP emission reduction strategies, measures, and actions that are already subject to an enforceable commitment and have committed funding for a particular project may not use the Remediation Fund. As used in this MOU, the term "CARB Guidelines" refers to CARB funding program guidance documents (including program-related documents titled either as "guidelines" or as "blueprints,") as described in Section 93130.16(h)(3) of the Control Measure.

III. CONTACT INFORMATION

- A. The CARB MOU Liaison is Katelyn Carter. Correspondence regarding this MOU and the Remediation Fund shall be directed to:

Name: Katelyn Carter
California Air Resources Board
Transportation and Toxics Division
1001 I Street
Sacramento, California 95812
Phone: (279) 208-7744
Email: katelyn.carter@arb.ca.gov

- B. The Fund Administrator Liaison is Todd DeYoung. Correspondence regarding this MOU and the Remediation Fund shall be directed to:

Name: Todd DeYoung
Title: Director of Grants and Incentives
Address: 1990 E. Gettysburg Ave., Fresno, CA 93726
Phone: (559) 230-5816
Email: todd.deyoung@valleyair.org

IV. GENERAL PROVISIONS

- A. **Total Agreement; Entirety.** This MOU, including Exhibits B and C below, constitutes the entire agreement and understanding between the Parties and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning this MOU.
- B. **Program-Specific Terms and Conditions.** Exhibit B below contains the program-specific terms and conditions of this MOU. Exhibit B, in its entirety, is incorporated by reference into this MOU as if set forth in full herein.
- C. **Effective Date, Term, and Renewal Term.** The term ("Term") of this MOU is five (5) years, effective as of the last date this MOU is fully executed by all the Parties. This MOU will automatically renew for a five (5) year term (the "Renewal Term") at the expiration of each Term, unless terminated sooner by either Party. In this MOU, the original Term and each Renewal Term are collectively referred to as the "Term."
- D. **Termination.** This MOU may be terminated at any time for any or no reason by either Party upon providing ninety (90) business days advance written notice. This MOU may be terminated by CARB by written notice at any time upon violation by the Fund Administrator of any material term or condition of this MOU after such violation has been called to the attention of the Fund Administrator by CARB and after failure of the Fund Administrator to bring itself into compliance with the provisions of this MOU within thirty (30) days of receipt of written notice from CARB, or such longer period as CARB may provide at its sole discretion.
1. Within 30 business days of the effective date of termination or as otherwise agreed upon by the Parties, the Fund Administrator shall turn over all records, personally identifiable information ("PII"), intellectual property, documents, information and data relating to performance, accounting, administration, contracting and management of the Remediation Fund, projects funded by the Remediation Fund and as otherwise required elsewhere in this MOU;

2. Within 60 days of the effective date of termination or such longer period as agreed upon by the parties, CARB shall direct the Fund Administrator to transfer any funds remaining in the Remediation Fund to CARB or another entity as determined by CARB. "Remaining funds" means the amount of funds remaining in the Remediation Fund, after accounting for direct and reasonable expenses incurred and contracts executed before receipt of the termination notice and direct and reasonable expenses incurred associated with termination; and
 3. The Fund Administrator shall follow the Remediation Fund Transfer Plan developed under Section III(B)(4)(e) of Exhibit B for the timely transfer of data, records and project knowledge.
- E. **Amendments.** No amendment or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties. No oral understanding or agreement not incorporated in the MOU is binding on any of the parties.
- F. **Americans with Disabilities Act (ADA) Language.** Fund Administrator shall require that all products and services (including data and documents) submitted to, uploaded, or otherwise provided to CARB which CARB will make available to the public on its website, prepared in the course of performance of this MOU, including Status Reports (collectively, the "Work"), comply with Web Content Accessibility Guidelines 2.0, level AA or a subsequent version, and otherwise meet the accessibility requirements set forth in California Government Code Sections 7405 and 11135, Section 202 of the federal Americans with Disabilities Act (42 U.S.C. § 12132), and Section 508 of the federal Rehabilitation Act (29 U.S.C. § 794d) and the regulations promulgated thereunder (36 C.F.R. Parts 1193 and 1194) (collectively, the "Accessibility Requirements"). For any work provided to CARB or the public in PDF format, Fund Administrator, shall also provide an electronic version in the original electronic format (for example, Microsoft Word or Adobe InDesign).
- CARB may request from Fund Administrator documentation of compliance with the requirements described above and may perform testing to verify compliance. Deviations from the Accessibility Requirements are permitted only by advance written consent by CARB. Fund Administrator's obligations under this provision do not apply to products and services submitted using forms, templates or documents provided by CARB.
- G. **Assignment.** This MOU is not assignable, in whole or in part, by Fund Administrator without the advance written consent of CARB in the form of a formal written amendment signed by authorized representatives of both Parties.

- H. **Audit.** Fund Administrator agrees that CARB, the California Department of General Services, California Department of Finance, the California State Auditor, the California Bureau of State Audits, or any of their respective designated representatives shall have the right to review and copy any records and supporting documentation pertaining to the performance of this MOU and all Remediation Funds received or expended. Fund Administrator agrees to allow such California designated representatives (including auditors) access to such records during normal business hours, and to allow interviews of any and all employees, representatives, agents, officers, consultants, grantees, subgrantees, contractors and subcontractors of Fund Administrator who might reasonably have information related to such records. Further, Fund Administrator agrees to include similar right of the State to audit records and conduct interviews of any and all grantees, subgrantees, contractors and subcontractors in relation to performance or use of the Remediation Fund under this MOU. Fund Administrator agrees to allow and fully cooperate with ongoing evaluations, reviews, and fiscal audits by CARB, other State agencies and their designees, and to authorize CARB and its designee to inspect incentive activities and projects to ensure compliance with CARB requirements.
- I. **Compliance with Law.** Fund Administrator agrees that it will, at all times, comply with, all applicable federal, state, and local laws, rules, guidelines, regulations, and requirements in the performance of this MOU during the time period in which this MOU is effective.
- J. **Conflict of Interest.** Fund Administrator certifies that it is in compliance with applicable state and federal conflict of interest laws at the time it enters into this MOU and shall remain in compliance with all such laws during the Term of this MOU. Fund Administrator may have no interest, and shall not acquire any interest, direct or indirect, which will conflict with its ability to impartially perform under, or complete the tasks described in, this MOU. Fund Administrator must disclose any direct or indirect financial interest or situation which may pose an actual, apparent, or potential conflict of interest with its duties throughout the MOU Term. CARB may consider the nature and extent of any actual, apparent, or potential conflict of interest in Fund Administrator's ability to perform the MOU. Fund Administrator must immediately advise CARB in writing of any potential new conflicts of interest throughout the MOU Term.
- K. **Disputes.** Prior to exercising any rights or remedies which may arise as a result of a breach of this MOU, or for any disagreements or conflicts arising from the implementation of this MOU, the party alleging the breach disagreement or conflict will provide the other party written notice of the term or condition which is alleged to have been breached, or the disagreement or conflict that has arisen. Fund Administrator shall

continue with the responsibilities under this MOU during any dispute between Fund Administrator and CARB, unless otherwise directed in writing by CARB. Fund Administrator staff and management and CARB staff and management shall work together in good faith to resolve any disagreements or conflicts arising from implementation of this MOU. However, any disagreements that cannot be resolved at the management level within 30 calendar days of when the issue is first raised with CARB staff shall be subject to resolution by the CARB Executive Officer, or the Executive Officer's designated representative. Nothing contained in this paragraph is intended to limit any of the rights or remedies that the Parties may have under law.

- L. **Environmental Justice.** In the performance of this MOU, Fund Administrator shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that seeks to ensure the fair treatment of people of all races, genders, cultures, or income levels, including minority populations and low-income populations, of the State of California.
- M. **Force Majeure.** Neither CARB nor Fund Administrator are liable for or deemed to be in default for any delay or failure in performance under this MOU or interruption of services resulting, directly or indirectly, from including, but not limited to, acts of God, enemy or hostile governmental action, civil commotion, strikes, government orders, national or state declared pandemics, lockouts, labor disputes, fire, flood, earthquakes, war, other physical natural disasters, or other acts beyond their control. If either Party intends to invoke this clause to excuse or delay performance, the Party invoking the clause must provide written notice to the other Party immediately, but no later than within fifteen (15) calendar days of the intent to invoke the clause and the reasons that the force majeure event is preventing that Party from, or delaying that Party in, performing its obligations under this MOU. CARB may terminate this MOU immediately, in writing and without penalty, in the event Fund Administrator invokes this clause.
 1. If the MOU is not terminated by CARB pursuant to this clause, upon completion of the force majeure event, Fund Administrator must as soon as reasonably practicable re-commence the performance of its obligations under this MOU. Fund Administrator must also provide to CARB a revised Remediation Fund scope or schedule ("Fund Schedule") for anticipated major milestones and timeframe for expending remediation monies that minimizes the effects of the delay caused by the force majeure event.
 2. An event of force majeure does not relieve a Party from any of its obligations which arose before the occurrence of the force majeure event.

- N. **Governing Law and Venue.** This MOU is governed by, and shall be interpreted in accordance with, the laws of the State of California. CARB and Fund Administrator hereby agree that any action arising out of this MOU shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. Fund Administrator hereby waives any existing sovereign immunity for the purposes of this MOU.
- O. **Indemnification.** Fund Administrator agrees to indemnify, defend, and hold harmless the State of California, CARB, and CARB officers, Board members, employees, agents, representatives, and successors-in-interest against, for and from any and all liabilities, losses, and expenses, including reasonable attorneys' fees, from any and all claims for injury or damages to the extent arising out of the negligence, reckless, willful misconduct or breach of this MOU by the Fund Administrator .
- P. **Independent Actor.** The Fund Administrator, its agents, employees, contractors, subcontractors, suppliers, officers and assigns, if any, in their, its, his or her performance of this MOU, shall act in an independent capacity and not as officers, employees or agents of the State of California or CARB.
- Q. **Nondiscrimination.** During the performance of this MOU, the Fund Administrator shall, and shall require its contractors, subcontractors, employees, agents and assigns to, not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, or veteran or military status, nor shall any employee be discriminated against or harassed based on a request for or because of taking family-care leave, medical-care leave, or pregnancy-disability leave. Fund Administrator shall, and shall require its contractors, subcontractors, employees, agents and assigns to, ensure that the evaluation and treatment of employees and applicants for employment are free from such discrimination and harassment. Fund Administrator shall, and shall require its contractors, subcontractors, employees, agents and assigns to, comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a)-(f), set forth in Chapter 5 of Division 4.1 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference, and made a part hereof as if set forth in full. Fund Administrator shall, and shall require its contractors, subcontractors, employees, agents and assigns to, give written notice of their, its, his, her obligations under this clause

to all labor organizations with which there exists collective bargaining or other agreement. The Fund Administrator shall include the nondiscrimination and compliance provisions of this clause in all contracts, agreements, and subcontracts to perform work under this MOU.

- R. **No Third-Party Rights.** This MOU does not create, and nothing stated in this MOU creates, rights in, or grants remedies to, any third party as a beneficiary of this MOU, or of any duty, covenant, obligation or undertaking establish herein.
- S. **Third Party Agreements, Required Terms.** All written agreements and amendments executed after the effective date of this MOU, including but not limited to awards, grants, and procurement contracts, entered into by and between the Fund Administrator and a contractor, vendor, grantee, or awardee ("Recipient") using funds from the Remediation Fund, shall contain the following language (or similar language with the same meaning and intent) listed below to the extent applicable or feasible as determined by the Fund Administrator.
1. Conflict of interest. Recipient certifies, represents and warrants that it is in compliance with all applicable state and federal conflict of interest laws on the date said agreement is signed and shall remain in compliance with all such laws during the term of the agreement and for any other period required by said applicable federal or state law as they pertain to Recipient's agreement. Recipient further certifies, represents and warrants that it has no interest, and shall not acquire any interest, direct or indirect, which will conflict with Recipient's ability to impartially perform under, or complete the tasks described in Recipient's agreement with the Fund Administrator. The Recipient acknowledges, understands and accepts that Recipient must disclose any direct or indirect financial interest or situation which may pose an actual, apparent, or potential conflict of interest. The Recipient acknowledges, understands and accepts that the nature and extent of any actual, apparent, or potential conflict of interest may be a basis for disqualification from receiving any state funds. The Recipient certifies, represents and warrants that Recipient will immediately advise Fund Administrator in writing of any potential new conflicts of interest as they arise.
 2. Cooperation with Audits. Recipient shall cooperate fully, without delay, in all audits, inquiries and investigations initiated by or on behalf of the Fund Administrator and/or the state of California concerning or relating to compliance with local, state or federal air quality laws, or Recipient's agreement with Fund Administrator, including but not limited to timely

submission of any and all records requested and full cooperation with any on-site inspections.

3. Compliance with Applicable Laws. During the term of Recipient's agreement with Fund Administrator, Recipient shall comply with all applicable federal, state and local laws ordinances, regulations, and standards in administering remediation activities, including by obtaining any permits or approvals necessary to undertake the activities funded by the Remediation Fund, and complying with all environmental review requirements associated with such activities.
4. Payment on Demand. Recipient shall, upon notification by the Fund Administrator or its authorized representative of an overpayment, a wrongful payment or a violation of or failure to comply with any of the agreement, contract, or program requirements or obligations, remit to the Fund Administrator or its authorized representative the requested amount within 60 days from the date of issuance of said notice.
5. Third Party Beneficiary. The state of California, acting by and through the California Air Resources Board, is an intended third-party beneficiary to any and all Recipient agreements, contracts, subcontracts, and awards with the Fund Administrator where any Remediation Funds are used or applied.
6. Authorized Signature. The Recipient agrees and acknowledges that it has signed or has authorized the signing of the agreement with the Fund Administrator, and by doing so hereby declares under penalty of perjury, under the laws of the State of California, that all statements and responses made in said agreement are true and correct, with full knowledge that all statements and responses are subject to investigation and that any incomplete, unclear, false, or dishonest response may be grounds for disqualification from receiving any existing or further funding or participating in any programs or projects using the Remediation Fund, or from doing business with the State of California or the Fund Administrator. The Recipient acknowledges, understands and accepts that by providing or making any false statements or providing false information, the Recipient may be in a violation of the California False Claims Act (Government Code Section 12650 et seq.). Recipient certifies, represents and warrants that the individual signing on its, his or her behalf herein below is an authorized representative of Recipient with full power and legal authority to sign below and by said signature Recipient is bound to and will comply with all terms, conditions and obligations set forth in the agreement.
7. Survival. Recipient acknowledges, agrees and accepts that those sections and provisions pertaining to indemnity, recordkeeping, audit,

third party beneficiary status, return of funds, data security and confidentiality shall survive the termination, cancellation or expiration of the agreement.

- T. **Russian Sanctions.** On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts and grants with, and to refrain from entering any new contracts and grants with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Fund Administrator is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this MOU. The State shall provide Fund Administrator advance written notice of such termination, allowing Fund Administrator at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.
- U. **Office of Foreign Asset Control.** The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC publishes lists of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. These lists can be found at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>. Unless otherwise authorized or exempt, transactions by U.S. persons or in the United States may be or are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the Office of Foreign Asset Control's (OFAC) SDN or other Lists. The property and interests in property of an entity that is 50 percent or more owned, whether individually or in the aggregate, directly or indirectly, by one or more persons whose property and interests in property are blocked pursuant to any part of 31 C.F.R. chapter V are also blocked, regardless of whether the entity itself is listed. Refer also to the U.S. Department of the Treasury website: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>. Fund Administrator shall notify CARB within 15 calendar days if it has or obtains knowledge that Fund

Administrator or any Recipient is in violation of any federal law pertaining to any entity or individual listed on any of the OFAC lists.

In the event CARB determines that Fund Administrator is in violation of any federal law pertaining to any entity or individual listed on any of the OFAC lists, that shall be grounds for CARB, in its sole discretion, to terminate this MOU. CARB shall provide Fund Administrator advance written notice of such termination.

- V. **Cumulative Remedies.** The rights and remedies of the Parties to this MOU, whether pursuant to this MOU or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.
- W. **Paragraph Headings.** The headings and captions of the various paragraphs, subparagraphs and sections hereof are for convenience only, and they shall not limit, expand, or otherwise affect the construction or interpretation of this MOU.
- X. **Prevailing Wage and Labor Compliance.** Fund Administrator agrees to include in all agreements subject to reimbursement from this MOU a requirement that the provisions of California Labor Code Sections 1720-1861 are being met by Remediation Fund recipients, as applicable.
- Y. **Professionals.** Fund Administrator agrees that only licensed professionals will be used to perform services or conduct work under this MOU, where such services are called for and licensed professionals are required for those services under California law.
- Z. **Authority.** Each person executing this MOU on behalf of a Party represents that he or she is duly authorized to execute and deliver this MOU on the Party's behalf.
- AA. **Severability.** If a court of competent jurisdiction holds any provision of this MOU Agreement to be illegal, unenforceable, or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portions of those provisions, will not be affected, and will remain in full force and effect.
- BB. **Timeliness.** Time is of the essence in the performance of this MOU. Fund Administrator shall proceed with and complete all of its obligations under this MOU in a timely and expeditious manner.
- CC. **Waiver of Rights.** Any waiver of rights with respect to a default or other matter arising under the MOU at any time by either Party shall not be considered a waiver of rights with respect to any other default or matter. Any

rights and remedies of a Party provided for in this MOU are in addition to any other rights and remedies provided by law.

DD. **Order of Precedence.** In the event of any inconsistency between the exhibits, attachments, specifications, or provisions which constitute this MOU, the following order of precedence shall apply:

1. Exhibit A - MOU Terms and Conditions
2. Exhibit B - Program Specific Terms and Conditions
3. Exhibit C - Key Project Personnel
4. All other Exhibits incorporated into the MOU.

EE. **Survival.** The following provisions shall survive the termination, cancellation or expiration of this MOU: those sections in Exhibit B pertaining to insurance (Section XI); recordkeeping (Section IV(B)(4)(d)); transfer plan (Section IV(B)(4)(e)); remedies (Section VIII(E)); oversight and accountability (Section VIII); and confidentiality and data security (Section X).

Exhibit B - Program-Specific Terms and Conditions

I. FUND ADMINISTRATOR

Prior to entering into this MOU, the Fund Administrator submitted an application to CARB (which is incorporated into and made a part of this MOU by this reference) demonstrating the following:

- A. The Fund Administrator is an existing Air Pollution Control District, Air Quality Management District, or the California Air Pollution Control Officers Association (CAPCOA) as set out in Section 40000 et seq of the California Health and Safety Code, and as such is eligible to administer this Remediation Fund;
- B. The Fund Administrator has demonstrated that it has the capacity to successfully administer this Remediation Fund to the satisfaction of CARB;
- C. The Fund Administrator has provided CARB with a resolution from its governing board authorizing it to enter into this MOU and administer and manage this Remediation Fund; and
- D. The emissions reductions resulting from this Remediation Fund can properly be attributed to, and claimed by, the Remediation Fund in accordance with the Control Measure requirements.

II. ACKNOWLEDGEMENT

Where applicable, the Fund Administrator agrees to acknowledge the Remediation Fund as a funding source for projects in response to any news media, websites, applications, brochures, publications, audiovisuals, or other types of promotional material. Subject to advance review and approval, CARB may approve the use of its name and/or logo on any such materials. The Fund Administrator agrees to adhere to CARB's logo usage requirements in a manner directed by CARB. CARB logos will be provided to the Fund Administrator by CARB staff.

III. DUTIES

This section defines the respective duties and requirements of CARB and the Fund Administrator in implementing the Remediation Fund.

- A. **California Air Resources Board Duties.** CARB is responsible for the following:
 - 1. Selecting the Fund Administrator.
 - 2. Posting executed MOUs with Fund Administrators on CARB's public website.

3. Providing policy direction, consistent with the Control Measure, in consultation with the Fund Administrator.
4. Reviewing requests from vessel operators, terminal operators, CAECS operators and ports ("Fund Applicant") for eligibility to use the Remediation Fund option as described in the Control Measure. CARB shall notify the Fund Applicant and the Fund Administrator concurrently if the Fund Applicant is approved to use that Remediation Fund option, the location of the vessel visits subject to the approval, the amount of payment, and when Fund Applicant must remit payment to Fund Administrator for the Remediation Fund option (within 30 calendar days of notification of approved eligibility). The notification shall include a unique ID number assigned for each vessel visit approved to use the Remediation Fund and can be used for tracking and reporting purposes. Requests for Remediation Fund participation that are approved by CARB as eligible shall still qualify for Remediation Fund participation even if the Remediation Fund account has not yet been established by the Fund Administrator. However, within 30 calendar days following the establishment of the Remediation Fund account by the Fund Administrator, the eligible Fund Applicant must transfer and the Fund Administrator must receive the funds.
5. Providing administrative oversight, which, at CARB's sole discretion, may include the review, evaluation and audit of the Fund Administrator, the Remediation Fund and work product and may involve access to and review of solicitations for projects, contracts, financial accounts, emission reduction project funding and allocation, grant agreements, presentations, reports, papers, and other work product.
6. Participating in regular meetings with the Fund Administrator to discuss the Remediation Fund's administration, funding allocations, duties and project status.

B. **Fund Administrator Duties.** The Fund Administrator is responsible for the following:

1. Administration. The Fund Administrator is responsible for the day-to-day management and administration of the Remediation Fund established under this MOU, including but not limited to establishing accounts, and providing support, oversight and enforcement to the resulting projects that are funded with the Remediation Fund.
2. Compliance with MOU. Complying, at all times, with the terms and conditions of this MOU (including as amended), for the purpose of providing incentive monies to activities that achieve emission reductions, not otherwise required by law or regulation, in communities

impacted by excess emissions from vessels at berth in accordance with the definitions and requirements of the Control Measure.

3. Compliance with Control Measure and Other Provisions. Complying fully with all applicable terms and conditions of the Control Measure, applicable Funding Plans, applicable CARB incentive programs, applicable CARB Funding Guidelines, and all applicable requirements of local, state and federal statutes and regulations, as amended or revised from time to time. The Fund Administrator shall require its employees, agents, officers, directors, representatives, grantees, subgrantees, contractors and subcontractors to comply fully with all terms and conditions of this MOU (as amended from time to time) and all of the other aforementioned requirements.
4. The Fund Administrator's additional responsibilities include, but are not limited to, the following tasks (as well as those set forth in other sections of this MOU):
 - a. Project Planning and Implementation
 - i. Coordinate with CARB and program administrators for the applicable funding programs that the Fund Administrator will use to disburse the funds (e.g. Moyer, Prop 1B, etc.), as necessary, ensure expeditious implementation of all projects in a manner that best fulfills the intent and purpose of the Remediation Fund, the Control Measure and this MOU.
 - ii. Upon at least 30 days' written notice, participate in CARB-approved events (e.g., CARB Board hearings, press events, conferences, forums, symposiums, etc.) to represent the Remediation Fund.
 - iii. Assist CARB in hosting emission reduction project-related review meetings and events.
 - iv. Communicate with CARB as needed to ensure CARB's awareness of the most current status of emission reduction projects.
 - b. Public Outreach
 - i. Prepare outreach and educational materials, in consultation with CARB, and work with community-based organizations (CBOs) to conduct public outreach necessary to solicit public input and educate local community

members about the benefits of the local projects that may result from the Remediation Fund.

- ii. Translation services should be made available upon request for community events hosted by Fund Administrator and for documents produced by Fund Administrator to support the Remediation Fund.
 - iii. Respond promptly to legislative and public requests regarding the Remediation Fund in coordination with CARB.
 - iv. Upon at least 30 days' written notice, assist CARB in planning of public events that showcase the Remediation Fund.
- c. Data Collection and Processing
- i. Data Availability. Provide data updates to CARB as requested by CARB no more frequently than quarterly, on a form prepared in consultation between CARB and Fund Administrator.
 - ii. Incentive Activities. Recruit, evaluate, select, fund, and track incentive activities in conformance with the requirements of the applicable guidelines for the incentive program or programs identified in the Fund Administrator's Application.
 - iii. Ensure that data collection, as required by each of the funding program requirements, is being collected, processed, analyzed, and reported to CARB in a timely manner, and that the data-related responsibilities set forth in this agreement are followed.
 - iv. Document and validate findings from the funded projects.
- d. Recordkeeping and Reporting
- i. Establish and maintain Remediation Fund accounts and records in accordance with this MOU and applicable local, state and federal laws.
 - ii. Record Retention. Utilize best practices to store all records in a safe and secure storage facility that maintains confidentiality and provides fire and natural disaster protection. Any and all records relating to the Remediation Fund (e.g., solicitations, applications, invoices, contracts,

and correspondence, data, accounting records, correspondence, other records described in this MOU, etc.) shall be retained during the Term of the MOU and for an additional five (5) years from the MOU termination date or after a funded incentive activity has concluded, whichever is later. Upon completion of the required record-retention period, to the extent the Remediation Fund records have not already been provided to CARB pursuant to other provisions of this MOU, upon request by CARB, the Fund Administrator must submit requested records to CARB or, as requested, CARB's designee, trustee or new Fund Administrator. Hardcopy or electronic records are suitable. Acceptable forms of electronic media include hard drives, CDs, DVDs, and flash drives. Other forms of electronic media may be allowed based on prior written concurrence from CARB.

- iii. Develop a systematic process and schedule to back-up Remediation Fund data each day, at a minimum.
 - iv. Develop and enforce security measures to safeguard Remediation Fund data.
 - v. Submit to CARB semi-annual reports covering fiscal activity and remediation activities funded, including, but not limited to, recipient, type, location, and estimated emission reductions achieved.
- e. Transfer Plan.
- i. In case of termination or expiration of this MOU, the Fund Administrator must develop and execute a Remediation Fund Transfer Plan, as part of the Fund Administrator's closeout duties, to ensure, in a form and format acceptable to CARB, a complete and timely transfer of information, remaining funds and project knowledge or property in Fund Administrator's possession or control to CARB, the CARB-approved trustee or new Fund Administrator on a timely basis. The Remediation Fund Transfer Plan is subject to review, approval and acceptance by CARB, and at CARB's request, the Fund Administrator shall promptly amend, modify, or update the Remediation Fund Transfer Plan. The Remediation Fund Transfer Plan will include, at a minimum, the following tasks:

- a. Upon request and to the extent technically and legally feasible, transfer and assign to CARB, or CARB's designees, all ownership and control of all webpage(s), databases, software or other intellectual property developed, licensed or purchased with funds from the Remediation Fund by or for the Fund Administrator for the purposes of administering, managing or implementing the Remediation Fund; and,
 - b. Within the timeline set by the Transfer Plan, deliver all Remediation Fund data and project records to CARB or, at CARB's request, to the subsequent Fund Administrator or trustee.
- f. Administrative costs exceeding fees. Fund Administrator shall provide CARB written notice 30 days prior to or as soon as reasonably possible, whichever comes first, of the date when Fund Administrator anticipates being unable to perform any of the duties under section B.4.(a)-(d) due to costs exceeding administrative fees. CARB and the Fund Administrator agree to meet and confer to determine whether program modifications or amendments to the MOU are needed and can be changed to address administrative costs exceeding the fees. The parties acknowledge and agree that Fund Administrator's ability to perform any or all of the duties under the above-described sections may be constrained due to costs exceeding administrative fees.

IV. FISCAL ADMINISTRATION

A. Project Funding

1. Emissions Reductions. The Fund Administrator agrees to use the Remediation Fund for incentive activities that directly benefit communities impacted by excess emissions from the port or independent marine terminal and achieve emission reductions consistent with CARB's most recent applicable incentive program guidelines for: Carl Moyer Program, Proposition 1B Program, or Community Air Protection Incentives Program; or similar programs for mobile and/or stationary sources of air pollution. The Fund Administrator shall seek to prioritize eligible activities in communities that are also identified by CARB under the AB 617 Community Air Protection Program, including any eligible project identified in CARB-approved AB617 project plans, or eligible activities in disadvantaged

communities as defined by the CalEPA Secretary for Environmental Protection. Fund Administrator may combine remediation payments from different vessel visits to fund a particular project. Fund Administrator may also combine remediation payments with funding from other sources, such as other CARB incentive programs, to fund a particular project consistent with Section 93130.16.

2. Fund Schedule. Within 3 months of the full execution of this MOU, the Fund Administrator will provide an initial Fund Schedule identifying anticipated major milestones for implementing emission reduction projects with the Remediation Fund monies that have been received to date by the Fund Administrator, including a timeframe by which those monies will be expended. The Fund Administrator shall obligate and expend funds to achieve community health benefits as quickly as reasonably feasible. The Fund Schedule will be revised as necessary as part of the semi-annual status reports.

B. Administrative Fees

1. The Fund Administrator may retain up to ten (10) percent of the funds within the Remediation Fund for its direct and reasonable expenses incurred to implement the incentive program.
2. Administrative fees shall be used to fund costs for administering the Remediation Fund including to manage the daily administration of the programs and outreach.
3. Administrative fees must be reasonable and necessary to administer the Remediation Fund and shall NOT be used for any of the following purposes: to pay off debt, or as credit or as collateral on any debt or loan; to pay for gifts, entertainment, alcohol, food, beverages, prizes, donations, fundraising, memberships, or recruitment; or to pay for closing costs or the purchase of any property, plant or equipment (PP&E).
4. Administrative fees may include, where necessary and reasonable, the following:
 - a. A portion of the Fund Administrator's direct and reasonable personnel costs and fringe benefits that exceed the Fund Administrator's existing budget or funding for such costs.
 - b. Those indirect and operating costs incurred to provide direct support to the Remediation Fund (i.e., supplies and materials). Indirect cost calculation methodologies must be described or cited in the Policies and Procedures Manual or local

- administrative manual, and calculated costs must be documented.
- c. Travel within the state of California for the purposes of carrying out the management and administrative duties and responsibilities of the Remediation Fund. Travel expenses and per diem rates set at the rate specified by the California Department of Human Resources (CalHR).¹
 - d. Consultant fees incurred in direct support of the Remediation Fund, and
 - e. Printing, records retention, and mailing costs incurred in direct support of the Remediation Fund.
5. The Fund Administrator agrees to maintain all supporting documentation and accounting of Remediation Fund administrative fees expended, transferred, held, or used for implementation and outreach, including all of the following:
- a. Personnel documentation must make use of timesheets or other labor tracking software. Duty statements or other documentation may also be used to verify the number of staff and actual hours or percent of time staff devoted to Remediation Fund implementation and outreach.
 - b. Fees for external consultants must be documented with copies of the consultant contract and invoices.
 - c. Printing, mailing, and travel expenses must be documented with receipts and/or invoices.
 - d. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those amounts paid to the State's represented employees. The State's travel and per diem reimbursement amounts may be found online at <http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Fund Administrator.

¹ CARB will only reimburse travel expenses and per diem rates that are set by CalHR. The Fund Administrator will be responsible for travel expenses and per diem rates that exceed CalHR rates.

6. The above documentation, records, and referenced materials must be made available for review during monitoring visits and audits by CARB, or its designee.
7. A summary of administrative fees spent must be provided to CARB in semi-annual Status Reports, and upon request. CARB may request documentation as needed in support of the summary of spending.

C. Earned Interest

1. "Earned interest" means any interest generated from Remediation Funds held in any interest-bearing accounts.
2. Interest earned by interest-bearing accounts must be reported to CARB. All interest income on the Remediation Fund, including both emission reduction project funds and administrative fee/outreach funds, must be reinvested in the Remediation Fund in a manner approved by CARB. The Fund Administrator is responsible for reporting to CARB everything that is funded with interest earned on the Remediation Fund.
3. The Fund Administrator must maintain records using generally acceptable accounting principles (e.g., general ledger) that tracks interest earned on the Remediation Fund, including as follows:
 - a. The calculation of interest must be based on an average daily balance or some other reasonable and demonstrable method of allocating the proceeds from the interest-generating account back into the Remediation Fund.
 - b. The methodology for tracking earned interest must ensure that it is separately identifiable from interest earned on non-Remediation Fund funds.
4. Documentation of interest earned on the Remediation Fund must be retained for a minimum of five (5) years on a rolling continuous basis after it is generated. Documentation of interest expended must be retained for a minimum of five (5) years after the interest has been expended, on a rolling continuous basis.
5. The above documentation must be provided to CARB upon request. CARB, may, at its sole discretion, request copies of or review any of the above documentation in advance of or after receipt of any Status Reports, and the Fund Administrator shall fully cooperate and comply will all such requests.

D. Match Funding. While funds from the Remediation Fund can be used as part of an existing incentive program, the funds cannot be used in place of any required match funding. Funds from the Remediation Fund may only be

combined with funds from other incentive programs to the extent that the emissions reductions caused by the Remediation Fund are capable of being calculated and attributed to the Remediation Fund.

V. PROJECT MONITORING

A. Meetings

1. Initial meeting. A meeting will be held between key project personnel and CARB staff before Fund administration begins. The purpose of the first meeting will be to discuss the overall plan to establish the Remediation Fund, details of performing the management of the Remediation Fund, and any issues that may need to be resolved.
2. Review meetings. Meetings to discuss progress must be held at least quarterly beginning three months after the initial meeting. Additional meetings or less frequent meetings may be scheduled at the sole discretion of the CARB MOU Liaison, but not more frequently than every quarter unless the parties mutually agree otherwise. Such meetings may be conducted in any manner deemed appropriate by the CARB MOU Liaison.
3. Site visits. Site visits shall be coordinated by the CARB MOU Liaison and the Fund Administrator Liaison during the Term of this MOU. CARB shall provide Fund Administrator at least 30 days' written notice for site visits.

B. Technical Monitoring

1. The Fund Administrator Liaison shall notify the CARB MOU Liaison in writing, immediately, if any circumstances arise (technical, economic, or otherwise), which might place continued administration and/or management of the Remediation Fund in jeopardy. The Fund Administrator shall also notify the CARB MOU Liaison if there is a change in key project personnel (see Exhibit C).
2. In addition to Status Reports, the Fund Administrator shall provide to CARB all information requested by the CARB MOU Liaison which is believed to be needed to assess progress in completing tasks and meeting the objectives of the Remediation Fund, on a form developed in consultation between CARB and Fund Administrator.

VI. DOCUMENTATION OF EXPENDITURE OF REMEDIATION FUNDS

The Fund Administrator must provide CARB with documentation accounting for the proper expenditure of funds in the Remediation Fund. The documentation must be provided in Status Reports submitted to CARB.

VII. STATUS REPORTS

- A. The Fund Administrator shall submit Status Reports on a semi-annual basis. The Status Reports shall include, at minimum, a summary of spending, earned interest information, and incentive activities funded by the Remediation Fund, including, but not limited to, recipient, type, location, and estimated emission reductions achieved. In sufficient detail to verify accuracy, the Fund Administrator shall track emission reductions achieved, as applicable, which may include NO_x, PM, ROG and/or CO₂e emissions. Status reports must also include vessel visits by port or port complex for which funds were paid into the Remediation Fund. CARB, in consultation with Fund Administrator, may specify an electronic format for Status Reports.
- B. The Status Reports must also include the following:
 1. Current status of each of the emission reduction projects that are being funded by the Remediation Fund, including:
 - a. Location of funded projects,
 - b. Current milestone(s) being achieved,
 - c. Status of funds awarded or expended,
 - d. If any match funding has been used, and
 - e. Any issues being encountered and status of the emission reduction project's timeline.
 2. Status of any outreach efforts being planned or completed since the last report, such as public engagement plans, pamphlet examples, or input summaries.
 3. Any updates or changes to the Fund Schedule.
 4. Status of data collection for each of the emission reduction projects, reports on data collected so far for each emission reduction project, and plans for future data collection efforts.
 5. An accounting of Remediation Funds being held by the Fund Administrator, including the following items:

- a. Dollars added to the Remediation Fund,
- b. Source of payments into the Remediation Fund,
- c. Dollars spent from Remediation Fund since last report,
- d. A summary of administrative spending in accordance with the MOU requirements,
- e. An accounting of earned interest in accordance with MOU requirements.

VIII. OVERSIGHT AND ACCOUNTABILITY

- A. The Fund Administrator shall comply with all oversight responsibilities identified herein below and as elsewhere specified in the MOU.
- B. Without limiting any other rights of CARB stated elsewhere in this MOU, CARB or its designee may recover and redirect the Remediation Funds to a CARB-selected trustee where such funds were received by the Fund Administrator or by any third party based upon misinformation or fraud, or where the Fund Administrator is in significant or continual non-compliance with the terms of this MOU or applicable law. CARB also reserves the right to prohibit any entity from participating in the Fund due to non-compliance with Remediation Fund requirements or due to misinformation or fraud.
- C. If the Fund Administrator detects any actual and/or potentially fraudulent activity by any Recipient or project partners in any project supported by the Remediation Fund, the Fund Administrator shall immediately notify CARB and work with CARB to determine an appropriate course of action. If necessary, the Fund Administrator may initiate enforcement efforts and support CARB-initiated enforcement efforts, including the recapturing of funds. Fund Administrator's efforts to recapture funds may be guided by circumstances such as suspected or actual fraud or misuse of funds, the amount of funding involved, or the ability of the Fund Recipient to repay the funds. To this end, the Fund Administrator shall provide CARB with any and all information, documents, data, or other material needed to investigate, support or carry out such efforts.
- D. Non-performance provisions. The Fund Administrator agrees that the following is a non-exhaustive list of the circumstances that constitute non-performance (breach) under this MOU:
 1. Failure to comply with any of the provisions of the Control Measure for remediation fund administrators, or the CARB approved guidelines of the applicable incentive programs.

2. Failure to obligate or expend Remediation Funds within established timelines, or failure to show timely interim progress to meet these timelines.
 3. Insufficient performance or widespread deficiencies with Remediation Fund oversight, enforcement, recordkeeping, contracting provisions, inspections, or any other fund element.
 4. Misuse of Remediation Funds.
 5. Funding of ineligible incentive activities or other items.
 6. Exceeding the allowable Administration Fee allotment.
 7. Insufficient, incomplete, or faulty incentive activity documentation.
 8. Failure to provide required documentation or reports requested from CARB, or other State agencies, in a timely manner.
 9. Poor performance as determined by a review, or fiscal audit.
- E. Remedies. CARB may require the Fund Administrator to do any or all of the following actions to remedy non-performance by Fund Administrator:
1. Develop and implement a corrective action plan, within thirty days of CARB's request for such plan or such longer period as agreed to by CARB at its sole discretion.
 2. Termination of the MOU and timely transfer data, records, project knowledge and remaining funds in accordance with the MOU.
 3. Immediately cease all work and spending, and notify all Recipients to immediately cease all work and spending.

IX. REMEDIATION FUND RECORDS

- A. As further described below, Remediation Fund records include but are not limited to Fund Administrator incentive records, financial records, solicitations, applications, invoices, contracts and correspondence. All Remediation Fund records must be retained as specified in this MOU. All Remediation Fund records are subject to audit pursuant to the MOU terms.
1. Fund Administrator Record. The Fund Administrator shall retain a combined file for Remediation Fund records containing:
 - a. Original executed copy of this MOU and MOU Amendments (if applicable).
 - b. All documentation of earned interest generation and expenditure per the MOU terms.

- c. Correspondence between CARB and the Fund Administrator, and correspondence between the Recipients and the Fund Administrator.
- d. Copies of all deliverables from the Recipients provided to the Fund Administrator.
- e. Copies of all decisions that CARB has made in support of emission reduction projects such as minor changes in project scope, changes in timeline, or line-item shifts.
- f. All data that has been collected during the implementation of emission reduction projects that result from use or expenditure of the Remediation Fund.
- g. All documents, files and webpages that have been created to support Remediation Fund outreach.
- h. All presentations, pamphlets, posters, videos, and other electronic media used to support the Remediation Fund.
- i. Documentation of all significant actions relative to the Remediation Fund and the Recipients' projects.

2. Financial Records

- a. Fiscal management systems and accounting standards. The Fund Administrator agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of funds deposited into the Remediation Fund to a level of expenditure adequate to establish that such funds have not been used in violation of local, state or federal law or this MOU. The Fund Administrator further agrees that it will maintain accounting records (e.g. general ledger) for the Remediation Fund in accordance with generally accepted accounting principles.
 - i. Remediation Funds are not the assets of the Fund Administrator and shall not be used, obligated, or relied upon for any purposes other than those purposes and uses set out in this MOU and the Control Measure. Remediation Funds shall not be used as collateral for or an obligation to any debt, loan or other commitments of the Fund Administrator, its officers, agents, assigns, contractors, subcontractors, Recipients, grantees, subgrantees, representatives, employees, subgrantees or affiliates. All Remediation Fund accounts shall adequately and

accurately depict all amounts received and expended in the Remediation Fund.

X. CONFIDENTIALITY AND DATA SECURITY

- A. Except as required by applicable law, court order or legal process, or as otherwise expressly authorized by this MOU, Fund Administrator shall not disclose to any third party any record, data or information which CARB has designated as confidential and provided to Fund Administrator under this MOU. It is expressly understood and agreed that information the Fund Administrator collects, generates or acquires in performing its obligations under this MOU may be deemed confidential by CARB. Fund Administrator certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this MOU for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- B. With regard to any record, data or information which CARB has designated as confidential and provided to Fund Administrator under the MOU, if Fund Administrator believes disclosure of such record, data or information may be required under the California Public Records Act or for any other purpose, the Fund Administrator shall first give CARB at least ten (10) calendar days advance written notice prior to any planned disclosure so that CARB can seek, solely at CARB's discretion, an order preventing disclosure from a court of competent jurisdiction. Fund Administrator agrees that it shall immediately notify and work cooperatively with CARB to respond timely and correctly to any and all public records requests. Fund Administrator agrees that it will not challenge or authorize or endorse any challenge to any action or request by CARB to obtain a protective order or court order to prevent the release of any information.
- C. Any information or data required to be publicly accessible by CARB is not confidential. In addition, Fund Administrator may disclose information or data to its governing board as part of public meetings, including personally identifying individuals, for the purpose of providing status updates and obtaining necessary approvals for awarding contracts under this MOU.

XI. INSURANCE REQUIREMENTS

Unless Fund Administrator is self-insured, Fund Administrator shall add the State of California as an additional insured on all insurance policies it carries in relation to this MOU during the Term of this MOU.

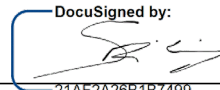
If Fund Administrator is self-insured in whole or in part, Fund Administrator shall provide CARB with written acknowledgement of this fact at the time of the execution of this MOU. CARB may require financial information to justify Fund Administrator's self-insured status. If, at any time after the execution of this MOU, Fund Administrator abandons its self-insured status, Fund Administrator shall immediately notify CARB of this fact and shall comply with all of the terms and conditions of this Section pertaining to insurance requirements.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU below:

CALIFORNIA AIR RESOURCES BOARD

SAN JOAQUIN VALLEY AIR
POLLUTION CONTROL DISTRICT



DocuSigned by:


Bonnie Soriano
Chief, Freight Activity Branch

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Samir Sheikh
Executive Director/Air Pollution Control
Officer

Date: 01/11/2024

Date: 2/6/2024

Exhibit C - Key Project Personnel

Fund Administrator: San Joaquin Valley Air Pollution Control District

Project: Remediation Fund Administration

Name	Position	Duties
Aaron Tarango	Program Manager	Administration of Incentive Programs
Brian Dodds	Program Manager	Administration of Incentive Programs
Ryan Buchanan	Director of Administrative Services	Finance
Ryan Kincaid	Controller	Finance
Annette Ballatore	District Counsel	Legal