



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

## BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

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Beneficiary Commonwealth of Virginia

Lead Agency Authorized to Act on Behalf of the Beneficiary Virginia Department of Environmental Quality  
*(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>	Battery Electric Public Transit Buses (Eligible Buses)
<b>Beneficiary's Project ID:</b>	VA VW-02
<b>Funding Request No.</b>	<i>(sequential)</i>
<b>Request Type: (select one or more)</b>	<input checked="" type="checkbox"/> Reimbursement <span style="margin-left: 200px;"><input type="checkbox"/> Advance</span> <input type="checkbox"/> Other (specify): _____
<b>Payment to be made to: (select one or more)</b>	<input checked="" type="checkbox"/> Beneficiary <input checked="" type="checkbox"/> Other (specify): <u>Virginia Department of Rail and Public Transportation</u>
<b>Funding Request &amp; Direction (Attachment A)</b>	<input type="checkbox"/> Attached to this Certification <input checked="" type="checkbox"/> To be Provided Separately

### SUMMARY

<b>Eligible Mitigation Action</b>	<input checked="" type="checkbox"/> Appendix D-2 item (specify): <u>See Attachment 1 - Summary Table</u>
<b>Action Type</b>	<input type="checkbox"/> Item 10 - DERA Option (5.2.12) (specify and attach DERA Proposal):
<b>Explanation of how funding request fits into Beneficiary's Mitigation Plan (5.2.1):</b> See Attachment 1 - Summary Table	
<b>Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2):</b> See Attachment 1 - Summary Table	
<b>Estimate of Anticipated NOx Reductions (5.2.3):</b> See Attachment 1 - Summary Table	
<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> See Attachment 1 - Summary Table	
<b>Describe how the Beneficiary will make documentation publicly available (5.2.7.2).</b> <b>See Attachment 1 - Summary Table</b>	
<b>Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8).</b> See Attachment 1 - Summary Table	
<b>Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9).</b> <b>See Attachment 1 - Summary Table</b>	

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).

See Attachment 1 - Summary Table

**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 Commonwealth of Virginia, 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: 01/31/2020

  
Michael G. Dowd, Director, Air & Renewable Energy Division

[NAME]

[TITLE]

Virginia Department of Environmental Quality

[LEAD AGENCY]

for

Commonwealth of Virginia

[BENEFICIARY]

**Attachment 1: Summary Table to Appendix D-4 Beneficiary Eligible Mitigation Action Certification**

<b>Summary</b>
<p><b>Eligible Mitigation Action Type</b> <input checked="" type="checkbox"/> <b>Appendix D-2 item (specify): (2) Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)</b></p>
<p><b>Explanation of how funding request fits into Beneficiary’s Mitigation Plan (5.2.1).</b></p> <p>Virginia's Beneficiary Mitigation Plan includes all eligible mitigation actions delineated in Appendix D-2 to the Volkswagen Settlement Agreements.</p>
<p><b>Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2).</b></p> <p>The transportation sector is a large source of NOx and particulate matter pollution, which adversely impact public health. Replacing old diesel transit buses with battery electric will eliminate all tailpipe NOx, PM, CO2 and other harmful air pollutants. \$14 million of the Trust has been allocated to replace older diesel public transit buses with all-electric transit buses through a new Clean Transportation Voucher Program implemented through the Department of Rail and Public Transportation’s annual public transportation capital grant cycle known as MERIT. This program will provide funding to cover the incremental cost of transitioning from diesel buses to all-electric buses.</p>
<p><b>Estimate of Anticipated NOx Reductions (5.2.3).</b></p> <p>Replacing old diesel transit buses with battery electric will eliminate all tailpipe NOx, PM, CO2 and other harmful air pollutants. <b>NOTE</b> DEQ will calculate the actual emission reductions from replacing diesel transit buses with battery electric and will be reporting these reductions to the public and the Trustee.</p>
<p><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></p> <p>Virginia Department of Environmental Quality (DEQ).</p>
<p><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></p> <p>Per Appendix D-3 Certification for Beneficiary Status: Paragraph 7. Publicly Available Information, Virginia 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</p>

certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

**Procedures for Accessing Information Pertaining to the Use of State Beneficiary Environmental Mitigation Trust (State Trust) Funds**

Information referenced under Paragraph 7 and submitted to the Trustee in support of funding request for eligible mitigation actions and expenditures of State Trust funds will be publicly available from the Virginia Department of Environmental Quality (DEQ) public Volkswagen mitigation webpage located at <https://www.deq.virginia.gov/Programs/Air/VWMitigation.aspx> as well as on the Trustee public facing website located at <https://www.vwenvironmentalmitigationtrust.com/state-trust/virginia>.

The public may also access this information by submitting a Freedom of Information Act (FOIA) request by U.S. mail, fax, e-mail, in person, or over the phone. DEQ's Freedom of Information Act policy

(<https://www.deq.virginia.gov/ConnectWithDEQ/FreedomofInformationAct/DEQsPolicy.aspx>) delineates the procedures for accessing agency information as well as the treatment and disclosure of certified confidential business information (CBI) or personally identifiable information. DEQ's FOIA policy and procedures are established pursuant to the Virginia Freedom of Information Act (VFOIA) Va. Code §2.2-3700 (<https://law.lis.virginia.gov/vacode/title2.2/chapter37/>).

**Procedures for Requesting and Considering Public Input on the State Beneficiary Mitigation Plan**

Virginia developed a proposed Beneficiary Mitigation Plan (BMP) in 2016 intended to provide the public with insight into the Commonwealth's vision for the eligible uses of the VW Trust mitigation funds. The state conducted a public comment period (Nov 17 — Dec 16, 2016) and meeting (Dec 7, 2016) on the proposed mitigation plan. Virginia received 101 comments on the proposed mitigation plan that are currently under review.

(<https://www.deq.virginia.gov/Programs/Air/VolkswagenSettlementAgreement/VWSettlementTimeline.aspx>).

To further inform the state's understanding of the best use of VW EMT funds, Virginia released Request for Information (RFI) # 17-01-CP in April 2017 seeking early input from governmental and non-governmental entities on the type and scope of projects that they may later submit to compete for VW Trust funds, funding and project evaluation priorities, and methods the state could employ to increase participation in future requests for VW mitigation projects.

(<https://www.deq.virginia.gov/Programs/Air/VolkswagenSettlementAgreement/VWSettlementTimeline.aspx>). DEQ received a total of 35 responses to RFI #17-01-CP. Of the 35 responses, 29 organizations submitted 39 project ideas totaling approximately \$600 million, and six organizations exclusively submitted responses to the question section of the RFI.

DEQ submitted a revised BMP to the Trustee on August 9, 2018. A state BMP is a living document. As such, public input is ongoing. The public may submit comments and/or questions

regarding the BMP to [vwmitigation@deq.virginia.gov](mailto:vwmitigation@deq.virginia.gov).

Public input on Virginia's mitigation plan and related planning efforts is guided by DEQ's Community Involvement policy located at: <https://www.deq.virginia.gov/ConnectWithDEQ/CommunityInvolvement.aspx>. This policy specifies the DEQ processes for engaging the public in effective environmental discussion making, such as creating early and ongoing opportunities for public input in agency decisions beyond the minimum requirements, ensuring that decision-making activities are open and accessible to all interested individuals and organizations, ensuring that the public understands the most effective ways to provide comment to DEQ, and considering and integrating public input into environmental decisions. DEQ's Community Involvement policy supplements existing Virginia regulations that detail public participation requirements applicable to only DEQ's regulatory activities under the Virginia Administrative Process Act Va. Code § 2.2-4007.02 (<https://law.lis.virginia.gov/vacode/2.2-4007.02/>), These requirements specify the minimum level of participation in regulatory decisions.

#### Applicability to State Laws Governing Confidential Business Information (CBI) and Personally Identifiable information

The certification in Paragraph 7 is fully subject to Virginia's applicable laws governing the publication of confidential business information and personally identifiable information, Va. Code § 2.2-4342(F) provides: "Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary." See also Va. Code § 2.2-3705.6(10) (exempting "[c]onfidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317"). The certification is subject to the Commonwealth of Virginia's procurement policies and procedures in the "Agency Procurement and Surplus Property Manual" (APSPM). Available at: <https://dgs.virginia.gov/procurement/policy-consulting--review/policy/>. Specifically, Special Term and Condition #59 provides: "The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement." Additionally, Va. Code § 2.2-3705.1(10) excludes

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from disclosure under FIOA: "Personal contact information furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. Finally, the certification is be subject to the Government Data Collection and Dissemination Practices Act, Va. Code §§ 2.2-3800 through -3809. This Act provides some limits on the use of personal information by public agencies. For instance, any "agency maintaining an information system that includes personal information shall [c]ollect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency." Va. Code § 2.2-3803(A)(1).

**Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8).**

There are no applicable cost share requirements specific to the VW Trust. However, all transit agencies are subject to cost-share requirements of the Virginia Department of Rail and Public Transportation's (DRPT) statewide public transportation State of Good Repair (SGR) Capital Assistance grant funding, which requires a minimum 4% local match for all funded grant projects. Only those projects prioritized by DRPT to receive SGR Capital Assistance grant funding (i.e. state grant funding) will be considered for VW Trust funding. Transit agencies may combine federal and state capital assistance grant funds and local match to decrease the VW funds needed for each project.

**Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9).**

DEQ emailed the State Trust Agreement to specified U.S. Government Agencies on February 23, 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).**

Virginia will be replacing older diesel public transit buses with all electric buses statewide, thus, air quality benefits will be realized statewide, including communities that have borne a disproportionate share of adverse impacts of NOx emissions.



**Attachment B: Eligible Mitigation Action Management Plan Including Detailed Budget  
 and Implementation and Expenditures Timeline (5.2.4).**

**Battery Electric Public Transit Bus Deployment Project Schedule**

<b>Virginia Department of Rail and Public Transportation (DRPT) Making Efficient and Responsible Investments in Transit (MERIT) Fiscal Year (FY) 2020 Grant Program - Capital Assistance: State of Good Repair (SGR)</b>	
<b>Action</b>	<b>Date</b>
Grant Application Opens	December 1, 2018
Grant Application Closes	Feb 3, 2019
Grant Funds Awarded	July 1, 2019
Buses Ordered off State Contract (Contract No. E194-81688)	November 30 2019
Buses Delivered	May 30, 2020
Project Complete	June 30, 2020
<b>Virginia DRPT MERIT FY 2021 Grant Program - Capital Assistance: SGR</b>	
<b>Action</b>	<b>Date</b>
Grant Application Start	December 1, 2019
Grant Application Closes	Feb 3, 2020
Grant Funds Awarded	July 1, 2020
Buses Ordered off State Contract (Contract No. E194-81688)	November 30, 2020
Buses Delivered	May 1, 2021
Project Complete	June 30, 2021

<b>Project Budget</b>			
<b>Budget Category</b>	<b>Total Approved Budget</b>	<b>Share of Total Budget to be Funded by the Trust<sup>1</sup></b>	<b>Other Funds<sup>2</sup></b>
1. Battery Electric Transit Buses	\$14,000,000	\$14,000,000 <sup>3</sup>	
2. Administrative	\$700,000	\$700,000	
<b>Project Totals</b>	<b>\$14,700,000</b>	<b>\$14,700,000</b>	

<sup>1</sup> Funding from the VW Trust may be used to reimburse governmental entities up to 100% of the incremental cost between a new diesel-powered transit bus and a new all-electric transit bus, including the cost of charging infrastructure.

<sup>2</sup> Federal, state, and/or local funds will cover project costs not covered by the VW Trust (i.e., non-eligible costs). The amount of “other” funds will vary bus to bus. DEQ will track and report actual matching funds to the Trustee and the public.

**PROJECTED TRUST ALLOCATIONS:**

	<b>2020</b>	<b>2021</b>
1. Anticipated Annual Project Funding Request to be paid through the Trust	\$7,350,000	\$7,350,000
2. Anticipated Annual Cost Share	N/A	N/A
3. Anticipated Total Project Funding by Year (line 1 plus line 2)	\$7,350,000	\$7,350,000
4. Cumulative Trustee Payments Made to Date Against Cumulative Approved Beneficiary Allocation	\$14,700,000 <sup>4</sup>	\$22,050,000 <sup>5</sup>
5. Current Beneficiary Project Funding to be paid through the Trust (line 1)	\$7,350,000	\$7,350,000
6. Total Funding Obligated, inclusive of Current Action by Year (line 4 plus line 5)	\$22,050,000	\$29,400,000
7. Total Beneficiary Share of Trust	\$93,633,980	\$93,633,980
8. Net Beneficiary Funds Remaining in Trust, net of cumulative Beneficiary Funding Actions (line 7 minus line 6)	\$71,583,980	\$64,233,980

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<sup>4</sup> Obligated Trust funds for EVSE (VA VW-01)

<sup>5</sup> Obligated Trust funds for EVSE Project (VA VW-01) and Eligible Buses Project (VA VW-02)

**Attachment C: Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11)**

The Virginia Department of Environmental Quality (DEQ) will provide detailed reporting on this funding request for Eligible Mitigation Action 2 (Eligible Buses) in two ways: 1) timely updates to DEQ's Volkswagen Environmental Mitigation Trust web pages; and 2) semi-annual reports to the Trustee as required by subparagraph 5.3 of the Environmental Mitigation Trust Agreement for State Beneficiaries.

**DEQ Website**

DEQ maintains a Volkswagen Mitigation webpage, which can be found at [www.deq.virginia.gov/Programs/Air/VWMitigation.aspx](http://www.deq.virginia.gov/Programs/Air/VWMitigation.aspx). Virginia's Beneficiary Mitigation Plan, information on planned or mitigation actions underway, and background information on the VW Settlement agreements are available for public access through the webpage. Links to approved funding requests (or D-4 forms) will be available for public access through links on the DEQ website and from the Trustee's public facing website at <https://www.vwenvironmentalmitigationtrust.com/state-trust/virginia>.

**Semi-Annual Reports to the Trustee**

As required by subparagraph 5.3 of the Environmental Mitigation Trust Agreement for State Beneficiaries, DEQ will submit a report to the Trustee within 6 months of the first disbursement and thereafter no later than January 30 and July 30 for the preceding 6-month periods. These reports will describe the progress implementing this and any other Eligible Mitigation Action ongoing during the reporting period. These reports will include a summary of all costs expended and a complete description of the status (including the actual or projected termination date), development, implementation, and any modification of the Eligible Mitigation Action. These semi-annual reports to the Trustee will be available for public access through links on the main Volkswagen Trust page on the DEQ website and from the Trustee's public facing website at <https://www.vwenvironmentalmitigationtrust.com/state-trust/virginia>.

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**Attachment D: Detailed cost estimates from selected vendor for each proposed expenditure exceeding \$25,000 (5.2.6).**

A state contract for purchasing electric transit buses and charging infrastructure by public bodies (i.e., Contract No. E194-81688) was established through Invitation for Bids # 2712. This Invitation for Bids (IFB) was issued by the Commonwealth of Virginia, acting through its Department of General Services' Division of Purchases and Supply to solicit sealed bids to establish an optional use contract(s) with one or more qualified suppliers/manufacturers/contractors for the manufacture and delivery of Electric Low Floor Heavy-duty Transit Bus Vehicles for purchases and use by public bodies throughout the Commonwealth of Virginia. See Table 1 for a summary of final bid prices resulting from IFB # 2712 per vendor per bus size.

IFB # 2712 State of Virginia

Low Floor Transit Buses, Battery-Electric

note: all prices include delivery fees to Virginia customers

	GILLIG	NEW FLYER	NOVA BUS	PROTERRA
<b>35 FT</b>				
Gillig Electric Bus 35ft	\$ 810.780			
New Flyer Xcelsior XE 35ft		\$ 700.725		
Proterra Catalyst XR 35ft				\$ 654.757
<b>40 FT</b>				
Gillig Electric Bus 40ft	\$ 814.980			
New Flyer Xcelsior XE 40ft		\$ 705,725		
Nova Bus LFSe 40ft			\$ 687,842	
Proterra Catalyst XR 40ft				\$ 669.757
<b>60 FT</b>				
New flyer Xcelsior XE 60ft		\$ 1.144.929		

Table 1 Publication, Pre-bid signatures, Bid Tab, Intent to Award, Virginia DGS

To obtain a copy of Contract No. E194-81688 and all associated files, including pricing for each vendor, go to [https://logi.epro.cgipdc.com/External/rdPage.aspx?rdReport=Public.Reports.Report9008\\_Data](https://logi.epro.cgipdc.com/External/rdPage.aspx?rdReport=Public.Reports.Report9008_Data) and then enter **E194-81688** (contract number) into the **Search For** field shown below.

The screenshot shows the eVA Transparency Reports website. The search bar is circled in red. Below the search bar, there are several menu items: Special Contract Pages, Other Contracts / Info, Fuel & Rental Vehicles, Non-Professional Construction Related Services, Fleet, Trains, Mandatory Statewide Contracts, Vehicles, VITA Contracts, New Contracts (Last 90 days), and Statewide Building & Professional Services Pool. An Excel icon is also visible.

Contract Number	Contract Type	Authorized Entities	Description	Contractors	Start	End	NGP	Contract Officer
OK-SV-300	Mandatory Statewide Contract	State / Localities	AED's Automated External Defibrillators - Cooperative	PHYSIO CONTROL INC PHILIPS HEALTHCARE ZOLL MEDICAL CORPORATION CARDIAC SCIENCE CORP	2/6/2018	10/4/2020	6514	David Hueston
E194-77244	Agency Mandatory Contract	Department of Conservation and Recreation (A199)	Aluminum Sign Blanks	VULCAN INC	7/6/2017	6/30/2020	80109	Laura Lee Silva
E194-83407	Mandatory Statewide Contract	State / Localities	Ammunition - Herault	GULF STATES DISTRIBUTORS INC	10/21/2019	10/20/2020	88804	Tina Rodriguez
E194-77985	Mandatory Statewide Contract	State / Localities	Ammunition - Remington	TOWN POLICE SUPPLY	4/4/2017	3/31/2022	88804	Tina Rodriguez
E194-77944	Mandatory Statewide Contract	State / Localities	Ammunition - Vista Outdoor & Fiocchi	THE GUN SHOP	4/1/2017	3/1/2022	88804	Tina Rodriguez

Public bodies selected to receive VW Trust funds to purchase electric transit buses are encouraged to use the state contract established by the Commonwealth of Virginia. However, public bodies may conduct their own bid. Public bodies that conduct their own bid must use their own established procurement procedures while adhering to all applicable state and local laws as well as applicable terms and conditions of the *ENVIRONMENTAL MITIGATION TRUST AGREEMENT FOR STATE BENEFICIARIES* (State Trust) including Section 5.2.6. DEQ will provide necessary documentation to the Trustee to satisfy Section 5.2.6. of the State Trust/Attachment D to the D-4 Certification for any public body electing not to use the state contract.