



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.	<i>(sequential)</i>
Request Type: (select one or more)	<input type="checkbox"/> Reimbursement <input type="checkbox"/> Advance <input type="checkbox"/> Other (specify): _____
Payment to be made to: (select one or more)	<input type="checkbox"/> Beneficiary <input type="checkbox"/> Other (specify): _____
Funding Request & Direction (Attachment A)	<input type="checkbox"/> Attached to this Certification <input type="checkbox"/> To be Provided Separately

SUMMARY

Eligible Mitigation Action	<input type="checkbox"/> Appendix D-2 item (specify): _____
Action Type	<input type="checkbox"/> 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).
See Attached 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: 07/05/2023


Director, Air and 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

Summary								
<p>Explanation of how funding request fits into Beneficiary’s Mitigation Plan (5.2.1).</p> <p>Virginia's Beneficiary Mitigation Plan includes all eligible mitigation actions delineated in Appendix D-2 to the Volkswagen Settlement Agreements.</p>								
<p>Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2).</p> <p>VW State Trust funds, in combination with public funds are obligated to replace diesel Class 8 refuse trucks that operate five (5) days per week throughout the year and serve eight sanitary districts, collecting refuse from 44,000 residential and commercial customers located within Fairfax County, VA with new electric refuse trucks and associated recharging infrastructure helping to improve the air quality in Virginia’s only nonattainment area for Ozone. Fairfax County is also an EPA DERA high priority area for reducing diesel pollution.</p>								
<p>Estimate of Anticipated NOx Reductions (5.2.3).</p> <p>Calculated lifetime NO_x, PM_{2.5} and CO₂ reductions because of replacing heavy duty diesel refuse trucks with all-electric:</p> <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>Lifetime NOx Reduction (tons)</th> <th>Lifetime PM 2.5 Reduction (tons)</th> <th>Lifetime CO2 Reduction (tons)</th> </tr> </thead> <tbody> <tr> <td>5.7</td> <td>0.2</td> <td>2,044</td> </tr> </tbody> </table>			Lifetime NOx Reduction (tons)	Lifetime PM 2.5 Reduction (tons)	Lifetime CO2 Reduction (tons)	5.7	0.2	2,044
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5.7	0.2	2,044						
<p>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).</p> <p>Virginia Department of Environmental Quality (DEQ).</p>								
<p>Describe how the Beneficiary will make documentation publicly available (5.2.7.2).</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</p>								

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.

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/get-involved/topics-of-interest/volkswagen-settlement-agreement> as well as on the Trustee public facing website located at 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/get-involved/about-deq/freedom-of-information-act>) 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.

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. 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.

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Public input on Virginia's mitigation plan is guided by DEQ's community involvement 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 processes supplement 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 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

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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).

Project owner is required to provide at least a 25% cost-share of eligible project costs. Project owners are responsible for funding all project costs not eligible for reimbursement.

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).

Class 8 Truck diesel replacement project is an Ozone nonattainment area, a Diesel Emissions Reduction Act 2020 Priority Area, and an area with a higher than state average of minority population and population with residents under the age of five. Reduction of criteria pollutants will bring significant public health benefits to Fairfax County and alleviate the burden of mobile air source pollution for its vulnerable populations.

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

Clean Air Communities Program: EMA#1 Class 8 Trucks (Large Trucks) Deployment Project Schedule	
Action	Date
Agreement Executed	2021
Trucks and Associated Charging Infrastructure Ordered	2021 - 2022
Trucks and Associated Charging Infrastructure Delivered	2023/2024
Reimbursement Requests	2023-2024
Project Complete	2024

Clean Air Communities Program: EMA#1 Class 8 Trucks (Large Trucks) Project Budget			
EMA#1	Project Budget	Share of Budget to be Funded by the VW State Trust	Share of Budget Funded by the Grantee
New Electric Class 8 Trucks and Charging infrastructure	\$1,264,420	\$948,315	\$316,105
DEQ Administrative Expenditures	\$200,000	\$200,000	N/A
Total	\$1,464,420	\$1,148,315	\$316,105

PROJECTED TRUST ALLOCATIONS:

	2023	2024
1. Anticipated Annual Project Funding Request to be paid through the Trust	\$300,000	\$848,315
2. Anticipated Annual Cost Share	\$74,998.50	\$241,106.50
3. Anticipated Total Project Funding by Year (line 1 plus line 2)	\$374,998.50	\$1,089,421.50
4. Cumulative Trustee Payments Made to Date Against Cumulative Approved Beneficiary Allocation	\$29,998,090.67	\$29,998,090.67
5. Current Beneficiary Project Funding to be paid through the Trust (line 1)	\$300,000	\$848,315
6. Total Funding Obligated, inclusive of Current Action by Year (line 4 plus line 5)	\$30,298,090.67	\$31,146,405.67
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)	\$63,335,889.33	\$62,487,574.33

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

The Virginia Department of Environmental Quality satisfies 5.2.6 by requiring the following information from entities for the sole purpose of reimbursement for EMA Class 8 Trucks, but not limited to:

- Copy of bid(s) or detailed cost estimate(s) from the vendor for Class 8 Trucks and charging infrastructure. If purchasing trucks and chargers (if applicable) from a public contract, provide copies of the actual pricing for each bus and each associated charger.

Note that the cost estimate from the selected vendor has identified the cost estimate as propriety information. If necessary, DEQ can make copies of the cost estimates for the Class 8 Truck available for view by Trustee.

- Obtaining a signed Statement of Certification that all vehicles and associated charging infrastructure presented will be procured in a manner compliant with the jurisdiction's public procurement and contracting law and will provide proof that the jurisdiction's public procurement and contracting law were followed (see embedded signed Statement of Certification below).

Appendix F - Statement of Certification

Fairfax County certifies all vehicles, equipment, or engines and associated charging infrastructure presented for funding in the CACP application were/will be procured in a manner compliant with the jurisdiction's public procurement and contracting law and will provide proof that the jurisdiction's public procurement and contracting law were followed. If awarded funding, Fairfax County certifies that it understands that if the vendor who provided the cost estimate or the public contract used for pricing and submitted with the grant application is not the same vendor/contract used to purchase vehicles, equipment, or engines and associated charging infrastructure, DEQ will not increase the funding above the original award amount. Fairfax County understands it is responsible for providing proof that the jurisdiction's public procurement and contracting law were/will be followed.

If awarded funding, Fairfax County certifies that it understands that if all or part of the eligible project expenses presented for reimbursement were not procured or contracted in a manner compliant with the jurisdiction's public procurement and contracting law, those project costs are ineligible for reimbursement from the Volkswagen Environmental Mitigation Trust Fund.

Applicant Certification Signature

Signature of Applicant Authorizing Agent	
Date	1/8/21
Name	John Kellas
Title or relationship to applicant organization	Deputy Director of Solid Waste Management Fairfax County Solid Waste Management Program
Contact information	703-324-5047 john.kellas@fairfaxcounty.gov

- Copy(s) of the original purchase order(s) and vendor-issued sale receipt(s) that shall include (a) total price, (b) price for each product and/or service, (c) a detailed description of each product

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and/or service (including the VIN for each invoiced bus), and (d) the vendor delivery date for each bus); and proof of the payment to the vendor(s).

- Provide copies/documentation of applicable jurisdictional procurement/contracting laws of and sign and certify that the buses were obtained based on jurisdictional procurement/contracting laws (5.2.5).
- Copies of original invoices from vendor for new EMA Class 8 Trucks and associated charging infrastructure that show: Itemization of costs to identify the amount paid by the project owner, the amount paid by “Other” funding sources, the amount to be paid by State Trust funds, and the total amount the public body is requesting for reimbursement.

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 in two ways: 1) timely updates to DEQ's Volkswagen Environmental Mitigation Trust web pages at <https://www.deq.virginia.gov/get-involved/topics-of-interest/volkswagen-settlement-agreement>; and 2) semiannual 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 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 Attachment A to D-4 forms) will be available for public access through links on the DEQ website to the Trustee's public facing website at <https://www.vwenvironmentalmitigationtrust.com/state-trust/virginia>.

Semiannual 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 to the Trustee's public facing website at <https://www.vwenvironmentalmitigationtrust.com/state-trust/virginia>.