

**APPENDIX D-4**  
**Maine Beneficiary Eligible Mitigation Action Certification**

State of Maine  
State Multimodal Improvements Option  
EMA Category 2-Class 4-8 School Bus, Shuttle Bus, or Transit Bus  
MaineDOT ID (23901.00)  
2020 WMTS  
Advance Fund Request 13

### BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary: State of Maine

Lead Agency Authorized to Act on Behalf of the Beneficiary: Maine Department of Transportation (MaineDOT) (*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*)

<b>Action Title:</b>	State Multimodal Improvement (MMPI) EMA Category 2-Class 4-8 School Bus, Shuttle Bus, or Transit Bus
<b>Beneficiary's Project ID:</b>	23901.00
<b>Funding Request No.</b>	13
<b>Request Type:</b> (select one or more)	<input type="checkbox"/> Reimbursement <input checked="" type="checkbox"/> Advance <input type="checkbox"/> Other (specify): _____
<b>Payment to be made to:</b> (select one or more)	<input checked="" type="checkbox"/> Beneficiary <input type="checkbox"/> Other (specify): _____
<b>Funding Request &amp; Direction (Attachment A)</b>	<input checked="" type="checkbox"/> Attached to this Certification <input type="checkbox"/> To be Provided Separately

#### SUMMARY

<b>Eligible Mitigation Action</b> <input checked="" type="checkbox"/> Appendix D-2 item (specify): <u>MMPI- EMA Category 2-Class 4-8 School Bus, Shuttle Bus, or Transit Bus</u> <input type="checkbox"/> Item 10 - DERA Option (5.2.12) (specify and attach DERA Proposal):
<b>Action Type</b> <b>Explanation of how funding request fits into Beneficiary's Mitigation Plan (5.2.1):</b> Maine's BMP allocated 8.4 million for the State Multimodal Priorities category. The funding request will fund 17 transit buses that qualify under EMA category 2.
<b>Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2):</b> See Maine BMP, Section VII
<b>Estimate of Anticipated NOx Reductions (5.2.3):</b> See Maine BMP, Section VII
<b>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):</b> MaineDOT, Bureau of Finance & Administration
<b>Describe how the Beneficiary will make documentation publicly available (5.2.7.2).</b> As stated in Paragraph 7 of Maine's Appendix D-3 filing, 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) To satisfy the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public. MaineDOT has established a website ( <a href="http://www.maine.gov/mdot/vw">http://www.maine.gov/mdot/vw</a> ) to house state-specific documents, guidance, public comments, funding process descriptions, and web links to other sites for useful background information and resources related to the VW Environmental Mitigation Settlement;

- (ii) As part of Maine’s Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered included the solicitation of public comments via web notice and comment period on Maine’s Beneficiary Mitigation Plan. Two public meetings were held in geographically diverse locations prior to closing of the comment period. Comments were and will continue to be considered through program implementation.
- (iii) 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. The certification in Paragraph 7 is subject to Maine’s Freedom of Access Act (FOAA), 1 M.R.S. §§ 400-414, and other applicable Maine law. All documentation and records submitted by the State in support of each funding request and supporting all expenditures of Trust Funds by the State shall be accessible to the public unless an exception from disclosure under Maine law applies to the document or part thereof. For example, Maine’s FOAA, 1 M.R.S. § 402(3), includes in the list of exceptions a general exception for records that have been designated confidential by statute. Any claims for confidentiality under this exception, other enumerated exceptions, or under other Maine law would be reviewed by the Maine Department of Transportation and legal counsel. Documents, or parts of documents, would be protected from disclosure only to the extent required by Maine law. The State has identified the following specific provisions potentially applicable to confidential business information and personally identifiable information.

The enumerated exceptions under Maine’s FOAA include records that would be within the scope of a privilege against discovery or use as evidence recognized by Maine courts in civil or criminal trials if the records were sought during the course of a court proceeding. 1 M.R.S. § 402(3)(B). Maine Rule of Civil Procedure 26(c) provides that a trade secret or other confidential research, development, or commercial information may be the subject of a protective order by a court, when sought during discovery. Also, Rule 507 of the Maine Rules of Evidence contains a privilege to refuse to disclose, and prevent others from disclosing, a trade secret. The Maine Supreme Judicial Court has looked to the definition of “trade secret” in Maine’s Uniform Trade Secrets Act, 10 M.R.S. § 1542(4), in interpreting “trade secret” claims for non-disclosure under FOAA. That definition includes information that “[d]erives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use” and “[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Maine’s FOAA contains exceptions to disclosure for certain personally identifiable information such as social security numbers. 1 M.R.S. § 402(3)(N).

**Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8).**  
Under Maine’s BMP, there is an 75% cost share for the non-government transit buses which will be met using federal and/or state funds already committed.

**Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9).**  
Lead agency contact emailed the State Trust Agreement to specified recipients on February 12, 2018.

**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)**

- |          |                     |   |
|----------|---------------------|---|
| <b>X</b> | <b>Attachment A</b> | <b>Funding Request and Direction.</b>   |
| <b>X</b> | <b>Attachment B</b> | <b>Eligible Mitigation Action Management Plan Including Detailed Budget and Implementation and Expenditures Timeline (5.2.4).</b>   |
| <b>X</b> | <b>Attachment C</b> | <b>Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11).</b>   |
| <b>X</b> | <b>Attachment D</b> | <b>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.]</b> |
|          | <b>Attachment E</b> | <b>DERA Option (5.2.12). [Attach only if using DERA option.]</b>  |
|          | <b>Attachment F</b> | <b>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.]</b> |

**CERTIFICATIONS**

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

1. This application is submitted on behalf of Beneficiary State of Maine, 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: 7/14/2020



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David Gardner  
Director, Environmental Office

Maine Department of Transportation  
[LEAD AGENCY]

for

State of Maine  
[BENEFICIARY]

**ATTACHMENT B**  
**Eligible Mitigation Action Management Plan**

Project Schedule and Milestones (July 2018-June 2019)

Project Budget (July 2020 for WMTS)

BUDGET CATEGORY	TOTAL APPROVED BUDGET	SHARE TO BE FUNDED BY TRUST	COST SHARE (project sponsor/federal)
Expenditure on Multimodal priorities-17 New Diesel Transit Buses	\$238,528.00	\$47,706	\$190,822.00
Percentage	100%	20%	80%

Projected Trust Allocations

	FY 2019 July 2018-June 2019	FY 2020	FY 2021-2028
1. Anticipated Annual Project Funding Requests to be paid through Trust	\$6,300,000	\$10,000,000	\$3,253,064
2. Anticipated Annual Cost Share	\$3,504,600	\$4,320,000	\$5,855,515
3. Anticipated Total Project Funding by Year (line 1 plus line 2)	\$9,804,600	\$14,320,000	\$9,108,579
4. Cumulative Trustee Payments made to Date against Cumulative Approved Beneficiary Allocations	\$1,500,000	7,800,000	\$17,800,000
5. Current Beneficiary Project Funding to be paid through the Trust (line 1)	\$6,300,000	\$10,000,000	\$3,253,064
6. Total Funding Allocated to Beneficiary, inclusive of current Action by Year (line 4 plus line 5)	\$7,800,000	\$17,800,000	\$21,053,051
7. Beneficiary Share of estimated Funds Remaining in Trust	\$19,553,064	\$13,253,064	-
8. Net Beneficiary Funds Remaining in Trust, Net of Cumulative Beneficiary Funding Actions (line 7 minus line 5)	\$13,253,064	\$3,253,064	-

ATTACHMENT C  
Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11)

Records of applications and selected projects will be made available on the Maine VW webpage:  
<http://www.maine.gov/mdot/vw/>.

ATTACHMENT D  
COST ESTIMATES and AWARDS

Detailed Cost Estimates from Selected or Potential Vendors for each Proposed expenditure exceeding \$25,000 (5.2.6)

Pricing estimates for the transit buses are shown in the matrix below.

TYPE	COST	VW FUNDS (20%)	COST SHARE (80%)
(2) transit diesel buses (24+2)	\$238,528.00	\$47,706.00	\$190,822.00

The total VW share for the Multimodal Priorities Funding 2020 WMTS- Category 2: Class 4-8 School Bus, Shuttle Bus, or Transit Bus is \$47,706.00.

Application information can be located on the Maine VW webpage: <http://www.maine.gov/mdot/vw/>.