BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division

JOSHUA H. VAN EATON (WA-39871)
BETHANY ENGEL (MA-660840)
ROBERT D. MULLANEY (CA 116441)
Trial Attorneys

U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-5474
Facsimile: (202) 514-0097
Email: Josh.Van.Eaton@usdoj.gov

Attorneys for Plaintiff United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	MDL No. 2672 CRB (JSC) **UNITED STATES' NOTICE OF AND MEMORANDUM IN SUPPORT OF ITS UNOPPOSED MOTION FOR COURT APPROVAL OF FINALIZED TRUST AGREEMENTS**
This Document Relates to: *United States v. Volkswagen AG et al.*, Case No. 16-cv-295 (N.D. Cal.)	Date: To be determined Time: To be determined Courtroom 6, 17th Floor The Honorable Charles R. Breyer

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on _____, 2017, or at such other date as may be agreed upon, in Courtroom 6 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff the United States will and hereby does move this Court to approve the finalized Environmental Mitigation Trust Agreement for State Beneficiaries ("State Trust Agreement") and the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries ("Indian Tribe Trust Agreement") that are appended to this motion as Attachments A and B.

As set forth in the memorandum in support of this motion, the Court should approve the finalized Trust Agreements because they further the purpose of the Partial Consent Decree and the Second Partial Consent Decree. Dkt. No. 2103-1 at 19, ¶17, Appendix D (Form of Environmental Trust Agreement); Dkt. No. 3228-1 at 17-19, ¶¶17-19.[1] The State of California will file a joinder in the United States' motion. Defendants do not oppose this motion. Accordingly, the United States now respectfully requests that the Court sign and enter a proposed Order approving the finalized Trust Agreements and establishing the Volkswagen Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District of Columbia ("State Mitigation Trust"), and the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries ("Indian Tribe Mitigation Trust").

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

In this motion, the United States provides the Court with two finalized Trust Agreements (see Attachments A and B) that have been approved by the United States, by the Defendants and the Trustee, Wilmington Trust, N.A. ("WTNA"), in accordance with Paragraph 17 of the Partial Consent Decree. Dkt. No. 2103-1 at 19. Because these Trust Agreements differ in certain significant respects from the

[1] In this motion, all page references to a Court document are to those pages in the header of the Court document (e.g., "Page 19 of 225").

form of the trust agreement that the Court approved as Appendix D to the Partial Consent Decree ("Appendix D"), the United States seeks Court approval of the final Trust Agreements.

Section II of this motion provides a brief background on the requirements of the Partial Consent Decree and the Second Partial Consent Decree with respect to the establishment of the Trusts. Section III briefly explains the changes that were made to the form of the trust agreement, and explains why such changes further the purpose of the Partial Consent Decree and the Second Partial Consent Decree by establishing a sound trust structure to fund Eligible Mitigation Actions proposed by the Beneficiaries to achieve reductions of nitrogen oxide ("NOx") emissions in the United States. Section IV provides notice to the Court of a pending federal indictment of Wilmington Trust Corporation ("WTC"), a second tier bank holding company that is the corporate parent of WTNA, the Trustee, and explains that, after a thorough investigation of the matter, the United States does not believe that the federal indictment of WTC jeopardizes WTNA's ability to serve as Trustee.

Both the State of California and the Defendants were parties to the negotiation of the finalized Trust Agreements and approved the changes to the form of trust agreement contemplated by Appendix D, which are reflected in the finalized Trust Agreements. Each of those changes furthers the purpose of the Trusts. The State of California, the Defendants, and the Beneficiaries do not object to WTNA continuing as Trustee. Accordingly, the United States respectfully requests the Court to enter the attached proposed Order approving the finalized Trust Agreements and establishing the State Mitigation Trust and the Indian Tribe Mitigation Trust. Because this motion is unopposed by the Defendants and the State of California has joined the motion, the United States requests the Court to approve the finalized Trust Agreements without a hearing.

II. BACKGROUND

Pursuant to the Partial Consent Decree, the Settling Defendants are required to make $2.7 billion in payments to the Trust to fulfill their environmental mitigation obligations under the Decree. Dkt. No. 2103-1 at 15, ¶14, 183 (Appendix D). Similarly, the Second Partial Consent Decree requires the Defendants to make $225 million in mitigation trust payments to the Trust. Dkt. No. 3228-1 at 17, ¶17. The Trust's funds are intended to fully mitigate the total lifetime excess NOx emissions through

environmental mitigation projects that reduce NOx emissions ("Eligible Mitigation Actions" as set forth in Appendix D-2 of the Partial Consent Decree) in places where Defendants' TDI diesel engine cars were, are or will be operated. Dkt. No. 2103-1 at 183. The Trust's purpose is to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries, which are the 50 States, Puerto Rico, the District of Columbia, and the federally-recognized Indian Tribes. Id. at 184 (Trust purpose), 207 (Appendix D-1 - list of initial allocation for Beneficiaries); Dkt. No. 3228-1 at 164 (initial 3.0 liter mitigation allocation appendix).

The Partial Consent Decree established a procedure for the selection of a trustee. Dkt. No. 2103-1 at 16-18, ¶15. After satisfying these procedural requirements, the United States requested the Court to appoint WTNA as the Trustee. Dkt. No. 2964 at 7. On March 15, 2017, the Court granted the motion and appointed WTNA. Dkt. No. 3030 at 2. Pursuant to the Partial Consent Decree, the United States negotiated with the Trustee, the State Beneficiaries, and the Defendants, and consulted with representatives of Indian Tribe Beneficiaries, to finalize the Trust Agreements. Dkt. No. 2103-1 at 18-19, ¶16. The Partial Consent Decree then requires the United States to file the finalized Trust Agreement with the Court to establish the Trust. Id. at 19, ¶17. As noted above, because the Trust Agreements attached hereto as Attachments A and B differ in certain significant respects from the form of the trust agreement that the Court approved as Appendix D to the Partial Consent Decree, the United States seeks the Court's approval of the final Trust Agreements.

Pursuant to the Partial Consent Decree, Settling Defendants made an initial deposit of $900 million in mitigation trust payments on November 22, 2016, which was deposited into the Court Registry because the Trust under the Partial Consent Decree had not yet been established. Dkt. No. 2103-1 at 15-16, ¶14.a. and d.; see also Dkt. No. 2118 at 4; Dkt. No. 2210 at 4. On June 15, 2017, Defendants, as required by the Second Partial Consent Decree, made an additional payment of $225 million into the Court Registry because the Trust had not yet been established. Dkt. No. 3228-1 at 17, ¶17.

III. OVERVIEW OF SIGNIFICANT CHANGES TO TRUST AGREEMENTS

Appendix D of the Partial Consent Decree contains a form of the Environmental Mitigation Trust

Agreement. Dkt. No. 2103-1 at 183-225. The parties contemplated that the form of the trust agreement would need to be modified after the Court appointed a trustee, and expressly provided that the United States would provide the selected trustee with an opportunity to request changes to the form of the trust agreement in Appendix D. Id. at 18, ¶16. After the Court appointed WTNA as Trustee, the United States met with the State Beneficiaries of the Trust, the Trustee, and the Defendants to discuss the terms of an agreement. During this negotiation period, the United States also contacted representatives of the National Tribal Air Association ("NTAA"), an organization with 117 principal member federally-recognized Indian Tribes, to solicit NTAA's input regarding Trust provisions pertaining to Indian Tribe Beneficiaries. After extensive negotiations, the parties reached an accord, determining that two separate trust agreements should be established. In this Section III, we provide an overview of the significant differences between the form of the trust agreement in Appendix D to the Partial Consent Decree and the finalized Trust Agreements contained in Attachments A and B to this motion.

A. The Establishment of Two Trust Agreements

Appendix D contemplated the formation of one trust to provide funds for the Beneficiaries, which include the 50 States, Puerto Rico, the District of Columbia, and the federally-recognized Indian Tribes. Dkt. No. 2103-1 at 207 (Appendix D-1 - list of initial allocation for Beneficiaries); Dkt. No. 3228-1 at 164 (initial 3.0 liter mitigation allocation appendix). During negotiations, the Trustee pointed out that different tax provisions would apply to the 50 States, Puerto Rico, and the District of Columbia than to the federally-recognized Indian Tribes. However, if one trust included all of these Beneficiaries, the States, Puerto Rico, and the District of Columbia would be subject to federal taxation on the trust's income that otherwise could be treated as tax-exempt under 26 U.S.C. § 115. As a result, the parties decided to create two separate trusts: a State Mitigation Trust to serve the States, Puerto Rico, and the District of Columbia, and an Indian Tribe Mitigation Trust to serve the Indian Tribe Beneficiaries. The creation of separate trusts required a reallocation of administrative cost subaccounts to ensure that the Indian Tribe Mitigation Trust could function as a stand-alone trust, which is now reflected in revisions to allocations to the administrative cost subaccounts in Appendices D-1 and D-1A to each Trust. See Attachment ("Att.") A and Att. B, Appendices D-1 and D-1A.

B. Elements Common to the Two Trust Agreements

The following is a summary of elements common to both Trust Agreements that differ significantly from the form of the trust in Appendix D.

1. Discretionary Trust vs. Directed Trust

Appendix D provided for the establishment of a discretionary trust in which a trustee would hire outside experts to review the Beneficiaries' funding requests and to evaluate whether the requests constituted an approvable Eligible Mitigation Action under Appendix D-2. Dkt. No. 2103-1 at 188, ¶3.1.2.5. After discussion of potential liability risks to the Trusts' assets and the potential advantages in streamlining the funding process, the parties agreed to structure each Trust Agreement as a directed trust in which each Beneficiary submits a funding request certifying that its request meets the requirements regarding Eligible Mitigation Actions in Appendix D-2. See Att. A at 25, Att. B at 28, ¶5.2. Pursuant to the Trust Agreements, the Trustee is permitted to rely on a Beneficiary's certification with no further duty of inquiry. Att. A at 26, Att. B at 29, ¶5.2.15. The EPA will have no role in determining the eligibility of funding requests, subject to the United States' general oversight role as discussed below.[2] Nevertheless, the Trust Agreements contain robust procedural safeguards to protect against fraud. The Trustee is required to have an annual independent audit prepared and posted on its website. Att. A at 10, Att. B at 11, ¶3.1.2.6. To facilitate the funding process, the parties prepared a separate funding request certification form in a new Appendix D-4 to the Trust Agreements. Id. at Appendix D-4. According to Appendix D-4, each Beneficiary must prepare a detailed budget, certify that all vendors are selected in accordance with law, identify the governmental entity responsible to audit expenditures, and commit to make all supporting documentation publicly available. Id. In addition, each funding request from a Beneficiary must be posted on the Trustee's website. Att. A. at 26, Att. B at 29, ¶5.2.14. Each Beneficiary must submit semiannual reports on the Eligible Mitigation Actions under penalty of perjury; these reports will be made publicly available on the Trustee's website. Att. A at 27, Att. B at 30, ¶5.3.

[2] The EPA will continue to administer the Diesel Emission Reduction Program (DERA) grants pursuant to 42 U.S.C. §§ 16132 and 16133 and all applicable DERA guidance, as relates to Eligible Mitigation Action #10.

Also, the United States, by and through EPA, and each Beneficiary, shall have the right upon 14 days' prior written notice to inspect the Trustee's books and records, as well as supporting documentation. Att. A at 13, Att. B at 15, ¶3.3. Finally, the United States retains the right to object to the Court about the Trustee's funding decisions. Att. A at 27, Att. B at 29, ¶5.2.16.

2. Delaware Statutory Trust

Appendix D left open whether the trust would be governed by California or Delaware law. Dkt. No. 2103-1 at 203, ¶6.3. The Trustee proposed that each Trust be established as a Delaware statutory trust, which would allow the parties to define the Trust's duties in each Trust Agreement. To establish this statutory trust under Delaware law, the parties prepared a form of a certificate of trust as a new Appendix D-5 to the Trust Agreements. See Att. A and Att. B, Appendix D-5. Consistent with Delaware law, both Trust Agreements also list the specific powers of the Trust in each Agreement (Att. A at 9-11, Att. B at 11-13, ¶¶3.1.2 - 3.1.2.19), rather than requiring the establishment of separate bylaws as originally proposed in Appendix D. Dkt. No. 2103-1 at 188, ¶3.1.2.3. To protect the interests of both the Trustee and the Beneficiaries, the Trustee is required to have an annual audit prepared by an independent auditor, which the Trustee will post on its website. Att. A at 10, Att. B at 11, ¶3.1.2.6. The Trust Agreements also include a provision allowing the United States and the Defendants to request the Trustee to provide a copy of all documents at the termination of the Trust (Att. A at 14, Att. B at 16, ¶3.3.2), and provide for termination of the Trust pursuant to Delaware law. Att. A at 35, Att. B at 37, ¶6.8.

3. Separation of Trustee and Investment Manager Roles

Appendix D assumed that a trustee would both administer the trust and manage the investment of trust funds. Dkt. No. 2103-1 at 187-189, ¶¶3.1, 3.2. In negotiations, the Trustee noted that a different standard of care applies under Delaware law for these two functions. Accordingly, the Trust Agreements provide that Wilmington Trust, N.A. is acting in two distinct roles (Att. A at 8, Att. B at 10, ¶3.0.1), and specifies the applicable standard of care for a trustee and an investment manager. Att. A at 9, Att. B at 10, ¶3.1.1; Att. A at 12, Att. B at 13, ¶3.2.2.

4. Payment of Trustee and Investment Manager

Appendix D provided for the trustee to be paid for its services on an hourly basis. Dkt. No. 2103-1 at 192, ¶3.6. The Trustee proposed a fee schedule that contained an initial start-up cost and a monthly fee for services as Trustee administrator, and a fee for investment management services that is deducted from the investment earnings on trust assets. Att. A at 17, Att. B at 19, ¶3.6. This fee schedule, which the Trustee will provide to the Beneficiaries on a secure internet site, is now referenced in the Trust Agreements. Id.

5. Insurance and Indemnification

Appendix D provided that the trustee should not be personally liable for any claim asserted against the trust except for actions or omissions determined by the court to be fraudulent, negligent, or willful misconduct by the trustee. Dkt. No. 2103-1 at 191, ¶3.5.2. Appendix D generally authorized a trustee to purchase insurance to protect against claims. Id. at 188, ¶3.1.2.6. Based on its business experience in the market, the Trustee requested that this authority to obtain insurance expressly include its officers and directors as well as tax professionals hired by the Trustee. In addition, the Trustee requested that it be provided indemnification against each Trust's administration accounts for claims unless the Court found that the Trustee's actions were fraudulent, negligent or willful misconduct. The Trust Agreements were modified to include these provisions. Att. A at 10, Att. B at 12, ¶3.1.2.8; Att. A at 15, Att. B at 17, ¶3.5.3.

6. Consequential Damages

Appendix D did not address the issue of consequential damages. In the Trust Agreements, the parties agreed to limit consequential damages claims by Beneficiaries against the Trustee to cases of fraudulent or willful misconduct, and to bar consequential damages for claims by third parties against the Trustee. Att. A at 17, Att. B at 18-19, ¶¶3.5.6, 3.5.7.

C. Elements Distinct to the Indian Tribe Trust Agreement

1. Technical Assistance Provider, Tribal Advisory Council, and Option of Consultation Motion

The United States consulted with Indian Tribes for a 60-day period after lodging the Partial Consent Decree to discuss the allocation of funds in the Tribal Allocation Subaccount of the Trust. Dkt.

No. 2103-1 at 185, ¶2.1.1. Paragraph 2.1.1.1 of Appendix D provided the United States with the option to file a consultation motion with the Court seeking approval of the allocation mechanism that resulted from the consultation period. Id., ¶2.1.1.1. During the consultation period, Indian Tribe representatives requested technical assistance in preparing funding requests and asked that a Tribal Advisory Council be established to assist the trustee in evaluating funding requests by Indian Tribes. The United States conferred with NTAA representatives, which had established a national Volkswagen settlement working group, to discuss changes to the form of the trust agreement set forth in Appendix D. In response to comments received during the consultation period, the Indian Tribe Trust Agreement includes both a technical assistance provider and a Tribal Advisory Council. Att. B at 6-8, ¶¶2.1.1.1 - 2.1.1.5; Att. B at 8, ¶2.1.4. Due to the addition of these sections to the Indian Tribe Trust Agreement, the United States did not file the optional consultation motion and deleted this provision from the Indian Tribe Trust Agreement.

2. Distribution of Tribal Allocation Subaccount

Appendix D set up a six-year period for Indian Tribe Beneficiaries to apply for funds. Dkt. No. 2103-1 at 197, ¶ 5.0.5. If funding requests from Indian Tribes exceeded the allocation for a funding cycle year ("oversubscribed"), Appendix D provided that no funds would be distributed until the following year. Id. at 198-199, ¶5.0.5.2.3. After six years, Appendix D required that any funds left in the Tribal Allocation Subaccount would be returned to the trust for reallocation to State Beneficiaries. Id. at 198, ¶5.0.5.2.1. During the consultation period, Indian Tribes objected to these requirements. In response to these objections, the Indian Tribe Trust Agreement now establishes a 10-year period for distribution of funds in the Tribal Allocation Subaccount. Att. B at 26-27, ¶¶5.0.5.2.1 - 5.0.5.2.7. Moreover, the Indian Tribe Trust Agreement includes a specific allocation method based on census figures for Indian Tribes for any oversubscribed funding cycle year. Id. at 26, ¶5.0.5.2.3.

IV. INDICTMENT OF WILMINGTON TRUST COMPANY

In August 2016, the United States Attorney for the District of Delaware filed a Third Superseding Indictment ("Indictment") of WTC and four of its executives. WTC is currently the corporate parent of the Trustee, WTNA, as a result of a merger and corporate reorganization that took

place after the period of the criminal activity alleged in the Indictment. The Indictment alleges that WTC and the individual defendants misrepresented the quality of the bank's loan portfolio to the Federal Reserve, the Securities and Exchange Commission, and to investors from the third quarter of 2009 through the third quarter of 2010. According to the Indictment, WTC raised $290 million in a securities offering in February 2009. The Indictment specifically alleges that WTC underreported its amount of "past due" loans by over $300 million during the relevant time period and in connection with the capital raise.

Counsel for the United States became aware of the Indictment of WTC after the Court appointed WTNA as the Trustee. The United States has conducted a thorough investigation, reviewing publicly available information, making detailed, specific queries of WTNA, and conferring with federal bank regulators. The United States scrutinized the current corporate structure of WTC and WTNA and their corporate structure at the time of the alleged misconduct in 2009-2010. The United States also examined the relationship of the WTNA employees who have been identified as likely to perform services for the Trusts with those accused of alleged wrongdoing in the Indictment. Based on this investigation, the United States determined that WTNA's current business lines, and those of its corporate predecessor, are not related to the business segment at issue in the Indictment. The United States found that there was no overlap between WTNA employees who have been identified as likely to perform services for the Trusts and the WTC business segment involved in the Indictment. Based on discussions with federal regulators, we believe that if WTC is convicted, any possible collateral consequences for WTNA would not affect WTNA's ability to fulfill its responsibilities under the Trust Agreements. In sum, based on this investigation, the United States has concluded that the Indictment and possible conviction of WTC will not jeopardize WTNA's ability to serve as the Trustee. The United States has disclosed its conclusion to the State of California, the Defendants, and the Beneficiaries, and none objects to WTNA continuing as Trustee.

V. CONCLUSION

For the reasons stated herein, the United States requests the Court to approve the finalized Trust Agreements (appended as Attachments A and B) and to establish the State Mitigation Trust and the

Indian Tribe Mitigation Trust. The State of California intends to file a joinder in the United States' motion. Defendants do not oppose this motion. A proposed Order has been submitted concurrently with this motion.

Dated: September 6, 2017

Respectfully submitted,

For the United States of America

BRUCE S. GELBER
DEPUTY ASSISTANT ATTORNEY GENERAL

By: */s/ Robert D. Mullaney*
Robert D. Mullaney

Joshua H. Van Eaton
Josh.Van.Eaton@usdoj.gov
Bethany Engel
Bethany.Engel@usdoj.gov
Robert D. Mullaney
Robert.Mullaney@usdoj.gov
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-5474
Facsimile: (202) 514-0097

Counsel for the United States

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	MDL No. 2672 CRB (JSC) **[PROPOSED] ORDER APPROVING TRUST AGREEMENTS AND ESTABLISHING TRUSTS**
This Document Relates to: *United States v. Volkswagen AG et al.*, Case No. 16-cv-295 (N.D. Cal.)	

Having reviewed and considered (1) the United States' unopposed motion requesting the Court to approve the Environmental Mitigation Trust Agreement for State Beneficiaries and the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries ("Trust Agreements") and to establish the Volkswagen Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District of Columbia, and the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries ("Trusts") in accordance with Paragraph 17 of the Partial Consent Decree (Dkt. No. 2103-1 at 19, ¶17), and (2) the State of California's joinder in the United States' motion, the Court:

1) **GRANTS** the United States' motion, and hereby approves the Trust Agreements and all of the terms and conditions thereof (appended to the United States' motion as Attachments A and B) and,

2) **ORDERS** that within two weeks following the date that this Order is entered by the Court, (a) the Trustee and the Settling Defendants shall execute and deliver to the United States each of the executed Trust Agreements, and (b) the United States shall file the fully executed Trust Agreements with the Court.

3) **ORDERS** that the Trust Effective Date for each Trust Agreement shall be the date that the fully executed Trust Agreements are filed with the Court. Each of the Trusts shall be established on the Trust Effective Date and shall thereafter constitute the legal, valid and binding obligations of all parties thereto. The Court directs the Trustee and the Settling Defendants to commence performance of their obligations in accordance with the terms of each Trust Agreement immediately upon the Trust Effective Date.

IT IS SO ORDERED.

Dated: _____, 2017

_____
CHARLES R. BREYER
United States District Judge

Attachment A
Environmental Mitigation Trust Agreement for State Beneficiaries

ENVIRONMENTAL MITIGATION TRUST AGREEMENT FOR STATE BENEFICIARIES

On October 25, 2016, the Court entered a Partial Consent Decree ("First Partial Consent Decree") in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, the "Settling Defendants"), the United States, and the State of California. In that case, the Court also entered a Second Partial Consent Decree (Dkt. No. 3228-1) on May 17, 2017, among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (collectively, the "Defendants"), the United States, and the State of California. Pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, the Defendants and Wilmington Trust, N.A. (the "Trustee"): (1) hereby enter into this Environmental Mitigation Trust Agreement for State Beneficiaries (i.e., for the 50 States, Puerto Rico, and the District of Columbia) (hereinafter, the "State Trust Agreement") and establish the environmental mitigation trust described herein (the "State Mitigation Trust" or "State Trust"); and (2) concurrently enter into a separate Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (i.e., for federally-recognized Indian Tribes) (hereinafter, the "Indian Tribe Trust Agreement") and establish the environmental mitigation trust described in that agreement ("Indian Tribe Mitigation Trust" or "Indian Tribe Trust"). The Defendants and the Trustee acknowledge that the purpose of the State Mitigation Trust and the Indian Tribe Mitigation Trust is to fulfill the Settling Defendants' environmental mitigation obligations under the First Partial Consent Decree and the Defendants' environmental mitigation obligations under the Second Partial Consent Decree. All payments to and expenditures from the State Mitigation Trust and the Indian Tribe Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants' environmental mitigation obligations under the First Partial Consent Decree and the Defendants' environmental mitigation obligations under the Second Partial Consent Decree, and for the costs and expenses of administering each trust as set forth in the State Mitigation Trust and the Indian Tribe Mitigation Trust. The State Mitigation Trust and the Indian Tribe Mitigation Trust shall be funded with Mitigation Trust Payments according to the terms of the First Partial Consent Decree and the Second Partial Consent Decree (jointly, the "Consent Decree"), and in accordance with the following allocation: (1) 97.99% of the Mitigation Trust Payments from the First Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.01% to the Indian Tribe Mitigation Trust; and (2) 97.7% of the Mitigation Trust Payments from the Second Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.3% to the Indian Tribe Mitigation Trust.

PURPOSE AND RECITALS

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

Whereas, the funding for the Eligible Mitigation Actions provided for in the State Trust Agreement and the Indian Tribe Trust Agreement is intended to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be operated;

Whereas, the Defendants hereby establish this State 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 State Trust Agreement in accordance with the requirements set forth in the First Partial Consent Decree; and

Whereas, the Trustee is willing to act as trustee in accordance with the terms of this State Trust Agreement;

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

I. DEFINITIONS

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

1.1 "Beneficiary" shall mean each governmental entity among the 50 States, Puerto Rico, and District of Columbia that is determined to be a Beneficiary pursuant to Section IV (State Mitigation Trust Beneficiaries).

1.2 "Business Day" means, with respect to any delivery requirement, deadline, or payment under this State Trust Agreement, each Monday, Tuesday, Wednesday, Thursday, and Friday that is not a day on which the Trustee in the State of Delaware or, as to a specific Beneficiary, a day on which that Beneficiary under this State Trust is authorized or obligated by law, regulation, or executive order to close.

1.3 "Claims" shall mean any and all losses, liabilities, claims, actions, suits, or expenses, of any nature whatsoever, including legal fees and expenses.

1.4 "Consent Decree" shall mean the First Partial Consent Decree in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), and the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

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

1.6 "Day" shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this State Trust Agreement, where the last day would fall on a Saturday, Sunday, or federal or Delaware holiday, the period shall run to the close of business of the next Business Day;

1.7 "Delaware Act" shall mean the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826.

1.8 "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. §§ 16131-16139).

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

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

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

1.12 "First Partial Consent Decree" shall mean the Partial Consent Decree entered by the Court in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), on October 25, 2016.

1.13 "Force Majeure" shall have the same meaning as in Paragraph 54 of the First Partial Consent Decree.

1.14 "Indian Land" shall mean the lands of any Indian Tribe or within Indian country.

1.15 "Indian Tribe" shall mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe as provided in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130. Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a current list of federally acknowledged Indian Tribes at 82 Fed. Reg. 4,915 (Jan. 17, 2017), which will be updated from time to time.

1.16 "Investment Manager" shall mean Wilmington Trust, N.A., acting solely in its role as the professional investment manager of Trust Assets in accordance with subparagraph 3.2.2 of this State Trust Agreement and the Investment Management Agreement entered into on the Trust Effective Date. In subparagraphs 2.2.4, 3.1.2.8, 3.5.3 (last sentence), 3.5.6, and 3.5.7 of the State Trust Agreement, each reference to the Investment Manager shall include the Investment Manager and its officers, directors, and employees.

1.17 "IRS" shall mean the Internal Revenue Service.

1.18 "Shared State and Indian Tribe Administration Costs" shall mean the costs, fees, and expenses of: (1) establishing and maintaining the Trustee's public-facing website; and (2) establishing and maintaining a secure method of internet-based communication for the Trustee and Beneficiaries.

1.19 "Start-up Costs" shall mean all fees, costs, and expenses incurred in connection with establishing the State Mitigation Trust and the Indian Tribe Mitigation Trust and setting them up for operation. Start-up costs shall not include the cost of premiums for insurance policies.

1.20 "Subject Vehicles" shall mean: (i) the "2.0 Liter Subject Vehicles," as defined in the First Partial Consent Decree in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1); and (ii) the "3.0 Liter Subject Vehicles," as defined in the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

1.21 "Tax" or "Taxes" shall mean all federal, state, and local taxes that may be imposed on the Trust by any taxing authority.

1.22 "Tax Professionals" shall mean all accountants and tax lawyers hired to assist the Trustee with the Trust's reporting obligations, tax filings, audits, and all other tax and accounting-related activities, including efforts to obtain and, if granted, maintain the IRS Private Letter Ruling as described in subparagraphs 2.1.5.1, 2.1.5.2, and 3.1.2.7, and Paragraph 6.7 of this State Trust Agreement.

1.23 "Tax Return" or "Tax Returns" shall mean all required federal, state, and local tax returns and information returns, including any returns associated with compliance with withholding and reporting requirements.

1.24 "Termination Date" shall mean the date that the State Trust terminates pursuant to Paragraph 6.8 of this State Trust Agreement.

1.25 "Trust Administration Costs" shall mean all expenditures of Trust Assets by the Trustee.

1.26 "Trust Effective Date" shall mean the date that the United States files the fully executed final version of the State Trust Agreement with the Court.

1.27 "Trustee" shall mean Wilmington Trust, N.A., acting solely in its role as the Trustee of this State Mitigation Trust as appointed in accordance with Paragraph 3.0, or a successor trustee pursuant to subparagraph 3.7.2. In subparagraphs 2.2.4, 3.1.2.8, 3.5.2, 3.5.3, 3.5.6, and 3.5.7 of this State Trust Agreement, each reference to the Trustee shall include the Trustee and its officers, directors, and employees.

1.28 "United States" shall mean the United States of America, acting on behalf of the U.S. Environmental Protection Agency ("EPA").

II. STATE MITIGATION TRUST

2.0 Establishment of the State Mitigation Trust

2.0.1 Irrevocable Establishment. The Defendants hereby and irrevocably establish this State Mitigation Trust on behalf of the Beneficiaries in the form of a statutory trust under the Delaware Act, which shall bear the name "Volkswagen Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District of Columbia." In connection with the Trustee's power hereunder, the Trustee may use this name or a variation thereof. The Trustee is hereby authorized and directed to execute and

file a Certificate of Trust for the State Mitigation Trust in the form attached hereto as Appendix D-5. The Trustee hereby accepts and agrees to hold the assets owned by the State 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 State Mitigation Trust in accordance with this State Trust Agreement and the Consent Decree.

2.0.3 Trust Purpose. It shall be the purpose of the State Mitigation Trust to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this State Trust Agreement, and to provide funds for the administration and operation of this State Trust in accordance with this State 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 State Trust Account. Within 15 Days following the Trust Effective Date, the Trustee shall establish a trust account ("State Trust Account"), and file with the Court a designation and identification of the State Trust Account. The purpose of the State Trust Account shall be to receive deposits from the Defendants (directly or through the Court Registry) pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, to hold them in trust, to receive income and gains from any investment of Trust Assets (collectively, "Trust Funds"), and to make disbursements to fund Eligible Mitigation Actions by Beneficiaries and to pay Trust Administration Costs, all in accordance with the Consent Decree and this State Trust Agreement. Disbursements shall be directed by each Beneficiary pursuant to a Beneficiary Eligible Mitigation Action Certification (Appendix D-4) delivered to the Trustee in accordance with Paragraph 5.2. Unless otherwise agreed by the parties to the Consent Decree ("Consent Decree Parties"), the State Trust Account shall be the only account that may be used for these purposes.

2.0.4.1 State Trust Account Divisions. The State 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 State Trust Agreement.

2.1 Funding of the State Mitigation Trust: The Settling Defendants shall fund the State Mitigation Trust as required by the First Partial Consent Decree, and the Defendants shall fund the State Mitigation Trust as required by the Second Partial Consent Decree. The Trustee shall allocate to the State Mitigation Trust the following amounts: (1) 97.99% of the Mitigation Trust Payments from the First Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account, and (2) 97.7% of the Mitigation Trust Payments from the Second Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account.

2.1.1 Intentionally Reserved.

2.1.1.1 Intentionally Reserved.

2.1.1.2 Intentionally Reserved.

2.1.1.3 Intentionally Reserved.

2.1.1.4 Intentionally Reserved.

2.1.1.5 Intentionally Reserved.

2.1.2 Intentionally Reserved.

2.1.3 Funding of the Trust Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the State Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall fund a subaccount to pay for Trust Administration Costs ("Trust Administration Cost Subaccount") by transferring into it from the State Trust Account the funds allocated to the Trust Administration Cost Subaccount in accordance with Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). 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 State Trust Agreement. No additional Trust Assets may be directed to the Trust Administration Cost Subaccount, or to the payment of Trust Administration Costs, other than investment earnings on the Trust Administration Cost Subaccount, absent further order of the Court.

2.1.3.1 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 as set forth in Appendices D-1 and D-1A. 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 in place at the time such costs are incurred. Pursuant to Paragraph 3.6, the State Mitigation Trust shall pay 98% of the Trustee's Start-up Costs, and shall pay 98% of the Shared State and Indian Tribe Administration Costs. These costs shall be allocated to each Trust Administration Cost Subaccount consistent with the weighted average allocation rates set forth in Appendix D-1B.

2.1.3.2 Intentionally Reserved.

2.1.4 Intentionally Reserved.

2.1.5 Tax Payment Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the State Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall deduct an amount equal to the estimated taxes owed on earnings of the Trust Funds while on deposit in the Court Registry that have been allocated to the State Mitigation Trust pursuant to Paragraph 2.1. The amount of the deduction shall be based on applicable income tax withholding and reporting requirements, and consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. Such amount shall be deposited into a dedicated, non-interest bearing account ("Tax Payment Subaccount"). In addition, prior to the allocation of any investment income pursuant to subparagraph 3.2.3, the Trustee shall deduct an amount equal to the estimated taxes owed on such earnings and deposit that sum into the Tax Payment Subaccount. The amounts in this Tax Payment Subaccount shall be used for the express purpose of paying all applicable taxes with respect to the State Trust in a manner consistent with Paragraph 6.7. If at any time the funds on deposit in this Tax Payment Subaccount are insufficient to pay all Taxes then due and owing, the Trustee shall seek to resolve any dispute pursuant to the dispute resolution procedures of Paragraph 6.2.

2.1.5.1 Within 30 Days of receipt of a Private Letter Ruling from the IRS determining that all investment income earned on the Trust Assets is excludible from gross income under Section 115 of the Internal Revenue Code, 26 U.S.C. § 115, the Trustee shall allocate all amounts held in the Tax Payment Subaccount to the Beneficiaries, consistent with the allocation rates included in Appendix D-1B.

2.1.5.2 Upon receipt of a Private Letter Ruling from the IRS, which determines that all or a portion of the investment income earned on the Trust Assets is not excludible from gross income under Section 115 of the Internal Revenue Code, 26 U.S.C. § 115, the Trustee shall pay any additional taxes owed from the Tax Payment Subaccount. Within 30 Days of receipt of such a letter ruling, the Trustee shall amend its calculation of estimated taxes and deposits to the Tax Payment Subaccount to reflect the proportion of investment income that is determined to be taxable by the IRS.

2.1.5.3 Within 120 Days of each tax-year end, the Trustee shall reconcile the amount of taxes owed and paid from the Tax Payment Subaccount, if any, and return all remaining amounts in the Tax Payment Subaccount to the Beneficiaries, consistent with the allocation rates included in Appendix D-1B. All overpayments of estimated taxes or refunds of taxes paid by, or on behalf of, the Trust shall be allocated to the Beneficiaries consistent with the allocation rates included in Appendix D-1B.

2.1.5.4 Pursuant to the secure internet-based communication established in Paragraph 6.0, the Trustee shall provide the Beneficiaries a copy of all communications from the IRS related to the payment or non-payment of taxes within 15 Days of receipt.

2.2 Trust Limitations

2.2.1 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 State Mitigation Trust.

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

2.2.3 This State Mitigation Trust is irrevocable. The 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 Defendants to fund the State Trust pursuant to the terms of the Consent Decree, (ii) shall not have any liabilities or funding obligations with respect to the State Trust (to the Trustee, the Beneficiaries or otherwise) other than the funding obligations expressly set forth in the Consent Decree, and (iii) shall not have any liability or obligation to pay tax on any income or gains from any investments of Trust Assets. Nor shall the Defendants have any rights or role with respect to the management or operation of the State Trust, or the Trustee's approval of requests for Eligible Mitigation Action funding.

2.2.4 Exculpation. Neither the Trustee and its officers, directors, and employees, the Investment Manager and its officers, directors, and employees, the Tax Professionals nor the State Mitigation Trust shall have any liability whatsoever to any person or party for any liability of the Defendants; provided, however, that the State Mitigation Trust shall be liable to the Beneficiaries for funding of Eligible Mitigation Actions in accordance with the terms of this State Trust Agreement and the Consent Decree.

III. TRUSTEE RESPONSIBILITIES

3.0 Appointment: Pursuant to Paragraph 15.e. of the First Partial Consent Decree, the Court appointed Wilmington Trust, N.A., as Trustee of the Environmental Mitigation Trust. Dkt. No. 3030 at 2. Wilmington Trust, N.A., not individually but in its representative capacity as Trustee, is hereby appointed to serve as the Trustee to administer the State Mitigation Trust in accordance with this State Trust Agreement and the Consent Decree. The Trustee hereby accepts such appointment and agrees to serve, commencing on the Trust Effective Date, in such capacity to the State Mitigation Trust and for the benefit of the Beneficiaries.

3.0.1 Wilmington Trust, N.A. is acting in two separate and distinct roles under the State Mitigation Trust: (1) as the Trustee of the State Mitigation Trust; and (2) as the Investment Manager of the Trust Assets. These roles are subject to different standards of

care. Wilmington Trust, N.A., acting as Trustee, is subject to the standard of care set forth in subparagraphs 3.1.1 and 3.5.2. In its role as Investment Manager, Wilmington Trust, N.A. is subject to the standard of care set forth in subparagraph 3.2.2.

3.1 Powers of the Trustee

3.1.1 Except as set forth in this State Trust Agreement, the Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the State Mitigation Trust, which shall be exercised in an efficient and expeditious manner in furtherance of and in a manner consistent with the purposes of this State Trust Agreement and the Consent Decree. Subject to the limitations on liability set forth in subparagraph 3.5.2, the Trustee shall act in accordance with the current professional standards of care and with the diligence, skill, and care expected for the administration of such a Trust. The Trustee shall have only such duties, rights, powers, and privileges expressly set forth in the Consent Decree, this State Trust Agreement, and as otherwise provided by the Delaware Act. No implied duties (including fiduciary duties) shall be read into this State Trust against Wilmington Trust, N.A., acting as the Trustee.

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, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 of this State Trust Agreement or to engage a professional investment manager ("Investment Manager") to receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 for the benefit of the Beneficiaries. The Trustee appoints Wilmington Trust, N.A. as the Investment Manager for the State Mitigation Trust pursuant to an Investment Management Agreement entered into on the Trust Effective Date to manage the Trust Assets in accordance with Paragraph 3.2;

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

3.1.2.3 To establish and maintain a secure method of internet-based communications for the use of the Trustee and the Beneficiaries;

3.1.2.4 To hold title to property in the name of the Trustee in its capacity as such;

3.1.2.5 To incur, and pay from the Trust Administration Cost Subaccount, any and all customary and commercially reasonable charges and expenses upon or connected with the administration of this State Mitigation Trust in the discharge of its obligations hereunder, including 98% of Start-up Costs and 98% of Shared State and Indian Tribe Administration Costs;

3.1.2.6 To engage and compensate professionals to assist the Trustee in accordance with this State Trust Agreement, including, but not limited to, legal, environmental, investment, accounting, tax, website, and third-party auditing professionals, or internet service providers, or insurance providers. 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. The Trustee shall have an annual independent audit prepared and posted on the website. In its sole discretion, the United States may waive the requirement of an annual audit starting in year ten or at an earlier time in order to preserve Trust Funds;

3.1.2.7 To engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS: (1) that the State Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; (2) that all investment income earned on the Trust Assets will be excludible from gross income under Section 115 of the Internal Revenue Code, 26 U.S.C. § 115; and (3) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the rulings in (1) and (2) or otherwise prudent to clarify an uncertain application of federal tax law to the State Mitigation Trust, and to take such actions as may be reasonably necessary to secure such ruling and to ensure that the State Trust continues to comply with such ruling upon the advice of the Tax Professionals;

3.1.2.8 To purchase any insurance policies as the Trustee may determine to be prudent to protect the State Mitigation Trust, the Trust Assets, the Trustee and its officers, directors, and employees, Wilmington Trust, N.A., in its role as Investment Manager, and its officers, directors, and employees, and to cover Tax Professionals, if required, from any and all Claims that might be asserted against each;

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

3.1.2.10 To file documents in Court on behalf of itself and the State Trust;

3.1.2.11 To make all necessary state and federal filings and to provide information as required by law;

3.1.2.12 To vote shares or other investments;

3.1.2.13 To open or maintain any additional bank accounts, or close bank accounts or open securities accounts as are necessary or appropriate to manage the Trust Assets;

3.1.2.14 To apply, as soon as practicable after the Trust Effective Date, for an employer identification number for the State Trust pursuant to IRS Form SS-4, and in accordance with Treasury Regulation Section 1.468B-2(k)(4), 26 C.F.R. § 1.468B-2(k)(4);

3.1.2.15 To deduct and withhold from allocation of investment earnings to the Beneficiaries under subparagraph 3.2.3 all Taxes that the Trustee may be required to deduct and withhold under any provision of tax law, and any allocation of investment income under subparagraph 3.2.3 to a State Trust subaccount shall be reduced to the extent such withheld amounts are remitted to the appropriate taxing authority;

3.1.2.16 To file on behalf of the State Trust all required Tax Returns, which shall be completed in consultation with Tax Professionals, ensure compliance with withholding and reporting requirements, and pay any and all Taxes, including estimated Taxes, due and owing with respect to the State Trust from amounts in the Tax Payment Subaccount pursuant to subparagraph 2.1.5; and

3.1.2.17 Subject to applicable requirements of this State Trust Agreement (including the limitations on liability set forth in subparagraph 3.5.2), 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 State Mitigation Trust in accordance with this State Trust Agreement and the Consent Decree, each in accordance with its duties and the current professional standards of care, and with the diligence, skill, and care expected for the administration of such a State Trust for the benefit of the governmental entities identified in Appendix D-1 and Appendix D-1A.

3.1.2.18 Duty to Comply with Law. The Trustee shall not be required to take any action that would violate a law or regulation to which it is subject.

3.1.2.19 Relation-Back Election. If applicable, the Trustee and the Defendants shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), 26 C.F.R. § 1.468B-1(j)(2), to treat the State Trust as coming into existence as a settlement fund as of the earliest possible date.

3.2 Investment of Trust Assets: The Trustee shall engage the Investment Manager to 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 State 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 or Investment Manager must perform its duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that 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. The Investment Manager shall comply with all applicable laws and shall be held to a fiduciary standard of care with respect to the investment and reinvestment of the principal and income of Trust Assets; except that the right and power of the Investment Manager 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 State 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. The determination of the rating of any investments made by the Investment Manager shall be made on the date of acquisition of any such investment or on the date of re-investment. The Investment Manager shall reconfirm that all investments of Trust Assets still meet the original rating requirement on a quarterly basis. If the Investment Manager determines that any particular investment no longer meets the rating requirement, the Investment Manager shall substitute that investment with an investment that meets the ratings requirement as promptly as practicable, but in no event later than the next reporting period. Previously purchased securities downgraded below AA may be held for a reasonable and prudent period of time if the Investment Manager believes it is in the interest of the State Trust to do so. The borrowing of funds or securities for the purpose of leveraging, shorting, or other investments is prohibited. Investment in non-U.S. dollar denominated bonds is prohibited. This subparagraph 3.2.2 shall act as a standing default investment instruction for all cash in any account or subaccount that holds any Trust Assets in cash, which shall be invested in The Blackrock Fed Fund (CUSIP 09248U809). Except for actions or omissions of the Investment Manager that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, the Investment Manager and its officers, directors, or employees shall have no liability for any and all Claims.

3.2.3 Allocation of Investment Income. Any and all earnings, interest, and other investment income realized on the investment of the Trust Assets shall be allocated to each State Trust subaccount on the basis of the respective subaccount balances at the end of each month. Any and all earnings, interest, and other investment income realized on the investment of the assets held in the Trust Administration Cost Subaccount shall be allocated to each administration subaccount on the basis of the respective administration subaccount balance at the end of each month.

3.2.4 Nothing in this Section shall be construed as authorizing the Trustee to cause the State 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 State 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 State 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 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 State 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 February 15 (for the preceding six-month period of July 1 to December 31) and August 15 (for the preceding six-month period of January 1 to June 30) of each year, and then at least 30 Days prior to the filing of a motion to terminate pursuant to Paragraph 6.8 hereof (each a "Financial Reporting Date"), the Trustee shall file with the Court and provide each Beneficiary and the Defendants with:

3.3.1.1 A statement: (i) confirming the value of the Trust Assets; (ii) itemizing the investments then held by the State 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 State 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 State Trust 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 2.1.3.1;

3.3.1.4 For the State 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 State 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 the Trustee's prior budget projections for Trust Administration Costs to actual performance;

3.3.1.6 A description of any previously unreported action taken by the State Trust in performance of its duties which, as determined by the Trustee, counsel, accountants, or other professionals retained by the Trustee, affects the State Trust in a materially adverse way;

3.3.1.7 A brief description of all actions taken in accordance with this State Trust 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 State Trust's public-facing website all information required to be provided under Paragraph 3.3.

3.3.2 After the Termination Date, the Trustee intends to destroy all records retained pursuant to this State Trust Agreement. The Trustee shall notify the United States and the Defendants at least 90 Days prior to the destruction of the records. Upon request by the United States or the Defendants, the Trustee shall deliver any such records to EPA or the Defendants, respectively.

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. This provision does not prevent Wilmington Trust, N.A. from acting as the Investment Manager.

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 and Standard of Care for the Trustee. In no event shall the Trustee be held personally liable for any and all Claims asserted against the Trustee and/or State Mitigation Trust except for actions or omissions of the Trustee that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Trustee. The Trustee shall not be held personally liable for carrying out the express terms of this State Mitigation Trust or carrying out any directions from the Beneficiaries or the United States issued in accordance with this State Trust Agreement or in accordance with any Court Order entered in connection with or arising out of the State Mitigation Trust. The Trustee shall not be held personally liable for any failure or delay in the performance of its obligations hereunder arising from causes beyond the control of the Trustee ("Force Majeure"). 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 final, non-appealable judgment of the Court determining fraud, negligence, or willful misconduct on the part of the Trustee in following such advice. The Trustee shall not be held liable for the negligence, fraud, or willful misconduct of any professional hired by it hereunder provided that the Trustee appointed and engaged the professional with due care. In the absence of willful misconduct, negligence, or fraud by the Trustee, as determined by a final, non-appealable judgment of the Court, the Trustee shall not be personally liable to persons seeking payment from or asserting any and all Claims against the State Mitigation Trust or the Trustee. The Trustee, which is a trustee of this State Trust that has been established under the Delaware Act, shall only be held to the standards of care set forth in this subparagraph 3.5.2; the standards of common law trust laws or the personal trust laws of any state shall not apply in any circumstances hereunder.

3.5.2.1 Limitation of Liability for Tax Professionals. In no event shall the Tax Professionals engaged by the Trustee to assist it with the administration of the State Mitigation Trust be held personally liable for any and all Claims asserted against them except for actions or omissions of the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Tax Professionals.

3.5.3 Indemnification. Except for actions or omissions of the Trustee, the Investment Manager, and the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee, the Investment Manager, or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification from the Trust Assets, solely as provided in this subparagraph 3.5.3, to hold

them harmless against any and all Claims brought against any of them arising out of or in connection with the acceptance or administration of their duties under this State Mitigation Trust, including any and all Claims in connection with enforcing their rights hereunder and defending themselves against any and all Claims. In asserting any indemnification claim against Trust Assets pursuant to this subparagraph 3.5.3, the Trustee, the Investment Manager, and the Tax Professionals shall first seek to recover the amount by asserting a claim against the Trustee's insurance policies purchased pursuant to subparagraph 3.1.2.8 to protect the Trustee, the Investment Manager, and the Tax Professionals hired hereunder against any and all Claims. With respect to any and all amounts that: (1) are not fully and timely paid to the Trustee, the Investment Manager, or the Tax Professionals pursuant to the insurance policies purchased pursuant to subparagraph 3.1.2.8, and (2) are not determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee or the Investment Manager or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification solely from the portion of Trust Assets in (1) the Trust Administration Cost Subaccount established pursuant to subparagraph 2.1.3; and (2) the investment earnings on the Trust Administration Cost Subaccount. Any indemnification amounts shall constitute Shared Administration Costs under subparagraph 2.1.3.1. Indemnification under this subparagraph 3.5.3 covers only the amounts not fully and timely paid or covered by insurance policies purchased pursuant to subparagraph 3.1.2.8. The Trustee, the Investment Manager, and the Tax Professionals shall reimburse the State Mitigation Trust for any amount advanced to them or paid from the Trust Administration Cost Subaccount for any Claim if any proceeds are paid on such Claim from insurance policies purchased pursuant to subparagraph 3.1.2.8. If insurance payments are denied in whole or part, the Trustee shall confer with legal counsel and consider whether to affirmatively pursue such insurance payments including, without limitation, an insurance coverage suit arising out of a wrongful denial of coverage. For the avoidance of doubt, subparagraphs 3.5.2, 3.5.2.1, and 3.5.3 do not create for the State Mitigation Trust, the Trustee, the Investment Manager, and the Tax Professionals hired hereunder any express or implied right to indemnification from any Consent Decree Party for any and all Claims asserted against the Trustee, the State Mitigation Trust, the Investment Manager, or the Tax Professionals, and no Consent Decree Party shall be liable for any and all Claims asserted against the Trustee, the State Mitigation Trust, the Investment Manager, or Tax Professionals.

3.5.4 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. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the Beneficiaries, including the Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3) and each Beneficiary Eligible Mitigation Action Certification form (Appendix D-4). The Trustee shall have no duty to monitor or supervise the use of Trust Funds paid in accordance with Beneficiary Eligible Mitigation Action Certification and Funding Direction forms or any Beneficiary's compliance with an Eligible Mitigation Action.

3.5.5 Right to Demand Documentation. Notwithstanding anything else in this State Trust 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 State 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.

3.5.6 Limitation on Consequential Damages. Unless the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have engaged in fraudulent or willful misconduct, the United States or any Beneficiary of the State Mitigation Trust shall not have any right to recover, and the State Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals shall not be liable for, any special, indirect, punitive, or consequential loss or damages, of any kind whatsoever, against the State Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals. When the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have been negligent, any and all Claims by the United States or any Beneficiary of the State Mitigation Trust shall be limited to direct damages.

3.5.7 No Consequential Damages. In no event shall the Trustee, the Investment Manager, the Tax Professionals, or the State Mitigation Trust be held responsible or liable for special, indirect, punitive, or consequential loss or damages of any kind whatsoever in connection with any and all Claims brought against them by any third party.

3.6 Payment of Trust Administration Costs: Subject to the limits set forth in Appendix D-1 and Appendix D-1A, the State 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 State Trust, including payment of professionals hired in connection with the duties and responsibilities of the State Trust, payment of insurance premiums for policies purchased pursuant to subparagraph 3.1.2.8, payment of a deductible incurred under an insurance policy for the State Trust, Trustee, Investment Manager, or Tax Professionals hired hereunder purchased pursuant to subparagraph 3.1.2.8 in cases in which the State Trust, Trustee, Investment Manager, or Tax Professionals would be entitled to indemnification under subparagraph 3.5.3, and any indemnification amounts as provided in accordance with subparagraph 3.5.3. The Trustee also shall be entitled to receive reasonable compensation for services rendered on behalf of the State Mitigation Trust, in accordance with the projected annual budgets for administration of the State Mitigation Trust required under subparagraph 3.3.1 hereof, and shall be entitled to pay itself from the Trust Administration Cost Subaccount its initial fee and its annual administration fee as set forth in its fee letter dated as of the Trust Effective Date ("Trustee Fee Letter"). The Trustee shall provide a copy of the Trustee Fee Letter to each Beneficiary via the secure internet site established by the Trustee pursuant to subparagraph 3.1.2.3. The State Mitigation Trust shall pay from the Trust Administration Cost Subaccount 98% of Start-up Costs and 98% of Shared State and Indian Tribe Administration Costs, which shall be allocated

to each Trust Administration Cost Subaccount consistent with the weighted average allocation rates set forth in Appendix D-1B. Notwithstanding the foregoing, the total amount of allowable Trust Administration Costs shall not exceed the specific allocation established for the Trust Administration Cost Subaccount in Appendix D-1 and Appendix D-1A, plus any and all earnings, interest, and other investment income realized on the investment of the assets held in the Trust Administration Cost Subaccount. The Trustee shall not use the Trust Administration Cost Subaccount to pay: (1) the fees and expenses of the Investment Manager; or (2) any and all Taxes due and owing with respect to the State Trust. In accordance with the terms of the Investment Management Agreement, the Investment Manager's fees and expenses shall be deducted directly from the investment earnings on the Trust Assets, and not from the corpus of the Trust Assets. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established in subparagraph 2.1.5. The Trustee shall include in its semi-annual reporting, and post on its public-facing website, all Trust Administration Costs (including the costs and descriptions of the Trustee's services rendered on behalf of the State Trust) at least 15 Days prior to the payment of any such expense; provided, however, that the requirement to post all Trust Administrative Costs at least 15 Days prior to payment shall first take effect when the website is established and ready for use, and shall not initially apply to Start-up Costs and to Shared State and Indian Tribe Administration Costs. After the Trust Administration Cost Subaccount is funded pursuant to subparagraph 2.1.3, the Trustee, after receipt of invoices from any third party service providers, shall pay as promptly as practical any and all fees, costs, and expenses incurred by the Trustee to establish the State Mitigation Trust including, but not limited to: (1) the invoices of third party service providers (e.g., legal, accounting, website developer, and hosting provider); (2) fees, costs, and expenses necessary to commence the operations of the State Trust (e.g., Intralinks, Pacer, and insurance premiums); and (3) the Trustee's acceptance fee and first quarter portion of the Trustee's annual fee for the first year. All Trust Administration Costs that are paid prior to the establishment of the website shall be posted on the website as promptly as practicable after the website is established. Such information 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 State Mitigation Trust and the Beneficiaries will terminate on the Termination Date.

3.7.2 Resignation of Trustee and Successor Trustee. The Trustee may commence the resignation process at any time by providing 90 Days' notice to the United States, the Defendants, and the Beneficiaries. Resignation of the Trustee shall only be effective upon: (i) selection of a successor pursuant to the procedures set forth in the First Partial 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 State 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 ceases to exist or ceases to operate its corporate trust business, 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 First Partial Consent Decree. Any successor Trustee appointed hereunder shall file an amendment to the Certificate of Trust as required by the Delaware Act.

IV. STATE MITIGATION TRUST BENEFICIARIES

4.0 Determination of Beneficiary Status: The States, Puerto Rico, and the District of Columbia may elect to become a Beneficiary hereunder by filing with the Court a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (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. At the time of filing the Certification Form with the Court, the States, Puerto Rico, and the District of Columbia shall also provide a copy of the Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1. Each governmental entity that timely files such certifications shall be a "Certifying Entity." Each governmental 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.

4.0.1 Notice of Objection. If the United States determines that a certification filed by any Certifying Entity fails to comply with the requirements of this Section, the United States 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 Paragraph 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 did not timely file the certifications pursuant to Paragraph 4.0. Each such governmental 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: After being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, each Beneficiary, not later than 30 Days prior to submitting its first funding request pursuant to Paragraph 5.2, 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. The Trustee has no duty to monitor or supervise any Beneficiary's compliance with its 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 in Appendix D-3

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Certification Form (Appendix D-3) 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 State, Puerto Rico, or the District of Columbia 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 governmental 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 State Trust 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 State 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 (Appendix D-3) must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this State Trust 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 State Trust Agreement in accordance with its terms.

4.2.3 Certification of Legal Authority. Each Certification Form (Appendix D-3) 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 (Appendix D-3) must include a certification and agreement that, in connection with all actions related to this State 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 (Appendix D-3) 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 (Appendix D-3) 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 Defendants) of all claims for injunctive relief to redress environmental injury caused by the 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.

4.2.7 Publicly Available Information. Each Certification Form (Appendix D-3) 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 the 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 (Appendix D-3) 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 State Trust 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. For the U.S. Department of the Interior and the U.S. Department of Agriculture, Beneficiaries may provide notice as required by this subparagraph to the following:

Department of the Interior:

National Park Service, Air Resources Division
VW Settlement
P.O. Box 25287
Denver, CO 80225-0287
Or via email to: vwsettlement@nps.gov.

Tim Allen or other designated representative
U.S Fish and Wildlife Service
National Wildlife Refuge System
Branch of Air Quality
Re: VW Settlement
7333 W. Jefferson Ave., Suite 375
Lakewood, CO 80235-2017
Or via email to: VW_Settlement@fws.gov

Department of Agriculture:

Linda Geiser or other designated representative
National Air Program Manager
lgeiser@fs.fed.us
(202) 756-0068

Bret Anderson or other designated representative
National Air Modeling Coordinator
baanderson02@fs.fed.us
(970) 295-5981

4.2.9 Registration of Subject Vehicles. Each Certification Form (Appendix D-3) must state, for the benefit of the parties to the Consent Decree (including the Defendants) and the owners from time-to-time of 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, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or Emissions Compliant Recall based solely on:

i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or

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

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

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

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Certifying Entity by the 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, 42 U.S.C. §§ 7543, 7507, and not explicitly excluded in subparagraphs 4.2.9(a)-(b).

V. DISTRIBUTION OF STATE MITIGATION TRUST ASSETS

5.0 Initial Allocation: Each State, Puerto Rico, and the District of Columbia shall have the right under this State Trust Agreement, upon becoming a Beneficiary pursuant to Section IV (State Mitigation Trust Beneficiaries), to request its share of Eligible Mitigation Action funds in

accordance with the weighted average allocation rates set forth in Appendix D-1B ("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 of this State Mitigation Trust, in accordance with the weighted average allocation rates set forth in Appendix D-1B, but excluding the Excluded Entities, the Tribal Trust Allocation, and the Tribal Administration Cost Subaccount ("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 State 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 State 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. Ninety-Seven and Ninety-Seven/One Hundredths (97.97) percent of any "National Mitigation Trust Payment" made pursuant to Section VI (Recall Rate) of Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall Program) of the First Partial Consent Decree or Section X (Recall Rate) of Appendix A (Buyback, Lease Termination, Vehicle Modification, and Emissions Compliant Recall Program) of the Second Partial Consent Decree shall be allocated among all Beneficiaries (other than California) of this State Mitigation Trust and the Trust Administration Cost Subaccount, in accordance with the weighted average allocation percentages in Appendix D-1C. Any "California Mitigation Trust Payment" made pursuant to Appendix A of the First Partial Consent Decree or the Second Partial Consent Decree shall be allocated as follows: 99.86% to California and 0.14% to the Trust Administration Cost Subaccount.

5.0.4 Allocation of Appendix B Mitigation Trust Payments. Ninety-Seven and Ninety-Seven/One Hundredths (97.97) percent of any Mitigation Trust Payments made pursuant to Appendix B (Vehicle Recall and Emissions Modification Program) of the First Partial Consent Decree or Appendix B (Vehicle Recall and Emissions Modification Program for 3.0 Liter Subject Vehicles) of the Second Partial Consent Decree or any Consent Decree provisions related thereto shall be allocated among all Beneficiaries of this State Mitigation Trust and to the Trust Administration Cost Subaccount, weighted in accordance with the Final Allocation Rates.

5.0.5 Intentionally Reserved:

5.0.5.1 Intentionally Reserved.

5.0.5.2 Intentionally Reserved.

5.0.5.2.1 Intentionally Reserved.

5.0.5.2.2 Intentionally Reserved.

5.0.5.2.3 Intentionally Reserved

5.0.5.2.4 Intentionally Reserved.

5.0.5.2.5 Intentionally Reserved.

5.0.5.2.6 Intentionally Reserved.

5.0.5.2.7 Intentionally Reserved.

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 in Appendix D-2.

5.2 Funding Requests: Beneficiaries may submit requests for Eligible Mitigation Action funding at any time by filing with the Trustee a Beneficiary Eligible Mitigation Action Certification form (Appendix D-4), containing each of the certifications required by subparagraphs 5.2.1 through 5.2.13, as applicable. 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 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 If applicable, 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 support for 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 State Trust's public-facing website upon receipt.

5.2.15 Reliance on Form. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any Beneficiary Eligible Mitigation Action

Certification form (Appendix D-4) reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

5.2.16 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this State Trust Agreement and its Appendices. If a Beneficiary submits multiple pending Eligible Mitigation Action funding requests that exceed the allocated funds available to the Beneficiary, the Trustee shall contact the Beneficiary for direction regarding the allocation and timing of payments for each such request. Within 60 Days after receipt of each Eligible Mitigation Action funding request, the Trustee shall transmit to the requesting Beneficiary and post on the State 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 or Appendix D-4. 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.

5.2.16.1 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, unless such date is not a Business Day and then the payment shall be made on the next succeeding Business Day.

5.2.17 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 State 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 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, each Beneficiary shall submit to 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 Paragraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the State 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 EPA, and to each Beneficiary, and publish on its public-facing 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 Paragraph 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 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 State 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 State Trust. After the fifteenth anniversary of the Trust Effective Date, any Trust Assets held in the State Trust Account or any subaccount (including, but not limited to, the Trust Administration Cost Subaccount) that are not needed for final Trust Administration Costs shall be deemed to have been donated by the State 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 Federal Agencies exist, the United States will file a motion, with notice to the Defendants and the Beneficiaries, requesting the Court to order that any Trust Assets held in the State Trust Account (or any subaccount thereof) be distributed either to a governmental unit or to another trust, the income of which is excluded from gross income under the provisions of Internal Revenue Code Section 115, 26 U.S.C. § 115.

VI. MISCELLANEOUS PROVISIONS

6.0 Correspondence with State Trust: In accordance with subparagraph 3.1.2.3, the Trustee shall establish and maintain a secure method of internet-based communications for the use of the Trustee and the Beneficiaries that will: (1) enable each Beneficiary to deliver the required documentation under this State Trust Agreement in an electronic format; (2) enable secure communications between the Trustee and each Beneficiary; and (3) provide each Beneficiary with access to its own document base. In addition, each Beneficiary will have the ability to view its own balance in its individual subaccount via the Wilmington Trust Online Portfolio product or a similar product then in use.

6.0.1 Addresses for Delivery of Physical Copies of Documentation and Notices.

State Trust or Trustee:

Volkswagen Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District of Columbia
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Attn: Capital Markets & Agency Services
Wilmington, DE 19890
Facsimile: 302 636-4145

EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460
E-mail: VW_settlement@epa.gov

U.S. Department of Justice:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11386

Defendants:

As to Volkswagen AG by mail:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Audi AG by mail:

Audi AG
Auto-Union-Strasse 1
85045 Ingolstadt, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.

2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America, Inc. by mail:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America Chattanooga Operations, LLC by mail:

Volkswagen Group of America Chattanooga Operations, LLC
8001 Volkswagen Dr.
Chattanooga, TN 37416
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Dr. Ing. h.c. F. Porsche AG by mail:

Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Porscheplatz 1

D-70435 Stuttgart
Attention: GR/ Rechtsabteilung/ General Counsel

As to Porsche Cars North America, Inc.:

Porsche Cars North America, Inc.
1 Porsche Dr.
Atlanta, GA 30354
Attention: Secretary
With copy by email to: offsecy@porsche.us

As to one or more of the Defendants by email:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Granta Nakayama
Cari Dawson

giuffrar@sullcrom.com
nelless@sullcrom.com
gnakayama@kslaw.com
cari.dawson@alston.com

As to one or more of the Defendants by mail:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004

Granta Nakayama
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006

Cari Dawson
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

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 State 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 State 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 and Appendix D-1A hereto, the Consent Decree Parties, and the Trustee arising under or with respect to this State Trust Agreement.

6.2.1 Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this State Trust 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 State 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 State Mitigation Trust shall be governed by the laws of the State of 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. The duties, rights, protections, and immunities of the Trustee, as a trustee of a statutory trust under the Delaware Act, shall be governed by the laws of the State of 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 State 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 State 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 State Trust Agreement, this State Trust Agreement shall control.

6.4 Waiver of Jury Trial: Each party hereto and each Beneficiary hereof hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this State Trust.

6.5 Modification: Material modifications to the State Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) 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 State Mitigation Trust. Any modification of this State Mitigation Trust that affects the rights, powers, duties, obligations, liabilities, or indemnities of the Trustee requires the written consent of the Trustee. Minor modifications or clarifying amendments to the State Mitigation Trust, Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (Beneficiary Eligible Mitigation Action Certification) 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 State Mitigation Trust, and shall be filed with the Court. To the extent the consent of the 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 Defendants, no modification shall: (i) require the Defendants to make any payments to the State Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Defendants than those set forth in the State 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 State Mitigation Trust, whether material or minor, before such modification shall become effective.

6.6 Severability: If any provision of this State Trust 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 State Trust 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 State Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

6.7 Taxes: The State Trust is intended to be a qualified settlement fund ("QSF") pursuant to Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. The Trustee is intended to be the State Trust's "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). The Trustee shall use its best efforts to submit, within six months after the Trust Effective Date, an application and all necessary supporting documentation to the IRS to obtain a Private Letter Ruling from the IRS:

(1) that the State Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; (2) that all investment income earned on the Trust Assets will be excludible from gross income under Section 115 of the Internal Revenue Code, 26 U.S.C. § 115; and (3) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the rulings in (1) and (2) or otherwise prudent to clarify an uncertain application of federal tax law to the State Mitigation Trust. Within ten Days after any application has been made to the IRS, the Trustee shall provide a copy of the application and accompanying documentation to the United States (pursuant to subparagraph 6.0.1) and to the Beneficiaries (pursuant to the secure internet-based communication in Paragraph 6.0). Within seven Days after receipt of any IRS Private Letter Ruling, the Trustee shall provide a copy to the United States (pursuant to subparagraph 6.0.1) and the Beneficiaries (pursuant to the secure internet-based communication established in Paragraph 6.0). If the IRS determines that the investment income earned on Trust Assets is taxable, the Trustee, the Investment Manager, the United States, and the State Beneficiaries shall meet and confer to discuss possible resolutions to this issue, and may seek a modification of this State Trust Agreement as appropriate pursuant to Paragraph 6.5. The Trustee shall be responsible for filing all required Tax Returns, ensuring compliance with income tax withholding and reporting requirements, and paying applicable Taxes with respect to the State Trust in a manner consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established pursuant to subparagraph 2.1.5. The Defendants shall provide to the Trustee and the IRS the statement described in Treasury Regulation Section 1.468B-3(e)(2), 26 C.F.R. § 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which the Settling Defendants make a transfer to the State Trust.

6.8 Termination: After all funds have been expended pursuant to subparagraph 5.4.5, final reports have been delivered pursuant to Paragraph 3.3 and subparagraph 3.3.1, and notice regarding retained documents has been provided pursuant to subparagraph 3.3.2, the Trustee may file a motion with the Court requesting an order to begin the process under the Delaware Act to terminate this State Trust. The United States and the Beneficiaries shall be given not less than 60 Days to oppose such motion. After the Court approves the motion to terminate, the Trustee shall begin the dissolution and winding up processes under the Delaware Act. On the date that the Trustee completes all the statutory requirements under the Delaware Act and files a certificate of cancellation, this State Trust shall terminate (the “Termination Date”).

FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR STATE BENEFICIARIES, PUERTO RICO, AND THE DISTRICT OF COLUMBIA:

WILMINGTON TRUST, N.A., AS TRUSTEE FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR STATE BENEFICIARIES, PUERTO RICO, AND THE DISTRICT OF COLUMBIA, AND NOT IN ITS INDIVIDUAL CAPACITY

Date: _____

David A. Vanaskey, Jr.
Administrative Vice President

By their execution of this State Trust Agreement each undersigned party represents that they are authorized signer for such Company entitled to sign on behalf of each Settling Defendant and that each of the Settling Defendants have taken all necessary corporate actions required to make this a legal, valid and binding obligation of each such Settling Defendant.

FOR VOLKSWAGEN AG:

Date: _____

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR AUDI AG:

Date: _____

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date: _____

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date: _____

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

_____
Date

_____
ROBERT J. GIUFFRA, JR.
SHARON L. NELLES
WILLIAM B. MONAHAN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3358
giuffrar@sullcrom.com
nelless@sullcrom.com
monahanw@sullcrom.com

FOR DR. ING. h.c. F . PORSCHE AG:

Date: _____

DR. MICHAEL STEINER
Member of the Executive Board
Research and Development
DR. ING. h.c.f. PORSCHE
AKTIENGESELLSCHAFT
Porschestrasse 911
71287 Weissach, Germany

Date: _____

ANGELA KREITZ
General Counsel & Chief Compliance Officer
DR. ING. h.c.f. PORSCHE
AKTIENGESELLSCHAFT
Porscheplatz 1
70435 Stuttgart-Zuffenhausen, Germany

FOR PORSCHE CARS NORTH AMERICA, INC.:

Date: _____

JOSEPH S. FOLZ
Vice President, General Counsel and Secretary
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

Date: _____

GLENN GARDE
Vice President, After Sales
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

COUNSEL FOR DR. ING. h.c. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA, INC.

Date: _____

GRANTA NAKAYAMA
JOSEPH A. EISERT
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006
gnakayama@kslaw.com
jeisert@kslaw.com

Date: _____

CARI DAWSON
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
cari.dawson@alston.com

APPENDIX D-1
Initial 2.0 Liter Allocation

APPENDIX D-1 - INITIAL ALLOCATION

INITIAL SUBACCOUNTS	INITIAL ALLOCATIONS ($)	INITIAL ALLOCATIONS (%)
Puerto Rico	$ 7,500,000.00	0.28%
North Dakota	$ 7,500,000.00	0.28%
Hawaii	$ 7,500,000.00	0.28%
South Dakota	$ 7,500,000.00	0.28%
Alaska	$ 7,500,000.00	0.28%
Wyoming	$ 7,500,000.00	0.28%
District of Columbia	$ 7,500,000.00	0.28%
Delaware	$ 9,051,682.97	0.34%
Mississippi	$ 9,249,413.91	0.34%
West Virginia	$ 11,506,842.13	0.43%
Nebraska	$ 11,528,812.23	0.43%
Montana	$ 11,600,215.07	0.43%
Rhode Island	$ 13,495,136.57	0.50%
Arkansas	$ 13,951,016.23	0.52%
Kansas	$ 14,791,372.72	0.55%
Idaho	$ 16,246,892.13	0.60%
New Mexico	$ 16,900,502.73	0.63%
Vermont	$ 17,801,277.01	0.66%
Louisiana	$ 18,009,993.00	0.67%
Kentucky	$ 19,048,080.43	0.71%
Oklahoma	$ 19,086,528.11	0.71%
Iowa	$ 20,179,540.80	0.75%
Maine	$ 20,256,436.17	0.75%
Nevada	$ 22,255,715.66	0.82%
Alabama	$ 24,084,726.84	0.89%
New Hampshire	$ 29,544,297.76	1.09%
South Carolina	$ 31,636,950.19	1.17%
Utah	$ 32,356,471.11	1.20%
Indiana	$ 38,920,039.77	1.44%
Missouri	$ 39,084,815.55	1.45%
Tennessee	$ 42,407,793.83	1.57%
Minnesota	$ 43,638,119.67	1.62%
Connecticut	$ 51,635,237.63	1.91%
Arizona	$ 53,013,861.68	1.96%
Georgia	$ 58,105,433.35	2.15%
Michigan	$ 60,329,906.41	2.23%
Colorado	$ 61,307,576.05	2.27%
Wisconsin	$ 63,554,019.22	2.35%
New Jersey	$ 65,328,105.14	2.42%
Oregon	$ 68,239,143.96	2.53%
Massachusetts	$ 69,074,007.92	2.56%
Maryland	$ 71,045,824.78	2.63%
Ohio	$ 71,419,316.56	2.65%
North Carolina	$ 87,177,373.87	3.23%
Virginia	$ 87,589,313.32	3.24%
Illinois	$ 97,701,053.83	3.62%
Washington	$ 103,957,041.03	3.85%
Pennsylvania	$ 110,740,310.73	4.10%
New York	$ 117,402,744.86	4.35%
Florida	$ 152,379,150.91	5.64%
Texas	$ 191,941,816.23	7.11%
California	$ 381,280,175.09	14.12%
Tribal Allocation Subaccount	$ 49,652,857.71	1.84%
Trust Administration Cost Subaccount	$ **23,467,171.38**	**0.87%**
Tribal Administration Cost Subaccount	$ **4,525,885.71**	**0.17%**
	$ 2,700,000,000.00	100.00%

APPENDIX D-1A
Initial 3.0 Liter Allocation

APPENDIX D-1A – INITIAL 3.0 LITER ALLOCATION

INITIAL SUBACCOUNTS	INITIAL ALLOCATIONS ($)	INITIAL ALLOCATIONS (%)
Puerto Rico	$ 625,000.00	0.28%
North Dakota	$ 625,000.00	0.28%
Hawaii	$ 625,000.00	0.28%
Mississippi	$ 625,000.00	0.28%
West Virginia	$ 625,000.00	0.28%
District of Columbia	$ 625,000.00	0.28%
South Dakota	$ 625,000.00	0.28%
Wyoming	$ 625,000.00	0.28%
Alaska	$ 625,000.00	0.28%
Delaware	$ 625,000.00	0.28%
Arkansas	$ 696,692.86	0.31%
Nebraska	$ 719,535.25	0.32%
Maine	$ 796,628.31	0.35%
Kansas	$ 870,866.08	0.39%
Rhode Island	$ 873,721.37	0.39%
Vermont	$ 890,853.17	0.40%
Montana	$ 1,002,209.81	0.45%
Iowa	$ 1,022,196.90	0.45%
New Mexico	$ 1,082,158.17	0.48%
Idaho	$ 1,102,145.26	0.49%
Kentucky	$ 1,330,569.15	0.59%
New Hampshire	$ 1,370,543.33	0.61%
Alabama	$ 1,396,241.02	0.62%
Oklahoma	$ 1,835,957.01	0.82%
Louisiana	$ 1,838,812.30	0.82%
Indiana	$ 2,015,840.82	0.90%
Missouri	$ 2,067,236.19	0.92%
South Carolina	$ 2,258,541.20	1.00%
Nevada	$ 2,618,308.82	1.16%
Utah	$ 2,821,035.03	1.25%
Tennessee	$ 3,352,120.57	1.49%
Minnesota	$ 3,363,541.76	1.49%
Wisconsin	$ 3,523,438.48	1.57%
Arizona	$ 3,646,216.32	1.62%
Ohio	$ 3,883,206.11	1.73%
Connecticut	$ 4,085,932.31	1.82%
Michigan	$ 4,477,108.22	1.99%
Maryland	$ 4,668,413.23	2.07%
Oregon	$ 4,728,374.50	2.10%
North Carolina	$ 4,868,284.13	2.16%
Georgia	$ 5,519,292.21	2.45%
Massachusetts	$ 5,990,416.48	2.66%
Virginia	$ 6,044,667.16	2.69%
New Jersey	$ 6,886,980.25	3.06%
Colorado	$ 7,432,342.28	3.30%
Pennsylvania	$ 7,829,228.79	3.48%
Washington	$ 8,788,609.12	3.91%
New York	$ 10,299,062.08	4.58%
Illinois	$ 10,978,623.15	4.88%
Florida	$ 13,899,593.63	6.18%
Texas	$ 17,377,347.34	7.72%
California	$ 41,356,145.05	18.38%
Tribal Allocation Subaccount	$ 4,795,063.51	2.13%
Trust Administration Cost Subaccount	$ 1,955,597.62	0.87%
Tribal Administration Cost Subaccount	$ 390,303.65	0.17%
Grand Total	$ **$ 225,000,000.00**	**100.00%**

APPENDIX D-1B

Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation

Appendix D-1B

Weighted Average Allocation Formula:

(2.0 Allocation$_{Subaccount}$ + 3.0 Allocation $_{Subaccount}$) / ($2,700,000,000 + $225,000,000)

where Subaccount represents an individual Beneficiary subaccount or the Tribal, Administration Cost, or Tribal Administration Cost subaccount.

	Appendix D-1		Appendix D-1A		Appendix D-1B	
State Trust Allocation	2.0 Liter Allocation Amount	2.0 Liter Allocation Percentage	3.0 Liter Allocation Amount	3.0 Liter Allocation Percentage	Total Allocation Amount	Weighted Average Allocation Percentage
Puerto Rico	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
North Dakota	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Hawaii	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
South Dakota	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Alaska	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Wyoming	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
District of Columbia	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Delaware	$9,051,682.97	0.34%	$625,000.00	0.28%	$9,676,682.97	0.33%
Mississippi	$9,249,413.91	0.34%	$625,000.00	0.28%	$9,874,413.91	0.34%
West Virginia	$11,506,842.13	0.43%	$625,000.00	0.28%	$12,131,842.13	0.41%
Nebraska	$11,528,812.23	0.43%	$719,535.25	0.32%	$12,248,347.48	0.42%
Montana	$11,600,215.07	0.43%	$1,002,209.81	0.45%	$12,602,424.88	0.43%
Rhode Island	$13,495,136.57	0.50%	$873,721.37	0.39%	$14,368,857.94	0.49%
Arkansas	$13,951,016.23	0.52%	$696,692.86	0.31%	$14,647,709.09	0.50%
Kansas	$14,791,372.72	0.55%	$870,866.08	0.39%	$15,662,238.80	0.54%
Idaho	$16,246,892.13	0.60%	$1,102,145.26	0.49%	$17,349,037.39	0.59%
New Mexico	$16,900,502.73	0.63%	$1,082,158.17	0.48%	$17,982,660.90	0.61%
Vermont	$17,801,277.01	0.66%	$890,853.17	0.40%	$18,692,130.18	0.64%
Louisiana	$18,009,993.00	0.67%	$1,838,812.30	0.82%	$19,848,805.30	0.68%
Kentucky	$19,048,080.43	0.71%	$1,330,569.15	0.59%	$20,378,649.58	0.70%
Oklahoma	$19,086,528.11	0.71%	$1,835,957.01	0.82%	$20,922,485.12	0.72%
Iowa	$20,179,540.80	0.75%	$1,022,196.90	0.45%	$21,201,737.70	0.72%
Maine	$20,256,436.17	0.75%	$796,628.31	0.35%	$21,053,064.48	0.72%
Nevada	$22,255,715.66	0.82%	$2,618,308.82	1.16%	$24,874,024.48	0.85%
Alabama	$24,084,726.84	0.89%	$1,396,241.02	0.62%	$25,480,967.86	0.87%
New Hampshire	$29,544,297.76	1.09%	$1,370,543.33	0.61%	$30,914,841.09	1.06%
South Carolina	$31,636,950.19	1.17%	$2,258,541.20	1.00%	$33,895,491.39	1.16%
Utah	$32,356,471.11	1.20%	$2,821,035.03	1.25%	$35,177,506.14	1.20%
Indiana	$38,920,039.77	1.44%	$2,015,840.82	0.90%	$40,935,880.59	1.40%
Missouri	$39,084,815.55	1.45%	$2,067,236.19	0.92%	$41,152,051.74	1.41%
Tennessee	$42,407,793.83	1.57%	$3,352,120.57	1.49%	$45,759,914.40	1.56%
Minnesota	$43,638,119.67	1.62%	$3,363,541.76	1.49%	$47,001,661.43	1.61%
Connecticut	$51,635,237.63	1.91%	$4,085,932.31	1.82%	$55,721,169.94	1.90%
Arizona	$53,013,861.68	1.96%	$3,646,216.32	1.62%	$56,660,078.00	1.94%
Georgia	$58,105,433.35	2.15%	$5,519,292.21	2.45%	$63,624,725.56	2.18%
Michigan	$60,329,906.41	2.23%	$4,477,108.22	1.99%	$64,807,014.63	2.22%
Colorado	$61,307,576.05	2.27%	$7,432,342.28	3.30%	$68,739,918.33	2.35%
Wisconsin	$63,554,019.22	2.35%	$3,523,438.48	1.57%	$67,077,457.70	2.29%
New Jersey	$65,328,105.14	2.42%	$6,886,980.25	3.06%	$72,215,085.39	2.47%
Oregon	$68,239,143.96	2.53%	$4,728,374.50	2.10%	$72,967,518.46	2.49%
Massachusetts	$69,074,007.92	2.56%	$5,990,416.48	2.66%	$75,064,424.40	2.57%
Maryland	$71,045,824.78	2.63%	$4,668,413.23	2.07%	$75,714,238.01	2.59%
Ohio	$71,419,316.56	2.65%	$3,883,206.11	1.73%	$75,302,522.67	2.57%
North Carolina	$87,177,373.87	3.23%	$4,868,284.13	2.16%	$92,045,658.00	3.15%
Virginia	$87,589,313.32	3.24%	$6,044,667.16	2.69%	$93,633,980.48	3.20%
Illinois	$97,701,053.83	3.62%	$10,978,623.15	4.88%	$108,679,676.98	3.72%
Washington	$103,957,041.03	3.85%	$8,788,609.12	3.91%	$112,745,650.15	3.85%
Pennsylvania	$110,740,310.73	4.10%	$7,829,228.79	3.48%	$118,569,539.52	4.05%
New York	$117,402,744.86	4.35%	$10,299,062.08	4.58%	$127,701,806.94	4.37%
Florida	$152,379,150.91	5.64%	$13,899,593.63	6.18%	$166,278,744.54	5.68%
Texas	$191,941,816.23	7.11%	$17,377,347.34	7.72%	$209,319,163.57	7.16%
California	$381,280,175.09	14.12%	$41,356,145.05	18.38%	$422,636,320.14	14.45%
State Trust Administration Cost Subaccount	$23,467,171.38	0.87%	$1,955,597.62	0.87%	$25,422,769.00	0.87%
Subtotal	$2,645,821,256.54	97.99%	$219,814,632.84	97.70%	$2,865,635,889.38	97.97%
Tribal Trust Allocation	$49,652,857.71	1.84%	$4,795,063.51	2.13%	$54,447,921.22	1.86%
Tribal Administration Cost Subaccount	$4,525,885.77	0.17%	$390,303.65	0.17%	$4,916,189.42	0.17%
Subtotal	$54,178,743.48	2.01%	$5,185,367.16	2.30%	$59,364,110.64	2.03%
Total	$2,700,000,000.00	100.00%	$225,000,000.00	100.00%	$2,925,000,000.00	100.00%

APPENDIX D-1C

Weighted Average Allocation Percentage for Subparagraph 5.0.3

APPENDIX D-1C

State Trust Allocation	Weighted Average Allocation Percentage, net of CA, for subparagraph 5.0.3
Puerto Rico	0.33%
North Dakota	0.33%
Hawaii	0.33%
South Dakota	0.33%
Alaska	0.33%
Wyoming	0.33%
District of Columbia	0.33%
Delaware	0.40%
Mississippi	0.40%
West Virginia	0.50%
Nebraska	0.50%
Montana	0.52%
Rhode Island	0.59%
Arkansas	0.60%
Kansas	0.64%
Idaho	0.71%
New Mexico	0.74%
Vermont	0.77%
Louisiana	0.81%
Kentucky	0.83%
Oklahoma	0.86%
Iowa	0.87%
Maine	0.86%
Nevada	1.02%
Alabama	1.04%
New Hampshire	1.27%
South Carolina	1.39%
Utah	1.44%
Indiana	1.68%
Missouri	1.69%
Tennessee	1.87%
Minnesota	1.92%
Connecticut	2.28%
Arizona	2.32%
Georgia	2.61%
Michigan	2.65%
Colorado	2.81%
Wisconsin	2.75%
New Jersey	2.96%
Oregon	2.99%
Massachusetts	3.07%
Maryland	3.10%
Ohio	3.08%
North Carolina	3.77%
Virginia	3.83%
Illinois	4.45%
Washington	4.62%
Pennsylvania	4.86%
New York	5.23%
Florida	6.81%
Texas	8.57%
California	
State Trust Administration Cost Subaccount	1.00%
Total	100.00%

APPENDIX D-2
Eligible Mitigation Actions and Mitigation Action Expenditures

APPENDIX D-2

ELIGIBLE MITIGATION ACTIONS AND MITIGATION ACTION EXPENDITURES

1. Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

    a. Eligible Large Trucks include 1992-2009 engine model year Class 8 Local Freight or Drayage. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the proposed Eligible Mitigation Action, Eligible Large Trucks shall also include 2010-2012 engine model year Class 8 Local Freight or Drayage.

    b. Eligible Large Trucks must be Scrapped.

    c. Eligible Large Trucks may be Repowered with any new diesel or Alternate Fueled engine or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Large Trucks Mitigation Action occurs or one engine model year prior.

    d. For Non-Government Owned Eligible Class 8 Local Freight Trucks, Beneficiaries may only draw funds from the Trust in the amount of:

        1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

        2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

        3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

        4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

    e. For Non-Government Owned Eligible Drayage Trucks, Beneficiaries may only draw funds from the Trust in the amount of:

        1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

        2. Up to 50% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

f. For Government Owned Eligible Class 8 Large Trucks, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

2. <u>Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)</u>

a. Eligible Buses include 2009 engine model year or older class 4-8 school buses, shuttle buses, or transit buses. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year buses at the time of the proposed Eligible Mitigation Action, Eligible Buses shall also include 2010-2012 engine model year class 4-8 school buses, shuttle buses, or transit buses.

b. Eligible Buses must be Scrapped.

c. Eligible Buses may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Bus Mitigation Action occurs or one engine model year prior.

d. For Non-Government Owned Buses, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

e. For Government Owned Eligible Buses, and Privately Owned School Buses Under Contract with a Public School District, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

3. <u>Freight Switchers</u>

a. Eligible Freight Switchers include pre-Tier 4 switcher locomotives that operate 1000 or more hours per year.

b. Eligible Freight Switchers must be Scrapped.

c. Eligible Freight Switchers may be Repowered with any new diesel or Alternate Fueled or All-Electric engine(s) (including Generator Sets), or may be replaced with any new diesel or Alternate Fueled or All-Electric (including Generator Sets) Freight Switcher, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the CFR for the engine model year in which the Eligible Freight Switcher Mitigation Action occurs.

d. For Non-Government Owned Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of :

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) Freight Switcher.

3. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

4. Up to 75% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.

e. For Government Owned Eligible Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) Freight Switcher.

3. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

4. Up to 100% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.

4. <u>Ferries/Tugs</u>

a. Eligible Ferries and/or Tugs include unregulated, Tier 1, or Tier 2 marine engines.

b. Eligible Ferry and/or Tug engines that are replaced must be Scrapped.

c. Eligible Ferries and/or Tugs may be Repowered with any new Tier 3 or Tier 4 diesel or Alternate Fueled engines, or with All-Electric engines, or may be upgraded with an EPA Certified Remanufacture System or an EPA Verified Engine Upgrade.

d. For Non-Government Owned Eligible Ferries and/or Tugs, Beneficiaries may only draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).

2. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

e. For Government Owned Eligible Ferries and/or Tugs, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).

2. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

5. Ocean Going Vessels (OGV) Shorepower

a. Eligible Marine Shorepower includes systems that enable a compatible vessel's main and auxiliary engines to remain off while the vessel is at berth. Components of such systems eligible for reimbursement are limited to cables, cable management systems, shore power coupler systems, distribution control systems, and power distribution. Marine shore power systems must comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 High Voltage Shore Connection Systems or the IEC/PAS 80005-3:2014 Low Voltage Shore Connection Systems) and should be supplied with power sourced from the local utility grid. Eligible Marine Shorepower includes equipment for vessels that operate within the Great Lakes.

b. For Non-Government Owned Marine Shorepower, Beneficiaries may only draw funds from the Trust in the amount of up to 25% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

c. For Government Owned Marine Shorepower, Beneficiaries may draw funds from the Trust in the amount of up to 100% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

6. Class 4-7 Local Freight Trucks (Medium Trucks)

a. Eligible Medium Trucks include 1992-2009 engine model year class 4-7 Local Freight trucks, and for Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the proposed Eligible Mitigation Action, Eligible Trucks shall also include 2010-2012 engine model year class 4-7 Local Freight trucks.

b. Eligible Medium Trucks must be Scrapped.

c. Eligible Medium Trucks may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Medium Trucks Mitigation Action occurs or one engine model year prior.

d. For Non-Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

e. For Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

7. <u>Airport Ground Support Equipment</u>

a. Eligible Airport Ground Support Equipment includes:

1. Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and

2. Uncertified, or certified to 3 g/bhp-hr or higher emissions, spark ignition engine powered airport ground support equipment.

b. Eligible Airport Ground Support Equipment must be Scrapped.

c. Eligible Airport Ground Support Equipment may be Repowered with an All-Electric engine, or may be replaced with the same Airport Ground Support Equipment in an All-Electric form.

d. For Non-Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may only draw funds from the Trust in the amount of:

1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 75% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.

e. For Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 100% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.

8. <u>Forklifts and Port Cargo Handling Equipment</u>

a. Eligible Forklifts includes forklifts with greater than 8000 pounds lift capacity.

b. Eligible Forklifts and Port Cargo Handling Equipment must be Scrapped.

c. Eligible Forklifts and Port Cargo Handling Equipment may be Repowered with an All-Electric engine, or may be replaced with the same equipment in an All-Electric form.

d. For Non-Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 75% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.

e. For Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 100% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.

9. Light Duty Zero Emission Vehicle Supply Equipment. Each Beneficiary may use up to fifteen percent (15%) of its allocation of Trust Funds on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects as specified below. Provided, however, that Trust Funds shall not be made available or used to purchase or rent real-estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (i.e., maintenance other than of the Supply Equipment).

   a. Light duty electric vehicle supply equipment includes Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

   b. Light duty hydrogen fuel cell vehicle supply equipment includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (MPa) (or analogous successor technologies) that is located in a public place.

   c. Subject to the 15% limitation above, each Beneficiary may draw funds from the Trust in the amount of:

      1. Up to 100% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Government Owned Property.

      2. Up to 80% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Non-Government Owned Property.

      3. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a workplace but not to the general public.

      4. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public.

5. Up to 33% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kg/day that will be available to the public.

6. Up to 25% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day that will be available to the public.

10. Diesel Emission Reduction Act (DERA) Option. Beneficiaries may use Trust Funds for their non-federal voluntary match, pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16133), or Section 792 (codified at 42 U.S.C. § 16132) in the case of Tribes, thereby allowing Beneficiaries to use such Trust Funds for actions not specifically enumerated in this Appendix D-2, but otherwise eligible under DERA pursuant to all DERA guidance documents available through the EPA. Trust Funds shall not be used to meet the non-federal mandatory cost share requirements, as defined in applicable DERA program guidance, of any DERA grant.

Eligible Mitigation Action Administrative Expenditures

For any Eligible Mitigation Action, Beneficiaries may use Trust Funds for actual administrative expenditures (described below) associated with implementing such Eligible Mitigation Action, but not to exceed 15% of the total cost of such Eligible Mitigation Action. The 15% cap includes the aggregated amount of eligible administrative expenditures incurred by the Beneficiary and any third-party contractor(s).

1. Personnel including costs of employee salaries and wages, but not consultants.
2. Fringe Benefits including costs of employee fringe benefits such as health insurance, FICA, retirement, life insurance, and payroll taxes.
3. Travel including costs of Mitigation Action-related travel by program staff, but does not include consultant travel.
4. Supplies including tangible property purchased in support of the Mitigation Action that will be expensed on the Statement of Activities, such as educational publications, office supplies, etc. Identify general categories of supplies and their Mitigation Action costs.
5. Contractual including all contracted services and goods except for those charged under other categories such as supplies, construction, etc. Contracts for evaluation and consulting services and contracts with sub-recipient organizations are included.
6. Construction including costs associated with ordinary or normal rearrangement and alteration of facilities.
7. Other costs including insurance, professional services, occupancy and equipment leases, printing and publication, training, indirect costs, and accounting.

Definitions/Glossary of Terms

"Airport Ground Support Equipment" shall mean vehicles and equipment used at an airport to service aircraft between flights.

"All-Electric" shall mean powered exclusively by electricity provided by a battery, fuel cell, or the grid.

"Alternate Fueled" shall mean an engine, or a vehicle or piece of equipment that is powered by an engine, which uses a fuel different from or in addition to gasoline fuel or diesel fuel (e.g., CNG, propane, diesel-electric Hybrid).

"Certified Remanufacture System or Verified Engine Upgrade" shall mean engine upgrades certified or verified by EPA or CARB to achieve a reduction in emissions.

"Class 4-7 Local Freight Trucks (Medium Trucks)" shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs.

"Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Buses)" shall mean vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 14,001 lbs. used for transporting people. See definition for School Bus below.

"Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)" shall mean trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs. used for port drayage and/or freight/cargo delivery (including waste haulers, dump trucks, concrete mixers).

"CNG" shall mean Compressed Natural Gas.

"Drayage Trucks" shall mean trucks hauling cargo to and from ports and intermodal rail yards.

"Forklift" shall mean nonroad equipment used to lift and move materials short distances; generally includes tines to lift objects. Eligible types of forklifts include reach stackers, side loaders, and top loaders.

"Freight Switcher" shall mean a locomotive that moves rail cars around a rail yard as compared to a line-haul engine that moves freight long distances.

"Generator Set" shall mean a switcher locomotive equipped with multiple engines that can turn off one or more engines to reduce emissions and save fuel depending on the load it is moving.

"Government" shall mean a State or local government agency (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds), and a tribal government or native village. The term "State" means the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Gross Vehicle Weight Rating (GVWR)" shall mean the maximum weight of the vehicle, as specified by the manufacturer. GVWR includes total vehicle weight plus fluids, passengers, and cargo.

Class 1: < 6000 lb.
Class 2: 6001-10,000 lb.
Class 3: 10,001-14,000 lb.
Class 4: 14,001-16,000 lb.
Class 5: 16,001-19,500 lb.
Class 6: 19,501-26,000 lb.
Class 7: 26,001-33,000 lb.
Class 8: > 33,001 lb.

"Hybrid" shall mean a vehicle that combines an internal combustion engine with a battery and electric motor.

"Infrastructure" shall mean the equipment used to enable the use of electric powered vehicles (e.g., electric vehicle charging station).

"Intermodal Rail Yard" shall mean a rail facility in which cargo is transferred from drayage truck to train or vice-versa.

"Port Cargo Handling Equipment" shall mean rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including yard hostlers and yard tractors that operate within ports.

"Plug-in Hybrid Electric Vehicle (PHEV)" shall mean a vehicle that is similar to a Hybrid but is equipped with a larger, more advanced battery that allows the vehicle to be plugged in and recharged in addition to refueling with gasoline. This larger battery allows the car to be driven on a combination of electric and gasoline fuels.

"Repower" shall mean to replace an existing engine with a newer, cleaner engine or power source that is certified by EPA and, if applicable, CARB, to meet a more stringent set of engine emission standards. Repower includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source (e.g., grid, battery), diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s) (genset), diesel engine upgrades in Ferries/Tugs with an EPA Certified Remanufacture System, and/or diesel engine upgrades in Ferries/Tugs with an EPA Verified Engine Upgrade. All-Electric and fuel cell Repowers do not require EPA or CARB certification.

"School Bus" shall mean a Class 4-8 bus sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events. May be Type A-D.

"Scrapped" shall mean to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an Eligible project, Scrapped shall also include the disabling of the chassis by cutting the vehicle's frame rails completely in half.

"Tier 0, 1, 2, 3, 4" shall refer to corresponding EPA engine emission classifications for nonroad, locomotive, and marine engines.

"Tugs" shall mean dedicated vessels that push or pull other vessels in ports, harbors, and inland waterways (e.g., tugboats and towboats).

"Zero Emission Vehicle (ZEV)" shall mean a vehicle that produces no emissions from the on-board source of power (e.g., All-Electric or hydrogen fuel cell vehicles).

APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

APPENDIX D-3

CERTIFICATION FOR BENEFICIARY STATUS UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT

1. Identity of Lead Agency

_____("Beneficiary"), by and through the Office of the Governor (or, if not a State, the analogous Chief Executive) of the Appendix D-1 and Appendix D-1A entity on whose behalf the Certification Form is submitted: (i) hereby identifies _____ ("Lead Agency") as the Lead Agency for purposes of the Beneficiary's participation in the Environmental Mitigation Trust ("Trust") as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

BENEFICIARY'S LEAD AGENCY CONTACT INFORMATION:

Contact:	
Address:	
Phone:	
Fax:	
Email:	

2. Submission to Jurisdiction

The Beneficiary expressly consents to the jurisdiction of the U.S. District Court for the Northern District of California for all matters concerning the interpretation or performance of, or any disputes arising under, the Trust and the Environmental Mitigation Trust Agreement ("Trust Agreement"). The Beneficiary's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

3. Agreement to be Bound by the Trust Agreement and Consent to Trustee Authority

The Beneficiary agrees, without limitation, to be bound by the terms of the Trust Agreement, including the allocations of the Trust Assets set forth in Appendix D-1 and Appendix D-1A to the Trust Agreement, as such allocation may be adjusted in accordance with the Trust Agreement. The Beneficiary further agrees that the Trustee has the authorities set forth in the Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds pursuant to the Trust Agreement; and (ii) to implement the Trust Agreement in accordance with its terms.

4. Certification of Legal Authority

The Beneficiary certifies that: (i) it has the authority to sign and be bound by this Certification Form; (ii) the Beneficiary's laws do not prohibit it from being a Trust Beneficiary; (iii) either (a)

the Beneficiary's laws do not prohibit it from receiving or directing payment of funds from the Trust, or (b) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust, then prior to requesting any funds from the Trust, the Beneficiary shall obtain full legal authority to receive and/or direct payments of such funds within two years of submitting this Certification Form; and (iv) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust and fails to demonstrate that it has obtained such legal authority within two years of submitting this Certification Form, it shall become an Excluded Entity under the Trust Agreement and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1 of the Trust Agreement.

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies 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 Trust for credit to the Beneficiary's allocation.

6. Waiver of Claims for Injunctive Relief under Environmental or Common Laws

Upon becoming a Beneficiary, the Beneficiary, on behalf of itself and all of its agencies, departments, offices, and divisions, hereby expressly waives, in favor of the parties (including the Settling Defendants) to the Partial Consent Decree (Dkt. No. 2103-1) and the parties (including the Defendants) to the Second Partial Consent Decree (Dkt. No. 3228-1), all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles and the 3.0 Liter Subject Vehicles (jointly, "Subject Vehicles"), whether based on the environmental or common law within its jurisdiction. This waiver is binding on all agencies, departments, offices, and divisions of the Beneficiary asserting, purporting to assert, or capable of asserting such claims. This waiver does not waive, and the Beneficiary expressly reserves, its rights, if any, to seek fines or penalties.

7. Publicly Available Information

The Beneficiary certifies 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 Beneficiary, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement, unless the laws of the Beneficiary require a longer record retention period. Together herewith, the Beneficiary attaches an explanation of: (i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; (ii) for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered; and (iii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust 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 Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary 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 Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

The Beneficiary certifies, for the benefit of the Parties (including the Settling Defendants) to the Partial Consent Decree and the Parties to the Second Partial Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that upon becoming a Beneficiary, the Beneficiary:

(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 Partial Consent Decree or in the Second Partial Consent Decree; or

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

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

(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or an Emissions Compliant Recall based solely on:

i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or

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

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

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

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.

(d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary'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 9(a)-(b).

10. Reliance on Certification

The Beneficiary acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying upon, this Appendix D-3 Certification, or a subsequent communication from the Lead Agency designating new or additional authorized individuals, as setting forth the Lead Agency and the authorized individuals who may direct the Trustee with respect to all of the Beneficiary's rights and duties under the Trust Agreement. The Beneficiary and its delegated Lead Agency, including all authorized individuals, agree to comply with all security procedures, standard payment and signatory authorization protocols, as well as procedures for designating new or additional authorized individuals, as set forth by the Trustee.

FOR THE GOVERNOR (or, if not a State, the analogous Chief Executive):

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

APPENDIX D-4
Beneficiary Eligible Mitigation Action Certification

BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary _____

Lead Agency Authorized to Act on Behalf of the Beneficiary _____
(Any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency)

Action Title:	
Beneficiary's Project ID:	
Funding Request No.	*(sequential)*
Request Type: **(select one or more)**	☐ Reimbursement ☐ Advance ☐ Other (specify): _____
Payment to be made to: **(select one or more)**	☐ Beneficiary ☐ Other (specify): _____
Funding Request & Direction (Attachment A)	☐ Attached to this Certification ☐ To be Provided Separately

SUMMARY

Eligible Mitigation Action Action Type	☐ Appendix D-2 item (specify): _____ ☐ Item 10 - DERA Option (5.2.12) (specify and attach DERA Proposal):
Explanation of how funding request fits into Beneficiary's Mitigation Plan (5.2.1):	
Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2):	
Estimate of Anticipated NOx Reductions (5.2.3):	
Identification of Governmental Entity Responsible for Reviewing and Auditing Expenditures of Eligible Mitigation Action Funds to Ensure Compliance with Applicable Law (5.2.7.1):	
Describe how the Beneficiary will make documentation publicly available (5.2.7.2).	
Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8).	
Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9).	

If applicable, describe how the mitigation action will mitigate the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions (5.2.10).

ATTACHMENTS
(CHECK BOX IF ATTACHED)

☐	**Attachment A**	**Funding Request and Direction.**
☐	**Attachment B**	**Eligible Mitigation Action Management Plan Including Detailed Budget and Implementation and Expenditures Timeline (5.2.4).**
☐	**Attachment C**	**Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11).**
☐	**Attachment D**	**Detailed cost estimates from selected or potential vendors for each proposed expenditure exceeding $25,000 (5.2.6). [Attach only if project involves vendor expenditures exceeding $25,000.]**
☐	**Attachment E**	**DERA Option (5.2.12). [Attach only if using DERA option.]**
☐	**Attachment F**	**Attachment specifying amount of requested funding to be debited against each beneficiary's allocation (5.2.13). [Attach only if this is a joint application involving multiple beneficiaries.]**

CERTIFICATIONS

By submitting this application, the Lead Agency makes the following certifications:

1. **This application is submitted on behalf of Beneficiary _____, and the person executing this certification has authority to make this certification on behalf of the Lead Agency and Beneficiary, pursuant to the Certification for Beneficiary Status filed with the Court.**

2. **Beneficiary requests and directs that the Trustee make the payments described in this application and Attachment A to this Form.**

3. **This application contains all information and certifications required by Paragraph 5.2 of the Trust Agreement, and the Trustee may rely on this application, Attachment A, and related certifications in making disbursements of trust funds for the aforementioned Project ID.**

4. **Any vendors were or will be selected in accordance with a jurisdiction's public contracting law as applicable. (5.2.5)**

5. **Beneficiary will maintain and make publicly available all documentation submitted in**

support of this 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. (5.2.7.2)

DATED: _____

_____
[NAME]
[TITLE]

_____
[LEAD AGENCY]

for

_____
[BENEFICIARY]

ATTACHMENT A

FUNDING REQUEST AND DIRECTION

(Attachment to Appendix D-4, Beneficiary Eligible Mitigation Action Certification, pursuant to Paragraph 5.2 of the Environmental Mitigation Trust Agreement)

Pursuant to the authority granted to _____ [*insert Lead Agency]* to act on behalf of Beneficiary _____ under the Mitigation Trust, *[Lead Agency]* directs the Trustee to make the following payments from its subaccount no. _____ to the following payees, for the amounts specified on the dates specified below.

LEAD AGENCY INFORMATION

Beneficiary Name:		Lead Agency Contact Person:	_____
Lead Agency Name:	_____	Lead Agency Email Address:	_____
Lead Agency Address:	_____	Lead Agency Fax:	_____
Lead Agency Phone:	_____	Lead Agency TIN:	_____

Contact information entered above may correspond to Lead Agency or any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency

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MITIGATION ACTION INFORMATION

Action Title:	_____	Funding Request No:	_____
Beneficiary's Project ID:	_____		

PAYMENTS REQUESTED

(attach additional pages if needed)

Amount	Requested Date	Payee	Request Type

PAYEE CONTACT AND WIRE INFORMATION

(fill out both tables below for each payee and payment identified in "Payments Requested" table on p. 1; attach additional pages if needed)

PAYEE CONTACT INFORMATION

Action Title:	_____	Beneficiary Project ID:	_____
Payee Name:	_____	Payee Contact Person:	_____
Payee Address:	_____	Payee Email Address:	_____
Payee Phone:	_____	Payee Fax:	_____
Payee TIN:	_____		

Payment Amount	Requested Date	Request Type

WIRE INFORMATION

Receiving Bank Name:	_____		
Receiving Bank Branch:	_____		
Receiving Bank Address:	_____		
Bank Swift ID:	_____	National Routing No. / Bank ABA Number *(Sort Code, BLZ)*	_____
Amount of Wire:	_____		
Message to Payee:	_____		
Instructions to Receiving Bank:	_____		
For Credit to:	_____		
Other Special Instructions:	_____		

[Signature Block]

[SAMPLE ATTACHMENT B - USE OF THIS FORMAT IS NOT MANDATORY]

PROJECT MANAGEMENT PLAN
PROJECT SCHEDULE AND MILESTONES

Milestone	Date
Lead Agency Provides Notice of Availability of Mitigation Action Funds	
Project Sponsor Submits Proposal to Lead Agency	
Lead Agency Provides Written Approval of Project Sponsor's Proposal	
Lead Agency Incorporates Project Sponsor's Proposal into Mitigation Plan	
Trustee Acknowledges Receipt of Project Certification and Funding Direction	
Trustee Allocates Share of State Funds for Approved Project	
Lead Agency Directs Funding (Advance Funded Projects)	
Project Sponsor Obtains Cost Share, Notifies or Certifies to Lead Agency	
Project Sponsor Enters into Contracts, Purchase Orders, etc. - Start	
Project Sponsor Enters into Contracts, Purchase Orders, etc. - Complete	
Project Installation(s) – Start	
Project Installation(s) – Complete	
Project Sponsor provides detailed invoices for all claimed project costs, documentation for emission reduction estimates, required certification documents to Lead Agency to support direction to Trustee for Payment (Reimbursement, Direct-to-Vendor) or final accounting (Forward Funded Projects)	-
Lead Agency completes review and certifies payment direction to Trustee (Reimbursement)	
Trustee Acknowledges Receipt of Direction for Payment(s) (Advance Funded, Reimbursement)	-
Project Sponsor Certifies Project Completion	
Lead Agency Reports Project Completion	

PROJECT BUDGET

Period of Performance: _____

Budget Category	Total Approved Budget	Share of Total Budget to be Funded by the Trust	Cost-Share, if applicable (Entity #1)	Cost-Share, if applicable (Entity #2)
1. Equipment Expenditure	$	$	$	$
2. Contractor Support *(Provide List of Approved Contractors as Attachment with approved funding ceilings)*	$	$	$	$
3. Subrecipient Support *(Provide List of Approved Subrecipients or Grant Awardees as Attachment with approved funding ceilings)*	$	$	$	$
4. Administrative[1]	$	$	$	$
Project Totals	$	$	$	$
Percentage	%	%	%	%

[1] Subject to Appendix D-2 15% administrative cap.

PROJECTED TRUST ALLOCATIONS:

	2017	2018	2019	2020	2021
1. Anticipated Annual Project Funding Request to be paid through the Trust	$	$	$	$	$
2. Anticipated Annual Cost Share	$	$	$	$	$
3. Anticipated Total Project Funding by Year (line 1 plus line 2)	$	$	$	$	$
4. Cumulative Trustee Payments Made to Date Against Cumulative Approved Beneficiary Allocation	$	$	$	$	$
5. Current Beneficiary Project Funding to be paid through the Trust (line 1)	$	$	$	$	$
6. Total Funding Allocated to for Beneficiary, inclusive of Current Action by Year (line 4 plus line 5)	$	$	$	$	$
7. Beneficiary Share of Estimated Funds Remaining in Trust	$	$	$	$	$
8. Net Beneficiary Funds Remaining in Trust, net of cumulative Beneficiary Funding Actions (line 7 minus line 6)	$	$	$	$	$

APPENDIX D-5
Form of Certificate of Trust of the VW Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District Of Columbia

APPENDIX D-5

FORM OF CERTIFICATE OF TRUST OF THE VW DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR STATE BENEFICIARIES, PUERTO RICO, AND THE DISTRICT OF COLUMBIA

This Certificate of Trust of the VW Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District of Columbia (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as Trustee, to form a statutory trust under the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826 (the "Act").

1. Name. The name of the statutory trust formed by this Certificate of Trust is the VW Diesel Emissions Environmental Mitigation Trust for State Beneficiaries, Puerto Rico, and the District of Columbia.

2. Delaware Trustee. The name and business address of the Trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust, N.A., 1100 North Market Street, Wilmington, Delaware 19890. Attn: Corporate Trust Administration.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

4. IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

WILMINGTON TRUST, N.A.,
not in its individual capacity but solely
as Trustee

By:_____
Name:
Title:

Attachment B
Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries

ENVIRONMENTAL MITIGATION TRUST AGREEMENT FOR INDIAN TRIBE BENEFICIARIES

On October 25, 2016, the Court entered a Partial Consent Decree ("First Partial Consent Decree") in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, the "Settling Defendants"), the United States, and the State of California. In that case, the Court also entered a Second Partial Consent Decree (Dkt. No. 3228-1) on May 17, 2017, among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (collectively, the "Defendants"), the United States, and the State of California. Pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, the Defendants and Wilmington Trust, N.A. (the "Trustee"): (1) hereby enter into this Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (i.e., for federally-recognized Indian Tribes) (hereinafter, the "Indian Tribe Trust Agreement") and establish the environmental mitigation trust described in that agreement ("Indian Tribe Mitigation Trust" or "Indian Tribe Trust"); and (2) concurrently enter into a separate Environmental Mitigation Trust Agreement for State Beneficiaries (i.e., for the 50 States, Puerto Rico, and the District of Columbia) (hereinafter, the "State Trust Agreement") and establish the environmental mitigation trust described in that agreement (the "State Mitigation Trust" or "State Trust"). The Defendants and the Trustee acknowledge that the purpose of the Indian Tribe Mitigation Trust and the State Mitigation Trust is to fulfill the Settling Defendants' environmental mitigation obligations under the First Partial Consent Decree and the Defendants' environmental mitigation obligations under the Second Partial Consent Decree. All payments to and expenditures from the Indian Tribe Mitigation Trust and the State Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants' environmental mitigation obligations under the First Partial Consent Decree and the Defendants' environmental mitigation obligations under the Second Partial Consent Decree, and for the costs and expenses of administering each trust as set forth in the Indian Tribe Mitigation Trust and the State Mitigation Trust. The Indian Tribe Mitigation Trust and the State Mitigation Trust shall be funded with Mitigation Trust Payments according to the terms of the First Partial Consent Decree and the Second Partial Consent Decree (jointly, the "Consent Decree"), and in accordance with the following allocation: (1) 97.99% of the Mitigation Trust Payments from the First Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.01% to the Indian Tribe Mitigation Trust; and (2) 97.7% of the Mitigation Trust Payments from the Second Partial Consent Decree shall be allocated to the State Mitigation Trust and 2.3% to the Indian Tribe Mitigation Trust.

PURPOSE AND RECITALS

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

Whereas, the funding for the Eligible Mitigation Actions provided for in the Indian Tribe Trust Agreement and the State Trust Agreement is intended to fully mitigate the total, lifetime excess NOx emissions from the Subject Vehicles where the Subject Vehicles were, are, or will be

operated;

Whereas, the Defendants hereby establish this Indian Tribe 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 Indian Tribe Trust Agreement in accordance with the requirements set forth in the First Partial Consent Decree; and

Whereas, the Trustee is willing to act as trustee in accordance with the terms of this Indian Tribe Trust Agreement;

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

I. DEFINITIONS

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

1.1 "Beneficiary" shall mean each Indian Tribe determined to be a Beneficiary pursuant to Section IV (Indian Tribe Mitigation Trust Beneficiaries) and subparagraphs 2.1.2 and 5.0.5.

1.2 "Business Day" means, with respect to any delivery requirement, deadline, or payment under this Indian Tribe Trust Agreement, each Monday, Tuesday, Wednesday, Thursday, and Friday that is not a day on which the Trustee in the State of Delaware or, as to a specific Beneficiary, a day on which that Beneficiary under this Indian Tribe Trust is authorized or obligated by law, regulation, or executive order to close.

1.3 "Claims" shall mean any and all losses, liabilities, claims, actions, suits, or expenses, of any nature whatsoever, including legal fees and expenses.

1.4 "Consent Decree" shall mean the First Partial Consent Decree in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), and the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

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

1.6 "Day" shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this Indian Tribe Trust Agreement, where the last day would fall on a Saturday, Sunday, or federal or Delaware holiday, the period shall run to the close of business of the next Business Day;

1.7 "Delaware Act" shall mean the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826.

1.8 "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. §§ 16131-16139).

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

1.10 "Eligible Mitigation Action Administrative Expenditure" shall mean those administrative expenditures by Beneficiaries specified in Appendix D-2 to this Indian Tribe Trust Agreement, and shall not include Trust Administration Costs.

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

1.12 "First Partial Consent Decree" shall mean the Partial Consent Decree entered by the Court in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), on October 25, 2016.

1.13 "Force Majeure" shall have the same meaning as in Paragraph 54 of the First Partial Consent Decree.

1.14 "Indian Land" shall mean the lands of any Indian Tribe or within Indian country.

1.15 "Indian Tribe" shall mean any Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe, as provided in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130. Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a current list of federally acknowledged Indian Tribes at 82 Fed. Reg. 4,915 (Jan. 17, 2017), which will be updated from time to time.

1.16 "Investment Manager" shall mean Wilmington Trust, N.A., acting solely in its role as the professional investment manager of Trust Assets in accordance with subparagraph 3.2.2 of this Indian Tribe Trust Agreement and the Investment Management Agreement entered into on the Trust Effective Date. In subparagraphs 2.2.4, 3.1.2.8, 3.5.3 (last sentence), 3.5.6, and 3.5.7 of the Indian Tribe Trust Agreement, each reference to the Investment Manager shall include the Investment Manager and its officers, directors, and employees.

1.17 "IRS" shall mean the Internal Revenue Service.

1.18 "Shared State and Indian Tribe Administration Costs" shall mean the costs, fees, and expenses of: (1) establishing and maintaining the Trustee's public-facing website; and (2) establishing and maintaining a secure method of internet-based communication for the Trustee and Beneficiaries.

1.19 "Start-up Costs" shall mean all fees, costs, and expenses incurred in connection with establishing the State Mitigation Trust and the Indian Tribe Mitigation Trust and setting them up for operation. Start-up costs shall not include the cost of premiums for insurance policies.

1.20 "Subject Vehicles" shall mean: (i) the "2.0 Liter Subject Vehicles," as defined in the First Partial Consent Decree in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1); and (ii) the "3.0 Liter Subject Vehicles," as defined in the Second Partial Consent Decree in that case (Dkt. No. 3228-1).

1.21 "Tax" or "Taxes" shall mean all federal, state, and local taxes that may be imposed on the Trust by any taxing authority.

1.22 "Tax Professionals" shall mean all accountants and tax lawyers hired to assist the Trustee with the Trust's reporting obligations, tax filings, audits, and all other tax and accounting-related activities, including efforts to obtain and, if granted, maintain the IRS Private Letter Ruling as described in subparagraph 3.1.2.7 and Paragraph 6.7 of this Indian Tribe Trust Agreement.

1.23 "Tax Return" or "Tax Returns" shall mean all required federal, state, and local tax returns and information returns, including any returns associated with compliance with withholding and reporting requirements.

1.24 "Termination Date" shall mean the date that the Indian Tribe Trust terminates pursuant to Paragraph 6.8 of this Indian Tribe Trust Agreement.

1.25 "Trust Administration Costs" shall mean all expenditures of Trust Assets by the Trustee.

1.26 "Trust Effective Date" shall mean the date that the United States files the fully executed final version of the Indian Tribe Trust Agreement with the Court.

1.27 "Trustee" shall mean Wilmington Trust, N.A., acting solely in its role as the Trustee of this Indian Tribe Mitigation Trust as appointed in accordance with Paragraph 3.0, or a successor trustee pursuant to subparagraph 3.7.2. In subparagraphs 2.2.4, 3.1.2.8, 3.5.2, 3.5.3, 3.5.6, and 3.5.7 of this Indian Tribe Trust Agreement, each reference to the Trustee shall include the Trustee and its officers, directors, and employees.

1.28 "United States" shall mean the United States of America, acting on behalf of the U.S. Environmental Protection Agency ("EPA").

II. INDIAN TRIBE MITIGATION TRUST

2.0 Establishment of the Indian Tribe Mitigation Trust

2.0.1 Irrevocable Establishment. The Defendants hereby and irrevocably establish this Indian Tribe Mitigation Trust on behalf of the Beneficiaries in the form of a statutory trust under the Delaware Act, which shall bear the name "Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries." In connection with the Trustee's power hereunder, the Trustee may use this name or a variation thereof. The Trustee is hereby authorized and directed to execute and file a Certificate of Trust for the Indian Tribe Mitigation Trust in the form attached hereto as Appendix D-5. The Trustee

hereby accepts and agrees to hold the assets owned by the Indian Tribe 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 Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree.

2.0.3 Trust Purpose. It shall be the purpose of the Indian Tribe Mitigation Trust to timely and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this Indian Tribe Trust Agreement, and to provide funds for the administration and operation of this Indian Tribe Trust in accordance with this Indian Tribe 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 Indian Tribe Trust Account. Within 15 Days following the Trust Effective Date, the Trustee shall establish a trust account ("Indian Tribe Trust Account"), and file with the Court a designation and identification of the Indian Tribe Trust Account. The purpose of the Indian Tribe Trust Account shall be to receive deposits from the Defendants (directly or through the Court Registry) pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, to hold them in trust, to receive income and gains from any investment of Trust Assets (collectively, "Trust Funds"), and to make disbursements to fund Eligible Mitigation Actions by Beneficiaries and to pay Trust Administration Costs, all in accordance with the Consent Decree and this Indian Tribe Trust Agreement. Disbursements shall be directed by each Beneficiary pursuant to a Beneficiary Eligible Mitigation Action Certification (Appendix D-4) delivered to the Trustee in accordance with Paragraph 5.2. Unless otherwise agreed by the parties to the Consent Decree ("Consent Decree Parties"), the Indian Tribe Trust Account shall be the only account that may be used for these purposes.

2.0.4.1 Indian Tribe Trust Account Divisions. The Indian Tribe 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 Indian Tribe Trust Agreement.

2.1 Funding of the Indian Tribe Mitigation Trust: The Settling Defendants shall fund the Indian Tribe Mitigation Trust as required by the First Partial Consent Decree, and the Defendants shall fund the Indian Tribe Mitigation Trust as required by the Second Partial Consent Decree. The Trustee shall allocate to the Indian Tribe Mitigation Trust the following amounts: (1) 2.01% of the Mitigation Trust Payments from the First Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account, and (2) 2.3% of the Mitigation Trust Payments from the Second Partial Consent Decree plus any income earned on that amount while deposited with the Court Registry account.

2.1.1 Funding and Use of Tribal Allocation Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall fund the Tribal Allocation Subaccount by transferring into it from the Indian Tribe Trust Account the funds allocated to the Tribal Allocation Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). These funds may only be used to fund Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures in the United States, and for a technical assistance provider in accordance with subparagraph 2.1.1.1. After lodging the First Partial Consent Decree, the United States consulted with interested Indian Tribes for a 60-Day period, in order to establish a mechanism for allocating the funds in the Tribal Allocation Subaccount among those Indian Tribes that are deemed Beneficiaries hereunder, including setting aside 5% of those funds to be directed towards technical assistance to enable Indian Tribes to prepare funding requests for Eligible Mitigation Actions.

2.1.1.1 Technical Assistance Provider. In comments received during the consultation process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference for using an established technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions. Accordingly, the Trustee agrees to: (1) set aside 5% of the Tribal Allocation Subaccount into a separate subaccount, the Technical Assistance Provider Subaccount, for record keeping purposes only, to be disbursed to a technical assistance provider to assist Indian Tribes in preparing funding requests for Eligible Mitigation Actions; and (2) select the Institute for Tribal Environmental Professionals as the technical assistance provider for these purposes. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any budget, semi-annual report, or other document from the technical assistance provider reasonably believed by the Trustee to be genuine and to have been signed or sent by the proper person or persons.

2.1.1.2 Budget. In order to fund its services, the technical assistance provider shall submit an annual budget to the Trustee in electronic and hard-copy format, and shall include: (i) a detailed description of the proposed services; (ii) a proposed management plan for the proposed services, including a detailed budget, an identification of all indirect costs, and an implementation and expenditure timeline; (iii) a certification that indirect costs comply with the limits in subparagraph 2.1.1.3; (iv) a certification that all vendors were or will be selected in accordance with state or tribal public contracting laws as applicable; (v) for each proposed expenditure exceeding $25,000, detailed cost estimates from selected or potential vendors; (vi) a detailed description of how the technical services provider will oversee the proposed services, including, but not limited to: identification of the specific entity responsible for reviewing and auditing expenditures of funds to ensure compliance with

applicable law; and a commitment by the technical assistance provider to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of 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 technical assistance provider shall make such documentation publicly available; and (vii) a detailed plan for reporting on implementation that meets the requirements of subparagraph 2.1.1.4. The Trustee shall post each budget on the Indian Tribe Trust's public-facing website upon receipt. Pursuant to the procedures and schedules in subparagraphs 5.2.16 and 5.2.16.1, the Trustee shall approve any funding request in the technical assistance provider's budget that meets the requirements of this subparagraph 2.1.1.2 and shall disburse funds according to the written instructions provided by the technical assistance provider.

2.1.1.3 Limits on Indirect Costs. The technical assistance provider's indirect costs associated with administering the technical assistance portion of the Tribal Allocation Subaccount shall not exceed 30.9% of the overall costs in providing technical assistance under subparagraph 2.1.1.1 (i.e., of the 5% portion that will be used for technical assistance, no more than 30.9% of the 5% portion may consist of indirect costs). For purposes of this subparagraph, "indirect costs" are those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. As required by subparagraph 2.1.1.2, the technical assistance provider shall separately set forth the indirect costs in each annual budget submitted to the Trustee. These indirect costs are subject to the limitations in the Federal Acquisition Regulations at 48 C.F.R. § 31.205.

2.1.1.4 Reporting Obligations. No later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, the technical assistance provider shall provide a semiannual report to the Trustee describing the progress implementing the technical assistance services during the six-month period leading up to the reporting date (including a summary of all costs expended on the services through the reporting date). Such reports shall include a complete description of the status, development, and implementation of the services. These reports shall be signed by an official with the authority to submit the report for the technical assistance provider and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.

2.1.1.5 Unused Funds. Upon the termination or completion of services by the technical assistance provider, any unused funds shall be returned by the technical assistance provider to the Indian Tribe Trust and added back to the Tribal Allocation Subaccount.

2.1.2 Establishment of Beneficiary Status and Funding Requests. Prior to receiving any funds, each Indian Tribe must establish Beneficiary status pursuant to Paragraph 4.0 by filing with the Court, at the time it submits its first funding request, including any request seeking DERA funds, a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3) ("Certification Form"), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. At the time of filing the Certification Form with the Court, each Indian Tribe shall also provide a copy of the Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1. Any funding request submitted by any Indian Tribe must comply with the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, and each allocation given to any Indian Tribe that is determined to be a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1 shall be subject to Paragraph 5.3 and subparagraphs 5.0.5, 5.2.17, and 5.4.5.

2.1.3 Intentionally Reserved.

2.1.3.1 Intentionally Reserved.

2.1.3.2 Tribal Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall establish a Tribal Administration Cost Subaccount that shall be funded in accordance with the specific allocation for the Tribal Administration Cost Subaccount in Appendix D-1 (Initial 2.0 Liter Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation). The funds in this subaccount shall be used exclusively to pay for the Indian Tribe Trust's expenses relating to administering the Tribal Allocation Subaccount; provided, however, that the Trustee, consistent with the weighted average allocation percentage of 2% set forth in Appendix D-1B, may also draw upon this account to pay 2% of the Start-up Costs and 2% of the Shared State and Indian Tribe Administration Costs, in accordance with Paragraph 3.6. No additional Trust Assets may be directed to the Tribal Administration Cost Subaccount, or to the payment of Trust Administration Costs relating to the Tribal Administration Cost Subaccount, other than investment earnings on the Tribal Administration Cost Subaccount, absent further order of the Court.

2.1.4 Tribal Advisory Council. In comments received during the consultation process referenced in subparagraph 2.1.1, Indian Tribes expressed a preference that a portion of the funds in the Tribal Administration Cost Subaccount be used to establish and fund a Tribal Advisory Council to advise the Trustee in evaluating tribal funding requests for

Eligible Mitigation Actions. The Trustee agrees to select the Institute for Tribal Environmental Professionals to coordinate the establishment of a Tribal Advisory Council. The Trustee shall set aside $30,000 of the Tribal Administrative Cost Subaccount into a separate subaccount, the Tribal Advisory Council Subaccount, for record keeping purposes only, to fund a Tribal Advisory Council to advise the Trustee in evaluating tribal funding requests. The Institute for Tribal Environmental Professionals shall follow the requirements of subparagraphs 2.1.1.2, 2.1.1.3, and 2.1.1.4 with respect to funding requests and reporting obligations for the Tribal Advisory Council. Upon the termination or completion of services by the Tribal Advisory Council, any unused funds shall be returned by the Institute for Tribal Environmental Professionals to the Indian Tribe Trust and added back to the Tribal Administration Cost Subaccount.

2.1.5 Tax Payment Subaccount. As soon as practicable after the Trust Effective Date, the Trustee's receipt of the Trust Funds from the Court Registry pursuant to subparagraph 2.0.4, and the funding of the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1, the Trustee shall deduct an amount equal to the estimated taxes owed on earnings of the Trust Funds while on deposit in the Court Registry that have been allocated to the Indian Tribe Mitigation Trust pursuant to Paragraph 2.1. The amount of the deduction shall be based on applicable income tax withholding and reporting requirements, and consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. Such amount shall be deposited into a dedicated, non-interest bearing account ("Tax Payment Subaccount"). In addition, prior to the allocation of any investment income pursuant to subparagraph 3.2.3, the Trustee shall deduct an amount equal to the estimated taxes owed on such earnings and deposit that sum into the Tax Payment Subaccount. The amounts in this Tax Payment Subaccount shall be used for the express purpose of paying all applicable taxes with respect to the Indian Tribe Mitigation Trust in a manner consistent with Paragraph 6.7. If at any time the funds on deposit in this Tax Payment Subaccount are insufficient to pay all Taxes then due and owing, the Trustee shall seek to resolve any dispute pursuant to the dispute resolution procedures of Paragraph 6.2.

2.2 Trust Limitations

2.2.1 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 Indian Tribe Mitigation Trust.

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

2.2.3 This Indian Tribe Mitigation Trust is irrevocable. The 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 Defendants to fund the Indian Tribe Trust pursuant to the terms of the Consent Decree, (ii) shall not have any liabilities or funding obligations with respect to the Indian Tribe Trust (to the Trustee, the Beneficiaries or otherwise) other than the funding obligations expressly set forth in the Consent Decree,

and (iii) shall not have any liability or obligation to pay tax on any income or gains from any investments of Trust Assets. Nor shall the Defendants have any rights or role with respect to the management or operation of the Indian Tribe Trust, or the Trustee's approval of requests for Eligible Mitigation Action funding.

2.2.4 Exculpation. Neither the Trustee and its officers, directors, and employees, the Investment Manager and its officers, directors, and employees, the Tax Professionals nor the Indian Tribe Mitigation Trust shall have any liability whatsoever to any person or party for any liability of the Defendants; provided, however, that the Indian Tribe Mitigation Trust shall be liable to the Beneficiaries for funding of Eligible Mitigation Actions in accordance with the terms of this Indian Tribe Trust Agreement and the Consent Decree.

III. TRUSTEE RESPONSIBILITIES

3.0 Appointment: Pursuant to Paragraph 15.e. of the First Partial Consent Decree, the Court appointed Wilmington Trust, N.A., as Trustee of the Environmental Mitigation Trust. Dkt. No. 3030 at 2. Wilmington Trust, N.A., not individually but in its representative capacity as Trustee, is hereby appointed to serve as the Trustee to administer the Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree. The Trustee hereby accepts such appointment and agrees to serve, commencing on the Trust Effective Date, in such capacity to the Indian Tribe Mitigation Trust and for the benefit of the Beneficiaries.

3.0.1 Wilmington Trust, N.A. is acting in two separate and distinct roles under the Indian Tribe Mitigation Trust: (1) as the Trustee of the Indian Tribe Mitigation Trust; and (2) as the Investment Manager of the Trust Assets. These roles are subject to different standards of care. Wilmington Trust, N.A., acting as Trustee, is subject to the standard of care set forth in subparagraphs 3.1.1 and 3.5.2. In its role as Investment Manager, Wilmington Trust, N.A. is subject to the standard of care set forth in subparagraph 3.2.2.

3.1 Powers of the Trustee

3.1.1 Except as set forth in this Indian Tribe Trust Agreement, the Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the Indian Tribe Mitigation Trust, which shall be exercised in an efficient and expeditious manner in furtherance of and in a manner consistent with the purposes of this Indian Tribe Trust Agreement and the Consent Decree. Subject to the limitations on liability set forth in subparagraph 3.5.2, the Trustee shall act in accordance with the current professional standards of care and with the diligence, skill, and care expected for the administration of such a Trust. The Trustee shall have only such duties, rights, powers, and privileges expressly set forth in the Consent Decree, this Indian Tribe Trust Agreement, and as otherwise provided by the Delaware Act. No implied duties (including fiduciary duties) shall be read into this Indian Tribe Trust against Wilmington Trust, N.A., acting as the Trustee.

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, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 of this Indian Tribe Trust Agreement or to engage a professional investment manager ("Investment Manager") to receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 for the benefit of the Beneficiaries. The Trustee appoints Wilmington Trust, N.A. as the Investment Manager for the Indian Tribe Mitigation Trust pursuant to an Investment Management Agreement entered into on the Trust Effective Date to manage the Trust Assets in accordance with Paragraph 3.2;

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

3.1.2.3 To establish and maintain a secure method of internet-based communications for the use of the Trustee and the Beneficiaries;

3.1.2.4 To hold title to property in the name of the Trustee in its capacity as such;

3.1.2.5 To incur, and pay from the Tribal Administration Cost Subaccount, any and all customary and commercially reasonable charges and expenses upon or connected with the administration of this Indian Tribe Mitigation Trust in the discharge of its obligations hereunder, including 2% of Start-up Costs and 2% of Shared State and Indian Tribe Administration Costs;

3.1.2.6 To engage and compensate professionals to assist the Trustee in accordance with this Indian Tribe Trust Agreement, including, but not limited to, legal, environmental, investment, accounting, tax, website, and third-party auditing professionals, or internet service providers, or insurance providers. 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. The Trustee shall have an annual independent audit prepared and posted on the website. In its sole discretion, the United States may waive the requirement of an annual audit starting in year seven or at an earlier time in order to preserve Trust Funds;

3.1.2.7 To engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the

Indian Tribe Mitigation Trust, and to take such actions as may be reasonably necessary to secure such ruling and to ensure that the Indian Tribe Mitigation Trust continues to comply with such ruling upon the advice of the Tax Professionals. The Trustee may engage and compensate professionals to assist the Trustee in requesting a Private Letter Ruling from the IRS that investment income earned on the Trust Assets will be excludible from gross income upon the advice of Tax Professionals that the pursuit of such a Private Letter Ruling is prudent; and

3.1.2.8 To purchase any insurance policies as the Trustee may determine to be prudent to protect the Indian Tribe Mitigation Trust, the Trust Assets, the Trustee and its officers, directors, and employees, Wilmington Trust, N.A., in its role as Investment Manager, and its officers, directors, and employees, and to cover Tax Professionals, if required, from any and all Claims that might be asserted against each;

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

3.1.2.10 To file documents in Court on behalf of itself and the Indian Tribe Trust;

3.1.2.11 To make all necessary state and federal filings and to provide information as required by law;

3.1.2.12 To vote shares or other investments;

3.1.2.13 To open or maintain any additional bank accounts, or close bank accounts or open securities accounts as are necessary or appropriate to manage the Trust Assets;

3.1.2.14 To apply, as soon as practicable after the Trust Effective Date, for an employer identification number for the Indian Tribe Trust pursuant to IRS Form SS-4, and in accordance with Treasury Regulation Section 1.468B-2(k)(4), 26 C.F.R. § 1.468B-2(k)(4);

3.1.2.15 To deduct and withhold from allocation of investment earnings to the Beneficiaries under subparagraph 3.2.3 all Taxes that the Trustee may be required to deduct and withhold under any provision of tax law, and any allocation of investment income under subparagraph 3.2.3 to an Indian Tribe Trust subaccount shall be reduced to the extent such withheld amounts are remitted to the appropriate taxing authority;

3.1.2.16 To file on behalf of the Indian Tribe Trust all required Tax Returns, which shall be completed in consultation with Tax Professionals, ensure compliance with withholding and reporting requirements, and pay any and all Taxes, including estimated Taxes, due and owing with respect to the Indian Tribe Trust from amounts in the Tax Payment Subaccount pursuant to subparagraph 2.1.5; and

3.1.2.17 Subject to applicable requirements of this Indian Tribe Trust Agreement (including the limitations on liability set forth in subparagraph 3.5.2), 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 Indian Tribe Mitigation Trust in accordance with this Indian Tribe Trust Agreement and the Consent Decree, each in accordance with its duties and the current professional standards of care, and with the diligence, skill, and care expected for the administration of such a Trust for the benefit of the Indian Tribes.

3.1.2.18 Duty to Comply with Law. The Trustee shall not be required to take any action that would violate a law or regulation to which it is subject.

3.1.2.19 Relation-Back Election. If applicable, the Trustee and the Defendants shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), 26 C.F.R. § 1.468B-1(j)(2), to treat the Indian Tribe Trust as coming into existence as a settlement fund as of the earliest possible date.

3.2 Investment of Trust Assets: The Trustee shall engage the Investment Manager to 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 Indian Tribe Trust Account for distribution among the Beneficiaries.

3.2.2 In investing, reinvesting, exchanging, selling, and managing Trust Assets, the Trustee or Investment Manager must perform its duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that 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. The Investment Manager shall comply with all applicable laws and shall be held to a fiduciary standard of care with respect to the investment and reinvestment of the principal and income of Trust Assets; except that the right and power of the Investment Manager 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. The Investment Manager shall maintain prudent diversification across instruments and specific issuers. The value of bonds of any single company and its affiliates owned by the Indian Tribe Trust directly rather than through a mutual fund shall not exceed 10% of the investment portfolio at time of purchase; this restriction does not apply to any of the following: Repurchase Agreements; Money Market Funds; U.S. Treasuries; and U.S. Government Agencies. Any such investments shall be made consistently with the Uniform Prudent Investor Act. The determination of the rating of any investments made by the Investment Manager shall be made on the date of acquisition of any such investment or on the date of re-investment. The Investment Manager shall reconfirm that all investments of Trust Assets still meet the original rating requirement on a quarterly basis. If the Investment Manager determines that any particular investment no longer meets the rating requirement, the Investment Manager shall substitute that investment with an investment that meets the ratings requirement as promptly as practicable, but in no event later than the next reporting period. Previously purchased securities downgraded below AA may be held for a reasonable and prudent period of time if the Investment Manager believes it is in the interest of the Indian Tribe Trust to do so. The borrowing of funds or securities for the purpose of leveraging, shorting, or other investments is prohibited. Investment in non-U.S. dollar denominated bonds is prohibited. This subparagraph 3.2.2 shall act as a standing default investment instruction for all cash in any account or subaccount that holds any Trust Assets in cash, which shall be invested in The Blackrock Fed Fund (CUSIP 09248U809). Except for actions or omissions of the Investment Manager that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, the Investment Manager and its officers, directors, or employees shall have no liability for any and all Claims.

3.2.3 Allocation of Investment Income. Any and all earnings, interest, and other investment income realized on the investment of the Trust Assets shall be allocated to each Indian Tribe Trust subaccount on the basis of the respective subaccount balances at the end of each month. Any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount shall be allocated to that administration subaccount on the basis of the administration subaccount balance at the end of each month.

3.2.4 Nothing in this Section shall be construed as authorizing the Trustee to cause the Indian Tribe 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 Indian Tribe 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 Indian Tribe 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 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 Indian Tribe 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 February 15 (for the preceding six-month period of July 1 to December 31) and August 15 (for the preceding six-month period of January 1 to June 30) of each year, and then at least 30 Days prior to the filing of a motion to terminate pursuant to Paragraph 6.8 hereof (each a "Financial Reporting Date"), the Trustee shall file with the Court and provide each known Beneficiary, the Technical Assistance Provider, and the Defendants with:

3.3.1.1 A statement: (i) confirming the value of the Trust Assets; (ii) itemizing the investments then held by the Indian Tribe 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 Indian Tribe Trust Account and all subaccounts to any recipient;

3.3.1.2 Regarding the Tribal Allocation Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) the initial allocation of Trust Assets in the Tribal Allocation Subaccount; (ii) any allocation adjustments pursuant to this Indian Tribe Trust Agreement; (iii) line item descriptions of completed disbursements on account of approved Eligible Mitigation Action; and (iv) the remaining and projected amount in the Tribal Allocation Subaccount. 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 Regarding the Tribal Administration Cost Subaccount, the Trustee shall provide cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) line item disbursements of Total Administration Costs; (ii) balance statements; and (iii) 3-year projected annual budgets of disbursements on account of Trust Administration Costs;

3.3.1.4 For the Indian Tribe Trust Account and all subaccounts, including, but not limited to the Tribal 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 Indian Tribe Trust Account and 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 the Trustee's prior budget projections for Trust Administration Costs to actual performance;

3.3.1.6 A description of any previously unreported action taken by the Indian Tribe Trust in performance of its duties which, as determined by the Trustee, counsel, accountants, or other professionals retained by the Trustee, affects the Indian Tribe Trust in a materially adverse way;

3.3.1.7 A brief description of all actions taken in accordance with this Indian Tribe Trust 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 Indian Tribe Trust's public-facing website all information required to be provided under Paragraph 3.3.

3.3.2 After the Termination Date, the Trustee intends to destroy all records retained pursuant to this Indian Tribe Trust Agreement. The Trustee shall notify the United States and the Defendants at least 90 Days prior to the destruction of the records. Upon request by the United States or the Defendants, the Trustee shall deliver any such records to EPA or the Defendants, respectively.

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. This provision does not prevent Wilmington Trust, N.A. from acting as the Investment Manager.

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 or tribal 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 and Standard of Care for the Trustee. In no event shall the Trustee be held personally liable for any and all Claims asserted against the Trustee and/or the Indian Tribe Mitigation Trust except for actions or omissions of the Trustee that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Trustee. The Trustee shall not be held personally liable for carrying out the express terms of this Indian Tribe Mitigation Trust or carrying out any directions from the Beneficiaries or the United States issued in accordance with this Indian Tribe Trust Agreement or in accordance with any Court Order entered in connection with or arising out of the Indian Tribe Mitigation Trust. The Trustee shall not be held personally liable for any failure or delay in the performance of its obligations hereunder arising from causes beyond the control of the Trustee ("Force Majeure"). 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 final, non-appealable judgment of the Court determining fraud, negligence, or willful misconduct on the part of the Trustee in following such advice. The Trustee shall not be held liable for the negligence, fraud, or willful misconduct of any professional hired by it hereunder provided that the Trustee appointed and engaged the professional with due care. In the absence of willful misconduct, negligence, or fraud by the Trustee, as determined by a final, non-appealable judgment of the Court, the Trustee shall not be personally liable to persons seeking payment from or asserting any and all Claims against the Indian Tribe Mitigation Trust or the Trustee. The Trustee, which is a trustee of this Indian Tribe Trust that has been established under the Delaware Act, shall only be held to the standards of care set forth in this subparagraph 3.5.2; the standards of common law trust laws or the personal trust laws of any state shall not apply in any circumstances hereunder.

3.5.2.1 Limitation of Liability for Tax Professionals. In no event shall the Tax Professionals engaged by the Trustee to assist it with the administration of the Indian Tribe Mitigation Trust be held personally liable for any and all Claims asserted against them except for actions or omissions of the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct by the Tax Professionals.

3.5.3 Indemnification. Except for actions or omissions of the Trustee, the Investment Manager, and the Tax Professionals that are determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee, the Investment Manager, or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification from the Trust Assets, solely as provided in this subparagraph 3.5.3, to hold them harmless against any and all Claims brought against any of them arising out of or in connection with the acceptance or administration of their duties under this Indian Tribe Mitigation Trust, including any and all Claims in connection with enforcing their rights hereunder and defending themselves against any and all Claims. In asserting any indemnification claim against Trust Assets pursuant to this subparagraph 3.5.3, the Trustee, the Investment Manager, and the Tax Professionals shall first seek to recover the amount by asserting a claim against the Trustee's insurance policies purchased pursuant to subparagraph 3.1.2.8 to protect the Trustee, the Investment Manager, and the Tax Professionals hired hereunder against any and all Claims. With respect to any and all amounts that: (1) are not fully and timely paid to the Trustee, the Investment Manager, or the Tax Professionals pursuant to the insurance policies purchased pursuant to subparagraph 3.1.2.8, and (2) are not determined in a final, non-appealable judgment of the Court to be fraudulent, negligent, or willful misconduct, in each separate case, by the Trustee or the Investment Manager or the Tax Professionals, each of the Trustee, the Investment Manager, and the Tax Professionals hired hereunder are entitled to indemnification solely from the portion of Trust Assets in (1) the Tribal Administration Cost Subaccount established pursuant to subparagraph 2.1.3.2; and (2) the investment earnings on the Tribal

Administration Cost Subaccount. Indemnification under this subparagraph 3.5.3 covers only the amounts not fully and timely paid or covered by insurance policies purchased pursuant to subparagraph 3.1.2.8. The Trustee, the Investment Manager, and the Tax Professionals shall reimburse the Indian Tribe Mitigation Trust for any amount advanced to them or paid from the Tribal Administration Cost Subaccount for any Claim if any proceeds are paid on such Claim from insurance policies purchased pursuant to subparagraph 3.1.2.8. If insurance payments are denied in whole or part, the Trustee shall confer with legal counsel and consider whether to affirmatively pursue such insurance payments including, without limitation, an insurance coverage suit arising out of a wrongful denial of coverage. For the avoidance of doubt, subparagraphs 3.5.2, 3.5.2.1, and 3.5.3 do not create for the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, and the Tax Professionals hired hereunder any express or implied right to indemnification from any Consent Decree Party for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or the Tax Professionals, and no Consent Decree Party shall be liable for any and all Claims asserted against the Trustee, the Indian Tribe Mitigation Trust, the Investment Manager, or Tax Professionals.

3.5.4 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. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the Beneficiaries, including the Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3) and each Beneficiary Eligible Mitigation Action Certification form (Appendix D-4). The Trustee shall have no duty to monitor or supervise the use of Trust Funds paid in accordance with Beneficiary Eligible Mitigation Action Certification and Funding Direction forms or any Beneficiary's compliance with an Eligible Mitigation Action.

3.5.5 Right to Demand Documentation. Notwithstanding anything else in this Indian Tribe Trust 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 Indian Tribe 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.

3.5.6 Limitation on Consequential Damages. Unless the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have engaged in fraudulent or willful misconduct, the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall not have any right to recover, and the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals shall not be liable for, any special, indirect, punitive, or consequential loss or damages, of any kind whatsoever, against the Indian Tribe Mitigation Trust, the Trustee, the Investment Manager, or the Tax Professionals. When the Trustee, the Investment Manager, or the Tax Professionals are determined in a final, non-appealable judgment of the Court to have been

negligent, any and all Claims by the United States or any Beneficiary of the Indian Tribe Mitigation Trust shall be limited to direct damages.

3.5.7 No Consequential Damages. In no event shall the Trustee, the Investment Manager, the Tax Professionals, or the Indian Tribe Mitigation Trust be held responsible or liable for special, indirect, punitive, or consequential loss or damages of any kind whatsoever in connection with any and all Claims brought against them by any third party.

3.6 Payment of Trust Administration Costs: Subject to the limits set forth in Appendix D-1 and Appendix D-1A, the Indian Tribe Mitigation Trust shall pay from the Tribal 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 Indian Tribe Trust, including payment of professionals hired in connection with the duties and responsibilities of the Indian Tribe Trust, payment of insurance premiums for policies purchased pursuant to subparagraph 3.1.2.8, payment of a deductible incurred under an insurance policy for the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals hired hereunder purchased pursuant to subparagraph 3.1.2.8 in cases in which the Indian Tribe Trust, Trustee, Investment Manager, or Tax Professionals would be entitled to indemnification under subparagraph 3.5.3, and any indemnification amounts as provided in accordance with subparagraph 3.5.3. The Trustee also shall be entitled to receive reasonable compensation for services rendered on behalf of the Indian Tribe Mitigation Trust, in accordance with the projected annual budgets for administration of the Indian Tribe Mitigation Trust required under subparagraph 3.3.1 hereof, and shall be entitled to pay itself from the Tribal Administration Cost Subaccount its initial fee and its annual administration fee as set forth in its fee letter dated as of the Trust Effective Date ("Trustee Fee Letter"). The Trustee shall provide a copy of the Trustee Fee Letter to each Beneficiary via the secure internet site established by the Trustee pursuant to subparagraph 3.1.2.3. Consistent with the weighted average allocation rates set forth in Appendix D-1B, the Indian Tribe Mitigation Trust shall pay from the Tribal Administration Cost Subaccount 2% of Start-up Costs and 2% of Shared State and Indian Tribe Administration Costs. Notwithstanding the foregoing, the total amount of allowable Trust Administration Costs shall not exceed the specific allocation established for the Tribal Administration Cost Subaccount in Appendix D-1 and Appendix D-1A, plus any and all earnings, interest, and other investment income realized on the investment of the assets held in the Tribal Administration Cost Subaccount. The Trustee shall not use the Tribal Administration Cost Subaccount to pay: (1) the fees and expenses of the Investment Manager; or (2) any and all Taxes due and owing with respect to the Indian Tribe Trust. In accordance with the terms of the Investment Management Agreement, the Investment Manager's fees and expenses shall be deducted directly from the investment earnings on the Trust Assets, and not from the corpus of the Trust Assets. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established in subparagraph 2.1.5. The Trustee shall include in its semi-annual reporting, and post on its public-facing website, all Trust Administration Costs (including the costs and descriptions of the Trustee's services rendered on behalf of the Indian Tribe Trust) at least 15 Days prior to the payment of any such expense; provided, however, that the requirement to post all Trust Administrative Costs at least 15 Days prior to payment shall first take effect when the website is established and ready for use, and shall not initially apply to Start-up Costs and to Shared State and Indian Tribe Administration Costs. After the Tribal Administration Cost Subaccount is funded pursuant to subparagraph 2.1.3.2, the Trustee, after receipt of invoices

from any third party service providers, shall pay as promptly as practical any and all fees, costs, and expenses incurred by the Trustee to establish the Indian Tribe Mitigation Trust including, but not limited to: (1) the invoices of third party service providers (e.g., legal, accounting, website developer, and hosting provider); (2) fees, costs, and expenses necessary to commence the operations of the Indian Tribe Trust (e.g., Intralinks, Pacer, and insurance premiums); and (3) the Trustee's acceptance fee and first quarter portion of the Trustee's annual fee for the first year. All Trust Administration Costs that are paid prior to the establishment of the website shall be posted on the website as promptly as practicable after the website is established. Such information 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 Indian Tribe Mitigation Trust and the Beneficiaries will terminate on the Termination Date.

3.7.2 Resignation of Trustee and Successor Trustee. The Trustee may commence the resignation process at any time by providing 90 Days' notice to the United States, the Defendants, and the Beneficiaries. Resignation of the Trustee shall only be effective upon: (i) selection of a successor pursuant to the procedures set forth in the First Partial 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 Indian Tribe 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 ceases to exist or ceases to operate its corporate trust business, 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 First Partial Consent Decree. Any successor Trustee appointed hereunder shall file an amendment to the Certificate of Trust as required by the Delaware Act.

IV. INDIAN TRIBE MITIGATION TRUST BENEFICIARIES

4.0 Determination of Beneficiary Status: Each Indian Tribe may elect to become a Beneficiary hereunder by filing with the Court a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9, at the time it files its first funding request, including any request seeking DERA funds. At the time of filing the Certification Form with the Court, each Indian Tribe shall also provide a copy of the Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1. Each Indian Tribe that timely files such certifications shall be a "Certifying Entity." 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 pursuant to subparagraphs 4.02 and 5.0.5.1.

4.0.1 Notice of Objection. If the United States determines that a certification filed by any Certifying Entity fails to comply with the requirements of this Section, the United States 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 Paragraph 6.2.

4.0.2 Notice of Beneficiary Designation. Regarding the determination of Beneficiary status for Indian Tribes pursuant to subparagraphs 5.0.5 and 5.0.5.1, 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; and

4.0.2.2 Intentionally Reserved.

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 not qualified as a Beneficiary under this Indian Tribe Trust Agreement.

4.1 Intentionally Reserved.

4.2 Required Certifications in Appendix D-3

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Certification Form (Appendix D-3) must include a designation of lead agency, certified by the Office of the Governor (or the analogous chief executive) of the Indian Tribe 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 Indian Tribe. 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 Indian Tribe Trust 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 Indian Tribe 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 (Appendix D-3) must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this Indian Tribe Trust 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 Indian Tribe Trust Agreement in accordance with its terms.

4.2.3 Certification of Legal Authority. Each Certification Form (Appendix D-3) must certify that: (i) the laws of the Certifying Entity do not prohibit it from being a Beneficiary hereunder; and (ii) prior to requesting any funds hereunder, the Certifying Entity has obtained full legal authority to receive and/or direct payments of such funds. If the Certifying Entity fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary pursuant to subparagraphs 4.0.2.1 and 5.0.5.1 until it has obtained such legal authority.

4.2.4 Certification of Legal Compliance. Each Certification Form (Appendix D-3) must include a certification and agreement that, in connection with all actions related to this Indian Tribe 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 (Appendix D-3) 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 Tribal Allocation Subaccount.

4.2.6 Waiver of Claims for Injunctive Relief under Environmental or Common Laws. Each Certification Form (Appendix D-3) 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 Defendants) of all claims for injunctive relief to redress environmental injury caused by the 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. 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 (Appendix D-3) 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. These procedures shall be designed to support access and limit the burden for the general public. 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 (Appendix D-3) 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 Indian Tribe Trust 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. For the U.S. Department of the Interior and the U.S. Department of Agriculture, Beneficiaries may provide notice as required by this subparagraph to the following:

Department of the Interior:

National Park Service, Air Resources Division
VW Settlement
P.O. Box 25287
Denver, CO 80225-0287
Or via email to: vwsettlement@nps.gov.

Tim Allen or other designated representative
U.S Fish and Wildlife Service
National Wildlife Refuge System
Branch of Air Quality
Re: VW Settlement
7333 W. Jefferson Ave., Suite 375
Lakewood, CO 80235-2017
Or via email to: VW_Settlement@fws.gov

Department of Agriculture:

Linda Geiser or other designated representative
National Air Program Manager
lgeiser@fs.fed.us
(202) 756-0068

Bret Anderson or other designated representative
National Air Modeling Coordinator
baanderson02@fs.fed.us
(970) 295-5981

4.2.9 Registration of Subject Vehicles. Each Certification Form (Appendix D-3) must state, for the benefit of the parties to the Consent Decree (including the Defendants) and the owners from time-to-time of 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, an Emissions Compliant Recall, or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or Emissions Compliant Recall based solely on:

i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or

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

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

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

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Certifying Entity by the 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, 42 U.S.C. §§ 7543, 7507, and not explicitly excluded in subparagraphs 4.2.9(a)-(b).

V. DISTRIBUTION OF INDIAN TRIBE MITIGATION TRUST ASSETS

5.0 Intentionally Reserved.

5.0.1 Intentionally Reserved.

5.0.2 Intentionally Reserved.

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) of the First Partial Consent Decree or Section X (Recall Rate) of Appendix A (Buyback, Lease Termination, Vehicle Modification, and Emissions Compliant Recall Program) of the Second Partial Consent Decree shall be allocated in accordance with Appendix D-1B as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.4 Allocation of Appendix B Mitigation Trust Payments. Any Mitigation Trust Payments made pursuant to Appendix B (Vehicle Recall and Emissions Modification Program) of the First Partial Consent Decree or Appendix B (Vehicle Recall and Emissions Modification Program for 3.0 Liter Subject Vehicles) of the Second Partial Consent Decree or any Consent Decree provisions related thereto shall be allocated in accordance with Appendix D-1B as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.5 Distribution of Tribal Allocation Subaccount. Within 30 Days after the Trust Effective Date, the Trustee shall post on the Indian Tribe Mitigation 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, a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3) consistent with Paragraph 4.2; and (ii) of the date by which the Trustee will determine and post notice of the Beneficiary status of each certifying Indian Tribe, which determination shall be made in a manner consistent with the procedures set forth in subparagraphs 4.0.2, 4.0.2.1, and 4.0.2.3.

5.0.5.2 Notice that each Indian Tribe may submit to the Trustee a Beneficiary Eligible Mitigation Action Certification form (Appendix D-4) that meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, by the following funding request deadlines for six annual funding cycles: (1) for the first funding cycle only -- 90 Days after the Trust Effective Date; and (2) for each funding cycle for years two through six -- by September 1, 2018, through September 1, 2022, respectively. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate may be submitted to the Trustee for purposes of the funding request deadline. Any funding requests received by the Trustee after a funding request deadline for a funding cycle will be processed by the Trustee pursuant to subparagraph 5.2.16 in the next funding cycle.

5.0.5.2.1 Regardless of the total amount of funding requests received on each of these six annual funding request 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 will be available for up to four additional years or until expended in accordance with the procedure in subparagraphs 5.0.5.2.4 through 5.0.5.2.7.

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 processing funding requests pursuant to subparagraph 5.2.16.

5.0.5.2.3 In the event that the total amount of the approvable 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 5.2.16, but rather shall: (i) allocate to each Indian Tribe that has been deemed a Beneficiary hereunder and has submitted an approvable 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 Indian 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 within 60 Days after the funding request deadline for that funding cycle and notify each tribal applicant by letter and email that the Trustee is prepared to disburse this tribal allocation pursuant to subparagraph 5.2.16.1. In this event, such tribal allocation shall only apply to the over-subscribed funding cycle. To the extent an Indian 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.

5.0.5.2.4 Within 120 Days after the funding request deadline for the sixth funding cycle, the Trustee shall file with the Court, deliver to the United

States, by and through EPA, and to each Indian Tribe previously deemed a Beneficiary hereunder, and publish on its public-facing website, an accounting of all Trust Assets in the Tribal Allocation Subaccount and Tribal Administration Cost Subaccount 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 for the Tribal Allocation Subaccount. The difference between these two amounts shall be referred to as the "Tribal Subaccounts Remainder Balance."

5.0.5.2.5 For the seventh funding cycle, by the funding request deadline of September 1, 2023, any Indian Tribe that: (i) has been deemed a Beneficiary hereunder, or (ii) establishes Beneficiary status pursuant to Paragraph 4.0 and subparagraphs 2.1.2, 4.0.2.1, and 5.0.5.1, may submit to the Trustee a Beneficiary Eligible Mitigation Action Certification form (Appendix D-4) for Eligible Mitigation Action funding from the Tribal Subaccounts Remainder Balance. Each funding request shall meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable.

5.0.5.2.6 If the total amount of the funding requests received by September 1, 2023, is less than the Tribal Subaccounts Remainder Balance, the Trustee shall make no adjustments to the funding requests before processing funding requests pursuant to subparagraph 5.2.16. If the total amount of the approvable funding requests received by September 1, 2023, exceeds the Tribal Subaccounts Remainder Balance, the Trustee shall: (i) allocate to each Indian Tribe that has been deemed a Beneficiary hereunder and has submitted an approvable funding request during the seventh funding cycle a share of the Tribal Subaccounts Remainder Balance, weighted in accordance with the total population living within each Indian 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 by October 31, 2023.

5.0.5.2.7 If funds remain in the Tribal Subaccounts Remainder Balance after the seventh funding cycle, any Indian Tribe that: (i) has been deemed a Beneficiary hereunder, or (ii) establishes Beneficiary status pursuant to Paragraph 4.0 and subparagraphs 2.1.2, 4.0.2.1, and 5.0.5.1, may submit to the Trustee a Beneficiary Eligible Mitigation Action Certification form (Appendix D-4) for Eligible Mitigation Action funding from the Tribal Subaccounts Remainder Balance on a "first come, first served" basis until the funds are expended or until the end of the additional four-year period. Each funding request shall meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable. Uncommitted funds remaining in the Tribal Allocation Subaccount or the Tribal Administration Subaccount after this additional

four-year period shall be returned to the Indian Tribe Trust Account and shall be subject to final disposition pursuant to subparagraph 5.4.5.

5.0.5.3 Any Beneficiary may use any share of its allocation for Eligible Mitigation Projects on Indian Land or in areas that are not 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 in Appendix D-2.

5.2 Funding Requests: Beneficiaries may submit requests for Eligible Mitigation Action funding at any time by filing with the Trustee a Beneficiary Eligible Mitigation Action Certification form (Appendix D-4), containing each of the certifications required by subparagraphs 5.2.2 through 5.2.13, as applicable. Each request for Eligible Mitigation Action funding must be submitted to the Trustee in electronic and hard-copy format, and include:

5.2.1 Intentionally Reserved.

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 state or tribal public contracting laws as applicable;

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 If applicable, 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 support for 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 Indian Tribe Trust's public-facing website upon receipt.

5.2.15 Reliance on Form. The Trustee may rely on, with no further duty of inquiry, and shall be protected in acting upon, any Beneficiary Eligible Mitigation Action Certification form (Appendix D-4) reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

5.2.16 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this Indian Tribe Trust Agreement and its Appendices. Within 60 Days after receipt of each Eligible Mitigation Action funding request, the Trustee shall transmit to the requesting Beneficiary and post on the Indian Tribe 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 or Appendix D-4. 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.

5.2.16.1 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, unless such date is not a Business Day and then the payment shall be made on the next succeeding Business Day.

5.2.17 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 Indian Tribe Mitigation Trust and added back to the Tribal Allocation Subaccount.

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 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, each Beneficiary shall submit to 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 Paragraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Indian Tribe Trust's public-facing website upon receipt.

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

5.4.1 Intentionally Reserved.

5.4.2 Intentionally Reserved.

5.4.3 Intentionally Reserved.

5.4.4 Intentionally Reserved.

5.4.5 Final Disposition of Indian Tribe Trust Assets. Not later than the eleventh anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Indian Tribe Mitigation Trust. After the eleventh anniversary of the Trust

Effective Date, any Trust Assets held in the Indian Tribe Trust Account or any subaccount (including, but not limited to, the 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 Indian Tribe 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 Federal Agencies exist, the United States will file a motion, with notice to the Defendants and the Beneficiaries, requesting the Court to order that any Trust Assets held in the Indian Tribe Trust Account (or any subaccount thereof) be distributed either to a governmental unit or to another trust, the income of which is excluded from gross income under the provisions of Internal Revenue Code Section 115, 26 U.S.C. § 115.

VI. MISCELLANEOUS PROVISIONS

6.0 Correspondence with Indian Tribe Trust: In accordance with subparagraph 3.1.2.3, the Trustee shall establish and maintain a secure method of internet-based communications for the use of the Trustee and the Beneficiaries that will: (1) enable each Beneficiary to deliver the required documentation under this Indian Tribe Trust Agreement in an electronic format; (2) enable secure communications between the Trustee and each Beneficiary; and (3) provide each Beneficiary with access to its own document base. In addition, each Beneficiary will have the ability to view its own balance in its individual subaccount via the Wilmington Trust Online Portfolio product or a similar product then in use.

6.0.1 Addresses for Delivery of Physical Copies of Documentation and Notices.

Indian Tribe Trust or Trustee:

Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Attn: Capital Markets & Agency Services
Wilmington, DE 19890
Facsimile: 302 636-4145

EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A

Washington, DC 20460
E-mail: VW_settlement@epa.gov

U.S. Department of Justice:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11386

Technical Assistance Provider:

Institute for Tribal Environmental Professionals
Attn: Executive Director
Northern Arizona University
P.O. Box 15004
Flagstaff, AZ 86011-5004

Defendants:

As to Volkswagen AG by mail:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Audi AG by mail:

Audi AG

Auto-Union-Strasse 1
85045 Ingolstadt, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America, Inc. by mail:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America Chattanooga Operations, LLC by mail:

Volkswagen Group of America Chattanooga Operations, LLC
8001 Volkswagen Dr.
Chattanooga, TN 37416
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.

Herndon, VA 20171
Attention: President

Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Dr. Ing. h.c. F. Porsche AG by mail:

Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Porscheplatz 1
D-70435 Stuttgart
Attention: GR/ Rechtsabteilung/ General Counsel

As to Porsche Cars North America, Inc.:

Porsche Cars North America, Inc.
1 Porsche Dr.
Atlanta, GA 30354
Attention: Secretary
With copy by email to: offsecy@porsche.us

As to one or more of the Defendants by email:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Granta Nakayama
Cari Dawson

giuffrar@sullcrom.com
nelless@sullcrom.com
gnakayama@kslaw.com
cari.dawson@alston.com

As to one or more of the Defendants by mail:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004

Granta Nakayama
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200

Washington, DC 20006

Cari Dawson
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

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 Indian Tribe 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 Indian Tribe 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 Indian Tribes, the Consent Decree Parties, and the Trustee arising under or with respect to this Indian Tribe Trust Agreement.

6.2.1 Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Indian Tribe Trust 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 Indian Tribe 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 Indian Tribe Mitigation Trust shall be governed by the laws of the State of 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. The duties, rights, protections, and immunities of the Trustee, as a trustee of a statutory trust under the Delaware Act, shall be governed by the laws of the State of 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 Indian Tribe 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 Indian Tribe 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 Indian Tribe Trust Agreement, this Indian Tribe Trust Agreement shall control.

6.4 Waiver of Jury Trial: Each party hereto and each Beneficiary hereof hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Indian Tribe Trust.

6.5 Modification: Material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) 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 Indian Tribe Mitigation Trust. Any modification of this Indian Tribe Mitigation Trust that affects the rights, powers, duties, obligations, liabilities, or indemnities of the Trustee requires the written consent of the Trustee. Minor modifications or clarifying amendments to the Indian Tribe Mitigation Trust, Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (Beneficiary Eligible Mitigation Action Certification) 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 Indian Tribe Mitigation Trust, and shall be filed with the Court. To the extent the consent of the 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 Defendants, no modification shall: (i) require the Defendants to make any payments to the Indian Tribe Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Defendants than those set forth in the Indian Tribe 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 Indian Tribe Mitigation Trust, whether material or minor, before such modification shall become effective.

6.6 Severability: If any provision of this Indian Tribe Trust 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 Indian Tribe Trust 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 Indian Tribe Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

6.7 Taxes: The Indian Tribe Mitigation Trust is intended to be a qualified settlement fund ("QSF") pursuant to Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. The Trustee is intended to be the Indian Tribe Trust's "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). The Trustee shall use its best efforts to submit, within six months after the Trust Effective Date, an application and all necessary supporting documentation to the IRS to obtain a Private Letter Ruling from the IRS: (1) that the Indian Tribe Mitigation Trust will be treated as a Qualified Settlement Fund under 26 C.F.R. § 1.468B-1; and (2) on any federal tax matter that the Tax Professionals reasonably believe is necessary to support the ruling in (1) or otherwise prudent to clarify an uncertain application of federal tax law to the Indian Tribe Mitigation Trust. Within ten Days after any application has been made to the IRS, the Trustee shall provide a copy of the application and accompanying documentation to the United States (pursuant to subparagraph 6.0.1) and to the known Beneficiaries (pursuant to the secure internet-based communication in Paragraph 6.0). Within seven Days after receipt of any IRS Private Letter Ruling, the Trustee shall provide a copy to the United States (pursuant to subparagraph 6.0.1) and the known Beneficiaries (pursuant to the secure internet-based communication established in Paragraph 6.0). The Trustee shall be responsible for filing all required Tax Returns, ensuring compliance with income tax withholding and reporting requirements, and paying applicable Taxes with respect to the Indian Tribe Trust in a manner consistent with Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and related Treasury Regulations. All Taxes shall be paid from amounts on deposit in the Tax Payment Subaccount established pursuant to subparagraph 2.1.5. The Defendants shall provide to the Trustee and the IRS the statement described in Treasury Regulation Section 1.468B-3(e)(2), 26 C.F.R. § 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which the Settling Defendants make a transfer to the Indian Tribe Trust.

6.8 Termination: After all funds have been expended pursuant to subparagraph 5.4.5, final reports have been delivered pursuant to Paragraph 3.3 and subparagraph 3.3.1, and notice regarding retained documents has been provided pursuant to subparagraph 3.3.2, the Trustee may file a motion with the Court requesting an order to begin the process under the Delaware Act to terminate this Indian Tribe Trust. The United States and the Beneficiaries shall be given not less than 60 Days to oppose such motion. After the Court approves the motion to terminate, the Trustee shall begin the dissolution and winding up processes under the Delaware Act. On the date that the Trustee completes all the statutory requirements under the Delaware Act and files a certificate of cancellation, this Indian Tribe Trust shall terminate (the "Termination Date").

FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR INDIAN TRIBE BENEFICIARIES:

WILMINGTON TRUST, N.A., AS TRUSTEE FOR THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR INDIAN TRIBE BENEFICIARIES, AND NOT IN ITS INDIVIDUAL CAPACITY

Date: _____

David A. Vanaskey, Jr.
Administrative Vice President

By their execution of this Indian Tribe Trust Agreement each undersigned party represents that they are authorized signer for such Company entitled to sign on behalf of each Settling Defendant and that each of the Settling Defendants have taken all necessary corporate actions required to make this a legal, valid and binding obligation of each such Settling Defendant.

FOR VOLKSWAGEN AG:

Date: _____

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR AUDI AG:

Date: _____

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date: _____

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date: _____

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

_____
Date

_____
ROBERT J. GIUFFRA, JR.
SHARON L. NELLES
WILLIAM B. MONAHAN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3358
giuffrar@sullcrom.com
nelless@sullcrom.com
monahanw@sullcrom.com

FOR DR. ING. h.c. F . PORSCHE AG:

Date: _____

DR. MICHAEL STEINER
Member of the Executive Board
Research and Development
DR. ING. h.c.f. PORSCHE
AKTIENGESELLSCHAFT
Porschestrasse 911
71287 Weissach, Germany

Date: _____

ANGELA KREITZ
General Counsel & Chief Compliance Officer
DR. ING. h.c.f. PORSCHE
AKTIENGESELLSCHAFT
Porscheplatz 1
70435 Stuttgart-Zuffenhausen, Germany

FOR PORSCHE CARS NORTH AMERICA, INC.:

Date: _____

JOSEPH S. FOLZ
Vice President, General Counsel and Secretary
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

Date: _____

GLENN GARDE
Vice President, After Sales
PORSCHE CARS NORTH AMERICA, INC.
1 Porsche Drive
Atlanta, GA 30354

COUNSEL FOR DR. ING. h.c. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA, INC.

Date: _____

GRANTA NAKAYAMA
JOSEPH A. EISERT
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006
gnakayama@kslaw.com
jeisert@kslaw.com

Date: _____

CARI DAWSON
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
cari.dawson@alston.com

APPENDIX D-1
Initial 2.0 Liter Allocation

APPENDIX D-1 - INITIAL ALLOCATION

INITIAL SUBACCOUNTS	INITIAL ALLOCATIONS ($)	INITIAL ALLOCATIONS (%)
Puerto Rico	$ 7,500,000.00	0.28%
North Dakota	$ 7,500,000.00	0.28%
Hawaii	$ 7,500,000.00	0.28%
South Dakota	$ 7,500,000.00	0.28%
Alaska	$ 7,500,000.00	0.28%
Wyoming	$ 7,500,000.00	0.28%
District of Columbia	$ 7,500,000.00	0.28%
Delaware	$ 9,051,682.97	0.34%
Mississippi	$ 9,249,413.91	0.34%
West Virginia	$ 11,506,842.13	0.43%
Nebraska	$ 11,528,812.23	0.43%
Montana	$ 11,600,215.07	0.43%
Rhode Island	$ 13,495,136.57	0.50%
Arkansas	$ 13,951,016.23	0.52%
Kansas	$ 14,791,372.72	0.55%
Idaho	$ 16,246,892.13	0.60%
New Mexico	$ 16,900,502.73	0.63%
Vermont	$ 17,801,277.01	0.66%
Louisiana	$ 18,009,993.00	0.67%
Kentucky	$ 19,048,080.43	0.71%
Oklahoma	$ 19,086,528.11	0.71%
Iowa	$ 20,179,540.80	0.75%
Maine	$ 20,256,436.17	0.75%
Nevada	$ 22,255,715.66	0.82%
Alabama	$ 24,084,726.84	0.89%
New Hampshire	$ 29,544,297.76	1.09%
South Carolina	$ 31,636,950.19	1.17%
Utah	$ 32,356,471.11	1.20%
Indiana	$ 38,920,039.77	1.44%
Missouri	$ 39,084,815.55	1.45%
Tennessee	$ 42,407,793.83	1.57%
Minnesota	$ 43,638,119.67	1.62%
Connecticut	$ 51,635,237.63	1.91%
Arizona	$ 53,013,861.68	1.96%
Georgia	$ 58,105,433.35	2.15%
Michigan	$ 60,329,906.41	2.23%
Colorado	$ 61,307,576.05	2.27%
Wisconsin	$ 63,554,019.22	2.35%
New Jersey	$ 65,328,105.14	2.42%
Oregon	$ 68,239,143.96	2.53%
Massachusetts	$ 69,074,007.92	2.56%
Maryland	$ 71,045,824.78	2.63%
Ohio	$ 71,419,316.56	2.65%
North Carolina	$ 87,177,373.87	3.23%
Virginia	$ 87,589,313.32	3.24%
Illinois	$ 97,701,053.83	3.62%
Washington	$ 103,957,041.03	3.85%
Pennsylvania	$ 110,740,310.73	4.10%
New York	$ 117,402,744.86	4.35%
Florida	$ 152,379,150.91	5.64%
Texas	$ 191,941,816.23	7.11%
California	$ 381,280,175.09	14.12%
Tribal Allocation Subaccount	$ 49,652,857.71	1.84%
Trust Administration Cost Subaccount	$ **23,467,171.38**	**0.87%**
Tribal Administration Cost Subaccount	$ **4,525,885.71**	**0.17%**
	$ 2,700,000,000.00	100.00%

APPENDIX D-1A
Initial 3.0 Liter Allocation

APPENDIX D-1A – INITIAL 3.0 LITER ALLOCATION

INITIAL SUBACCOUNTS	INITIAL ALLOCATIONS ($)	INITIAL ALLOCATIONS (%)
Puerto Rico	$ 625,000.00	0.28%
North Dakota	$ 625,000.00	0.28%
Hawaii	$ 625,000.00	0.28%
Mississippi	$ 625,000.00	0.28%
West Virginia	$ 625,000.00	0.28%
District of Columbia	$ 625,000.00	0.28%
South Dakota	$ 625,000.00	0.28%
Wyoming	$ 625,000.00	0.28%
Alaska	$ 625,000.00	0.28%
Delaware	$ 625,000.00	0.28%
Arkansas	$ 696,692.86	0.31%
Nebraska	$ 719,535.25	0.32%
Maine	$ 796,628.31	0.35%
Kansas	$ 870,866.08	0.39%
Rhode Island	$ 873,721.37	0.39%
Vermont	$ 890,853.17	0.40%
Montana	$ 1,002,209.81	0.45%
Iowa	$ 1,022,196.90	0.45%
New Mexico	$ 1,082,158.17	0.48%
Idaho	$ 1,102,145.26	0.49%
Kentucky	$ 1,330,569.15	0.59%
New Hampshire	$ 1,370,543.33	0.61%
Alabama	$ 1,396,241.02	0.62%
Oklahoma	$ 1,835,957.01	0.82%
Louisiana	$ 1,838,812.30	0.82%
Indiana	$ 2,015,840.82	0.90%
Missouri	$ 2,067,236.19	0.92%
South Carolina	$ 2,258,541.20	1.00%
Nevada	$ 2,618,308.82	1.16%
Utah	$ 2,821,035.03	1.25%
Tennessee	$ 3,352,120.57	1.49%
Minnesota	$ 3,363,541.76	1.49%
Wisconsin	$ 3,523,438.48	1.57%
Arizona	$ 3,646,216.32	1.62%
Ohio	$ 3,883,206.11	1.73%
Connecticut	$ 4,085,932.31	1.82%
Michigan	$ 4,477,108.22	1.99%
Maryland	$ 4,668,413.23	2.07%
Oregon	$ 4,728,374.50	2.10%
North Carolina	$ 4,868,284.13	2.16%
Georgia	$ 5,519,292.21	2.45%
Massachusetts	$ 5,990,416.48	2.66%
Virginia	$ 6,044,667.16	2.69%
New Jersey	$ 6,886,980.25	3.06%
Colorado	$ 7,432,342.28	3.30%
Pennsylvania	$ 7,829,228.79	3.48%
Washington	$ 8,788,609.12	3.91%
New York	$ 10,299,062.08	4.58%
Illinois	$ 10,978,623.15	4.88%
Florida	$ 13,899,593.63	6.18%
Texas	$ 17,377,347.34	7.72%
California	$ 41,356,145.05	18.38%
Tribal Allocation Subaccount	$ 4,795,063.51	2.13%
Trust Administration Cost Subaccount	$ 1,955,597.62	0.87%
Tribal Administration Cost Subaccount	$ 390,303.65	0.17%
Grand Total	**$ $ 225,000,000.00**	**100.00%**

APPENDIX D-1B

Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation

Appendix D-1B

Weighted Average Allocation Formula:

(2.0 Allocation$_{Subaccount}$ + 3.0 Allocation $_{Subaccount}$) / ($2,700,000,000 + $225,000,000)

where Subaccount represents an individual Beneficiary subaccount or the Tribal, Administration Cost, or Tribal Administration Cost subaccount.

	Appendix D-1		Appendix D-1A		Appendix D-1B	
State Trust Allocation	2.0 Liter Allocation Amount	2.0 Liter Allocation Percentage	3.0 Liter Allocation Amount	3.0 Liter Allocation Percentage	Total Allocation Amount	Weighted Average Allocation Percentage
Puerto Rico	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
North Dakota	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Hawaii	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
South Dakota	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Alaska	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Wyoming	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
District of Columbia	$7,500,000.00	0.28%	$625,000.00	0.28%	$8,125,000.00	0.28%
Delaware	$9,051,682.97	0.34%	$625,000.00	0.28%	$9,676,682.97	0.33%
Mississippi	$9,249,413.91	0.34%	$625,000.00	0.28%	$9,874,413.91	0.34%
West Virginia	$11,506,842.13	0.43%	$625,000.00	0.28%	$12,131,842.13	0.41%
Nebraska	$11,528,812.23	0.43%	$719,535.25	0.32%	$12,248,347.48	0.42%
Montana	$11,600,215.07	0.43%	$1,002,209.81	0.45%	$12,602,424.88	0.43%
Rhode Island	$13,495,136.57	0.50%	$873,721.37	0.39%	$14,368,857.94	0.49%
Arkansas	$13,951,016.23	0.52%	$696,692.86	0.31%	$14,647,709.09	0.50%
Kansas	$14,791,372.72	0.55%	$870,866.08	0.39%	$15,662,238.80	0.54%
Idaho	$16,246,892.13	0.60%	$1,102,145.26	0.49%	$17,349,037.39	0.59%
New Mexico	$16,900,502.73	0.63%	$1,082,158.17	0.48%	$17,982,660.90	0.61%
Vermont	$17,801,277.01	0.66%	$890,853.17	0.40%	$18,692,130.18	0.64%
Louisiana	$18,009,993.00	0.67%	$1,838,812.30	0.82%	$19,848,805.30	0.68%
Kentucky	$19,048,080.43	0.71%	$1,330,569.15	0.59%	$20,378,649.58	0.70%
Oklahoma	$19,086,528.11	0.71%	$1,835,957.01	0.82%	$20,922,485.12	0.72%
Iowa	$20,179,540.80	0.75%	$1,022,196.90	0.45%	$21,201,737.70	0.72%
Maine	$20,256,436.17	0.75%	$796,628.31	0.35%	$21,053,064.48	0.72%
Nevada	$22,255,715.66	0.82%	$2,618,308.82	1.16%	$24,874,024.48	0.85%
Alabama	$24,084,726.84	0.89%	$1,396,241.02	0.62%	$25,480,967.86	0.87%
New Hampshire	$29,544,297.76	1.09%	$1,370,543.33	0.61%	$30,914,841.09	1.06%
South Carolina	$31,636,950.19	1.17%	$2,258,541.20	1.00%	$33,895,491.39	1.16%
Utah	$32,356,471.11	1.20%	$2,821,035.03	1.25%	$35,177,506.14	1.20%
Indiana	$38,920,039.77	1.44%	$2,015,840.82	0.90%	$40,935,880.59	1.40%
Missouri	$39,084,815.55	1.45%	$2,067,236.19	0.92%	$41,152,051.74	1.41%
Tennessee	$42,407,793.83	1.57%	$3,352,120.57	1.49%	$45,759,914.40	1.56%
Minnesota	$43,638,119.67	1.62%	$3,363,541.76	1.49%	$47,001,661.43	1.61%
Connecticut	$51,635,237.63	1.91%	$4,085,932.31	1.82%	$55,721,169.94	1.90%
Arizona	$53,013,861.68	1.96%	$3,646,216.32	1.62%	$56,660,078.00	1.94%
Georgia	$58,105,433.35	2.15%	$5,519,292.21	2.45%	$63,624,725.56	2.18%
Michigan	$60,329,906.41	2.23%	$4,477,108.22	1.99%	$64,807,014.63	2.22%
Colorado	$61,307,576.05	2.27%	$7,432,342.28	3.30%	$68,739,918.33	2.35%
Wisconsin	$63,554,019.22	2.35%	$3,523,438.48	1.57%	$67,077,457.70	2.29%
New Jersey	$65,328,105.14	2.42%	$6,886,980.25	3.06%	$72,215,085.39	2.47%
Oregon	$68,239,143.96	2.53%	$4,728,374.50	2.10%	$72,967,518.46	2.49%
Massachusetts	$69,074,007.92	2.56%	$5,990,416.48	2.66%	$75,064,424.40	2.57%
Maryland	$71,045,824.78	2.63%	$4,668,413.23	2.07%	$75,714,238.01	2.59%
Ohio	$71,419,316.56	2.65%	$3,883,206.11	1.73%	$75,302,522.67	2.57%
North Carolina	$87,177,373.87	3.23%	$4,868,284.13	2.16%	$92,045,658.00	3.15%
Virginia	$87,589,313.32	3.24%	$6,044,667.16	2.69%	$93,633,980.48	3.20%
Illinois	$97,701,053.83	3.62%	$10,978,623.15	4.88%	$108,679,676.98	3.72%
Washington	$103,957,041.03	3.85%	$8,788,609.12	3.91%	$112,745,650.15	3.85%
Pennsylvania	$110,740,310.73	4.10%	$7,829,228.79	3.48%	$118,569,539.52	4.05%
New York	$117,402,744.86	4.35%	$10,299,062.08	4.58%	$127,701,806.94	4.37%
Florida	$152,379,150.91	5.64%	$13,899,593.63	6.18%	$166,278,744.54	5.68%
Texas	$191,941,816.23	7.11%	$17,377,347.34	7.72%	$209,319,163.57	7.16%
California	$381,280,175.09	14.12%	$41,356,145.05	18.38%	$422,636,320.14	14.45%
State Trust Administration Cost Subaccount	$23,467,171.38	0.87%	$1,955,597.62	0.87%	$25,422,769.00	0.87%
Subtotal	$2,645,821,256.54	97.99%	$219,814,632.84	97.70%	$2,865,635,889.38	97.97%
Tribal Trust Allocation	$49,652,857.71	1.84%	$4,795,063.51	2.13%	$54,447,921.22	1.86%
Tribal Administration Cost Subaccount	$4,525,885.77	0.17%	$390,303.65	0.17%	$4,916,189.42	0.17%
Subtotal	$54,178,743.48	2.01%	$5,185,367.16	2.30%	$59,364,110.64	2.03%
Total	$2,700,000,000.00	100.00%	$225,000,000.00	100.00%	$2,925,000,000.00	100.00%

APPENDIX D-2
Eligible Mitigation Actions and Mitigation Action Expenditures

APPENDIX D-2

ELIGIBLE MITIGATION ACTIONS AND MITIGATION ACTION EXPENDITURES

1. Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

    a. Eligible Large Trucks include 1992-2009 engine model year Class 8 Local Freight or Drayage. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the proposed Eligible Mitigation Action, Eligible Large Trucks shall also include 2010-2012 engine model year Class 8 Local Freight or Drayage.

    b. Eligible Large Trucks must be Scrapped.

    c. Eligible Large Trucks may be Repowered with any new diesel or Alternate Fueled engine or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Large Trucks Mitigation Action occurs or one engine model year prior.

    d. For Non-Government Owned Eligible Class 8 Local Freight Trucks, Beneficiaries may only draw funds from the Trust in the amount of:

        1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

        2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

        3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

        4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

    e. For Non-Government Owned Eligible Drayage Trucks, Beneficiaries may only draw funds from the Trust in the amount of:

        1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

        2. Up to 50% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

f. For Government Owned Eligible Class 8 Large Trucks, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

2. <u>Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)</u>

a. Eligible Buses include 2009 engine model year or older class 4-8 school buses, shuttle buses, or transit buses. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year buses at the time of the proposed Eligible Mitigation Action, Eligible Buses shall also include 2010-2012 engine model year class 4-8 school buses, shuttle buses, or transit buses.

b. Eligible Buses must be Scrapped.

c. Eligible Buses may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Bus Mitigation Action occurs or one engine model year prior.

d. For Non-Government Owned Buses, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

e. For Government Owned Eligible Buses, and Privately Owned School Buses Under Contract with a Public School District, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

3. <u>Freight Switchers</u>

a. Eligible Freight Switchers include pre-Tier 4 switcher locomotives that operate 1000 or more hours per year.

b. Eligible Freight Switchers must be Scrapped.

c. Eligible Freight Switchers may be Repowered with any new diesel or Alternate Fueled or All-Electric engine(s) (including Generator Sets), or may be replaced with any new diesel or Alternate Fueled or All-Electric (including Generator Sets) Freight Switcher, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the CFR for the engine model year in which the Eligible Freight Switcher Mitigation Action occurs.

d. For Non-Government Owned Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of :

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) Freight Switcher.

3. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

4. Up to 75% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.

e. For Government Owned Eligible Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) Freight Switcher.

3. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

4. Up to 100% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.

4. <u>Ferries/Tugs</u>

a. Eligible Ferries and/or Tugs include unregulated, Tier 1, or Tier 2 marine engines.

b. Eligible Ferry and/or Tug engines that are replaced must be Scrapped.

c. Eligible Ferries and/or Tugs may be Repowered with any new Tier 3 or Tier 4 diesel or Alternate Fueled engines, or with All-Electric engines, or may be upgraded with an EPA Certified Remanufacture System or an EPA Verified Engine Upgrade.

d. For Non-Government Owned Eligible Ferries and/or Tugs, Beneficiaries may only draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).

2. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

e. For Government Owned Eligible Ferries and/or Tugs, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).

2. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

5. Ocean Going Vessels (OGV) Shorepower

a. Eligible Marine Shorepower includes systems that enable a compatible vessel's main and auxiliary engines to remain off while the vessel is at berth. Components of such systems eligible for reimbursement are limited to cables, cable management systems, shore power coupler systems, distribution control systems, and power distribution. Marine shore power systems must comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 High Voltage Shore Connection Systems or the IEC/PAS 80005-3:2014 Low Voltage Shore Connection Systems) and should be supplied with power sourced from the local utility grid. Eligible Marine Shorepower includes equipment for vessels that operate within the Great Lakes.

b. For Non-Government Owned Marine Shorepower, Beneficiaries may only draw funds from the Trust in the amount of up to 25% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

c. For Government Owned Marine Shorepower, Beneficiaries may draw funds from the Trust in the amount of up to 100% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

6. Class 4-7 Local Freight Trucks (Medium Trucks)

a. Eligible Medium Trucks include 1992-2009 engine model year class 4-7 Local Freight trucks, and for Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the proposed Eligible Mitigation Action, Eligible Trucks shall also include 2010-2012 engine model year class 4-7 Local Freight trucks.

b. Eligible Medium Trucks must be Scrapped.

c. Eligible Medium Trucks may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Medium Trucks Mitigation Action occurs or one engine model year prior.

d. For Non-Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

e. For Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

7. <u>Airport Ground Support Equipment</u>

a. Eligible Airport Ground Support Equipment includes:

1. Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and

2. Uncertified, or certified to 3 g/bhp-hr or higher emissions, spark ignition engine powered airport ground support equipment.

b. Eligible Airport Ground Support Equipment must be Scrapped.

c. Eligible Airport Ground Support Equipment may be Repowered with an All-Electric engine, or may be replaced with the same Airport Ground Support Equipment in an All-Electric form.

d. For Non-Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may only draw funds from the Trust in the amount of:

1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 75% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.

e. For Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 100% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.

8. <u>Forklifts and Port Cargo Handling Equipment</u>

a. Eligible Forklifts includes forklifts with greater than 8000 pounds lift capacity.

b. Eligible Forklifts and Port Cargo Handling Equipment must be Scrapped.

c. Eligible Forklifts and Port Cargo Handling Equipment may be Repowered with an All-Electric engine, or may be replaced with the same equipment in an All-Electric form.

d. For Non-Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 75% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.

e. For Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 100% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.

9. Light Duty Zero Emission Vehicle Supply Equipment. Each Beneficiary may use up to fifteen percent (15%) of its allocation of Trust Funds on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects as specified below. Provided, however, that Trust Funds shall not be made available or used to purchase or rent real-estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (i.e., maintenance other than of the Supply Equipment).

   a. Light duty electric vehicle supply equipment includes Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

   b. Light duty hydrogen fuel cell vehicle supply equipment includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (MPa) (or analogous successor technologies) that is located in a public place.

   c. Subject to the 15% limitation above, each Beneficiary may draw funds from the Trust in the amount of:

      1. Up to 100% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Government Owned Property.

      2. Up to 80% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Non-Government Owned Property.

      3. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a workplace but not to the general public.

      4. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public.

5. Up to 33% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kg/day that will be available to the public.
6. Up to 25% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day that will be available to the public.

10. Diesel Emission Reduction Act (DERA) Option. Beneficiaries may use Trust Funds for their non-federal voluntary match, pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16133), or Section 792 (codified at 42 U.S.C. § 16132) in the case of Tribes, thereby allowing Beneficiaries to use such Trust Funds for actions not specifically enumerated in this Appendix D-2, but otherwise eligible under DERA pursuant to all DERA guidance documents available through the EPA. Trust Funds shall not be used to meet the non-federal mandatory cost share requirements, as defined in applicable DERA program guidance, of any DERA grant.

Eligible Mitigation Action Administrative Expenditures

For any Eligible Mitigation Action, Beneficiaries may use Trust Funds for actual administrative expenditures (described below) associated with implementing such Eligible Mitigation Action, but not to exceed 15% of the total cost of such Eligible Mitigation Action. The 15% cap includes the aggregated amount of eligible administrative expenditures incurred by the Beneficiary and any third-party contractor(s).

1. Personnel including costs of employee salaries and wages, but not consultants.
2. Fringe Benefits including costs of employee fringe benefits such as health insurance, FICA, retirement, life insurance, and payroll taxes.
3. Travel including costs of Mitigation Action-related travel by program staff, but does not include consultant travel.
4. Supplies including tangible property purchased in support of the Mitigation Action that will be expensed on the Statement of Activities, such as educational publications, office supplies, etc. Identify general categories of supplies and their Mitigation Action costs.
5. Contractual including all contracted services and goods except for those charged under other categories such as supplies, construction, etc. Contracts for evaluation and consulting services and contracts with sub-recipient organizations are included.
6. Construction including costs associated with ordinary or normal rearrangement and alteration of facilities.
7. Other costs including insurance, professional services, occupancy and equipment leases, printing and publication, training, indirect costs, and accounting.

Definitions/Glossary of Terms

"Airport Ground Support Equipment" shall mean vehicles and equipment used at an airport to service aircraft between flights.

"All-Electric" shall mean powered exclusively by electricity provided by a battery, fuel cell, or the grid.

"Alternate Fueled" shall mean an engine, or a vehicle or piece of equipment that is powered by an engine, which uses a fuel different from or in addition to gasoline fuel or diesel fuel (e.g., CNG, propane, diesel-electric Hybrid).

"Certified Remanufacture System or Verified Engine Upgrade" shall mean engine upgrades certified or verified by EPA or CARB to achieve a reduction in emissions.

"Class 4-7 Local Freight Trucks (Medium Trucks)" shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs.

"Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Buses)" shall mean vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 14,001 lbs. used for transporting people. See definition for School Bus below.

"Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)" shall mean trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs. used for port drayage and/or freight/cargo delivery (including waste haulers, dump trucks, concrete mixers).

"CNG" shall mean Compressed Natural Gas.

"Drayage Trucks" shall mean trucks hauling cargo to and from ports and intermodal rail yards.

"Forklift" shall mean nonroad equipment used to lift and move materials short distances; generally includes tines to lift objects. Eligible types of forklifts include reach stackers, side loaders, and top loaders.

"Freight Switcher" shall mean a locomotive that moves rail cars around a rail yard as compared to a line-haul engine that moves freight long distances.

"Generator Set" shall mean a switcher locomotive equipped with multiple engines that can turn off one or more engines to reduce emissions and save fuel depending on the load it is moving.

"Government" shall mean a State or local government agency (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds), and a tribal government or native village. The term "State" means the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Gross Vehicle Weight Rating (GVWR)" shall mean the maximum weight of the vehicle, as specified by the manufacturer. GVWR includes total vehicle weight plus fluids, passengers, and cargo.

Class 1: < 6000 lb.
Class 2: 6001-10,000 lb.
Class 3: 10,001-14,000 lb.
Class 4: 14,001-16,000 lb.
Class 5: 16,001-19,500 lb.
Class 6: 19,501-26,000 lb.
Class 7: 26,001-33,000 lb.
Class 8: > 33,001 lb.

"Hybrid" shall mean a vehicle that combines an internal combustion engine with a battery and electric motor.

"Infrastructure" shall mean the equipment used to enable the use of electric powered vehicles (e.g., electric vehicle charging station).

"Intermodal Rail Yard" shall mean a rail facility in which cargo is transferred from drayage truck to train or vice-versa.

"Port Cargo Handling Equipment" shall mean rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including yard hostlers and yard tractors that operate within ports.

"Plug-in Hybrid Electric Vehicle (PHEV)" shall mean a vehicle that is similar to a Hybrid but is equipped with a larger, more advanced battery that allows the vehicle to be plugged in and recharged in addition to refueling with gasoline. This larger battery allows the car to be driven on a combination of electric and gasoline fuels.

"Repower" shall mean to replace an existing engine with a newer, cleaner engine or power source that is certified by EPA and, if applicable, CARB, to meet a more stringent set of engine emission standards. Repower includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source (e.g., grid, battery), diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s) (genset), diesel engine upgrades in Ferries/Tugs with an EPA Certified Remanufacture System, and/or diesel engine upgrades in Ferries/Tugs with an EPA Verified Engine Upgrade. All-Electric and fuel cell Repowers do not require EPA or CARB certification.

"School Bus" shall mean a Class 4-8 bus sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events. May be Type A-D.

"Scrapped" shall mean to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an Eligible project, Scrapped shall also include the disabling of the chassis by cutting the vehicle's frame rails completely in half.

"Tier 0, 1, 2, 3, 4" shall refer to corresponding EPA engine emission classifications for nonroad, locomotive, and marine engines.

"Tugs" shall mean dedicated vessels that push or pull other vessels in ports, harbors, and inland waterways (e.g., tugboats and towboats).

"Zero Emission Vehicle (ZEV)" shall mean a vehicle that produces no emissions from the on-board source of power (e.g., All-Electric or hydrogen fuel cell vehicles).

APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

APPENDIX D-3

CERTIFICATION FOR BENEFICIARY STATUS UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT

1. Identity of Lead Agency

_____("Beneficiary"), by and through the Office of the Governor (or the analogous Chief Executive) of the Indian Tribe on whose behalf the Certification Form is submitted: (i) hereby identifies _____ ("Lead Agency") as the Lead Agency for purposes of the Beneficiary's participation in the Environmental Mitigation Trust ("Trust") as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

BENEFICIARY'S LEAD AGENCY CONTACT INFORMATION:

Contact:	
Address:	
Phone:	
Fax:	
Email:	

2. Submission to Jurisdiction

The Beneficiary expressly consents to the jurisdiction of the U.S. District Court for the Northern District of California for all matters concerning the interpretation or performance of, or any disputes arising under, the Trust and the Environmental Mitigation Trust Agreement ("Trust Agreement"). The Beneficiary's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

3. Agreement to be Bound by the Trust Agreement and Consent to Trustee Authority

The Beneficiary agrees, without limitation, to be bound by the terms of the Trust Agreement, including the allocations of the Trust Assets set forth in Appendix D-1 and Appendix D-1A to the Trust Agreement, as such allocation may be adjusted in accordance with the Trust Agreement. The Beneficiary further agrees that the Trustee has the authorities set forth in the Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds pursuant to the Trust Agreement; and (ii) to implement the Trust Agreement in accordance with its terms.

4. Certification of Legal Authority

The Beneficiary certifies that: (i) it has the authority to sign and be bound by this Certification Form; (ii) the Beneficiary's laws do not prohibit it from being a Trust Beneficiary; and (iii) prior

to requesting any funds from the Trust, the Beneficiary has obtained full legal authority to receive and/or direct payments of such funds. If the Beneficiary fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary under the Trust Agreement until it has obtained such legal authority.

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies 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 Trust for credit to the Tribal Allocation Subaccount.

6. Waiver of Claims for Injunctive Relief under Environmental or Common Laws

Upon becoming a Beneficiary, the Beneficiary, on behalf of itself and all of its agencies, departments, offices, and divisions, hereby expressly waives, in favor of the parties (including the Settling Defendants) to the Partial Consent Decree (Dkt. No. 2103-1) and the parties (including the Defendants) to the Second Partial Consent Decree (Dkt. No. 3228-1), all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles and the 3.0 Liter Subject Vehicles (jointly, "Subject Vehicles"), whether based on the environmental or common law within its jurisdiction. This waiver is binding on all agencies, departments, offices, and divisions of the Beneficiary asserting, purporting to assert, or capable of asserting such claims. This waiver does not waive, and the Beneficiary expressly reserves, its rights, if any, to seek fines or penalties. No waiver submitted by any Indian Tribe shall be effective unless and until such Indian Tribe actually receives Trust Funds.

7. Publicly Available Information

The Beneficiary certifies 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 Beneficiary, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement, unless the laws of the Beneficiary require a longer record retention period. Together herewith, the Beneficiary attaches an explanation of: (i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; and (ii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust 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 Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary 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 Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

The Beneficiary certifies, for the benefit of the Parties (including the Settling Defendants) to the Partial Consent Decree and the Parties to the Second Partial Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that upon becoming a Beneficiary, the Beneficiary:

(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 Partial Consent Decree or in the Second Partial Consent Decree; or

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

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

(b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or an Emissions Compliant Recall based solely on:

i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or

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

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

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

(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions

Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.

(d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary'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 9(a)-(b).

10. Reliance on Certification

The Beneficiary acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying upon, this Appendix D-3 Certification, or a subsequent communication from the Lead Agency designating new or additional authorized individuals, as setting forth the Lead Agency and the authorized individuals who may direct the Trustee with respect to all of the Beneficiary's rights and duties under the Trust Agreement. The Beneficiary and its delegated Lead Agency, including all authorized individuals, agree to comply with all security procedures, standard payment and signatory authorization protocols, as well as procedures for designating new or additional authorized individuals, as set forth by the Trustee.

FOR THE GOVERNOR (or the analogous Chief Executive):

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

APPENDIX D-4
Beneficiary Eligible Mitigation Action Certification

BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary _____

Lead Agency Authorized to Act on Behalf of the Beneficiary _____
(Any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency)

Action Title:	
Beneficiary's Project ID:	
Funding Request No.	*(sequential)*
Request Type: **(select one or more)**	☐ Reimbursement ☐ Advance ☐ Other (specify): _____
Payment to be made to: **(select one or more)**	☐ Beneficiary ☐ Other (specify): _____
Funding Request & Direction (Attachment A)	☐ Attached to this Certification ☐ To be Provided Separately

SUMMARY

Eligible Mitigation Action Action Type	☐ Appendix D-2 item (specify): _____ ☐ Item 10 - DERA Option (5.2.12) (specify and attach DERA Proposal):
Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2):	
Estimate of Anticipated NOx Reductions (5.2.3):	
Identification of Governmental Entity Responsible for Reviewing and Auditing Expenditures of Eligible Mitigation Action Funds to Ensure Compliance with Applicable Law (5.2.7.1):	
Describe how the Beneficiary will make documentation publicly available (5.2.7.2).	
Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8).	
Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9).	

If applicable, describe how the mitigation action will mitigate the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions (5.2.10).

ATTACHMENTS
(CHECK BOX IF ATTACHED)

☐	**Attachment A**	**Funding Request and Direction.**
☐	**Attachment B**	**Eligible Mitigation Action Management Plan Including Detailed Budget and Implementation and Expenditures Timeline (5.2.4).**
☐	**Attachment C**	**Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11).**
☐	**Attachment D**	**Detailed cost estimates from selected or potential vendors for each proposed expenditure exceeding $25,000 (5.2.6). [Attach only if project involves vendor expenditures exceeding $25,000.]**
☐	**Attachment E**	**DERA Option (5.2.12). [Attach only if using DERA option.]**
☐	**Attachment F**	**Attachment specifying amount of requested funding to be debited against each beneficiary's allocation (5.2.13). [Attach only if this is a joint application involving multiple beneficiaries.]**

CERTIFICATIONS

By submitting this application, the Lead Agency makes the following certifications:

1. **This application is submitted on behalf of Beneficiary _____, and the person executing this certification has authority to make this certification on behalf of the Lead Agency and Beneficiary, pursuant to the Certification for Beneficiary Status filed with the Court.**

2. **Beneficiary requests and directs that the Trustee make the payments described in this application and Attachment A to this Form.**

3. **This application contains all information and certifications required by Paragraph 5.2 of the Trust Agreement, and the Trustee may rely on this application, Attachment A, and related certifications in making disbursements of trust funds for the aforementioned Project ID.**

4. **Any vendors were or will be selected in accordance with a jurisdiction's public contracting law as applicable. (5.2.5)**

5. **Beneficiary will maintain and make publicly available all documentation submitted in**

support of this 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. (5.2.7.2)

DATED: _____

_____
[NAME]
[TITLE]

_____
[LEAD AGENCY]

for

_____
[BENEFICIARY]

ATTACHMENT A

FUNDING REQUEST AND DIRECTION

(Attachment to Appendix D-4, Beneficiary Eligible Mitigation Action Certification, pursuant to Paragraph 5.2 of the Environmental Mitigation Trust Agreement)

Pursuant to the authority granted to _____ [*insert Lead Agency]* to act on behalf of Beneficiary _____ under the Mitigation Trust, *[Lead Agency]* directs the Trustee to make the following payments from its subaccount no. _____ to the following payees, for the amounts specified on the dates specified below.

LEAD AGENCY INFORMATION

Beneficiary Name:		Lead Agency Contact Person:	_____
Lead Agency Name:	_____	Lead Agency Email Address:	_____
Lead Agency Address:	_____	Lead Agency Fax:	_____
Lead Agency Phone:	_____	Lead Agency TIN:	_____

Contact information entered above may correspond to Lead Agency or any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency

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MITIGATION ACTION INFORMATION

Action Title:	_____	Funding Request No:	_____
Beneficiary's Project ID:	_____		

PAYMENTS REQUESTED

(attach additional pages if needed)

Amount	Requested Date	Payee	Request Type

PAYEE CONTACT AND WIRE INFORMATION

(fill out both tables below for each payee and payment identified in "Payments Requested" table on p. 1; attach additional pages if needed)

PAYEE CONTACT INFORMATION

Action Title:	_____	Beneficiary Project ID:	_____
Payee Name:	_____	Payee Contact Person:	_____
Payee Address:	_____	Payee Email Address:	_____
Payee Phone:	_____	Payee Fax:	_____
Payee TIN:	_____		

Payment Amount	Requested Date	Request Type

WIRE INFORMATION

Receiving Bank Name:	_____		
Receiving Bank Branch:	_____		
Receiving Bank Address:	_____		
Bank Swift ID:	_____	National Routing No. / Bank ABA Number *(Sort Code, BLZ)*	_____
Amount of Wire:	_____		
Message to Payee:	_____		
Instructions to Receiving Bank:	_____		
For Credit to:	_____		
Other Special Instructions:	_____		

[Signature Block]

[SAMPLE ATTACHMENT B - USE OF THIS FORMAT IS NOT MANDATORY]

PROJECT MANAGEMENT PLAN
PROJECT SCHEDULE AND MILESTONES

Milestone	Date
Lead Agency Provides Notice of Availability of Mitigation Action Funds	
Project Sponsor Submits Proposal to Lead Agency	
Lead Agency Provides Written Approval of Project Sponsor's Proposal	
Lead Agency Incorporates Project Sponsor's Proposal into Mitigation Plan	
Trustee Acknowledges Receipt of Project Certification and Funding Direction	
Trustee Allocates Share of Funds for Approved Project	
Lead Agency Directs Funding (Advance Funded Projects)	
Project Sponsor Obtains Cost Share, Notifies or Certifies to Lead Agency	
Project Sponsor Enters into Contracts, Purchase Orders, etc. - Start	
Project Sponsor Enters into Contracts, Purchase Orders, etc. - Complete	
Project Installation(s) – Start	
Project Installation(s) – Complete	
Project Sponsor provides detailed invoices for all claimed project costs, documentation for emission reduction estimates, required certification documents to Lead Agency to support direction to Trustee for Payment (Reimbursement, Direct-to-Vendor) or final accounting (Forward Funded Projects)	-
Lead Agency completes review and certifies payment direction to Trustee (Reimbursement)	
Trustee Acknowledges Receipt of Direction for Payment(s) (Advance Funded, Reimbursement)	-
Project Sponsor Certifies Project Completion	
Lead Agency Reports Project Completion	

PROJECT BUDGET

Period of Performance: _____

Budget Category	Total Approved Budget	Share of Total Budget to be Funded by the Trust	Cost-Share, if applicable (Entity #1)	Cost-Share, if applicable (Entity #2)
1. Equipment Expenditure	$	$	$	$
2. Contractor Support *(Provide List of Approved Contractors as Attachment with approved funding ceilings)*	$	$	$	$
3. Subrecipient Support *(Provide List of Approved Subrecipients or Grant Awardees as Attachment with approved funding ceilings)*	$	$	$	$
4. Administrative[1]	$	$	$	$
Project Totals	$	$	$	$
Percentage	%	%	%	%

[1] Subject to Appendix D-2 15% administrative cap.

PROJECTED TRUST ALLOCATIONS:

	2017	2018	2019	2020	2021
1. Anticipated Annual Project Funding Request to be paid through the Trust	$	$	$	$	$
2. Anticipated Annual Cost Share	$	$	$	$	$
3. Anticipated Total Project Funding by Year (line 1 plus line 2)	$	$	$	$	$
4. Cumulative Trustee Payments Made to Date Against Cumulative Approved Beneficiary Allocation	$	$	$	$	$
5. Current Beneficiary Project Funding to be paid through the Trust (line 1)	$	$	$	$	$
6. Total Funding Allocated to for Beneficiary, inclusive of Current Action by Year (line 4 plus line 5)	$	$	$	$	$
7. Beneficiary Share of Estimated Funds Remaining in Trust	$	$	$	$	$
8. Net Beneficiary Funds Remaining in Trust, net of cumulative Beneficiary Funding Actions (line 7 minus line 6)	$	$	$	$	$

APPENDIX D-5
Form of Certificate of Trust of the
VW Diesel Emissions Environmental Mitigation Trust
for Indian Tribe Beneficiaries

APPENDIX D-5

FORM OF CERTIFICATE OF TRUST OF THE VW DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR INDIAN TRIBE BENEFICIARIES

This Certificate of Trust of the VW Diesel Emissions Environmental Mitigation Trust for (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as Trustee, to form a statutory trust under the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826 (the "Act").

1. Name. The name of the statutory trust formed by this Certificate of Trust is the VW Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries.

2. Delaware Trustee. The name and business address of the Trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust, N.A., 1100 North Market Street, Wilmington, Delaware 19890. Attn: Corporate Trust Administration.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

4. IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

WILMINGTON TRUST, N.A.,
not in its individual capacity but solely
as Trustee

By:_____
Name:
Title: