

## **The Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries**

### **Notice of Trust Modification Effective Date for the Minor Modifications to the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (the “Indian Tribe Trust”) with the U.S. District Court for the Northern District of California in accordance with Subparagraph 6.5 of the Indian Tribe Trust Agreement**

Wilmington Trust, N.A., as Trustee (the “Trustee”) for the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (the “Indian Tribe Trust”) hereby gives notice that **June 18, 2020** is the **Trust Modification Effective Date** for the minor modifications to the Indian Tribe Trust (the “Minor Modifications to the Indian Tribe Trust”) that were filed with United States District Court for the Northern District of California (the “Court”) on May 19, 2020.

Subparagraph 6.5 of the Indian Tribe Trust agreement provides that the Minor Modifications to the Indian Tribe Trust will become effective 30 days from the date of notice to Beneficiaries. The Trustee provided that notice to the Beneficiaries on May 19, 2020. That notice commenced the 30-day notice period. A copy of that notice is attached hereto.

A copy of the United States’ Notice of Minor Modifications to the Indian Tribe Trust Agreement that was filed with the Court, along with a marked version of the Indian Tribe Trust agreement (as Attachment B) – showing the minor modifications from the Indian Tribe Trust agreement which was filed on May 19, 2020 at Dkt 83 and 83-2 with the Court in the case *United States of America v. Volkswagen AG et al* case number 3:16-cv-00295-CRB – and a clean version of the Minor Modifications to the Indian Tribe Trust agreement (as Attachment A) together with all exhibits, is attached hereto and can be found at Dkt 83-1 with the Court in case *United States of America v. Volkswagen AG et al* case number 3:16-cv-00295-CRB and at Dkt 7432 in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation* case number 3:15-md-02672-CRB.

In accordance with the terms of paragraphs 1.20, 1.33 and 6.5 of the Indian Tribe Trust agreement, the Trustee hereby confirms that the 30 days prior notice to the Beneficiaries of the Minor Modifications to the Indian Tribe Trust expired on June 18, 2020, making this date the Trust Modification Effective Date, as such term is defined in the Indian Tribe Trust agreement.

**BY:** Wilmington Trust, N.A., as Trustee for the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries

**DATE:** June 18, 2020



**The Volkswagen Diesel Emissions Environmental Mitigation Trust  
for Indian Tribe Beneficiaries**

**Notice of filing of Minor Modifications to the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (the “Indian Tribe Trust”) with the U.S. District Court for the Northern District of California on May 19, 2020 in accordance with Subparagraph 6.5 of the State Trust**

**Dated: May 19, 2020**

Wilmington Trust, N.A., as Trustee (the “Trustee”) for the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (the “Indian Tribe Trust”) hereby gives notice that minor modifications to the Indian Tribe Trust (the “Minor Modifications to the Indian Tribe Trust”) have been filed with United States District Court for the Northern District of California (the “Court”) on May 19, 2020. In accordance with the terms of subparagraph 6.5 of the Indian Tribe Trust, the Trustee hereby gives notice to the Beneficiaries of the Minor Modifications to the Indian Tribe Trust as required by Paragraph 6.5 of the Indian Tribe Trust.

Paragraph 6.5 of the Indian Tribe Trust provides that the Minor Modifications to the Indian Tribe Trust will become effective 30 days from the date of this notice on June 18, 2020. A copy of the Notice of Motion with a marked version of the Indian Tribe Trust showing the minor modifications from the Indian Tribe Trust which was filed on May 19, 2020 at Dkt 83 MDL 2672 (CRB) JSC including a clean and a marked version of the Minor Modifications to the Indian Tribe Trust together with all exhibits is attached thereto as filed with the Court.

The Minor Modifications to the Indian Tribe Trust were necessary to ensure the effective administration of the Indian Tribe Trust and are consistent with its purpose.

In light of the COVID-19 pandemic, the United States and Trustee have agreed to a discreet number of minor modifications to the Indian Tribe Trust to address issues arising from market disruptions and State-mandated office closures due to the COVID-19 pandemic. The modifications will allow: (i) the Investment Manager to continue to invest and reinvest the principal and income of the Trust Assets in investments reasonably calculated to preserve the principal value, taking into account the need for safety and liquidity of principal as may be required to fund Eligible Mitigation Actions and Trust Administration Costs in accordance with Paragraph 3.2.1 of the Indian Tribe Trust; and (ii) the use of electronic signatures and electronic retention of certain documents, in accordance with the Trustee’s new security procedures that respond to State-mandated closures or other business interruptions caused by the COVID-19 pandemic.

In summary, the agreed changes include:

- A modification of Permitted Investments under Paragraph 3.2.1 to allow the investment of Trust Assets in the BlackRock Fed Fund (CUSIP 09248U809), other similar mutual funds, and U.S. Treasury bills, bonds, notes, and other government securities issued by agencies of the federal government; and

- An additional paragraph that allows electronic signatures and electronic retention of certain documents required under or related to the Indian Tribe Trust, as identified by the Trustee.

Subparagraph 6.5 Modifications provides that Minor Modifications to the Indian Tribe Trust shall become effective automatically after the expiration of a 30-day notice period. This Notice commences that 30-day notice period. On June 18, 2020 the Minor Modifications to the Indian Tribe Trust will become effective, the “Trust Modification Effective Date” as defined therein.

The Trustee will provide notice to the Beneficiaries of the occurrence of the Trust Modification Effective Date via Intralinks and will post a notice on the public website.

**BY:** Wilmington Trust, N.A., as Trustee for the Volkswagen Diesel Emissions  
Environmental Mitigation Trust for Indian Tribe Beneficiaries

**DATE:** May 19, 2020



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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN “CLEAN DIESEL” ) MDL No. 2672 CRB (JSC)  
MARKETING, SALES PRACTICES, AND )  
PRODUCTS LIABILITY LITIGATION ) **UNITED STATES’ NOTICE OF MINOR**  
 ) **MODIFICATIONS TO INDIAN TRIBE**  
 ) **TRUST AGREEMENT**

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This Document Relates to:

*United States v. Volkswagen AG et al.*,  
Case No. 16-cv-295 (N.D. Cal.)

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1 On September 19, 2017, the Court approved the Environmental Mitigation Trust Agreement for  
2 Indian Tribe Beneficiaries (“Indian Tribe Trust Agreement” or “Trust”). *United States v. Volkswagen*  
3 *AG et al.*, Case No. 16-cv-295 (N.D. Cal.) (hereafter “*U.S. v. VW*”), Dkt. No. 49. The United States  
4 filed a fully executed copy of the Trust Agreement with the Court on October 2, 2017. *Id.*, Dkt. No.  
5 51-1.

6 Wilmington Trust, N.A. was appointed by the Court to serve as Trustee of the Trust. *In re:*  
7 *Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No.  
8 2672 CRB (JSC) (hereafter “*In re Volkswagen*”), Dkt. No. 3030 at 2.

9 On August 13, 2018, the United States filed a Notice of Proposed Material Modifications to  
10 Indian Tribe Trust Agreement. *U.S. v. VW*, Dkt. No. 62. The Court approved these modifications on  
11 November 16, 2018. *In re Volkswagen*, Dkt. No. 5559. The United States and the Trustee subsequently  
12 agreed to certain additional minor modifications and the modified Trust became effective on November  
13 30, 2018. *In re Volkswagen*, Dkt. No. 5624.

14 Pursuant to Paragraph 6.5 of the Indian Tribe Trust Agreement, minor modifications and  
15 clarifying amendments to the Indian Tribe Trust Agreement may be made upon written agreement  
16 between the United States and the Trustee, as necessary to enable the Trustee to effectuate the  
17 provisions of the Indian Tribe Trust Agreement, and shall be filed with the Court. *Id.*, at 44, ¶6.5.

18 After reviewing the Indian Tribe Trust Agreement, the United States and the Trustee have agreed  
19 to a discrete number of minor modifications to the Indian Tribe Trust Agreement to address issues  
20 arising from market disruptions and State-mandated office closures due to the COVID-19 pandemic.  
21 These modifications are necessary to ensure the effective administration of the Indian Tribe Trust and  
22 are consistent with its purpose. *See id.*, at 6, ¶2.0.3 (Trust Purpose). The modifications will allow: (i)  
23 the Investment Manager to continue to invest and reinvest the principal and income of the Trust Assets  
24 in investments reasonably calculated to preserve the principal value, taking into account the need for the  
25 safety and liquidity of principal as may be required to fund Eligible Mitigation Actions and Trust  
26 Administration Costs in accordance with Paragraph 3.2.1 of the Indian Tribe Trust; and (ii) the use of  
27 electronic signatures and electronic submission of certain documents, in accordance with the Trustee’s  
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1 new security procedures that respond to State-mandated office closures or other business interruptions  
2 caused by the COVID-19 pandemic.

3 In summary, the agreed changes include:

- 4 • A modification of Permitted Investments under Paragraph 3.2.1 to allow the investment of  
5 Trust Assets in the BlackRock Fed Fund (CUSIP 09248U809), other similar mutual funds,  
6 and U.S. Treasury bills, bonds, notes, and other government securities issued by agencies of  
7 the federal government; and
- 8 • An additional paragraph that allows electronic signatures and electronic submission of  
9 certain documents required under or related to the Trust, as identified by the Trustee.

10 These changes are incorporated in the Indian Tribe Trust Agreement in Attachment A, which  
11 contains a complete version of the Indian Tribe Trust Agreement, as modified on May 19, 2020, and  
12 Appendix D-1 through Appendix D-8 to the modified Indian Tribe Trust Agreement. The changes are  
13 also presented in Attachment B in a redlined version of the modified Indian Tribe Trust Agreement that  
14 became effective on November 30, 2018. Attachments A and B are filed with the Court together with  
15 this Notice.

16 The modifications to the Indian Tribe Trust Agreement will become effective 30 days after the  
17 following two requirements are satisfied: (1) the United States files with the Court the fully executed  
18 version of the Indian Tribe Trust Agreement, as modified on May 19, 2020; and (2) the Trustee provides  
19 notice to the Beneficiaries of the proposed amendments to the Indian Tribe Trust Agreement as required  
20 by Paragraph 6.5. *Id.*, at 44, ¶6.5; Attachment A, ¶1.29 (Trust Modification Effective Date). The  
21 United States satisfied the first requirement above by filing this Notice with the Court. Regarding the  
22 second requirement, the Trustee will provide notice to the Beneficiaries of these minor modifications  
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1 under Paragraph 6.5 of the Indian Tribe Trust Agreement as soon as the United States' Notice is filed  
2 with the Court.

3  
4 Dated: May 19, 2020

Respectfully submitted,

5 For the United States of America

6  
7 /s/ Bethany Engel  
Bethany Engel

8 Bethany Engel  
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ATTACHMENT A

Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries,  
as modified on May 19, 2020

UNITED STATES' NOTICE OF MINOR MODIFICATIONS  
TO INDIAN TRIBE TRUST AGREEMENT  
MDL No. 2672 CRB (JSC)

**ENVIRONMENTAL MITIGATION TRUST AGREEMENT  
FOR INDIAN TRIBE BENEFICIARIES  
(as modified on May 19, 2020)**

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;

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

**Whereas**, on August 13, 2018, the Defendants and the Trustee agreed to certain material modifications, and, on November 15, 2018, to certain nonmaterial modifications to the Indian Tribe Trust Agreement;

**Whereas**, the United States and the Trustee agreed in writing to certain additional minor modifications and clarifying amendments to the Indian Tribe Trust Agreement that are reflected herein (“proposed amendments”), and the United States will file these proposed amendments with the Court;

**Whereas**, the Trustee will provide notice of these proposed amendments to the Beneficiaries via Interlinks and by posting the proposed amendments on the public-facing website; and

**Whereas**, the proposed amendments to the Indian Tribe Trust Agreement shall be effective on the Trust Modification Effective Date;

**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 “2010 United States Census Table PCT4” shall mean Table PCT4 (entitled “American Indian and Alaska Native Alone or in Combination with One or More Other Races”) of the United States national census conducted by the U.S. Census Bureau in 2010.

1.2 “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.

1.3 “Beneficiary Status Certification Form” shall mean the Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form that is attached as Appendix D-3 to this Indian Tribe Trust Agreement.

1.4 “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.

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

1.6 “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).

1.7 “Court” shall mean the United States District Court for the Northern District of California.

1.8 “Court’s Approval Order” shall mean the Court’s Order dated November 16, 2018, approving the modifications to the Indian Tribe Trust Agreement in this matter. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 5559.

1.9 “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;

1.10 “Delaware Act” shall mean the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826.

1.11 “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).

1.12 “Eligible Mitigation Action” shall mean any of the actions listed in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement.

1.13 “Eligible Mitigation Action Administrative Expenditure” shall mean those administrative expenditures by Beneficiaries specified in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement, and shall not include Trust Administration Costs.

1.14 “EMA Certification Form” shall mean the Beneficiary Eligible Mitigation Action Certification form that is attached as Appendix D-4 to this Indian Tribe Trust Agreement.

1.15 “Federal Agency” shall mean any agency of the United States government.

1.16 “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.

1.17 “Force Majeure” shall have the same meaning as in Paragraph 54 of the First Partial Consent Decree.

1.18 “Indian Land” shall mean the lands of any Indian Tribe or within Indian country.

1.19 “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 recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018), which will be updated from time to time.

1.20 “Indian Tribe Trust Agreement” shall mean the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries approved by the Court on September 19, 2017, *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 49, the modifications thereto as approved by the Court’s Approval Order, and the fully executed version filed with the Court on the Trust Modification Effective Date.

1.21 “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.

1.22 “IRS” shall mean the Internal Revenue Service.

1.23 “Second Partial Consent Decree” shall mean the Second 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. 3228-1), on May 17, 2017.

1.24 “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.

1.25 “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.

1.26 “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).

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

1.28 “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.

1.29 “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.

1.30 “Termination Date” shall mean the date that the Indian Tribe Trust terminates pursuant to Paragraph 6.8 of this Indian Tribe Trust Agreement.

1.31 “Trust Administration Costs” shall mean all expenditures of Trust Assets by the Trustee.

1.32 “Trust Effective Date” shall mean October 2, 2017, the date that the United States filed the fully executed final version of the Indian Tribe Trust Agreement with the Court. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 51-2.

1.33 “Trust Modification Effective Date” shall be 30 Days after the following two requirements are satisfied: (1) the United States files with the Court the fully executed version of the Indian Tribe Trust Agreement, as modified on May 19, 2020; and (2) the Trustee provides notice to the Beneficiaries of the proposed amendments to the State Trust Agreement as required by Paragraph 6.5.

1.34 “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.

1.35 “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 form (“EMA Certification Form”) (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 (“Consultation Process”), 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: (1) to 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) consistent with comments received from Indian Tribes during the Consultation Process, to 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, semiannual 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 Scope of Tasks. The technical assistance provider shall perform the following tasks: (i) provide outreach and training to the Indian Tribes to assist them in completing their Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form (“Beneficiary Status Certification Form”) (Appendix D-3) and their EMA Certification Form (Appendix D-4); (ii) review the EMA Certification Forms (Appendix D-4) submitted by Beneficiaries for each funding cycle for compliance with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) as well as Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement; (iii) request missing information from the Indian Tribes necessary to complete the Beneficiary Status Certification Forms (Appendix D-3) and EMA Certification Forms (Appendix D-4); and (iv) after review of the EMA Certification Forms (Appendix D-4) submitted in each funding cycle, prepare a report for the Trustee indicating whether each form complies with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) and Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement. The technical assistance provider’s review and report shall be based on the information provided to it by each Indian Tribe; the technical assistance provider may conclusively rely

on the accuracy of the information provided by an Indian Tribe without any further duty of inquiry. The technical assistance provider's report relating to its review of the EMA Certification Forms (Appendix D-4) shall be delivered to the Trustee five Business Days before the Trustee's deadlines to approve or deny any EMA Certification Forms (Appendix D-4) in subparagraph 5.2.16. If there are differences or disputes relating to the services provided by the technical assistance provider pursuant to this Indian Tribe Trust Agreement, the Trustee and the United States shall work cooperatively to address and attempt to resolve those issues with the technical assistance provider. The duties and obligations of the technical assistance provider to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle.

2.1.1.3 Budget. In order to fund its services, the technical assistance provider shall submit to the Trustee, in electronic and hard-copy formats, an annual budget for its services in each year. The annual budget shall be submitted 45 Days before the commencement of the applicable budget period for review by the Trustee, and shall include: (i) a detailed description of the proposed services described above in subparagraph 2.1.1.2; (ii) a proposed management plan for the proposed services, including a detailed budget for proposed expenses for the upcoming year, an identification of all indirect costs, and an implementation and expenditure timeline; (iii) a certification that indirect costs comply with the limits in subparagraph 2.1.1.4; (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 2.1.1.5. The technical assistance provider shall provide additional information as requested by the Trustee. The Trustee shall post each proposed annual budget on the Indian Tribe Trust's public-facing website upon receipt. The Trustee must approve the annual budget for the technical assistance provider's services before disbursing funds for the budget. 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 2.1.1.3, and shall disburse funds according to the written instructions provided by the technical assistance provider. In connection with a

modification of this Indian Tribe Trust Agreement, the technical assistance provider may revise its initial budget to take into account factors including the scope of tasks listed in subparagraph 2.1.1.2 and the reduction in the number of funding cycles in subparagraph 5.0.5.2.

2.1.1.4 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 2.1.1.3, 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.

2.1.1.5 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.

2.1.1.6 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. Not later than December 31, 2022, any unused funds held by the technical assistance provider shall be returned to the Indian Tribe Trust.

## 2.1.2 Beneficiary Status, Designated Beneficiary's Participation Notice, and Funding Requests.

2.1.2.1 Establishment of Beneficiary Status. Prior to receiving any funds, each Indian Tribe must establish Beneficiary status pursuant to Paragraph 4.0 by filing with the Court a Beneficiary Status Certification Form (Appendix

D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. At the time of filing the Beneficiary Status Certification Form with the Court, each Indian Tribe shall also concurrently provide a copy of the Beneficiary Status Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1.

2.1.2.2 Designated Beneficiary's Participation Notice. Beginning with the second funding cycle, after an Indian Tribe has been designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1, that Indian Tribe Beneficiary may participate in the second and any subsequent funding cycle by submitting to the Trustee, pursuant to subparagraphs 5.0.5.3.3 and 5.0.5.3.5, a Designated Beneficiary's Participation Notice (Appendix D-6) by the deadline established for each funding cycle in which it would like to participate.

2.1.2.3 Funding Requests. In any request for Eligible Mitigation Action funding submitted to the Trustee by any Beneficiary, the Beneficiary shall timely submit an EMA Certification Form (Appendix D-4) for each funding cycle, and shall comply with the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable. Each allocation provided to any Indian Tribe that is designated as 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), 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. If additional funds are required to fund this Tribal Administration Cost Subaccount, the Trustee shall confer with the United



States to attempt to find an appropriate resolution to address any funding shortfall.

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. The Tribal Advisory Council shall: (i) advise the technical assistance provider on its outreach and training efforts to ensure that Indian Tribes are aware of the Indian Tribe Trust; and (ii) provide a forum for Indian Tribes to raise general questions relating to the Indian Tribe Trust Agreement. The Trustee agrees to select the Institute for Tribal Environmental Professionals to coordinate the establishment of a Tribal Advisory Council. Within 30 Days after the Court's Approval Order is issued, the Institute for Tribal Environmental Professionals shall undertake efforts to establish a Tribal Advisory Council and shall seek Indian Tribe representatives from the various regions of the United States to serve as Council members. The technical assistance provider shall provide a summary report to the Trustee regarding its meetings with the Tribal Advisory Council. The technical assistance provider's summary report may be submitted to the Trustee as a part of its regular semi-annual report to the Trustee pursuant to subparagraph 2.1.1.5. 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 for the purposes listed in this subparagraph. The Institute for Tribal Environmental Professionals shall follow the requirements of subparagraphs 2.1.1.3, 2.1.1.4, and 2.1.1.5 with respect to funding requests and reporting obligations for the Tribal Advisory Council. The duties and obligations of the Tribal Advisory Council to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle. 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 its 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. Initially, the Trustee will use Intralinks to provide this method of communication. The Trust may change this method at any time but shall provide 30 Days’ notice to the Beneficiaries in connection with any change;

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, 2% of Shared State and Indian Tribe Administration Costs, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement;



- 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 of the Trust's annual financial statements prepared and posted on the website. In its sole discretion, the United States may waive the requirement of an annual independent audit of the Trust's annual financial statements and the requirement of a semi-annual independent review of the Trust's financial statement for any semi-annual period, 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;
- 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 the allocation 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 allocation 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, notes, and other Government Securities as defined under Section 2(a)(16) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(16), including, but not limited to, Fannie Mae, Freddie Mac, Federal Home Loan Bank and Federal Farm Credit; (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, allocation or distribution out of the Trust Assets.

3.3.1 Semiannual 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 one-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 (1) financial statements for the semi-annual period ending June 30 of each year, accompanied by a review report thereon from an independent certified public accounting firm; (2) financial statements for the annual period ending December 31 of each year, accompanied by an audit opinion thereon from an independent certified public accounting firm; (3) all semi-annual and annual period's financial statements shall include disclosure of the disposition of Trust Assets from the previous year end date through the calendar quarter immediately preceding the Financial Reporting Date, and a supplemental schedule presenting a reconciliation of the Trustee's prior budget projections for Trust Administration Costs to actual performance for that period; and (4) the independent certified public accounting firm shall perform its review of the semi-annual financial statements and its audit of the annual financial statements in accordance with auditing standards generally accepted in the United States (i.e., audit standards issued by the Association of International Certified Professional Accountants ("AICPA")).

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 (a) the Tribal Administration Cost Subaccount established pursuant to subparagraph 2.1.3.2; and (b) 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 Beneficiary Status Certification Form (Appendix D-3) the EMA Certification Form (Appendix D-4), the Designated Beneficiary's Participation Notice (Appendix D-6), and the Beneficiary's Election to Opt Out Form (Appendix D-7). 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. 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 technical assistance provider, including, without limitation, the technical assistance provider's report relating to EMA Certification Forms (Appendix D-4) that it has reviewed in each funding cycle pursuant to subparagraph 2.1.1.2, its annual budget pursuant to subparagraph 2.1.1.3, and its report relating to its services and expenditures pursuant to subparagraph 2.1.1.5.

**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 or the technical assistance provider 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 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), 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, any indemnification amounts as provided in accordance with subparagraph 3.5.3, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement. 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), 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 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), 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 semiannual 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. In addition, any and all payments relating to Taxes are not subject to the 15-Day posting requirement on the public-facing website. 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 Beneficiary Status Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. For the first funding cycle, an Indian Tribe was required to file its Beneficiary Status Certification Form (Appendix D-3) at the time it filed its first funding request, including any request seeking DERA funds, which was due 90 Days after the Trust Effective Date. In order to qualify as a designated Beneficiary for funding cycles after the first funding cycle, any Indian Tribe, which has not yet been designated as a Beneficiary by the Trustee, shall file a Beneficiary Status Certification Form (Appendix D-3) with the Court by the following deadlines: for the second funding cycle -- by March 18, 2019; for the third funding cycle -- by March 16, 2020; for the fourth and any subsequent funding cycle -- by March 16, 2021. At the time of filing the Beneficiary Status Certification Form (Appendix D-3) with the Court, each Indian Tribe shall also, by the same deadlines, concurrently deliver a copy of the Beneficiary Status Certification Form (Appendix D-3) 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 4.0.2 and 5.0.5.1.

**4.0.1 Notice of Objection.** If the United States determines that a Beneficiary Status Certification Form (Appendix D-3) 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 the deadline for each funding cycle set in Paragraph 4.0 for a Certifying Entity to file its Beneficiary Status Certification Form (Appendix D-3) 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, the Trustee shall file with the Court, publish on its public-facing website, and serve on each Consent Decree Party and Certifying Entity a Notice of Beneficiary Designation according to the following schedule: for the first funding cycle -- not later than 120 Days after the Trust Effective Date; for the second funding cycle -- by May 17, 2019; for the third funding cycle

-- by May 15, 2020; for the fourth funding cycle and any subsequent funding cycle -- by May 17, 2021. The Trustee's Notice of Beneficiary Designation shall indicate:

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.

4.0.2.4 Once a Certifying Entity has been deemed a Beneficiary hereunder, it remains a Beneficiary for all future funding cycles, and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

**4.1** Intentionally Reserved.

## **4.2 Required Certifications in Appendix D-3 Form**

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status Certification Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Appendices 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 Beneficiary Status 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. ALLOCATION 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

5.0.5 Allocation of Tribal Allocation Subaccount.

5.0.5.1 Trustee’s Notices. The Trustee shall post a notice on the Indian Tribe Mitigation Trust’s public-facing website according to the following schedule:

(a) First Funding Cycle. Within 30 Days after the Trust Effective Date, the Trustee was required to post 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 Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2; (ii) that each Indian Tribe may submit to the Trustee an EMA Certification Form (Appendix D-4) that meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, by 90 Days after the Trust Effective Date; and (iii) stating 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. In accordance with this schedule, the Trustee filed a Notice of Beneficiary Designation with the Court on January 29, 2018, which designated 29 Indian Tribes as Beneficiaries pursuant to the terms of the Indian Tribe Trust Agreement. The Notice of Beneficiary Designation stated that two Tribes of the 29 designated Beneficiaries did not file a Beneficiary Status Certification Form (Appendix D-3) and an EMA Certification Form (Appendix D-4) by the deadline for the first funding cycle, and are not eligible to participate in the first funding cycle.<sup>1</sup> In addition, one Tribe of the 29 designated Beneficiaries applied for the DERA Option described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), did not receive a DERA Award from EPA, and is not eligible

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<sup>1</sup> These two Tribes are the Southern Ute Indian Tribe and the Swinomish Indian Tribal Community.

to participate in the first funding cycle.<sup>2</sup> As provided in subparagraph 4.0.2.4, once a Certifying Entity has been deemed a Beneficiary, it remains a Beneficiary for all future funding cycles and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

(b) Other Funding Cycles. For funding cycles after the first funding cycle, the Trustee shall post a notice on the Indian Tribe Trust's public-facing website by January 15, 2019 (for the second funding cycle), January 15, 2020 (for the third funding cycle), and January 15, 2021 (for the fourth funding cycle and any subsequent funding cycles) stating that: (i) each Indian Tribe, which has not yet been designated a Beneficiary by the Trustee, may seek to become a Beneficiary hereunder by filing with the Court a Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2 by the following deadlines: for the second funding cycle -- March 18, 2019; for the third funding cycle -- March 16, 2020; and for the fourth funding cycle and any subsequent funding cycles -- March 16, 2021; and (ii) the Trustee will determine and post a Notice of Beneficiary Designation of each certifying Indian Tribe by the deadline set in subparagraph 4.0.2, 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 Four Funding Cycles. The assets in the Tribal Allocation Subaccount shall be committed to Beneficiaries over four funding cycles as follows: (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-third of total remaining assets in the Tribal Allocation Subaccount may be committed during the second funding cycle; (iii) no more than one-half of total remaining assets in the Tribal Allocation Subaccount may be committed during the third funding cycle; and (iv) the remaining assets in the Tribal Allocation Subaccount may be committed during the fourth 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 fourth funding cycle, such funds may be made available for a fifth funding cycle in accordance with the procedure in subparagraphs 5.0.5.3.4 through 5.0.5.3.5. For purposes of this subparagraph 5.0.5.2, "remaining assets" shall mean the amount on deposit in the Tribal Allocation Subaccount on the following dates: (i) December 31, 2017 for the first funding cycle; (ii) December 31, 2018 for the second funding cycle; (iii) December 31, 2019 for the third funding cycle; and (iv) December 31, 2020 for the fourth funding cycle; and "uncommitted funds" shall mean the amount on deposit in the Tribal Allocation Subaccount on December 31, 2021 for the fifth funding cycle (if it occurs).

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<sup>2</sup> This Tribe is the San Manuel Band of Mission Indians.



5.0.5.3 In order to ensure an equitable allocation of funds in the Tribal Allocation Subaccount among Beneficiaries to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries, the Trustee shall apply the allocation method set forth below in each funding cycle.

5.0.5.3.1 Group Division Based on 2010 United States Census Table PCT4. The 2010 United States Census Table PCT4 shall provide the only population statistics used for the Indian Tribe Trust Agreement as provided herein, and was used to compile the Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas (Appendix D-8) (“Alignment Table”). For the avoidance of doubt, the population statistics in the Alignment Table shall not be updated or revised for the life of the Indian Tribe Trust Agreement. Based on the 2010 United States Census Table PCT4 and application of a Jenks Grouping algorithm ranking population based on statistical analysis, the Indian Tribes have been divided into three Groups: (1) Group One with a population range of 0 to 16,906; (2) Group Two with a population range of 16,907 to 47,649; and (3) Group Three with a population of 47,650 and above. Group One consists of 558 Tribes, which represent 51.52 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; Group Two consists of 6 Tribes, which represent 10.61 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; and Group Three consists of 4 Tribes, which represent 37.87 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes. This categorization, which is reflected in the Alignment Table (Appendix D-8), shall form the basis for part of the allocation (i.e., the pro rata population-based allocation) in each funding cycle. These three Groups shall not be adjusted except as specifically set forth in the Alignment Table (Appendix D-8) with respect to any new federally recognized Indian Tribes. If any new Indian Tribe is recognized by the United States, in order to participate as a Beneficiary in the Indian Tribe Trust, that Indian Tribe shall file with the Court a Beneficiary Status Certification Form (Appendix D-3), and concurrently deliver to the Trustee a Beneficiary Status Certification Form (Appendix D-3) together with official documentation of such federal recognition as an Indian Tribe by the deadlines set forth in Paragraph 4.0 for the respective funding cycle. For purposes of this Indian Tribe Trust, all new federally recognized Indian Tribes shall be deemed to be members of Group One with a zero population for all funding cycles.

5.0.5.3.2 First Funding Cycle. Twenty-six Indian Tribes, which were designated as Beneficiaries and submitted an approvable funding request by the filing deadline for the first funding cycle, are eligible to participate in the first funding cycle. Within 10 Business Days after the Trust Modification

Effective Date, the Trustee shall implement the steps below for the first funding cycle:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the first funding cycle equally among the 26 Beneficiaries participating in the first funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the first funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups (Group One, Group Two, and Group Three), the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Funding Limit. The Trustee shall limit the allocation of funding for a Beneficiary to no more than the amount that the Beneficiary requested in its original EMA Certification Form (Appendix D-4). The Trustee shall reallocate any "overage" among the Beneficiaries in the first funding cycle that did not -- after application of Steps 1 and 2 -- receive the full amount of funding that the Beneficiary had requested in its original EMA Certification Form (Appendix D-4) (the "Remaining Beneficiaries"). This reallocation of the overage shall be based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.<sup>3</sup> The population for each Indian Tribe shall be determined in accordance with the population statistics in the 2010 United States Census Table PCT4 as set forth in the Alignment Table (Appendix D-8).

Step 4: Notice. Within ten Business Days after applying the allocation rules in Steps 1 through 3, the Trustee shall transmit notice to each of the 26 Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee a revised EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or

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<sup>3</sup> For example, assume a Beneficiary requested funding of \$200,000 for the first funding cycle, but application of Steps 1 and 2 would result in a projected allocation of \$350,000 for that Beneficiary. The "overage" of \$150,000 would be reallocated among the Remaining Beneficiaries based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.

elect to opt out of the first funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit a revised EMA Certification Form (Appendix D-4), that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. The Beneficiary's revised EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the first funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the first funding cycle on the Indian Tribe Trust's public-facing website.

**5.0.5.3.3 Second through Fourth Funding Cycles.** Within 5 Business Days after filing a Notice of Beneficiary Designation pursuant to subparagraph 4.0.2 for the second through fourth funding cycles, the Trustee shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks stating that any Beneficiary that would like to participate in the respective funding cycle shall submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6) by the following deadlines: for the second funding cycle -- June 17, 2019; for the third funding cycle -- June 15, 2020; for the fourth funding cycle -- June 16, 2021. Based on its receipt of timely-filed Designated Beneficiary's Participation Notices (Appendix D-6), the Trustee shall determine the number of participating Beneficiaries for each respective funding cycle, and shall implement the following steps:

**Step 1: Per Capita Allocation.** The Trustee shall allocate 50 percent of the available funding for the funding cycle equally among the Beneficiaries participating in the funding cycle.

**Step 2: Pro Rata Population-based Allocation.** The Trustee shall allocate the other 50 percent of the available funding for the funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

**Step 3: Procedures for Exception Variants.** The Alignment Table (Appendix D-8) discusses and describes five "Exception Variants" that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in a given funding

cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within ten Business Days after the receipt of Designated Beneficiary's Participation Notices (Appendix D-6) that were timely filed by the deadline for each funding cycle, the Trustee shall apply the allocation rules in Steps 1, 2, and 3 in each funding cycle, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

After the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7) by the following deadlines: August 30, 2019 (for the second funding cycle); August 28, 2020 (for the third funding cycle), and August 30, 2021 (for the fourth funding cycle). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in each funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in that funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.3.4 Trustee's Accounting. By February 28, 2022, the Trustee shall file with the Court, deliver to the United States, by and through EPA, and to each Indian Tribe previously designated 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." After determining the Tribal Subaccounts Remainder Balance, the Trustee shall meet and confer with the United States. If the United States and the Trustee determine that the Tribal Subaccounts

Remainder Balance contains sufficient funds for a fifth funding cycle, the Trustee, by March 30, 2022, shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks that it will conduct a fifth funding cycle pursuant to subparagraph 5.0.5.3.5. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance appears to be insufficient to warrant a fifth funding cycle, the United States will seek an Order from the Court for further relief, which may include the authority for the Trustee to terminate the Indian Tribe Trust in accordance with the requirements of Paragraph 6.8.

5.0.5.3.5 Fifth Funding Cycle. In accordance with the procedures set forth in subparagraph 5.0.5.3.4, the Trustee shall provide notice by March 30, 2022, to the Beneficiaries via Intralinks that the Tribal Subaccounts Remainder Balance is available for a fifth funding cycle. If there are sufficient funds for the fifth funding cycle, by the deadline of April 29, 2022, any Indian Tribe that has been deemed a Beneficiary hereunder and would like to participate in the fifth funding cycle may submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6). Based on its receipt of timely-filed Designated Beneficiary's Participation Notices, the Trustee shall determine the number of participating Beneficiaries for the fifth funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the fifth funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the fifth funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses five Exception Variants that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in the fifth funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within fifteen Business Days after April 29, 2022, the Trustee shall apply the allocation rules in Steps 1, 2, and 3, and shall

transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the fifth funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the fifth funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.4 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 (Eligible Mitigation Actions and Mitigation Action Expenditures).

**5.2 Funding Requests:** Beneficiaries may submit requests for Eligible Mitigation Action funding by filing with the Trustee an EMA 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 (Eligible Mitigation Actions and Mitigation Action Expenditures), that Beneficiary may use its DERA proposal as support for its funding request for those Eligible Mitigation Actions funded through the DERA Option. In order to qualify for funding for the DERA Option under Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the Beneficiary must deliver a copy of an EPA DERA selection letter to the Trustee by the deadline to timely submit an EMA Certification Form (Appendix D-4) for a particular funding cycle pursuant to either subparagraph 5.0.5.3.3 or subparagraph 5.0.5.3.5.

5.2.13 Joint Application. After the requirements of subparagraph 5.0.5 have been satisfied and the Trustee has made its allocation determination of the amount of funding available for each participating Beneficiary in a funding cycle, two or more participating Beneficiaries may submit a joint request to fund an Eligible Mitigation Action using their combined allocation. In order to submit a Joint Application, each participating Beneficiary must comply with all requirements individually as set forth herein. Upon receipt of the

Trustee's allocation determination of available funding pursuant to Step 4 of subparagraphs 5.0.5.3.2, 5.0.5.3.3 or 5.0.5.3.5, each Indian Tribe interested in pursuing a joint request to fund an Eligible Mitigation Action shall complete an individual EMA Certification Form (Appendix D-4) that: (1) cross-references the other interested Indian Tribe's EMA Certification Form (Appendix D-4); (2) makes all the required certifications on behalf of each Indian Tribe individually; and (3) explains how the two individually allocated amounts will be used to jointly fund the Eligible Mitigation Action in that funding cycle. Both individual EMA Certification Forms (Appendix D-4) must be approved in accordance with subparagraph 5.2.16 before any disbursement of funds will be made by the Trustee.

5.2.14 Publication of Funding Requests. The Trustee shall post on the Indian Tribe Trust's public-facing website a copy of each approved EMA Certification Forms (Appendix D-4) and a list of each Beneficiary that filed a Beneficiary's Election to Opt Out Form (Appendix D-7) for each funding cycle 15 Days after the distribution of funds for each funding cycle.

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 EMA 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. The Trustee shall transmit to the requesting Beneficiary via Intralinks 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 according to the following schedule: for the first funding cycle -- within 60 Days after the deadline for Beneficiaries to submit a revised EMA Certification Form (Appendix D-4); and for the second through fifth funding cycles -- within 60 Days after the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) in each funding cycle; provided that, if the Trustee requests a modification to an EMA Certification Form (Appendix D-4) or additional information from a Beneficiary, the Beneficiary shall submit a modified EMA Certification Form (Appendix D-4) or the additional information to the Trustee no later than 30 Days after receiving the Trustee's request via Intralinks. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either approving or denying the modified EMA Certification Form (Appendix D-4) within 30 days after receipt of the modified EMA Certification Form (Appendix D-4) or additional information from the Beneficiary. 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 (Eligible Mitigation Actions and Mitigation Action Expenditures). 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 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form). 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. Each Beneficiary must complete all required documentation for the Trustee relating to incumbency and its security procedures prior to receiving any funds. Provided these conditions have been met by the Beneficiary, 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 (Eligible Mitigation Actions and Mitigation Action Expenditures), 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 October 2, 2024, the seventh anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Indian Tribe Mitigation Trust. After the seventh 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, initially Intralinks, 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 the balance in the Tribal Allocation Subaccount in the Trustee's monthly statement in the Intralinks General Information folder. Any notices required to be provided by the Trustee to the Beneficiaries hereunder shall be deemed to have been properly and sufficiently provided hereunder if the Trustee posts such notice on Intralinks or any successor secure method of internet-based communications in use by the Trustee at that time.

### 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](mailto: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](mailto:giuffrar@sullcrom.com)  
[nelless@sullcrom.com](mailto:nelless@sullcrom.com)  
[gnakayama@kslaw.com](mailto:gnakayama@kslaw.com)  
[cari.dawson@alston.com](mailto: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. The United States is a necessary party to any Dispute Resolution process under this Indian Tribe Trust.

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 (EMA Certification Form) 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. Minor modifications or clarifying amendments to the Indian Tribe Trust relating to the role of the technical assistance provider may be made upon written agreement among the United States, the Trustee, and the technical assistance provider, as necessary to enable the Trustee and the technical assistance 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; provided, however, if the Trustee has provided to the Beneficiaries not less than 30 Days' notice of any proposed material modifications



to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the modification shall become effective in accordance with the Order of the Court approving the modification.

**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”).

**6.9 Counterparts and Electronic Signatures:** Notwithstanding anything to the contrary contained herein, this Agreement and all documents required to be delivered hereunder

may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. Modifications to this Agreement under Paragraph 6.5, written agreements concerning such modifications, and certain other documents required to be delivered hereunder (as identified by the Trustee) may be signed electronically. When used in or in connection with any such document, the words “execute,” “execution,” “signed,” and “signature,” and words of similar import, shall include electronic signatures and the keeping of records in electronic form. For these documents, electronic signatures and electronic records shall have the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other similar state laws based on the Uniform Electronic Transactions Act. The Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to its security procedures approved by Trustee. The Trustee will send a notice to the Beneficiaries via Intralinks indicating which documents required hereunder may be signed or executed using an electronic signature and will update that notice in accordance with its current security procedures from time to time. The Trustee may subsequently request hard copies, with inked signatures, for any document previously accepted in electronic form, and the Beneficiaries shall provide such requested hard copies as soon as practicable. For purposes of the Indian Tribe Trust, any reference to “Intralinks” shall also include not only this particular method of secure electronic communication between the Trustee and the Beneficiaries but also any future secure method of electronic communications between the Trustee and the Beneficiaries used for delivery of documents and notices required hereunder.

**6.10 Appendices:** The following appendices are attached to and part of the Indian Tribe Trust Agreement:

Appendix D-1 - Initial Allocation

Appendix D-1A - Initial 3.0 Liter Allocation

Appendix D-1B - Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation

Appendix D-2 - Eligible Mitigation Actions and Mitigation Action Expenditures

Appendix D-3 - Certification for Beneficiary Status under Environmental Mitigation Trust Agreement

Appendix D-4 - Beneficiary Eligible Mitigation Action Certification

Appendix D-5 - Form of Certificate of Trust of Volkswagen Diesel Emissions

Environmental Mitigation Trust for Indian Tribe Beneficiaries

Appendix D-6 - Designated Beneficiary's Participation Notice

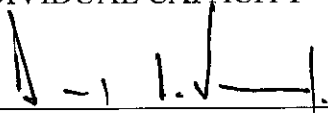
Appendix D-7 - Beneficiary's Election to Opt Out Form

Appendix D-8 - Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas

**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: 5/13/20



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

FOR AUDI AG:


Date: 5/13/20



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

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

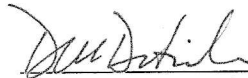
Date: 5/12/20



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

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

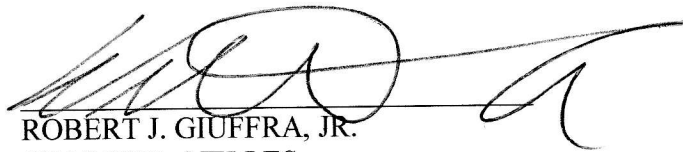
Date: 5/12/20



\_\_\_\_\_  
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 5/13/20



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  
nelles@sullcrom.com  
monahanw@sullcrom.com

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

Date:

May, 15, 2020



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

Date:

May 15, 2020



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: 5/7/2020



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GEORGE FEYGIN  
Vice President, Legal & General Counsel  
PORSCHE CARS NORTH AMERICA, INC.  
1 Porsche Drive  
Atlanta, GA 30354

Date: 5/7/2020



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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: May 11, 2020



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: 5-11-2020



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**

<b>INITIAL SUBACCOUNTS</b>	<b>INITIAL ALLOCATIONS (\$)</b>	<b>INITIAL ALLOCATIONS (%)</b>
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%
<b>Grand Total</b>	<b>\$ 225,000,000.00</b>	<b>100.00%</b>

## **APPENDIX D-1B**

### **Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation**



## Appendix D-1B

**Weighted Average Allocation Formula:**

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

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

State Trust Allocation	Appendix D-1		Appendix D-1A	
	2.0 Liter Allocation Amount	2.0 Liter Allocation Percentage	3.0 Liter Allocation Amount	3.0 Liter Allocation Percentage
Puerto Rico	\$7,500,000.00	0.28%	\$625,000.00	0.28%
North Dakota	\$7,500,000.00	0.28%	\$625,000.00	0.28%
Hawaii	\$7,500,000.00	0.28%	\$625,000.00	0.28%
South Dakota	\$7,500,000.00	0.28%	\$625,000.00	0.28%
Alaska	\$7,500,000.00	0.28%	\$625,000.00	0.28%
Wyoming	\$7,500,000.00	0.28%	\$625,000.00	0.28%
District of Columbia	\$7,500,000.00	0.28%	\$625,000.00	0.28%
Delaware	\$9,051,682.97	0.34%	\$625,000.00	0.28%
Mississippi	\$9,249,413.91	0.34%	\$625,000.00	0.28%
West Virginia	\$11,506,842.13	0.43%	\$625,000.00	0.28%
Nebraska	\$11,528,812.23	0.43%	\$719,535.25	0.32%
Montana	\$11,600,215.07	0.43%	\$1,002,209.81	0.45%
Rhode Island	\$13,495,136.57	0.50%	\$873,721.37	0.39%
Arkansas	\$13,951,016.23	0.52%	\$696,692.86	0.31%
Kansas	\$14,791,372.72	0.55%	\$870,866.08	0.39%
Idaho	\$16,246,892.13	0.60%	\$1,102,145.26	0.49%
New Mexico	\$16,900,502.73	0.63%	\$1,082,158.17	0.48%
Vermont	\$17,801,277.01	0.66%	\$890,853.17	0.40%
Louisiana	\$18,009,993.00	0.67%	\$1,838,812.30	0.82%
Kentucky	\$19,048,080.43	0.71%	\$1,330,569.15	0.59%
Oklahoma	\$19,086,528.11	0.71%	\$1,835,957.01	0.82%
Iowa	\$20,179,540.80	0.75%	\$1,022,196.90	0.45%
Maine	\$20,256,436.17	0.75%	\$796,628.31	0.35%
Nevada	\$22,255,715.66	0.82%	\$2,618,308.82	1.16%
Alabama	\$24,084,726.84	0.89%	\$1,396,241.02	0.62%
New Hampshire	\$29,544,297.76	1.09%	\$1,370,543.33	0.61%
South Carolina	\$31,636,950.19	1.17%	\$2,258,541.20	1.00%
Utah	\$32,356,471.11	1.20%	\$2,821,035.03	1.25%
Indiana	\$38,920,039.77	1.44%	\$2,015,840.82	0.90%
Missouri	\$39,084,815.55	1.45%	\$2,067,236.19	0.92%
Tennessee	\$42,407,793.83	1.57%	\$3,352,120.57	1.49%
Minnesota	\$43,638,119.67	1.62%	\$3,363,541.76	1.49%
Connecticut	\$51,635,237.63	1.91%	\$4,085,932.31	1.82%
Arizona	\$53,013,861.68	1.96%	\$3,646,216.32	1.62%
Georgia	\$58,105,433.35	2.15%	\$5,519,292.21	2.45%
Michigan	\$60,329,906.41	2.23%	\$4,477,108.22	1.99%
Colorado	\$61,307,576.05	2.27%	\$7,432,342.28	3.30%
Wisconsin	\$63,554,019.22	2.35%	\$3,523,438.48	1.57%
New Jersey	\$65,328,105.14	2.42%	\$6,886,980.25	3.06%
Oregon	\$68,239,143.96	2.53%	\$4,728,374.50	2.10%
Massachusetts	\$69,074,007.92	2.56%	\$5,990,416.48	2.66%
Maryland	\$71,045,824.78	2.63%	\$4,668,413.23	2.07%
Ohio	\$71,419,316.56	2.65%	\$3,883,206.11	1.73%
North Carolina	\$87,177,373.87	3.23%	\$4,868,284.13	2.16%
Virginia	\$87,589,313.32	3.24%	\$6,044,667.16	2.69%
Illinois	\$97,701,053.83	3.62%	\$10,978,623.15	4.88%
Washington	\$103,957,041.03	3.85%	\$8,788,609.12	3.91%
Pennsylvania	\$110,740,310.73	4.10%	\$7,829,228.79	3.48%
New York	\$117,402,744.86	4.35%	\$10,299,062.08	4.58%
Florida	\$152,379,150.91	5.64%	\$13,899,593.63	6.18%
Texas	\$191,941,816.23	7.11%	\$17,377,347.34	7.72%
California	\$381,280,175.09	14.12%	\$41,356,145.05	18.38%
State Trust Administration Cost Subaccount	\$23,467,171.38	0.87%	\$1,955,597.62	0.87%
<b>Subtotal</b>	<b>\$2,645,821,256.54</b>	<b>97.99%</b>	<b>\$219,814,632.84</b>	<b>97.70%</b>

Appendix D-1B	
Total Allocation Amount	Weighted Average Allocation Percentage
\$8,125,000.00	0.28%
\$8,125,000.00	0.28%
\$8,125,000.00	0.28%
\$8,125,000.00	0.28%
\$8,125,000.00	0.28%
\$8,125,000.00	0.28%
\$8,125,000.00	0.28%
\$9,676,682.97	0.33%
\$9,874,413.91	0.34%
\$12,131,842.13	0.41%
\$12,248,347.48	0.42%
\$12,602,424.88	0.43%
\$14,368,857.94	0.49%
\$14,647,709.09	0.50%
\$15,662,238.80	0.54%
\$17,349,037.39	0.59%
\$17,982,660.90	0.61%
\$18,692,130.18	0.64%
\$19,848,805.30	0.68%
\$20,378,649.58	0.70%
\$20,922,485.12	0.72%
\$21,201,737.70	0.72%
\$21,053,064.48	0.72%
\$24,874,024.48	0.85%
\$25,480,967.86	0.87%
\$30,914,841.09	1.06%
\$33,895,491.39	1.16%
\$35,177,506.14	1.20%
\$40,935,880.59	1.40%
\$41,152,051.74	1.41%
\$45,759,914.40	1.56%
\$47,001,661.43	1.61%
\$55,721,169.94	1.90%
\$56,660,078.00	1.94%
\$63,624,725.56	2.18%
\$64,807,014.63	2.22%
\$68,739,918.33	2.35%
\$67,077,457.70	2.29%
\$72,215,085.39	2.47%
\$72,967,518.46	2.49%
\$75,064,424.40	2.57%
\$75,714,238.01	2.59%
\$75,302,522.67	2.57%
\$92,045,658.00	3.15%
\$93,633,980.48	3.20%
\$108,679,676.98	3.72%
\$112,745,650.15	3.85%
\$118,569,539.52	4.05%
\$127,701,806.94	4.37%
\$166,278,744.54	5.68%
\$209,319,163.57	7.16%
\$422,636,320.14	14.45%
\$25,422,769.00	0.87%
<b>\$2,865,635,889.38</b>	<b>97.97%</b>

Tribal Trust Allocation	\$49,652,857.71	1.84%	\$4,795,063.51	2.13%
Tribal Administration Cost Subaccount	\$4,525,885.77	0.17%	\$390,303.65	0.17%
<b>Subtotal</b>	<b>\$54,178,743.48</b>	<b>2.01%</b>	<b>\$5,185,367.16</b>	<b>2.30%</b>

\$54,447,921.22	1.86%
\$4,916,189.42	0.17%
<b>\$59,364,110.64</b>	<b>2.03%</b>

<b>Total</b>	<b>\$2,700,000,000.00</b>	<b>100.00%</b>	<b>\$225,000,000.00</b>	<b>100.00%</b>
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<b>\$2,925,000,000.00</b>	<b>100.00%</b>
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**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. Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)

- 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. Freight Switchers

- 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. Ferries/Tugs

- 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. Airport Ground Support Equipment

- 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. Forklifts and Port Cargo Handling Equipment

- 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) directly 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). In the project management plan for any proposed Eligible Mitigation Action submitted under subparagraph 5.2.4 of the Indian Tribe Trust Agreement, Beneficiaries shall include a detailed budget specifying the funds allocated for administrative expenditures as well as an implementation and expenditure timeline. For any contracted services, the budget shall include detailed cost estimates from selected or potential vendors. If the contracted services are billed on an hourly basis, the cost estimate shall include a detailed description of the services provided or to be provided, the number of hours, and the cost per hour. Administrative expenditures may include incurred costs that are directly connected with funding project development and solicitation for an Eligible Mitigation Action.

Administrative expenditures shall not include: (1) any amount incurred or billed prior to October 2, 2017 (the Trust Effective Date), for contracted services by any third party service provider or third party contractor, including, but not limited to, lawyers or law firms, accountants or accounting firms, consultants, or other similar third party service providers; (2) any contingency fees for contracted services including, but not limited to, evaluation, consulting, legal services or other professional services; (3) any expenses incurred for preparation of a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3); (4) any expenses incurred for dispute resolution, including for judicial review of the dispute, under Paragraph 6.2 of the Indian Tribe Trust Agreement; and (5) any expenses incurred for judicial challenges or claims brought by any Beneficiary under the Indian Tribe Trust.

Administrative expenditures for Beneficiaries include the following:

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:**

<b>Contact:</b>	
<b>Address:</b>	
<b>Phone:</b>	
<b>Fax:</b>	
<b>Email:</b>	

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 agrees, without limitation, that any and all future modifications to the Indian Tribe Trust Agreement done in accordance with the Paragraph 6.5 of the Indian Tribe Trust Agreement shall automatically bind the Beneficiary to the Indian Tribe Trust Agreement without any further action on behalf of the Beneficiary. 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)*

<b>Action Title:</b>	
<b>Beneficiary's Project ID:</b>	
<b>Funding Request No.</b>	<i>(sequential)</i>
<b>Request Type:</b> (select one or more)	<input type="checkbox"/> Reimbursement <input type="checkbox"/> Advance <input type="checkbox"/> Other (specify): _____
<b>Payment to be made to:</b> (select one or more)	<input type="checkbox"/> Beneficiary <input type="checkbox"/> Other (specify): _____
<b>Funding Request &amp; Direction (Attachment A)</b>	<input type="checkbox"/> Attached to this Certification <input type="checkbox"/> To be Provided Separately

**SUMMARY**

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

If applicable, describe how the mitigation action will mitigate the impacts of NO<sub>x</sub> 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*

**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**

<b>Milestone</b>	<b>Date</b>
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: _____				
<b>Budget Category</b>	<b>Total Approved Budget</b>	<b>Share of Total Budget to be Funded by the Trust</b>	<b>Cost-Share, if applicable (Entity #1)</b>	<b>Cost-Share, if applicable (Entity #2)</b>
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 <sup>1</sup>	\$	\$	\$	\$
<b>Project Totals</b>	\$	\$	\$	\$
<b>Percentage</b>	%	%	%	%

<sup>1</sup> Subject to Appendix D-2 15% administrative cap.



**PROJECTED TRUST ALLOCATIONS:**

	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
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**  
**Volkswagen Diesel Emissions Environmental Mitigation Trust**  
**for Indian Tribe Beneficiaries**

**APPENDIX D-5**

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

This Certificate of Trust of the Volkswagen 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 Volkswagen 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:

**APPENDIX D-6**

**Designated Beneficiary's Participation Notice**

**APPENDIX D-6**

**Designated Beneficiary's Participation Notice**

\_\_\_\_\_, (“Beneficiary”), by and through \_\_\_\_\_, the Lead Agency with the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Trust Agreement”), hereby provides notice to the Trustee that the Beneficiary intends to participate in the \_\_\_\_\_ funding cycle of the Trust Agreement.

The Beneficiary acknowledges that providing this Notice to the Trustee does not entitle the Beneficiary to any funds unless and until it satisfies all of the requirements set forth in the Indian Tribe Trust Agreement, including, without limitation, Section V (Allocation of Indian Tribe Mitigation Trust Assets) and all paragraphs and subparagraphs thereof, in connection with the submission of funding requests.

The Beneficiary further acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying on, this Appendix D-6 Notice.

DATED: \_\_\_\_\_

\_\_\_\_\_  
[NAME]

[TITLE]

\_\_\_\_\_  
[LEAD AGENCY]

for

\_\_\_\_\_  
[BENEFICIARY]

**APPENDIX D-7**

**Beneficiary's Election to Opt Out Form**

**APPENDIX D-7**

**Beneficiary's Election to Opt Out Form**

\_\_\_\_\_, (“Beneficiary”), by and through \_\_\_\_\_, the Lead Agency with the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Trust Agreement”), hereby provides notice to the Trustee that the Beneficiary elects to opt out of the \_\_\_\_\_ funding cycle of the Trust Agreement.

The Beneficiary acknowledges that the submittal of this Beneficiary's Election to Opt Out Form to the Trustee means that: (1) the Beneficiary will not receive any funds in the funding cycle identified above; and (2) the Beneficiary has no right or entitlement to the funds identified by the Trustee as available to the Beneficiary for the funding cycle identified above.

The Beneficiary further acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying on, this Appendix D-7 Election.

DATED: \_\_\_\_\_

\_\_\_\_\_  
[NAME]

[TITLE]

\_\_\_\_\_  
[LEAD AGENCY]

for

\_\_\_\_\_  
[BENEFICIARY]

**APPENDIX D-8**

**Alignment Table of Federally Recognized Indian Tribes to 2010 U.S.  
Geographic Census Areas**



## APPENDIX D-8

### **Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas**

Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a current list of federally recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018) (“Federal Register List”). The 2010 United States Census published Table PCT4, which reported the total American Indian and Alaska Native population of American Indian and Alaska Native geographic census areas, including reservations, off-reservation trust lands, and statistical areas. This Appendix D-8 includes an Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas and Jenks Groups (the “Alignment Table”) that aligns federally recognized Indian Tribes on the Federal Register List with geographic census areas from the 2010 United States Census, and provides a crosswalk between the federally recognized Indian Tribes and the total population values reported in the 2010 United States Census Table PCT4. This information, which is included on the Alignment Table, shall be used to identify the population of each Indian Tribe for the purposes of the Indian Tribe Trust Agreement (“Trust Agreement”). In particular, this information shall be used to determine the pro rata population-based allocation in each funding cycle of the Trust Agreement consistent with subparagraph 5.0.5.3 of the Trust Agreement.

An alignment of the current Federal Register List of Indian Tribes with Table PCT4 of the 2010 United States Census raised five issues (“Exception Variants”) that are discussed below. In addition, some Indian Tribes may be federally recognized to exist as Indian Tribes after publication of the Federal Register List. These situations shall be subject to the following resolution for the purposes of this Trust Agreement.

1. The 2010 United States Census listed a total population of zero for 29 geographic census areas that align to 29 federally recognized Indian Tribes. The Alignment Table denotes these Indian Tribes as Exception Variant “A,” listing a population of zero for each Tribe. For the per capita allocation in each funding cycle of the Trust Agreement, each of these 29 Indian Tribes that has been designated as a Beneficiary and files a Designated Beneficiary’s Participation Notice in a given funding cycle shall be counted as a separate Indian Tribe. These Tribes shall not be eligible for the pro rata population-based allocation in any funding cycle of the Trust Agreement, because they are aligned with geographic census areas with a listed total population of zero in the 2010 United States Census, as denoted on the Alignment Table.

2. The Federal Register List denoted 12 Indian Tribes that align to more than one geographic census area in the 2010 United States Census. The Alignment Table lists these Indian Tribes as Exception Variant “B;” each of these Indian Tribes is represented on an individual row in the Alignment Table. For the per capita allocation in each funding cycle of the Trust Agreement, each of these 12 Alignment Table rows shall represent and be counted as one Indian Tribe. For the pro rata population-based allocation in each funding cycle of the Trust Agreement, the allocation shall be based on the respective total population listed in that Alignment Table row. Within each Indian Tribe denoted as Exception Variant B, more than one

entity may be designated as a Beneficiary pursuant to subparagraph 4.0.2. If this occurs in a funding cycle, the Trustee shall divide the total amount allocated to an Exception Variant B Indian Tribe (i.e., the sum of the per capita allocation and the pro rata population-based allocation) equally among the entities that were designated as participating Beneficiaries and comprise that Indian Tribe.

Example: According to the Federal Register List, the Minnesota Chippewa Tribe represents one Indian Tribe that consists of six component reservations. Assume that three of the six component reservations, the Fond du Lac Band, the Mille Lacs Band, and the White Earth Band, are designated as Beneficiaries pursuant to subparagraph 4.0.2 and each submits a timely Designated Beneficiary's Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. The Trustee shall count these three Bands as one Indian Tribe for the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 14,834 consistent with the corresponding geographic census area, as denoted on the Alignment Table. The Trustee shall then divide the total per capita and pro-rata population-based allocated amount into three equal shares, one share for each Band that is a participating Beneficiary. After the Trustee provides notice of the amount of funding available for each Beneficiary, the three participating Beneficiaries can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

3. In some cases, the 2010 United States Census reports the total population of a single geographic census area that aligns to more than one federally recognized Indian Tribe. The Alignment Table denotes these Indian Tribes as Exception Variant "C." For the per capita allocation in each funding cycle of the Trust Agreement, each of the Indian Tribes denoted with Exception Variant "C" shall be counted as one Indian Tribe. For the pro rata population-based allocation in each funding cycle of the Trust Agreement, the allocation shall be based on the alignment of the Indian Tribes denoted with Exception Variant "C" to the corresponding specified geographic census area and respective total population consistent with the 2010 United States Census, as denoted on the Alignment Table. Once the pro-rata population-based allocation for the geographic census area has been calculated, the Trustee shall divide it equally among the Indian Tribes designated as participating Beneficiaries aligned to that geographic census area.

Example: The Cherokee Nation ("Cherokee") and the United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB") are aligned to a single geographic area, the Cherokee OTSA, Oklahoma. Assume that both the Cherokee and the UKB are designated as Beneficiaries and each submits a timely Designated Beneficiary's Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. The Trustee shall count the Cherokee and the UKB as two separate Indian Tribes for purposes of the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 125,440 attributable to the single geographic area of Cherokee OTSA, Oklahoma. Once the pro-rata population-based allocation for this geographic census area has been calculated, the Trustee shall then divide it into two equal shares, one for the Cherokee and one for the UKB. After the Trustee provides notice of the



amount of funding available for each Beneficiary, the two Indian Tribes can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

4. The 2010 United States Census reports the total population of two geographic census areas that align to four Indian Tribes. The Alignment Table denotes these four Indian Tribes as Exception Variant “D.” For the per capita allocation in each funding cycle of the Trust Agreement, each of the Indian Tribes denoted with Exception Variant “D” shall be counted as one Indian Tribe. For the pro rata population-based allocation in each funding cycle of the Trust Agreement, the allocation shall be based on the listed population of 21,692, as denoted in the Alignment Table. Once the pro-rata population-based allocation for the combined geographic census areas has been calculated, the Trustee shall divide it equally among the Indian Tribes designated as participating Beneficiaries within the geographic census areas.

Example 1: The Apache Tribe of Oklahoma (“Apache”), the Comanche Nation, the Fort Sill Apache Tribe, and the Kiowa Indian Tribe are aligned within two geographic areas in Oklahoma. Assume that all four Indian Tribes are designated as Beneficiaries and each submits a timely Designated Beneficiary’s Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. The Trustee shall count the Indian Tribes as four separate Indian Tribes for purposes of the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 21,692 for the combined geographic census areas, as denoted on the Alignment Table. Once the pro-rata population based allocation for the combined geographic census area has been calculated, the Trustee shall divide it into four equal shares, allocating one share to each of the four participating Beneficiaries within the combined geographic census areas. After the Trustee provides notice of the amount of funding available for each Beneficiary, the four Indian Tribes can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

Example 2: Assume that only two of these four Tribes denoted with Exception Variant D on the Alignment Table, the Comanche and the Kiowa, are designated as Beneficiaries and timely submit a Designated Beneficiary’s Participation Notice (Appendix D-6) to the Trustee for the second funding cycle. In that case, the Trustee shall count the Indian Tribes as two separate Indian Tribes for purposes of the per capita allocation, and shall base the pro rata population-based allocation on the combined population of 21,692 for the combined geographic census areas, as denoted on the Alignment Table. Once the pro rata population-based allocation for the combined geographic census areas has been calculated, the Trustee shall divide it into two equal shares, allocating one share to each of the two participating Beneficiaries within the combined geographic census areas. After the Trustee provides notice of the amount of funding available for each Beneficiary, the two Indian Tribes can choose to file separate EMA Certification Forms (Appendix D-4) or can follow the procedures for a joint application pursuant to subparagraph 5.2.13 of the Trust Agreement.

5. There are 26 Indian Tribes included on the Federal Register List for which there is no evident alignment to a 2010 United States Census geographic census area name in Table PCT4.

The Alignment Table denotes these Indian Tribes as Exception Variant “E,” listing a population of zero for each Indian Tribe. For the per capita allocation in each funding cycle of the Trust Agreement, each of these 26 Indian Tribes that has been designated as a Beneficiary and files a Designated Beneficiary’s Participation Notice in a given funding cycle shall be counted as a separate Indian Tribe. These Tribes shall not be eligible for the pro rata population-based allocation in any funding cycle of the Trust Agreement.

6. Pursuant to 25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior publishes a current list of federally recognized Indian Tribes; this list may be updated from time to time. Following such updates, newly recognized Indian Tribes that do not appear on the Alignment Table may elect to become a Beneficiary hereunder by complying with Paragraph 4.0 and subparagraph 5.0.5.3.1 of the Trust Agreement. By the deadlines set out in Paragraph 4.0, the newly recognized Indian Tribe shall file a Beneficiary Status Certification Form (Appendix D-3) with the Court, and concurrently submit to the Trustee a copy of the Beneficiary Status Certification Form (Appendix D-3) together with official documentation of federal recognition as an Indian Tribe. These newly recognized Indian Tribes shall be deemed to have a population of zero. For the per capita allocation in each funding cycle of the Trust Agreement, each newly recognized Indian Tribe that has been designated as a Beneficiary and files a Designated Beneficiary’s Participation Notice in a given funding cycle shall be counted as a separate Indian Tribe. These newly recognized Indian Tribes shall not be eligible for the pro rata population-based allocation in any funding cycle of the Trust Agreement.

The Alignment Table is attached hereto.



No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT <sup>4</sup>	Group Alignment
1	1,2,3	C	Absentee-Shawnee Tribe of Indians of Oklahoma Citizen Potawatomi Nation, Oklahoma Shawnee Tribe	Citizen Potawatomi Nation-Absentee Shawnee OTSA, OK	13,463	1
2	4		Agdaquux Tribe of King Cove	King Cove ANVSA, AK	384	1
3	5		Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California	Agua Caliente Indian Reservation and Off-Reservation Trust Land, CA	435	1
4	6		Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona)	Maricopa (Ak Chin) Indian Reservation, AZ	903	1
5	7		Akiachak Native Community	Akiachak ANVSA, AK	603	1
6	8		Akiak Native Community	Akiak ANVSA, AK	328	1
7	9		Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)	Alabama-Coushatta Reservation and Off-Reservation Trust Land, TX	567	1
8	10	E	Alabama-Quassarte Tribal Town	No Census Area Mapped	None	1
9	11		Alaina Village	Alaina ANVSA, AK	31	1
10	12		Algaaciq Native Village (St. Mary's)	Algaaciq ANVSA, AK	408	1
11	13		Allakaket Village	Allakaket ANVSA, AK	170	1
12	14	A	Alturas Indian Rancheria, California	Alturas Indian Rancheria, CA	0	1
13	15		Altuiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor)	Old Harbor ANVSA, AK	194	1
14	16		Angoon Community Association	Angoon ANVSA, AK	405	1
15	17		Anvik Village	Anvik ANVSA, AK	82	1
16	18, 19, 20, 21	D	Apache Tribe of Oklahoma Comanche Nation, Oklahoma Fort Sill Apache Tribe of Oklahoma Kiowa Indian Tribe of Oklahoma	Kiowa-Comanche-Apache-Fort Sill Apache OTSA, OK, Kiowa-Comanche-Apache-Ft Sill Apache/Caddo-Wichita-Delaware joint-use OTSA, OK	21,692	2
17	22, 23	C	Arapaho Tribe of the Wind River Reservation, Wyoming Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming)	Wind River Reservation and Off-Reservation Trust Land, WY	8,445	1
18	24		Arctic Village (See Native Village of Venetie Tribal Government)	Arctic Village ANVSA, AK	145	1
19	25		Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)	Aroostook Band of Micmac Trust Land, ME	150	1
20	26		Aas'caarsamuit Tribe	Mountain Village ANVSA, AK	773	1
21	27		Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana	Fort Peck Indian Reservation and Off-Reservation Trust Land, MT	6,973	1
22	28		Ahtasuk Village (Ahtasook)	Ahtasuk ANVSA, AK	217	1
23	29	A	Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)	Augustine Reservation, CA	0	1
24	30		Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin	Bad River Reservation, WI	1,159	1
25	31		Bay Mills Indian Community, Michigan	Bay Mills Reservation and Off-Reservation Trust Land, MI	849	1
26	32		Bear River Band of the Rohnerville Rancheria, California	Rohnerville Rancheria, CA	16	1
27	33		Beaver Village	Beaver ANVSA, AK	83	1
28	34		Berry Creek Rancheria of Maidu Indians of California	Berry Creek Rancheria and Off-Reservation Trust Land, CA	119	1

No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT <sup>4</sup>	Group Alignment
29	35		Big Lagoon Rancheria, California	Big Lagoon Rancheria, CA	17	1
30	36		Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)	Big Pine Reservation, CA	418	1
31	37		Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)	Big Sandy Rancheria, CA	113	1
32	38		Big Valley Band of Pomo Indians of the Big Valley Rancheria, California	Big Valley Rancheria, CA	115	1
33	39		Birch Creek Tribe	Birch Creek ANVSA, AK	33	1
34	40		Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)	Bishop Reservation, CA	1,180	1
35	41		Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Blackfeet Indian Reservation and Off-Reservation Trust Land, MT	9,149	1
36	42		Blue Lake Rancheria, California	Blue Lake Rancheria and Off-Reservation Trust Land, CA	39	1
37	43		Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)	Bridgeport Reservation, CA	32	1
38	44	E	Buena Vista Rancheria of Me-Wuk Indians of California	No Census Area Mapped	None	1
39	45		Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)	Burns Paiute Indian Colony and Off-Reservation Trust Land, OR	124	1
40	46		Cabazon Band of Mission Indians, California	Cabazon Reservation, CA	30	1
41	47		Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California	Colusa Rancheria, CA	65	1
42	48, 49, 50, 51	C	Caddo Nation of Oklahoma Delaware Nation, Oklahoma Delaware Tribe of Indians Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma	Caddo-Wichita-Delaware OTSA, OK	1,961	1
43	52		Cahito Tribe of the Laytonville Rancheria	Laytonville Rancheria, CA	194	1
44	53		Cahuilla Band of Indians (previously listed as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California)	Cahuilla Reservation, CA	152	1
45	54	E	California Valley Miwok Tribe, California	No Census Area Mapped	None	1
46	55		Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California	Campo Indian Reservation, CA	276	1
47	56	B	Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)	Barona Reservation, CA, Viejas Reservation, CA	881	1
48	57		Catawba Indian Nation (aka Catawba Tribe of South Carolina)	Catawba Reservation, SC	644	1
49	58		Cayuga Nation	Cayuga Nation TDSA, NY	38	1
50	59		Cedarville Rancheria, California	Cedarville Rancheria and Off-Reservation Trust Land, CA	8	1
51	60	E	Central Council of the Tlingit & Haida Indian Tribes	No Census Area Mapped	None	1
52	61		Chalkyitsik Village	Chalkyitsik ANVSA, AK	59	1



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53	62		Cheesh-Na Tribe (previously listed as the Native Village of Chistochina)	Chistochina ANVSA, AK	50	1
54	63		Chemehuevi Indian Tribe of the Chemehuevi Reservation, California	Chemehuevi Reservation, CA	202	1
55	64		Cher-Ae Heights Indian Community of the Trinidad Rancheria, California	Trinidad Rancheria and Off-Reservation Trust Land, CA	103	1
56	65, 66	C	Cherokee Nation	Cherokee OTSA, OK	125,440	3
57	67		United Keetoowah Band of Cherokee Indians in Oklahoma	Chevak ANVSA, AK	912	1
58	68		Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)	Cheyenne-Arapaho OTSA, OK	13,145	1
59	69		Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota	Cheyenne River Reservation and Off-Reservation Trust Land, SD	6,331	1
60	70		Chickaloon Native Village	Chickaloon ANVSA, AK	2,373	1
61	71		Chicken Ranch Rancheria of Me-Wuk Indians of California	Chicken Ranch Rancheria and Off-Reservation Trust Land, CA	1	1
62	72		Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)	Chignik ANVSA, AK	56	1
63	73		Chignik Lake Village	Chignik Lake ANVSA, AK	70	1
64	74		Chilkat Indian Village (Klukwan)	Chilkat ANVSA, AK	88	1
65	75		Chilkoot Indian Association (Haines)	Chilkoot ANVSA, AK	105	1
66	76		Chinik Eskimo Community (Golovin)	Golovin ANVSA, AK	148	1
67	77		Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana)	Rocky Boy's Reservation and Off-Reservation Trust Land, MT	3,256	1
68	78		Chitimacha Tribe of Louisiana	Chitimacha Reservation, LA	396	1
69	79	A	Chuloomawick Native Village	Chuloomawick ANVSA, AK	0	1
70	80		Circle Native Community	Circle ANVSA, AK	90	1
71	81	E	Cloverdale Rancheria of Pomo Indians of California	No Census Area Mapped	None	1
72	82		Cocopah Tribe of Arizona	Cocopah Reservation, AZ	539	1
73	83		Coeur d'Alene Tribe (previously listed as the Coeur d'Alene Tribe of the Coeur d'Alene Reservation, Idaho)	Coeur d'Alene Reservation, ID	1,551	1
74	84		Cold Springs Rancheria of Mono Indians of California	Cold Springs Rancheria, CA	162	1
75	85		Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California	Colorado River Indian Reservation, AZ-CA	2,830	1
76	86		Confederated Salish and Kootenai Tribes of the Flathead Reservation	Flathead Reservation, MT	9,138	1
77	87		Confederated Tribes and Bands of the Yakama Nation	Yakama Nation Reservation and Off-Reservation Trust Land, WA	8,022	1
78	88		Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)	Siletz Reservation and Off-Reservation Trust Land, OR	427	1
79	89		Confederated Tribes of the Chehalis Reservation	Chehalis Reservation and Off-Reservation Trust Land, WA	363	1
80	90		Confederated Tribes of the Colville Reservation	Colville Reservation and Off-Reservation Trust Land, WA	4,994	1
81	91		Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians	Coos, Lower Umpqua, and Siuslaw Reservation and Off-Reservation Trust Land, OR	31	1
82	92		Confederated Tribes of the Goshute Reservation, Nevada and Utah	Goshute Reservation, NV--UT	127	1

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83	93		Confederated Tribes of the Grand Ronde Community of Oregon	Grand Ronde Community and Off-Reservation Trust Land, OR	353	1
84	94		Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)	Umatilla Reservation, OR	1,561	1
85	95		Confederated Tribes of the Warm Springs Reservation of Oregon	Warm Springs Reservation and Off-Reservation Trust Land, OR	3,754	1
86	96		Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)	Coquille Reservation, OR	157	1
87	97		Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California)	Cortina Indian Rancheria, CA	19	1
88	98		Coushatta Tribe of Louisiana	Coushatta Reservation and Off-Reservation Trust Land, LA	74	1
89	99		Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)	Cow Creek Reservation and Off-Reservation Trust Land, OR	48	1
90	100	E	Cowlitz Indian Tribe	No Census Area Mapped	None	1
91	101		Coyote Valley Band of Pomo Indians of California	Coyote Valley Reservation, CA	132	1
92	102		Craig Tribal Association (previously listed as the Craig Community Association)	Craig ANVSA, AK	455	1
93	103		Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Crow Creek Reservation, SD	1,821	1
94	104		Crow Tribe of Montana	Crow Reservation and Off-Reservation Trust Land, MT	5,408	1
95	105	E	Curyung Tribal Council	No Census Area Mapped	None	1
96	106		Death Valley Timbisha Shoshone Tribe (previously listed as the Death Valley Timbisha Shoshone Band of California)	Timbisha Shoshone Reservation and Off-Reservation Trust Land, CA-NV	18	1
97	107		Douglas Indian Association	Douglas ANVSA, AK	972	1
98	108	A	Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)	Dry Creek Rancheria, CA	0	1
99	109		Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada	Duckwater Reservation, NV	122	1
100	110		Eastern Band of Cherokee Indians	Eastern Cherokee Reservation, NC	7,351	1
101	111		Eastern Shawnee Tribe of Oklahoma	Eastern Shawnee OTSA, OK	215	1
102	112		Egegik Village	Egegik ANVSA, AK	51	1
103	113		Eklutna Native Village	Eklutna ANVSA, AK	44	1
104	114		Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California	Sulphur Bank Rancheria, CA	47	1
105	115		Elk Valley Rancheria, California	Elk Valley Rancheria and Off-Reservation Trust Land, CA	52	1
106	116		Ely Shoshone Tribe of Nevada	Ely Reservation, NV	160	1
107	117		Emmonak Village	Emmonak ANVSA, AK	737	1
108	118		Enterprise Rancheria of Maidu Indians of California	Enterprise Rancheria, CA	1	1
109	119		Evansville Village (aka Bettles Field)	Evansville ANVSA, AK	9	1
110	120	A	Ewilaapaay Band of Kumeaya Indians, California	Ewilaapaay Reservation, CA	0	1
111	121	E	Federated Indians of Graton Rancheria, California	No Census Area Mapped	None	1
112	122		Flandreau Santee Sioux Tribe of South Dakota	Flandreau Reservation, SD	371	1
113	123		Forest County Potawatomi Community, Wisconsin	Forest County Potawatomi Community and Off-Reservation Trust Land, WI	514	1



No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT4 <sup>4</sup>	Group Alignment
114	124		Fort Belknap Indian Community of the Fort Belknap Reservation of Montana	Fort Belknap Reservation and Off-Reservation Trust Land, MT	2,738	1
115	125		Fort Bidwell Indian Community of the Fort Bidwell Reservation of California	Fort Bidwell Reservation and Off-Reservation Trust Land, CA	86	1
116	126		Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California	Fort Independence Reservation, CA	62	1
117	127		Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon	Fort McDermitt Indian Reservation, NV--OR	327	1
118	128		Fort McDowell Yavapai Nation, Arizona	Fort McDowell Yavapai Nation Reservation, AZ	891	1
119	129		Fort Mojave Indian Tribe of Arizona, California & Nevada	Fort Mojave Reservation and Off-Reservation Trust Land, AZ--CA--NV	683	1
120	130		Galena Village (aka Loudon Village)	Galena ANVSA, AK	324	1
121	131		Gila River Indian Community of the Gila River Indian Reservation, Arizona	Gila River Indian Reservation, AZ	11,251	1
122	132		Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Grand Traverse Reservation and Off-Reservation Trust Land, MI	485	1
123	133		Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)	Greenville Rancheria, CA	19	1
124	134		Grindstone Indian Rancheria of Wintun-Wailaki Indians of California	Grindstone Indian Rancheria, CA	153	1
125	135		Guidiville Rancheria of California	Guidiville Rancheria and Off-Reservation Trust Land, CA	42	1
126	136		Gulkana Village	Gulkana ANVSA, AK	97	1
127	137		Habematolel Pomo of Upper Lake, California	Upper Lake Rancheria, CA	29	1
128	138		Hannahville Indian Community, Michigan	Hannahville Indian Community and Off-Reservation Trust Land, MI	454	1
129	139		Havasupai Tribe of the Havasupai Reservation, Arizona	Havasupai Reservation, AZ	455	1
130	140		Healy Lake Village	Healy Lake ANVSA, AK	11	1
131	141		Ho-Chunk Nation of Wisconsin	Ho-Chunk Nation Reservation and Off-Reservation Trust Land, WI--MN	1,215	1
132	142		Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)	Hoh Indian Reservation, WA	104	1
133	143		Holy Cross Village	Holy Cross ANVSA, AK	170	1
134	144		Hoonah Indian Association	Hoonah ANVSA, AK	502	1
135	145		Hoopa Valley Tribe, California	Hoopa Valley Reservation, CA	2,667	1
136	146		Hopi Tribe of Arizona	Hopi Reservation and Off-Reservation Trust Land, AZ	6,912	1
137	147		Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)	Hopland Rancheria and Off-Reservation Trust Land, CA	30	1
138	148		Houlton Band of Maliseet Indians	Houlton Maliseet Reservation and Off-Reservation Trust Land, ME	169	1
139	149		Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Hualapai Indian Reservation and Off-Reservation Trust Land, AZ	1,290	1
140	150		Hughes Village	Hughes ANVSA, AK	75	1
141	151		Huslia Village	Huslia ANVSA, AK	256	1
142	152		Hydaburg Cooperative Association	Hydaburg ANVSA, AK	324	1
143	153		Igiugig Village	Igiugig ANVSA, AK	35	1
144	154		Ilipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)	Santa Ysabel Reservation, CA	289	1

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145	155	A	Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California	Inaja and Cosmit Reservation, CA	0	1
146	156	E	Inupiat Community of the Arctic Slope	No Census Area Mapped	None	1
147	157	A	Ione Band of Miwok Indians of California	Ione Band of Miwok TDSA, CA	0	1
148	158		Iowa Tribe of Kansas and Nebraska	Iowa (KS-NE) Reservation and Off-Reservation Trust Land, KS--NE	95	1
149	159		Iowa Tribe of Oklahoma	Iowa OTSA, OK	625	1
150	160		Iqumuit Traditional Council	Russian Mission ANVSA, AK	302	1
151	161		Ivanof Bay Tribe (previously listed as the Ivanoff Bay Tribe and the Ivanoff Bay Village)	Ivanof Bay ANVSA, AK	7	1
152	162	A	Jackson Band of Miwok Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California)	Jackson Rancheria, CA	0	1
153	163		Jamestown S'Klallam Tribe	Jamestown S'Klallam Reservation and Off-Reservation Trust Land, WA	5	1
154	164	A	Jamul Indian Village of California	Jamul Indian Village, CA	0	1
155	165	A	Jena Band of Choctaw Indians	Jena Band of Choctaw Reservation, LA	0	1
156	166		Jicarilla Apache Nation, New Mexico	Jicarilla Apache Nation Reservation and Off-Reservation Trust Land, NM	3,013	1
157	167	E	Kaguyak Village	No Census Area Mapped	None	1
158	168		Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona	Kaibab Indian Reservation, AZ	211	1
159	169		Kaktovik Village (aka Barter Island)	Kaktovik ANVSA, AK	215	1
160	170		Kalispel Indian Community of the Kalispel Reservation	Kalispel Reservation and Off-Reservation Trust Land, WA	195	1
161	171		Karuk Tribe (previously listed as the Karuk Tribe of California)	Karuk Reservation and Off-Reservation Trust Land, CA	387	1
162	172		Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California	Stewarts Point Rancheria, CA	75	1
163	173		Kasigluk Traditional Elders Council	Kasigluk ANVSA, AK	550	1
164	174		Kaw Nation, Oklahoma	Kaw OTSA, OK	852	1
165	175		Kenaitze Indian Tribe	Kenaitze ANVSA, AK	3,417	1
166	176		Keetchikan Indian Corporation	Keetchikan ANVSA, AK	2,605	1
167	177		Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo)	Santo Domingo Pueblo, NM	3,219	1
168	178		Keweenaw Bay Indian Community, Michigan	L'Anse Reservation and Off-Reservation Trust Land, MI	1,286	1
169	179	E	Kialagee Tribal Town	No Census Area Mapped	None	1
170	180		Kickapoo Traditional Tribe of Texas	Kickapoo (TX) Reservation, TX	351	1
171	181	B	Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Kickapoo (KS) Reservation, KS, Kickapoo (KS) Reservation/Sac and Fox Nation Trust Land joint-use area, KS	771	1
172	182		Kickapoo Tribe of Oklahoma	Kickapoo OTSA, OK	2,968	1
173	183	E	King Island Native Community	No Census Area Mapped	None	1
174	184		King Salmon Tribe	King Salmon ANVSA, AK	103	1
175	185		Klamath Tribes	Klamath Reservation, OR	15	1
176	186		Klawock Cooperative Association	Klawock ANVSA, AK	396	1
177	187		Knik Tribe	Knik ANVSA, AK	6,582	1
178	188	E	Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California)	No Census Area Mapped	None	1
179	189		Kokhanok Village	Kokhanok ANVSA, AK	153	1



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180	190		Kootenai Tribe of Idaho	Kootenai Reservation and Off-Reservation Trust Land, ID	67	1
181	191		Koyukuk Native Village	Koyukuk ANVSA, AK	95	1
182	192		La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)	La Jolla Reservation, CA	394	1
183	193		La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California	La Posta Indian Reservation, CA	33	1
184	194		Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin	Lac Courte Oreilles Reservation and Off-Reservation Trust Land, WI	2,221	1
185	195		Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin	Lac du Flambeau Reservation, WI	2,244	1
186	196		Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan	Lac Vieux Desert Reservation, MI	118	1
187	197		Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada	Las Vegas Indian Colony, NV	86	1
188	198		Levelock Village	Levelock ANVSA, AK	62	1
189	199		Lime Village	Lime Village ANVSA, AK	28	1
190	200		Little River Band of Ottawa Indians, Michigan	Little River Reservation and Off-Reservation Trust Land, MI	29	1
191	201		Little Traverse Bay Bands of Odawa Indians, Michigan	Little Traverse Bay Reservation and Off-Reservation Trust Land, MI	37	1
192	202		Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California)	Lone Pine Reservation, CA	162	1
193	203		Los Coyotes Band of Cahulla and Cupeno Indians, California (previously listed as the Los Coyotes Band of Cahulla & Cupeno Indians of the Los Coyotes Reservation)	Los Coyotes Reservation, CA	72	1
194	204		Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada	Lovelock Indian Colony, NV	82	1
195	205		Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Lower Brule Reservation and Off-Reservation Trust Land, SD	1,396	1
196	206		Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington)	Lower Elwha Reservation and Off-Reservation Trust Land, WA	517	1
197	207		Lower Sioux Indian Community in the State of Minnesota	Lower Sioux Indian Community, MN	384	1
198	208		Lummi Tribe of the Lummi Reservation	Lummi Reservation, WA	2,643	1
199	209	A	Lytton Rancheria of California	Lytton Rancheria, CA	0	1
200	210		Makah Indian Tribe of the Makah Indian Reservation	Makah Indian Reservation, WA	1,232	1
201	211		Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California)	Manchester-Point Arena Rancheria, CA	177	1
202	212		Manley Hot Springs Village	Manley Hot Springs ANVSA, AK	26	1
203	213		Manokotak Village	Manokotak ANVSA, AK	425	1
204	214		Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California	Manzanita Reservation and Off-Reservation Trust Land, CA	62	1
205	215		Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut)	Mashantucket Pequot Reservation and Off-Reservation Trust Land, CT	223	1

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206	216	E	Mashpee Wampanoag Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.)	No Census Area Mapped	None	1
207	217	A	Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan	Match-e-be-nash-she-wish Band of Pottawatomí Reservation, MI	0	1
208	218		McGrath Native Village	McGrath ANVSA, AK	192	1
209	219		Mechoopda Indian Tribe of Chico Rancheria, California	Mechoopda TDSA, CA	217	1
210	220		Menominee Indian Tribe of Wisconsin	Menominee Reservation and Off-Reservation Trust Land, WI	3,000	1
211	221		Mentasta Traditional Council	Mentasta Lake ANVSA, AK	86	1
212	222		Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California	Mesa Grande Reservation, CA	91	1
213	223		Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Mescalero Reservation, NM	3,394	1
214	224		Metlakatla Indian Community, Annette Island Reserve	Annette Island Reserve, AK	1,294	1
215	225		Miami Tribe of Oklahoma	Miami OTSA, OK	94	1
216	226	A	Miccousukee Tribe of Indians	Miccousukee Reservation and Off-Reservation Trust Land, FL	0	1
217	227		Middletown Rancheria of Pomo Indians of California	Middletown Rancheria, CA	43	1
218	228	B	Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)	Bois Forte Reservation, MN, Fond du Lac Reservation and Off-Reservation Trust Land, MN--WI, Grand Portage Reservation and Off-Reservation Trust Land, MN, Leech Lake Reservation and Off-Reservation Trust Land, MN, Mille Lacs Reservation and Off-Reservation Trust Land, MN, White Earth Reservation and Off-Reservation Trust Land, MN, Minnesota Chippewa Trust Land	14,834	1
219	229		Mississippi Band of Choctaw Indians	Mississippi Choctaw Reservation, MS	7,028	1
220	230		Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada	Moapa River Indian Reservation, NV	234	1
221	231		Mohegan Tribe of Indians of Connecticut (previously listed as Mohegan Indian Tribe of Connecticut)	Mohegan Reservation and Off-Reservation Trust Land, CT	30	1
222	232		Mooretown Rancheria of Maidu Indians of California	Mooretown Rancheria and Off-Reservation Trust Land, CA	140	1
223	233		Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)	Morongo Reservation and Off-Reservation Trust Land, CA	632	1
224	234		Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington)	Muckleshoot Reservation and Off-Reservation Trust Land, WA	1,374	1
225	235		Naknek Native Village	Naknek ANVSA, AK	283	1
226	236	A	Narragansett Indian Tribe	Narragansett Reservation, RI	0	1
227	237	E	Native Village of Atoognak	No Census Area Mapped	None	1
228	238		Native Village of Akhiook	Akhiook ANVSA, AK	62	1
229	239		Native Village of Akutan	Akutan ANVSA, AK	76	1
230	240		Native Village of Aleknagik	Aleknagik ANVSA, AK	185	1
231	241		Native Village of Ambler	Ambler ANVSA, AK	228	1
232	242		Native Village of Atka	Atka ANVSA, AK	58	1
233	243		Native Village of Barrow Inupiat Traditional Government	Barrow ANVSA, AK	2,889	1
234	244	A	Native Village of Belkofski	Belkofski ANVSA, AK	0	1
235	245		Native Village of Brevig Mission	Brevig Mission ANVSA, AK	366	1
236	246		Native Village of Buckland	Buckland ANVSA, AK	405	1



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237	247		Native Village of Cantwell	Cantwell ANVSA, AK	45	1
238	248		Native Village of Chenega (aka Chanega)	Chenega ANVSA, AK	46	1
239	249		Native Village of Chignik Lagoon	Chignik Lagoon ANVSA, AK	58	1
240	250		Native Village of Chitina	Chitina ANVSA, AK	42	1
241	251		Native Village of Chuathbaluk (Russian Mission, Kuskokwim)	Chuathbaluk ANVSA, AK	112	1
242	252	A	Native Village of Council	Council ANVSA, AK	0	1
243	253		Native Village of Deering	Deering ANVSA, AK	111	1
244	254		Native Village of Diomedea (aka Inalik)	Inalik ANVSA, AK	110	1
245	255		Native Village of Eagle	Eagle ANVSA, AK	28	1
246	256		Native Village of Eek	Eek ANVSA, AK	289	1
247	257		Native Village of Ekwok	Ekwok ANVSA, AK	2	1
248	258		Native Village of Ekwok (previously listed as Ekwok Village)	Ekwok ANVSA, AK	109	1
249	259		Native Village of Elim	Elim ANVSA, AK	305	1
250	260		Native Village of Eyak (Cordova)	Eyak ANVSA, AK	9	1
251	261		Native Village of False Pass	False Pass ANVSA, AK	27	1
252	262		Native Village of Fort Yukon	Fort Yukon ANVSA, AK	530	1
253	263		Native Village of Gakona	Gakona ANVSA, AK	34	1
254	264		Native Village of Gambell	Gambell ANVSA, AK	654	1
255	265		Native Village of Georgetown	Georgetown ANVSA, AK	2	1
256	266		Native Village of Goodnews Bay	Goodnews Bay ANVSA, AK	232	1
257	267	A	Native Village of Hamilton	Hamilton ANVSA, AK	0	1
258	268		Native Village of Hooper Bay	Hooper Bay ANVSA, AK	1,070	1
259	269	E	Native Village of Kanatak	No Census Area Mapped	None	1
260	270		Native Village of Karluk	Karluk ANVSA, AK	35	1
261	271		Native Village of Kiana	Kiana ANVSA, AK	338	1
262	272		Native Village of Kipruk	Kipruk ANVSA, AK	626	1
263	273		Native Village of Kivalina	Kivalina ANVSA, AK	366	1
264	274		Native Village of Kluti Kaah (aka Copper Center)	Copper Center ANVSA, AK	184	1
265	275		Native Village of Kobuk	Kobuk ANVSA, AK	136	1
266	276		Native Village of Kongiganak	Kongiganak ANVSA, AK	430	1
267	277		Native Village of Kotzebue	Kotzebue ANVSA, AK	2,585	1
268	278		Native Village of Koyuk	Koyuk ANVSA, AK	319	1
269	279		Native Village of Kwigillingok	Kwigillingok ANVSA, AK	310	1
270	280		Native Village of Kwinhagak (aka Quinhagak)	Kwinhagak ANVSA, AK	650	1
271	281		Native Village of Larsen Bay	Larsen Bay ANVSA, AK	66	1
272	282		Native Village of Marshall (aka Fortuna Ledge)	Marshall ANVSA, AK	402	1
273	283	A	Native Village of Mary's Igloo	Mary's Igloo ANVSA, AK	0	1
274	284		Native Village of Mekoryuk	Mekoryuk ANVSA, AK	185	1
275	285		Native Village of Minto	Minto ANVSA, AK	200	1
276	286		Native Village of Nanwalek (aka English Bay)	Nanwalek ANVSA, AK	227	1
277	287		Native Village of Napaimute	Napaimute ANVSA, AK	1	1
278	288		Native Village of Napakiak	Napakiak ANVSA, AK	344	1
279	289		Native Village of Napaskiak	Napaskiak ANVSA, AK	393	1
280	290		Native Village of Nelson Lagoon	Nelson Lagoon ANVSA, AK	40	1
281	291		Native Village of Nightmute	Nightmute ANVSA, AK	257	1
282	292		Native Village of Nikolski	Nikolski ANVSA, AK	17	1

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283	293		Native Village of Noatak	Noatak ANVSA, AK	499	1
284	294		Native Village of Nuiqsut (aka Nookisut)	Nuiqsut ANVSA, AK	360	1
285	295		Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point)	Nunam Iqua ANVSA, AK	174	1
286	296		Native Village of Nunapitchuk	Nunapitchuk ANVSA, AK	484	1
287	297		Native Village of Ouzinkie	Ouzinkie ANVSA, AK	146	1
288	298	A	Native Village of Palmiut	Palmiut ANVSA, AK	0	1
289	299		Native Village of Perryville	Perryville ANVSA, AK	110	1
290	300		Native Village of Pilot Point	Pilot Point ANVSA, AK	57	1
291	301		Native Village of Pitkas Point	Pitkas Point ANVSA, AK	107	1
292	302		Native Village of Point Hope	Point Hope ANVSA, AK	629	1
293	303		Native Village of Point Lay	Point Lay ANVSA, AK	168	1
294	304		Native Village of Port Graham	Port Graham ANVSA, AK	160	1
295	305		Native Village of Port Heiden	Port Heiden ANVSA, AK	87	1
296	306		Native Village of Port Lions	Port Lions ANVSA, AK	119	1
297	307		Native Village of Ruby	Ruby ANVSA, AK	157	1
298	308		Native Village of Saint Michael	St. Michael ANVSA, AK	379	1
299	309		Native Village of Savoonga	Savoonga ANVSA, AK	637	1
300	310		Native Village of Scammon Bay	Scammon Bay ANVSA, AK	472	1
301	311		Native Village of Selawik	Selawik ANVSA, AK	792	1
302	312		Native Village of Shaktolik	Shaktolik ANVSA, AK	242	1
303	313		Native Village of Shishmaref	Shishmaref ANVSA, AK	540	1
304	314		Native Village of Shungnak	Shungnak ANVSA, AK	247	1
305	315		Native Village of Stevens	Stevens Village ANVSA, AK	71	1
306	316		Native Village of Tanacross	Tanacross ANVSA, AK	122	1
307	317		Native Village of Tanana	Tanana ANVSA, AK	220	1
308	318		Native Village of Tatitlek	Tatitlek ANVSA, AK	58	1
309	319		Native Village of Tazlina	Tazlina ANVSA, AK	134	1
310	320		Native Village of Teller	Teller ANVSA, AK	220	1
311	321		Native Village of Tellin	Tellin ANVSA, AK	122	1
312	322		Native Village of Tuntutuliak	Tuntutuliak ANVSA, AK	370	1
313	323		Native Village of Tununak	Tununak ANVSA, AK	314	1
314	324		Native Village of Tyonek	Tyonek ANVSA, AK	162	1
315	325		Native Village of Unalakleet	Unalakleet ANVSA, AK	574	1
316	326	E	Native Village of Unga	No Census Area Mapped	None	1
317	327, 328	C	Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie) Village of Venetie (See Native Village of Venetie Tribal Government)	Venetie ANVSA, AK	142	1
318	329		Native Village of Wales	Wales ANVSA, AK	136	1
319	330		Native Village of White Mountain	White Mountain ANVSA, AK	167	1
320	331		Navajo Nation, Arizona, New Mexico & Utah	Navajo Nation Reservation and Off-Reservation Trust Land, AZ--NM--UT	169,321	3
321	332		Nenana Native Association	Nenana ANVSA, AK	161	1
322	333		New Koliganek Village Council	New Koliganek ANVSA, AK	202	1
323	334		New Stuyahok Village	New Stuyahok ANVSA, AK	491	1



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324	335		Newhalen Village	Newhalen ANVSA, AK	175	1
325	336		Newtok Village	Newtok ANVSA, AK	343	1
326	337		Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho)	Nez Perce Reservation, ID	2,692	1
327	338		Nikolai Village	Nikolai ANVSA, AK	87	1
328	339		Ninichik Village	Ninichik ANVSA, AK	1,112	1
329	340		Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington)	Nisqually Reservation, WA	394	1
330	341		Nome Eskimo Community	Nome ANVSA, AK	2,396	1
331	342		Nondalton Village	Nondalton ANVSA, AK	137	1
332	343		Nooksack Indian Tribe	Nooksack Reservation and Off-Reservation Trust Land, WA	695	1
333	344		Noorvik Native Community	Noorvik ANVSA, AK	638	1
334	345		Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana	Northern Cheyenne Indian Reservation and Off-Reservation Trust Land, MT--SD	4,478	1
335	346		Northfork Rancheria of Mono Indians of California	North Fork Rancheria and Off-Reservation Trust Land, CA	48	1
336	347		Northway Village	Northway ANVSA, AK	213	1
337	348	A	Northwestern Band of the Shoshone Nation (previously listed as Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie))	Northwestern Shoshone Reservation, UT	0	1
338	349		Notlawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.)	Huron Potawatomi Reservation and Off-Reservation Trust Land, MI	34	1
339	350		Nulato Village	Nulato ANVSA, AK	250	1
340	351	E	Nunakayarmiut Tribe	No Census Area Mapped	None	1
341	352		Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota)	Pine Ridge Reservation, SD--NE	16,906	1
342	353		Ohkay Owinger, New Mexico (previously listed as the Pueblo of San Juan)	Ohkay Owinger, NM	1,513	1
343	354		Omaha Tribe of Nebraska	Omaha Reservation, NE--IA	2,353	1
344	355		Oneida Nation of New York	Oneida Nation Reservation, NY	18	1
345	356		Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin)	Oneida (WI) Reservation and Off-Reservation Trust Land, WI	4,654	1
346	357		Onondaga Nation	Onondaga Nation Reservation, NY	457	1
347	358		Organized Village of Graveling (aka Holikachuk)	Graveling ANVSA, AK	181	1
348	359		Organized Village of Kake	Kake ANVSA, AK	449	1
349	360		Organized Village of Kasaaan	Kasaan ANVSA, AK	22	1
350	361		Organized Village of Kweethuk	Kweethuk ANVSA, AK	703	1
351	362		Organized Village of Saxman	Saxman ANVSA, AK	276	1
352	363		Orutsararmiut Traditional Native Council (previously listed as Orutsararmiut Native Village (aka Bethel))	Bethel ANVSA, AK	4,334	1
353	364		Oscarville Traditional Village	Oscarville ANVSA, AK	67	1
354	365		Otoe-Missouria Tribe of Indians, Oklahoma	Otoe-Missouria OTSA, OK	422	1
355	366		Ottawa Tribe of Oklahoma	Ottawa OTSA, OK	1,359	1

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356	367		Paite Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)))	Paiute (UT) Reservation, UT	249	1
357	368	B	Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada	Fallon Paiute-Shoshone Colony and Off-Reservation Trust Land, NV, Fallon Paiute-Shoshone Reservation and Off-Reservation Trust Land, NV	614	1
358	369		Pala Band of Mission Indians (previously listed as the Pala Band of Luiseno Mission Indians of the Pala Reservation, California)	Pala Reservation, CA	706	1
359	370		Pamunkey Indian Tribe	Pamunkey (state) Reservation, VA	43	1
360	371		Pascua Yaqui Tribe of Arizona	Pascua Pueblo Yaqui Reservation, AZ	3,219	1
361	372	A	Paskenta Band of Nomlaki Indians of California	Paskenta Rancheria, CA	0	1
362	373	B	Passamaquoddy Tribe	Passamaquoddy Trust Land, ME, Indian Township Reservation, ME, Pleasant Point Reservation, ME	1,263	1
363	374	E	Pauloff Harbor Village	No Census Area Mapped	None	1
364	375		Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California	Pauma and Yuima Reservation, CA	156	1
365	376		Pawnee Nation of Oklahoma	Pawnee OTSA, OK	2,786	1
366	377		Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California	Pechanga Reservation, CA	250	1
367	378		Pedro Bay Village	Pedro Bay ANVSA, AK	30	1
368	379		Penobscot Nation (previously listed as the Penobscot Tribe of Maine)	Penobscot Reservation and Off-Reservation Trust Land, ME	512	1
369	380		Peoria Tribe of Indians of Oklahoma	Peoria OTSA, OK	1,202	1
370	381		Petersburg Indian Association	Petersburg ANVSA, AK	327	1
371	382		Picayune Rancheria of Chukchansi Indians of California	Picayune Rancheria and Off-Reservation Trust Land, CA	58	1
372	383		Pilot Station Traditional Village	Pilot Station ANVSA, AK	558	1
373	384		Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California)	Pinoleville Rancheria, CA	87	1
374	385	B	Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)	Big Bend Rancheria, CA, Likely Rancheria, CA, Lookout Rancheria, CA, Montgomery Creek Rancheria, CA, Roaring Creek Rancheria, CA, XL Ranch Rancheria, CA, Pit River Trust Land	97	1
375	386		Platinum Traditional Village	Platinum ANVSA, AK	57	1
376	387		Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama)	Poarch Creek Reservation and Off-Reservation Trust Land, AL--FL	216	1
377	388		Pokagon Band of Potawatomi Indians, Michigan and Indiana	Pokagon Reservation and Off-Reservation Trust Land, MI	2	1
378	389		Ponca Tribe of Indians of Oklahoma	Ponca OTSA, OK	824	1
379	390		Ponca Tribe of Nebraska	Ponca (NE) Trust Land, NE--IA	9	1
380	391		Port Gamble S'Klallam Tribe (previously listed as the Port Gamble Band of S'Klallam Indians)	Port Gamble Reservation, WA	592	1
381	392		Portage Creek Village (aka Ohgsenakale)	Portage Creek ANVSA, AK	1	1
382	393	E	Potter Valley Tribe, California	No Census Area Mapped	None	1



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383	394		Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)	Prairie Band of Potawatomi Nation Reservation, KS	822	1
384	395		Prairie Island Indian Community in the State of Minnesota	Prairie Island Indian Community and Off-Reservation Trust Land, MN	178	1
385	396		Pueblo of Acoma, New Mexico	Acoma Pueblo and Off-Reservation Trust Land, NM	2,947	1
386	397		Pueblo of Cochiti, New Mexico	Pueblo de Cochiti, NM	854	1
387	398		Pueblo of Isleta, New Mexico	Isleta Pueblo, NM	3,170	1
388	399		Pueblo of Jemez, New Mexico	Jemez Pueblo, NM	1,797	1
389	400		Pueblo of Laguna, New Mexico	Laguna Pueblo and Off-Reservation Trust Land, NM	3,909	1
390	401		Pueblo of Nambe, New Mexico	Nambe Pueblo and Off-Reservation Trust Land, NM	529	1
391	402		Pueblo of Picuris, New Mexico	Picuris Pueblo, NM	221	1
392	403		Pueblo of Pojoaque, New Mexico	Pueblo of Pojoaque and Off-Reservation Trust Land, NM	462	1
393	404		Pueblo of San Felipe, New Mexico	San Felipe Pueblo, NM	2,836	1
394	405		Pueblo of San Ildefonso, New Mexico	San Ildefonso Pueblo and Off-Reservation Trust Land, NM	498	1
395	406		Pueblo of Sandia, New Mexico	Sandia Pueblo, NM	692	1
396	407		Pueblo of Santa Ana, New Mexico	Santa Ana Pueblo, NM	597	1
397	408		Pueblo of Santa Clara, New Mexico	Santa Clara Pueblo, NM	1,547	1
398	409		Pueblo of Taos, New Mexico	Taos Pueblo and Off-Reservation Trust Land, NM	1,308	1
399	410		Pueblo of Tesuque, New Mexico	Tesuque Pueblo and Off-Reservation Trust Land, NM	356	1
400	411		Pueblo of Zia, New Mexico	Zia Pueblo and Off-Reservation Trust Land, NM	736	1
401	412		Puyallup Tribe of the Puyallup Reservation	Puyallup Reservation and Off-Reservation Trust Land, WA	2,127	1
402	413		Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada	Pyramid Lake Paiute Reservation, NV	1,265	1
403	414		Oagwan Teyagungin Tribe of Sand Point Village	Sand Point ANVSA, AK	417	1
404	415		Gawlangin Tribe of Unalaska	Unalaska ANVSA, AK	355	1
405	416		Quartz Valley Indian Community of the Quartz Valley Reservation of California	Quartz Valley Reservation and Off-Reservation Trust Land, CA	99	1
406	417		Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona	Fort Yuma Indian Reservation, CA--AZ	1,461	1
407	418		Quileute Tribe of the Quileute Reservation	Quileute Reservation, WA	394	1
408	419		Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)	Quinault Reservation, WA	1,098	1
409	420		Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)	Ramona Village, CA	12	1
410	421		Rampart Village	Rampart ANVSA, AK	23	1
411	422		Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Red Cliff Reservation and Off-Reservation Trust Land, WI	984	1
412	423		Red Lake Band of Chippewa Indians, Minnesota	Red Lake Reservation, MN	5,805	1
413	424		Redding Rancheria, California	Redding Rancheria, CA	22	1
414	425		Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)	Redwood Valley Rancheria, CA	101	1
415	426		Reno-Sparks Indian Colony, Nevada	Reno-Sparks Indian Colony, NV	875	1
416	427		Resighini Rancheria, California	Resighini Rancheria, CA	26	1
417	428		Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California	Rincon Reservation, CA	511	1

No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT4 <sup>4</sup>	Group Alignment
418	429		Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California)	Robinson Rancheria and Off-Reservation Trust Land, CA	199	1
419	430		Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota	Rosebud Indian Reservation and Off-Reservation Trust Land, SD	9,809	1
420	431		Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)	Round Valley Reservation and Off-Reservation Trust Land, CA	292	1
421	432	B	Sac & Fox Nation of Missouri in Kansas and Nebraska	Sac and Fox Nation Reservation and Off-Reservation Trust Land, NE--KS, Kickapoo (KS) Reservation/Sac and Fox Nation Trust Land joint-use area, KS	71	1
422	433		Sac & Fox Nation, Oklahoma	Sac and Fox OTSA, OK	8,347	1
423	434		Sac & Fox Tribe of the Mississippi in Iowa	Sac and Fox/Meskaki Settlement, IA	1,004	1
424	435		Saginaw Chippewa Indian Tribe of Michigan	Isabella Reservation, MI	2,409	1
425	436		Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)	St. George ANVSA, AK	92	1
426	437		Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)	St. Paul ANVSA, AK	417	1
427	438		Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)	St. Regis Mohawk Reservation, NY	3,131	1
428	439		Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona	Salt River Reservation, AZ	4,692	1
429	440		Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)	Samish TDSA, WA	801	1
430	441		San Carlos Apache Tribe of the San Carlos Reservation, Arizona	San Carlos Reservation, AZ	9,901	1
431	442	E	San Juan Southern Paiute Tribe of Arizona	No Census Area Mapped	None	1
432	443		San Manuel Band of Mission Indians, California (previously listed as the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation)	San Manuel Reservation, CA	72	1
433	444		San Pasqual Band of Diegueno Mission Indians of California	San Pasqual Reservation, CA	641	1
434	445		Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)	Santa Rosa Reservation, CA	61	1
435	446		Santa Rosa Indian Community of the Santa Rosa Rancheria, California	Santa Rosa Rancheria, CA	575	1
436	447		Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California	Santa Ynez Reservation, CA	214	1
437	448		Santee Sioux Nation, Nebraska	Santee Reservation, NE	686	1
438	449		Sauk-Suiattle Indian Tribe	Sauk-Suiattle Reservation, WA	57	1
439	450		Sault Ste. Marie Tribe of Chippewa Indians, Michigan	Sault Sainte Marie Reservation and Off-Reservation Trust Land, MI	1,231	1
440	451	E	Scotts Valley Band of Pomo Indians of California	No Census Area Mapped	None	1
441	452		Seldovia Village Tribe	Seldovia ANVSA, AK	118	1
442	453	B	Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))	Big Cypress Reservation, FL, Brighton Reservation, FL, Hollywood Reservation, FL, Seminole (FL) Trust Land, FL, Tampa Reservation, FL	1,530	1



No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT <sup>4</sup>	Group Alignment
443	454	B	Seneca Nation of Indians (previously listed as the Seneca Nation of New York)	Allegany Reservation, NY, Cattaraugus Reservation, NY, Oil Springs Reservation, NY	3,783	1
444	455		Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma)	Seneca-Cayuga OTSA, OK	802	1
445	456		Shageluk Native Village	Shageluk ANVSA, AK	80	1
446	457		Shakopee Mdewakanton Sioux Community of Minnesota	Shakopee Mdewakanton Sioux Community and Off-Reservation Trust Land, MN	406	1
447	458		Sherwood Valley Rancheria of Pomo Indians of California	Sherwood Valley Rancheria and Off-Reservation Trust Land, CA	140	1
448	459		Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California	Shingle Springs Rancheria, CA	77	1
449	460		Shinnecock Indian Nation	Shinnecock (state) Reservation, NY	584	1
450	461		Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)	Shoalwater Bay Indian Reservation and Off-Reservation Trust Land, WA	53	1
451	462		Shoshone-Bannock Tribes of the Fort Hall Reservation	Fort Hall Reservation and Off-Reservation Trust Land, ID	3,776	1
452	463		Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	Duck Valley Reservation, NV-ID	1,232	1
453	464		Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota	Lake Traverse Reservation and Off-Reservation Trust Land, SD-ND	4,393	1
454	465		Sitka Tribe of Alaska	Sitka ANVSA, AK	1,240	1
455	466		Skagway Village	Skagway ANVSA, AK	52	1
456	467		Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)	Skokomish Reservation, WA	528	1
457	468		Skull Valley Band of Goshute Indians of Utah	Skull Valley Reservation, UT	22	1
458	469	A	Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington)	Snoqualmie Reservation, WA	0	1
459	470		Soboba Band of Luiseno Indians, California	Soboba Reservation and Off-Reservation Trust Land, CA	413	1
460	471		Sokaogon Chippewa Community, Wisconsin	Sokaogon Chippewa Community and Off-Reservation Trust Land, WI	363	1
461	472		South Naknek Village	South Naknek ANVSA, AK	66	1
462	473		Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado	Southern Ute Reservation, CO	1,743	1
463	474		Spirit Lake Tribe, North Dakota	Spirit Lake Reservation, ND	3,642	1
464	475		Spokane Tribe of the Spokane Reservation	Spokane Reservation and Off-Reservation Trust Land, WA	1,771	1
465	476		Squaxin Island Tribe of the Squaxin Island Reservation	Squaxin Island Reservation and Off-Reservation Trust Land, WA	341	1
466	477		St. Croix Chippewa Indians of Wisconsin	St. Croix Reservation and Off-Reservation Trust Land, WI	639	1
467	478		Standing Rock Sioux Tribe of North & South Dakota	Standing Rock Reservation, SD-ND	6,414	1
468	479		Stebbins Community Association	Stebbins ANVSA, AK	530	1
469	480	A	Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington)	Stillaguamish Reservation and Off-Reservation Trust Land, WA	0	1
470	481		Stockbridge Munsee Community, Wisconsin	Stockbridge Munsee Community, WI	534	1
471	482		Summit Lake Paiute Tribe of Nevada	Summit Lake Reservation and Off-Reservation Trust Land, NV	1	1
472	483	A	Sumnaq Tribe of Kodiak (previously listed as the Shoonag' Tribe of Kodiak)	Kodiak ANVSA, AK	0	1
473	484		Suquamish Indian Tribe of the Port Madison Reservation	Port Madison Reservation, WA	941	1

No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT14 <sup>4</sup>	Group Alignment
474	485		Susanville Indian Rancheria, California	Susanville Indian Rancheria and Off-Reservation Trust Land, CA	301	1
475	486		Swinomish Indian Tribal Community (previously listed as the Swinomish Indians of the Swinomish Reservation of Washington)	Swinomish Reservation and Off-Reservation Trust Land, WA	734	1
476	487		Sycuan Band of the Kumeyaay Nation	Sycuan Reservation, CA	147	1
477	488		Table Mountain Rancheria of California	Table Mountain Rancheria, CA	3	1
478	489		Takotna Village	Takotna ANVSA, AK	25	1
479	490	A	Tanginaq Native Village (formerly Lesnoi Village (aka Woody Island))	Lesnoi ANVSA, AK	0	1
480	491	E	Tejon Indian Tribe	No Census Area Mapped	None	1
481	492		Tejida Village	Tejida ANVSA, AK	3	1
482	493	B	Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)	Battle Mountain Reservation, NV; Elko Colony, NV; South Fork Reservation and Off-Reservation Trust Land, NV; Wells Colony, NV	961	1
483	494		The Chickasaw Nation	Chickasaw OTSA, OK	41,048	2
484	495		The Choctaw Nation of Oklahoma	Choctaw OTSA, OK	47,649	2
485	496		The Modoc Tribe of Oklahoma	Modoc OTSA, OK	139	1
486	497		The Muscogee (Creek) Nation	Creek OTSA, OK	99,451	3
487	498		The Osage Nation (previously listed as the Osage Tribe)	Osage Reservation, OK	9,920	1
488	499		The Quapaw Tribe of Indians	Quapaw OTSA, OK	1,314	1
489	500		The Seminole Nation of Oklahoma	Seminole OTSA, OK	5,664	1
490	501	E	Thlopthlocco Tribal Town	No Census Area Mapped	None	1
491	502		Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Fort Berthold Reservation, ND	4,763	1
492	503		Tohono O'odham Nation of Arizona	Tohono O'odham Nation Reservation and Off-Reservation Trust Land, AZ	9,278	1
493	504		Toiowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California)	Smith River Rancheria and Off-Reservation Trust Land, CA	86	1
494	505		Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)	Tonawanda Reservation, NY	497	1
495	506		Tonkawa Tribe of Indians of Oklahoma	Tonkawa OTSA, OK	625	1
496	507		Tonto Apache Tribe of Arizona	Tonto Apache Reservation, AZ	90	1
497	508		Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)	Torres-Martinez Reservation, CA	225	1
498	509		Traditional Village of Togiak	Togiak ANVSA, AK	767	1
499	510		Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)	Tulalip Reservation and Off-Reservation Trust Land, WA	2,882	1
500	511		Tule River Indian Tribe of the Tule River Reservation, California	Tule River Reservation and Off-Reservation Trust Land, CA	947	1
501	512		Tulaksak Native Community	Tulaksak ANVSA, AK	357	1
502	513		Tunica-Biloxi Indian Tribe	Tunica-Biloxi Reservation and Off-Reservation Trust Land, LA	81	1
503	514		Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California	Tuolumne Rancheria, CA	155	1
504	515		Turtle Mountain Band of Chippewa Indians of North Dakota	Turtle Mountain Reservation and Off-Reservation Trust Land, MT--ND--SD	8,413	1



No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT4 <sup>4</sup>	Group Alignment
505	516		Tuscarora Nation	Tuscarora Nation Reservation, NY	385	1
506	517		Twenty-Nine Palms Band of Mission Indians of California	Twenty-Nine Palms Reservation, CA	5	1
507	518		Twin Hills Village	Twin Hills ANVSA, AK	72	1
508	519		Ugashik Village	Ugashik ANVSA, AK	9	1
509	520	E	Umkumiut Native Village (previously listed as Umkumiut Native Village)	No Census Area Mapped	None	1
510	521	A	United Auburn Indian Community of the Auburn Rancheria of California	Auburn Rancheria and Off-Reservation Trust Land, CA	0	1
511	522		Upper Sioux Community, Minnesota	Upper Sioux Community and Off-Reservation Trust Land, MN	133	1
512	523		Upper Skagit Indian Tribe	Upper Skagit Reservation, WA	190	1
513	524		Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Uintah and Ouray Reservation and Off-Reservation Trust Land, UT	3,457	1
514	525		Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah)	Ute Mountain Reservation and Off-Reservation Trust Land, CO--NM--UT	1,701	1
515	526		Utu Utu Gwaithu Paiute Tribe of the Benton Paiute Reservation, California	Benton Paiute Reservation and Off-Reservation Trust Land, CA	58	1
516	527		Village of Alakanuk	Alakanuk ANVSA, AK	660	1
517	528		Village of Anaktuvuk Pass	Anaktuvuk Pass ANVSA, AK	298	1
518	529		Village of Aniak	Aniak ANVSA, AK	397	1
519	530		Village of Atmautluak	Atmautluak ANVSA, AK	271	1
520	531	A	Village of Bill Moore's Slough	Bill Moore's ANVSA, AK	0	1
521	532		Village of Chefornak	Chefornak ANVSA, AK	403	1
522	533		Village of Clarks Point	Clarks Point ANVSA, AK	55	1
523	534		Village of Crooked Creek	Crooked Creek ANVSA, AK	97	1
524	535		Village of Dot Lake	Dot Lake ANVSA, AK	57	1
525	536		Village of Iliamna	Iliamna ANVSA, AK	71	1
526	537		Village of Kalskag	Kalskag ANVSA, AK	193	1
527	538		Village of Kaltag	Kaltag ANVSA, AK	179	1
528	539		Village of Kotlik	Kotlik ANVSA, AK	563	1
529	540		Village of Lower Kalskag	Lower Kalskag ANVSA, AK	274	1
530	541	A	Village of Ohogamiut	Ohogamiut ANVSA, AK	0	1
531	542		Village of Red Devil	Red Devil ANVSA, AK	19	1
532	543		Village of Salamatoff	Salamatoff ANVSA, AK	236	1
533	544		Village of Sleetmute	Sleetmute ANVSA, AK	66	1
534	545	A	Village of Solomon	Solomon ANVSA, AK	0	1
535	546		Village of Stony River	Stony River ANVSA, AK	50	1
536	547		Village of Wainwright	Wainwright ANVSA, AK	510	1
537	548		Walker River Paiute Tribe of the Walker River Reservation, Nevada	Walker River Reservation, NV	643	1
538	549		Wampanoag Tribe of Gay Head (Aquinnah)	Wampanoag-Aquinnah Trust Land, MA	60	1
539	550	B	Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches)	Carson Colony, NV, Dresslerville Colony, NV, Stewart Community, NV, Washoe Ranches Trust Land, NV--CA, Woodfords Community, CA	984	1
540	551		White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Fort Apache Reservation, AZ	13,014	1

No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT4 <sup>4</sup>	Group Alignment
541	552	E	Wilton Rancheria, California	No Census Area Mapped	None	1
542	553		Winnebago Tribe of Nebraska	Winnebago Reservation and Off-Reservation Trust Land, NE--IA	1,749	1
543	554		Winnemucca Indian Colony of Nevada	Winnemucca Indian Colony, NV	43	1
544	555		Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)	Table Bluff Reservation, CA	81	1
545	556		Wrangell Cooperative Association	Wrangell ANVSA, AK	371	1
546	557		Wyandotte Nation	Wyandotte OTSA, OK	454	1
547	558		Yakutat Tlingit Tribe	Yakutat ANVSA, AK	330	1
548	559		Yankton Sioux Tribe of South Dakota	Yankton Reservation, SD	3,074	1
549	560		Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona	Yavapai-Apache Nation Reservation, AZ	634	1
550	561		Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)	Yavapai-Prescott Reservation, AZ	143	1
551	562	B	Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada	Yerington Colony, NV, Campbell Ranch, NV	382	1
552	563		Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)	Rumsey Indian Rancheria, CA	42	1
553	564		Yomba Shoshone Tribe of the Yomba Reservation, Nevada	Yomba Reservation, NV	81	1
554	565		Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas)	Ysleta del Sur Pueblo and Off-Reservation Trust Land, TX	609	1
555	566		Yupit of Andreafski	Andreafsky ANVSA, AK	80	1
556	567		Yurok Tribe of the Yurok Reservation, California	Yurok Reservation, CA	712	1
557	568		Zuni Tribe of the Zuni Reservation, New Mexico	Zuni Reservation and Off-Reservation Trust Land, NM--AZ	7,627	1
<b>Total:</b>					<b>1,040,851</b>	<b>--</b>

**Notes:**

This Table reflects the mapping of federally recognized Indian Tribes per 83 Fed. Reg. 4,235 (Jan. 30, 2018) to Table PCT4 (entitled "American Indian and Alaska Native Alone or in Combination with One or More Races") of the United States national census conducted by the U.S. Census Bureau in 2010, accessible via the U.S. Census Bureau data repository, American Factfinder, filtered according to geography (i.e., American Indian and Alaska Native areas) and race and ethnicity (i.e., American Indian and Alaska Native). In order to access Table PCT4, take the following steps: 1. Access the U.S. Census Bureau's American Factfinder, "Advanced Search" feature at factfinder.census.gov. 2. Click the "Geographies" label on the left sidebar. 3. Select "American Indian Area/Alaska Native Area/Hawaiian Home Land - 250" from the dropdown menu. 4. Select "All American Indian Areas/Alaska Native Areas/Hawaiian Home Lands within the United States" from the resulting list. 5. Click "Add to your selection" with the item in step 4 selected. 6. Click the "Race and Ethnic Groups" label on the left sidebar. 7. Click the link "Alaska Native." 8. Click the link "American Indian." 9. Use the dropdown menu that reads "All Available Programs" to select "Decennial Census." 10. From the resulting array of tables, select Table PCT4: "AMERICAN INDIAN AND ALASKA NATIVE ALONE OR IN COMBINATION WITH ONE OR MORE RACES."

<sup>1</sup> In some instances, the geographic census areas mapped to an Indian Tribe were also mapped to other Indian Tribes. To avoid double-counting, it was necessary to group Indian Tribes together. When this occurs, the column contains multiple numbers, reflecting the number of grouped Indian Tribes. See also Exception Variants below.

<sup>2</sup> Reflects Indian Tribe name per the list of federally recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018).

<sup>3</sup> Reflects geographic census area(s) name(s) mapped to specific Indian Tribe(s), per Table PCT4 (entitled "American Indian and Alaska Native Alone or in Combination with One or More Races") of the United States national census conducted by the U.S. Census Bureau in 2010, accessible via the U.S. Census Bureau data repository, American Factfinder, as explained above.

<sup>4</sup> Reflects the value of "Total Population" for the census area(s) mapped to specific Indian Tribe(s), per Table PCT4 (entitled "American Indian and Alaska Native Alone or in Combination with One or More Races") of the United States national census conducted by the U.S. Census Bureau in 2010, accessible via the U.S. Census Bureau data repository, American Factfinder, as explained above.

**Exception Variant:**

- A. The U.S. Census population data lists zero population for 29 Indian Tribes. These Indian Tribes are included in Group 1 of the Jenks Groupings.
- B. The Federal Register notice lists 12 Indian Tribes for which the U.S. Census aligns more than one geographic census area. For purposes of Jenks groupings, all 12 Indian Tribes are aligned to the Group 1 category.



No.	Sequential Number <sup>1</sup>	Exception Variant	Indian Tribe(s) <sup>2</sup>	Geographic Census Area Name <sup>3</sup>	Total Population per 2010 U.S. Census Table PCT <sup>4</sup>	Group Alignment
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C. The U.S. Census population data aligns the population of more than one Indian Tribe to only one census area. For purposes of Jenks Groupings, each Indian Tribe is counted as a separate and distinct Indian Tribe, and is aligned to Jenks Groupings based on the population listed for the census area.

D. The U.S. Census population data aligns the population of more than one Tribal Nation to more than one census area, with a combined population of 21,692. For purposes of Jenks Groupings, each Indian Tribe is counted as a separate and distinct Indian Tribe, and are aligned to Jenks Groupings based on the total population listed for the census areas.

E. The Federal Register notice lists 26 Indian Tribes for which there is no evident alignment to U.S. Census geographic area names, and therefore no population estimate. These Indian Tribes are included in Group 1.





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ATTACHMENT B

Redlined Edits to Environmental Mitigation Trust Agreement  
for Indian Tribe Beneficiaries, as modified on May 19, 2020

**ENVIRONMENTAL MITIGATION TRUST AGREEMENT  
FOR INDIAN TRIBE BENEFICIARIES**

(as modified on ~~November 15, 2018~~May 19, 2020)

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;

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

**Whereas**, on August 13, 2018, the Defendants and the Trustee agreed to certain material modifications, and, on November 15, 2018, to certain nonmaterial modifications to the Indian Tribe Trust Agreement ~~that are reflected herein~~;

~~**Whereas**, the United States will lodge the modified Indian Tribe Trust Agreement with the Court and will accept comments from interested Indian Tribes for a 30-day period after lodging; and~~

~~**Whereas**, after the comment period, the United States will either file a motion requesting the Court to approve the modifications in accordance with Paragraph 6.5 or seek other relief from the Court;~~

~~**Whereas**, on November 15, 2018, the United States and the Trustee agreed to certain minor modifications to the Indian Tribe Trust Agreement that are reflected herein;~~

**Whereas**, the United States and the Trustee agreed in writing to certain additional minor modifications and clarifying amendments to the Indian Tribe Trust Agreement that are reflected herein (“proposed amendments”), and the United States will file these proposed amendments with the Court;

**Whereas**, the Trustee will provide notice of these proposed amendments to the Beneficiaries via Interlinks and by posting the proposed amendments on the public-facing website; and

**Whereas**, the proposed amendments to the Indian Tribe Trust Agreement shall be effective on the Trust Modification Effective Date;

**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 “2010 United States Census Table PCT4” shall mean Table PCT4 (entitled “American Indian and Alaska Native Alone or in Combination with One or More Other Races”) of the United States national census conducted by the U.S. Census Bureau in 2010.

1.2 “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.

1.3 “Beneficiary Status Certification Form” shall mean the Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form that is attached as Appendix D-3 to this Indian Tribe Trust Agreement.

1.4 “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.

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

1.6 “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).

1.7 “Court” shall mean the United States District Court for the Northern District of California.

1.8 “Court’s Approval Order” shall mean the Court’s Order dated \_\_\_\_\_, November 16, 2018, approving the modifications to the Indian Tribe Trust Agreement in this matter. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. —5559.

1.9 “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;

1.10 “Delaware Act” shall mean the Delaware Statutory Trust Act, Del. Code Ann. tit.12, §§ 3801-3826.

1.11 “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).

1.12 “Eligible Mitigation Action” shall mean any of the actions listed in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement.

1.13 “Eligible Mitigation Action Administrative Expenditure” shall mean those administrative expenditures by Beneficiaries specified in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) to this Indian Tribe Trust Agreement, and shall not include Trust Administration Costs.

1.14 “EMA Certification Form” shall mean the Beneficiary Eligible Mitigation Action Certification form that is attached as Appendix D-4 to this Indian Tribe Trust Agreement.

1.15 “Federal Agency” shall mean any agency of the United States government.

1.16 “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.

1.17 “Force Majeure” shall have the same meaning as in Paragraph 54 of the First Partial Consent Decree.

1.18 “Indian Land” shall mean the lands of any Indian Tribe or within Indian country.

1.19 “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 recognized Indian Tribes at 83 Fed. Reg. 4,235 (Jan. 30, 2018), which will be updated from time to time.

1.20 “Indian Tribe Trust Agreement” shall mean the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries approved by the Court on September 19, 2017, *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 49, the modifications thereto as approved by the Court’s Approval Order, and the fully executed version filed with the Court on the Trust Modification Effective Date.

1.21 “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.

1.22 “IRS” shall mean the Internal Revenue Service.

1.23 “Second Partial Consent Decree” shall mean the Second 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. 3228-1), on May 17, 2017.

1.24 “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.

1.25 “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.

1.26 “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).

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

1.28 “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.

1.29 “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.

1.30 “Termination Date” shall mean the date that the Indian Tribe Trust terminates pursuant to Paragraph 6.8 of this Indian Tribe Trust Agreement.

1.31 “Trust Administration Costs” shall mean all expenditures of Trust Assets by the Trustee.

1.32 “Trust Effective Date” shall mean October 2, 2017, the date that the United States filed the fully executed final version of the Indian Tribe Trust Agreement with the Court. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.), Dkt. No. 51-2.

1.33 “Trust Modification Effective Date” shall be \_\_\_\_\_, 2018, ~~the date that the United States filed the fully executed version of the November 15, 2018 modification of the Indian Tribe Trust Agreement with the Court. *United States v. Volkswagen AG, et al.*, No. 16-cv-295 (N.D. Cal.)~~ 30 Days after the following two requirements are satisfied: (1) the United States files with the Court the fully executed version of the Indian Tribe Trust Agreement, as modified on May 19, 2020; and (2) the Trustee provides notice to the Beneficiaries of the proposed amendments to the State Trust Agreement as required by Paragraph 6.5.

1.34 “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.

1.35 “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 form (“EMA Certification Form”) (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 ("Consultation Process"), 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: (1) to 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) consistent with comments received from Indian Tribes during the Consultation Process, to 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, semiannual 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 Scope of Tasks. The technical assistance provider shall perform the following tasks: (i) provide outreach and training to the Indian Tribes to assist them in completing their Certification for Beneficiary Status under Environmental Mitigation Trust Agreement form ("Beneficiary Status Certification Form") (Appendix D-3) and their EMA Certification Form (Appendix D-4); (ii) review the EMA Certification Forms (Appendix D-4) submitted by Beneficiaries for each funding cycle for compliance with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation



Action Expenditures) as well as Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement; (iii) request missing information from the Indian Tribes necessary to complete the Beneficiary Status Certification Forms (Appendix D-3) and EMA Certification Forms (Appendix D-4); and (iv) after review of the EMA Certification Forms (Appendix D-4) submitted in each funding cycle, prepare a report for the Trustee indicating whether each form complies with the requirements of Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures) and Section V (Allocation of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust Agreement. The technical assistance provider's review and report shall be based on the information provided to it by each Indian Tribe; the technical assistance provider may conclusively rely on the accuracy of the information provided by an Indian Tribe without any further duty of inquiry. The technical assistance provider's report relating to its review of the EMA Certification Forms (Appendix D-4) shall be delivered to the Trustee five Business Days before the Trustee's deadlines to approve or deny any EMA Certification Forms (Appendix D-4) in subparagraph 5.2.16. If there are differences or disputes relating to the services provided by the technical assistance provider pursuant to this Indian Tribe Trust Agreement, the Trustee and the United States shall work cooperatively to address and attempt to resolve those issues with the technical assistance provider. The duties and obligations of the technical assistance provider to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle.

2.1.1.3 Budget. In order to fund its services, the technical assistance provider shall submit to the Trustee, in electronic and hard-copy formats, an annual budget for its services in each year. The annual budget shall be submitted 45 Days before the commencement of the applicable budget period for review by the Trustee, and shall include: (i) a detailed description of the proposed services described above in subparagraph 2.1.1.2; (ii) a proposed management plan for the proposed services, including a detailed budget for proposed expenses for the upcoming year, an identification of all indirect costs, and an implementation and expenditure timeline; (iii) a certification that indirect costs comply with the limits in subparagraph 2.1.1.4; (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 2.1.1.5. The technical assistance provider shall provide additional information as requested by the Trustee. The Trustee shall post each proposed annual budget on the Indian Tribe Trust's public-facing website upon receipt. The Trustee must approve the annual budget for the technical assistance provider's services before disbursing funds for the budget. 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 2.1.1.3, and shall disburse funds according to the written instructions provided by the technical assistance provider. In connection with a modification of this Indian Tribe Trust Agreement, the technical assistance provider may revise its initial budget to take into account factors including the scope of tasks listed in subparagraph 2.1.1.2 and the reduction in the number of funding cycles in subparagraph 5.0.5.2.

2.1.1.4 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 2.1.1.3, 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.

2.1.1.5 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.

2.1.1.6 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. Not later than December 31, 2022, any unused funds held by the technical assistance provider shall be returned to the Indian Tribe Trust.

2.1.2 Beneficiary Status, Designated Beneficiary's Participation Notice, and Funding Requests.

2.1.2.1 Establishment of Beneficiary Status. Prior to receiving any funds, each Indian Tribe must establish Beneficiary status pursuant to Paragraph 4.0 by filing with the Court a Beneficiary Status Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. At the time of filing the Beneficiary Status Certification Form with the Court, each Indian Tribe shall also concurrently provide a copy of the Beneficiary Status Certification Form to the Trustee in electronic format and by mail pursuant to Paragraph 6.0 and subparagraph 6.0.1.

2.1.2.2 Designated Beneficiary's Participation Notice. Beginning with the second funding cycle, after an Indian Tribe has been designated as a Beneficiary pursuant to subparagraphs 4.0.2 and 5.0.5.1, that Indian Tribe Beneficiary may participate in the second and any subsequent funding cycle by submitting to the Trustee, pursuant to subparagraphs 5.0.5.3.3 and 5.0.5.3.5, a Designated Beneficiary's Participation Notice (Appendix D-6) by the deadline established for each funding cycle in which it would like to participate.

2.1.2.3 Funding Requests. In any request for Eligible Mitigation Action funding submitted to the Trustee by any Beneficiary, the Beneficiary shall timely submit an EMA Certification Form (Appendix D-4) for each funding cycle, and shall comply with the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable. Each allocation provided to any Indian Tribe that is designated as 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), 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. If additional funds are required to fund this Tribal Administration Cost Subaccount, the Trustee shall confer with the United States to attempt to find an appropriate resolution to address any funding shortfall.

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. The Tribal Advisory Council shall: (i) advise the technical assistance provider on its outreach and training efforts to ensure that Indian Tribes are aware of the Indian Tribe Trust; and (ii) provide a forum for Indian Tribes to raise general questions relating to the Indian Tribe Trust Agreement. The Trustee agrees to select the Institute for Tribal Environmental Professionals to coordinate the establishment of a Tribal Advisory Council. Within 30 Days after the Court's Approval Order is issued, the Institute for Tribal Environmental Professionals shall undertake efforts to establish a Tribal Advisory Council and shall seek Indian Tribe representatives from the various regions of the United States to serve as Council members. The technical assistance provider shall provide a summary report to the Trustee regarding its meetings with the Tribal Advisory Council. The technical assistance provider's summary report may be submitted to the Trustee as a part of its regular semi-annual report to the Trustee pursuant to subparagraph 2.1.1.5. 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 for the purposes listed in this subparagraph. The Institute for Tribal Environmental Professionals shall follow the requirements of subparagraphs 2.1.1.3, 2.1.1.4, and 2.1.1.5 with respect to funding requests and reporting obligations for the Tribal Advisory Council. The duties and obligations of the Tribal Advisory Council to the Indian Tribe Mitigation Trust shall terminate with the conclusion of the last funding cycle. 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 its 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. Initially, the Trustee will use Intralinks to provide this method of communication. The Trust may change this method at any time but shall provide 30 Days’ notice to the Beneficiaries in connection with any change;

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, 2% of Shared State and Indian Tribe Administration Costs, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement;
- 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 of the Trust's annual financial statements prepared and posted on the website. In its sole discretion, the United States may waive the requirement of an annual independent audit of the Trust's annual financial statements and the requirement of a semi-annual independent review of the Trust's financial statement for any semi-annual period, 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;
- 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 the allocation 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 allocation 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~~, and other Government Securities as defined under Section 2(a)(16) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(16), including, but not limited to, Fannie Mae, Freddie Mac, Federal Home Loan Bank and Federal Farm Credit; (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, allocation or distribution out of the Trust Assets.

3.3.1 Semiannual 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 one-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 (1) financial statements for the semi-annual period ending June 30 of each year, accompanied by a review report thereon from an independent certified public accounting firm; (2) financial statements for the annual period ending December 31 of each year, accompanied by an audit opinion thereon from an independent certified public accounting firm; (3) all semi-annual and annual period's financial statements shall include disclosure of the disposition of Trust Assets from the previous year end date through the calendar quarter immediately preceding the Financial Reporting Date, and a supplemental schedule presenting a reconciliation of the Trustee's prior budget projections for Trust Administration Costs to actual performance for that period; and (4) the independent certified public accounting firm shall perform its review of the semi-annual financial statements and its audit of the annual financial statements in accordance with auditing standards generally accepted in the United States (i.e., audit standards issued by the Association of International Certified Professional Accountants ("AICPA")).

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 (a) the Tribal Administration Cost Subaccount established pursuant to subparagraph 2.1.3.2; and (b) 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 Beneficiary Status Certification Form (Appendix D-3) the EMA Certification Form (Appendix D-4), the Designated Beneficiary's Participation Notice (Appendix D-6), and the Beneficiary's Election to Opt Out Form (Appendix D-7). 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. 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 technical assistance provider, including, without limitation, the technical assistance provider's report relating to EMA Certification Forms (Appendix D-4) that it has reviewed in each funding cycle pursuant to subparagraph 2.1.1.2, its annual budget pursuant to subparagraph 2.1.1.3, and its report relating to its services and expenditures pursuant to subparagraph 2.1.1.5.

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 or the technical assistance provider 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 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), 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, any indemnification amounts as provided in accordance with subparagraph 3.5.3, and its commercially reasonable fees, costs, and expenses in connection with any modification of this Indian Tribe Trust Agreement. 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation), 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 (Initial Allocation) and Appendix D-1A (Initial 3.0 Liter Allocation), 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 semiannual 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. In addition, any and all payments relating to Taxes are not subject to the 15-Day posting requirement on the public-facing website. 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 Beneficiary Status Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9. For the first funding cycle, an Indian Tribe was required to file its Beneficiary Status Certification Form (Appendix D-3) at the time it filed its first funding request, including any request seeking DERA funds, which was due 90 Days after the Trust Effective Date. In order to qualify as a designated Beneficiary for funding cycles after the first funding cycle, any Indian Tribe, which has not yet been designated as a Beneficiary by the Trustee, shall file a Beneficiary Status Certification Form (Appendix D-3) with the Court by the following deadlines: for the second funding cycle -- by March 18, 2019; for the third funding cycle -- by March 16, 2020; for the fourth and any subsequent funding cycle -- by March 16, 2021. At the time of filing the Beneficiary Status Certification Form (Appendix D-3) with the Court, each Indian Tribe shall also, by the same deadlines, concurrently deliver a copy of the Beneficiary Status Certification Form (Appendix D-3) 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 4.0.2 and 5.0.5.1.

4.0.1 Notice of Objection. If the United States determines that a Beneficiary Status Certification Form (Appendix D-3) 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 the deadline for each funding cycle set in Paragraph 4.0 for a Certifying Entity to file its Beneficiary Status Certification Form (Appendix D-3) 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, the Trustee shall file with the Court, publish on its public-facing website, and serve on each Consent Decree Party and Certifying Entity a Notice of Beneficiary Designation according to the following schedule: for the first funding cycle -- not later than 120 Days after the Trust Effective Date; for the second funding cycle -- by May 17, 2019; for the third funding cycle -- by May 15, 2020; for the fourth funding cycle and any subsequent funding cycle -- by May 17, 2021. The Trustee's Notice of Beneficiary Designation shall indicate:

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.

4.0.2.4 Once a Certifying Entity has been deemed a Beneficiary hereunder, it remains a Beneficiary for all future funding cycles, and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

**4.1** Intentionally Reserved.

## **4.2 Required Certifications in Appendix D-3 Form**

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status Certification



Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Beneficiary Status 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 Appendices 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 Beneficiary Status 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. ALLOCATION 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) 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 (Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation) as follows: 1.86% to the Tribal Allocation Subaccount and 0.17% to the Tribal Administration Cost Subaccount.

#### 5.0.5 Allocation of Tribal Allocation Subaccount.

5.0.5.1 Trustee's Notices. The Trustee shall post a notice on the Indian Tribe Mitigation Trust's public-facing website according to the following schedule:

(a) First Funding Cycle. Within 30 Days after the Trust Effective Date, the Trustee was required to post 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 Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2; (ii) that each Indian Tribe may submit to the Trustee an EMA Certification Form (Appendix D-4) that meet the requirements of subparagraphs 5.2.2 through 5.2.13, as applicable, by 90 Days after the Trust Effective Date; and (iii) stating 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. In accordance with this schedule, the Trustee filed a Notice of Beneficiary Designation with the Court on January 29, 2018, which designated 29 Indian Tribes as Beneficiaries pursuant to the terms of the Indian Tribe Trust Agreement. The Notice of Beneficiary Designation stated that two Tribes of the 29 designated Beneficiaries did not file a Beneficiary Status Certification Form (Appendix D-3) and an EMA Certification Form (Appendix D-4) by the deadline for the first funding cycle, and are not eligible to participate in the first funding cycle.<sup>1</sup> In addition, one Tribe of the 29 designated Beneficiaries applied for the DERA Option described in Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), did not receive a DERA Award from EPA, and is not eligible to participate in the first funding cycle.<sup>2</sup> As provided in subparagraph 4.0.2.4, once a Certifying Entity has been deemed a Beneficiary, it remains a Beneficiary for all future funding cycles and may apply for Eligible Mitigation Action funding by submitting a Designated Beneficiary's Participation Notice (Appendix D-6) and an EMA Certification Form (Appendix D-4) by the deadline for each respective funding cycle as set forth in subparagraphs 5.0.5.3.3 and 5.0.5.3.5.

(b) Other Funding Cycles. For funding cycles after the first funding cycle, the Trustee shall post a notice on the Indian Tribe Trust's public-facing website by January 15, 2019 (for the second funding cycle), January 15, 2020 (for the third funding cycle), and January 15, 2021 (for the fourth funding cycle and any subsequent funding cycles) stating that: (i) each Indian Tribe, which has not yet been designated a Beneficiary by the Trustee, may seek to become a Beneficiary hereunder by filing with the Court a Beneficiary Status Certification Form (Appendix D-3) consistent with Paragraph 4.2 by the following deadlines: for the second funding cycle -- March 18, 2019; for the third funding cycle -- March 16, 2020; and for the fourth funding cycle and any subsequent funding cycles -- March 16, 2021; and (ii) the Trustee will determine and post a Notice of Beneficiary Designation of each certifying Indian Tribe by the deadline set in subparagraph 4.0.2, 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 Four Funding Cycles. The assets in the Tribal Allocation Subaccount shall be committed to Beneficiaries over four funding cycles as follows: (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-third of total remaining assets in the Tribal Allocation Subaccount may be committed during the second funding cycle; (iii) no more than one-half of total remaining assets in the Tribal Allocation Subaccount may be committed during the third funding cycle; and (iv) the remaining assets in the Tribal Allocation Subaccount may be committed during the fourth funding cycle. In the event uncommitted funds remain in the Tribal Allocation

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<sup>1</sup> These two Tribes are the Southern Ute Indian Tribe and the Swinomish Indian Tribal Community.

<sup>2</sup> This Tribe is the San Manuel Band of Mission Indians.

Subaccount or the Tribal Administration Subaccount after all funding requests have been approved or rejected during the fourth funding cycle, such funds may be made available for a fifth funding cycle in accordance with the procedure in subparagraphs 5.0.5.3.4 through 5.0.5.3.5. For purposes of this subparagraph 5.0.5.2, “remaining assets” shall mean the amount on deposit in the Tribal Allocation Subaccount on the following dates: (i) December 31, 2017 for the first funding cycle; (ii) December 31, 2018 for the second funding cycle; (iii) December 31, 2019 for the third funding cycle; and (iv) December 31, 2020 for the fourth funding cycle; and “uncommitted funds” shall mean the amount on deposit in the Tribal Allocation Subaccount on December 31, 2021 for the fifth funding cycle (if it occurs).

5.0.5.3 In order to ensure an equitable allocation of funds in the Tribal Allocation Subaccount among Beneficiaries to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries, the Trustee shall apply the allocation method set forth below in each funding cycle.

5.0.5.3.1 Group Division Based on 2010 United States Census Table PCT4. The 2010 United States Census Table PCT4 shall provide the only population statistics used for the Indian Tribe Trust Agreement as provided herein, and was used to compile the Alignment Table of Federally Recognized Indian Tribes to 2010 U.S. Geographic Census Areas (Appendix D-8) (“Alignment Table”). For the avoidance of doubt, the population statistics in the Alignment Table shall not be updated or revised for the life of the Indian Tribe Trust Agreement. Based on the 2010 United States Census Table PCT4 and application of a Jenks Grouping algorithm ranking population based on statistical analysis, the Indian Tribes have been divided into three Groups: (1) Group One with a population range of 0 to 16,906; (2) Group Two with a population range of 16,907 to 47,649; and (3) Group Three with a population of 47,650 and above. Group One consists of 558 Tribes, which represent 51.52 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; Group Two consists of 6 Tribes, which represent 10.61 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes; and Group Three consists of 4 Tribes, which represent 37.87 percent of the sum of the population estimates attributable to the 2010 U.S. geographic census areas, as reported on the 2010 United States Census Table PCT4, that align with the list of federally recognized Indian Tribes. This categorization, which is reflected in the Alignment Table (Appendix D-8), shall form the basis for part of the allocation (i.e., the pro rata population-based allocation) in each funding cycle. These three Groups shall not be adjusted except as specifically set forth in the Alignment Table (Appendix D-8) with respect to any new federally recognized Indian Tribes. If any new Indian Tribe is recognized by the United States, in order to participate as a Beneficiary in the Indian Tribe Trust, that Indian Tribe shall file with the Court a Beneficiary

Status Certification Form (Appendix D-3), and concurrently deliver to the Trustee a Beneficiary Status Certification Form (Appendix D-3) together with official documentation of such federal recognition as an Indian Tribe by the deadlines set forth in Paragraph 4.0 for the respective funding cycle. For purposes of this Indian Tribe Trust, all new federally recognized Indian Tribes shall be deemed to be members of Group One with a zero population for all funding cycles.

5.0.5.3.2 First Funding Cycle. Twenty-six Indian Tribes, which were designated as Beneficiaries and submitted an approvable funding request by the filing deadline for the first funding cycle, are eligible to participate in the first funding cycle. Within 10 Business Days after the Trust Modification Effective Date, the Trustee shall implement the steps below for the first funding cycle:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the first funding cycle equally among the 26 Beneficiaries participating in the first funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the first funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups (Group One, Group Two, and Group Three), the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Funding Limit. The Trustee shall limit the allocation of funding for a Beneficiary to no more than the amount that the Beneficiary requested in its original EMA Certification Form (Appendix D-4). The Trustee shall reallocate any "overage" among the Beneficiaries in the first funding cycle that did not -- after application of Steps 1 and 2 -- receive the full amount of funding that the Beneficiary had requested in its original EMA Certification Form (Appendix D-4) (the "Remaining Beneficiaries"). This reallocation of the overage shall be based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.<sup>3</sup> The population for each Indian Tribe shall be determined in accordance with

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<sup>3</sup> For example, assume a Beneficiary requested funding of \$200,000 for the first funding cycle, but application of Steps 1 and 2 would result in a projected allocation of \$350,000 for that Beneficiary. The "overage" of \$150,000 would be reallocated among the Remaining Beneficiaries based on each Remaining Beneficiary's pro rata share of the total Indian Tribe population of the Remaining Beneficiaries participating in the first funding cycle without regard to any alignment into Groups.



the population statistics in the 2010 United States Census Table PCT4 as set forth in the Alignment Table (Appendix D-8).

Step 4: Notice. Within ten Business Days after applying the allocation rules in Steps 1 through 3, the Trustee shall transmit notice to each of the 26 Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee a revised EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the first funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit a revised EMA Certification Form (Appendix D-4), that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. The Beneficiary's revised EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the first funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the first funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.3.3 Second through Fourth Funding Cycles. Within 5 Business Days after filing a Notice of Beneficiary Designation pursuant to subparagraph 4.0.2 for the second through fourth funding cycles, the Trustee shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks stating that any Beneficiary that would like to participate in the respective funding cycle shall submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6) by the following deadlines: for the second funding cycle -- June 17, 2019; for the third funding cycle -- June 15, 2020; for the fourth funding cycle -- June 16, 2021. Based on its receipt of timely-filed Designated Beneficiary's Participation Notices (Appendix D-6), the Trustee shall determine the number of participating Beneficiaries for each respective funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within

each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses and describes five "Exception Variants" that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in a given funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within ten Business Days after the receipt of Designated Beneficiary's Participation Notices (Appendix D-6) that were timely filed by the deadline for each funding cycle, the Trustee shall apply the allocation rules in Steps 1, 2, and 3 in each funding cycle, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

After the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7) by the following deadlines: August 30, 2019 (for the second funding cycle); August 28, 2020 (for the third funding cycle), and August 30, 2021 (for the fourth funding cycle). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount and shall be made available for allocation to Beneficiaries in the next and/or subsequent funding cycles, as determined pursuant to subparagraph 5.0.5.2. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in each funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in that funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.3.4 Trustee's Accounting. By February 28, 2022, the Trustee shall file with the Court, deliver to the United States, by and through EPA, and to each Indian Tribe previously designated 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." After determining the Tribal Subaccounts Remainder Balance, the Trustee shall meet and confer with the United States. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance contains sufficient funds for a fifth funding cycle, the Trustee, by March 30, 2022, shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks that it will conduct a fifth funding cycle pursuant to subparagraph 5.0.5.3.5. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance appears to be insufficient to warrant a fifth funding cycle, the United States will seek an Order from the Court for further relief, which may include the authority for the Trustee to terminate the Indian Tribe Trust in accordance with the requirements of Paragraph 6.8.

5.0.5.3.5 Fifth Funding Cycle. In accordance with the procedures set forth in subparagraph 5.0.5.3.4, the Trustee shall provide notice by March 30, 2022, to the Beneficiaries via Intralinks that the Tribal Subaccounts Remainder Balance is available for a fifth funding cycle. If there are sufficient funds for the fifth funding cycle, by the deadline of April 29, 2022, any Indian Tribe that has been deemed a Beneficiary hereunder and would like to participate in the fifth funding cycle may submit to the Trustee a Designated Beneficiary's Participation Notice (Appendix D-6). Based on its receipt of timely-filed Designated Beneficiary's Participation Notices, the Trustee shall determine the number of participating Beneficiaries for the fifth funding cycle, and shall implement the following steps:

Step 1: Per Capita Allocation. The Trustee shall allocate 50 percent of the available funding for the fifth funding cycle equally among the Beneficiaries participating in the funding cycle.

Step 2: Pro Rata Population-based Allocation. The Trustee shall allocate the other 50 percent of the available funding for the fifth funding cycle into three separate funding pools, allocating 51.52 percent to Group One, 10.61 percent to Group Two, and 37.87 percent to Group Three. Within each of the three Groups, the Trustee shall allocate an amount to each of the participating Beneficiaries based on the pro rata share of: (i) the participating Beneficiary's population to (ii) the total population of all participating Beneficiaries within its Group, in accordance with the Alignment Table (Appendix D-8).

Step 3: Procedures for Exception Variants. The Alignment Table (Appendix D-8) discusses five Exception Variants that apply to certain Indian Tribes, and establishes specific allocation rules for these situations. For all Indian Tribe Beneficiaries associated with an Exception Variant that have submitted a timely-filed Designated Beneficiary's Participation Notice (Appendix D-6) in the fifth funding cycle, the Trustee shall follow the procedures set out in the Alignment Table (Appendix D-8) in allocating the amount of funding available for those Indian Tribe Beneficiaries.

Step 4: Notice. Within fifteen Business Days after April 29, 2022, the Trustee shall apply the allocation rules in Steps 1, 2, and 3, and shall transmit notice to each of the participating Beneficiaries via Intralinks regarding the Trustee's allocation determination of the amount of funding available for each Beneficiary.

Within 60 Days after the Trustee has delivered its allocation determination via Intralinks to each Beneficiary, each Beneficiary must either submit to the Trustee an EMA Certification Form (Appendix D-4) to implement Eligible Mitigation Actions with the amount allocated to that Beneficiary, or elect to opt out of the funding cycle by submitting a Beneficiary's Election to Opt Out Form (Appendix D-7). If a Beneficiary elects to opt out or fails to timely submit an EMA Certification Form (Appendix D-4) by the deadline, that Beneficiary has no right or entitlement to those funds; the amount allocated to it shall be returned to the Tribal Allocation Subaccount. For funding requests that seek DERA funds, the DERA Notice of Intent to Participate or the DERA Project Narrative may be submitted to the Trustee for purposes of the funding request deadline. The Beneficiary's EMA Certification Form (Appendix D-4) is subject to the Trustee's approval under subparagraph 5.2.16. Within five Business Days after the distribution of all funds to all of the participating Beneficiaries in the fifth funding cycle, the Trustee shall post the final allocation amounts for all participating Beneficiaries in the fifth funding cycle on the Indian Tribe Trust's public-facing website.

5.0.5.4 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 (Eligible Mitigation Actions and Mitigation Action Expenditures).

**5.2 Funding Requests:** Beneficiaries may submit requests for Eligible Mitigation Action funding by filing with the Trustee an EMA 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 (Eligible Mitigation Actions and Mitigation Action Expenditures), that Beneficiary may use its DERA proposal as support for its funding request for those Eligible Mitigation Actions funded through the DERA Option. In

order to qualify for funding for the DERA Option under Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the Beneficiary must deliver a copy of an EPA DERA selection letter to the Trustee by the deadline to timely submit an EMA Certification Form (Appendix D-4) for a particular funding cycle pursuant to either subparagraph 5.0.5.3.3 or subparagraph 5.0.5.3.5.

5.2.13 Joint Application. After the requirements of subparagraph 5.0.5 have been satisfied and the Trustee has made its allocation determination of the amount of funding available for each participating Beneficiary in a funding cycle, two or more participating Beneficiaries may submit a joint request to fund an Eligible Mitigation Action using their combined allocation. In order to submit a Joint Application, each participating Beneficiary must comply with all requirements individually as set forth herein. Upon receipt of the Trustee's allocation determination of available funding pursuant to Step 4 of subparagraphs 5.0.5.3.2, 5.0.5.3.3 or 5.0.5.3.5, each Indian Tribe interested in pursuing a joint request to fund an Eligible Mitigation Action shall complete an individual EMA Certification Form (Appendix D-4) that: (1) cross-references the other interested Indian Tribe's EMA Certification Form (Appendix D-4); (2) makes all the required certifications on behalf of each Indian Tribe individually; and (3) explains how the two individually allocated amounts will be used to jointly fund the Eligible Mitigation Action in that funding cycle. Both individual EMA Certification Forms (Appendix D-4) must be approved in accordance with subparagraph 5.2.16 before any disbursement of funds will be made by the Trustee.

5.2.14 Publication of Funding Requests. The Trustee shall post on the Indian Tribe Trust's public-facing website a copy of each approved EMA Certification Forms (Appendix D-4) and a list of each Beneficiary that filed a Beneficiary's Election to Opt Out Form (Appendix D-7) for each funding cycle 15 Days after the distribution of funds for each funding cycle.

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 EMA 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. The Trustee shall transmit to the requesting Beneficiary via Intralinks 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 according to the following schedule: for the first funding cycle -- within 60 Days after the deadline for Beneficiaries to submit a revised EMA Certification Form (Appendix D-4); and for the second through fifth funding cycles -- within 60 Days after the deadline for Beneficiaries to submit an EMA Certification Form (Appendix D-4) in each funding cycle; provided that, if the Trustee requests a modification to an EMA Certification Form (Appendix D-4) or additional information from a Beneficiary, the Beneficiary shall submit a modified EMA Certification Form (Appendix D-4) or the additional information to the Trustee no later than 30 Days after receiving the Trustee's request via Intralinks. The Trustee shall transmit to the requesting Beneficiary via Intralinks and post on the Indian Tribe Trust's public-facing website a written determination either



approving or denying the modified EMA Certification Form (Appendix D-4) within 30 days after receipt of the modified EMA Certification Form (Appendix D-4) or additional information from the Beneficiary. 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 (Eligible Mitigation Actions and Mitigation Action Expenditures). 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 (Eligible Mitigation Actions and Mitigation Action Expenditures) or Appendix D-4 (EMA Certification Form). 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. Each Beneficiary must complete all required documentation for the Trustee relating to incumbency and its security procedures prior to receiving any funds. Provided these conditions have been met by the Beneficiary, 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 (Eligible Mitigation Actions and Mitigation Action Expenditures), 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 October 2, 2024, the seventh anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Indian Tribe Mitigation Trust. After the seventh 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, initially Intralinks, 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 the balance in the Tribal Allocation Subaccount in the Trustee's monthly statement in the Intralinks General Information folder. Any notices required to be provided by the Trustee to the Beneficiaries hereunder shall be deemed to have been properly and sufficiently provided hereunder if the Trustee posts such notice on Intralinks or any successor secure method of internet-based communications in use by the Trustee at that time.

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](mailto: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](mailto:giuffrar@sullcrom.com)  
[nelless@sullcrom.com](mailto:nelless@sullcrom.com)  
[gnakayama@kslaw.com](mailto:gnakayama@kslaw.com)  
[cari.dawson@alston.com](mailto: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. The United States is a necessary party to any Dispute Resolution process under this Indian Tribe Trust.

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 (EMA Certification Form) 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. Minor modifications or clarifying amendments to the Indian Tribe Trust relating to the role of the technical assistance provider may be made upon written agreement among the United States, the Trustee, and the technical assistance provider, as necessary to enable the Trustee and the technical assistance 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; provided, however, if the Trustee has provided to the Beneficiaries not less than 30 Days' notice of any proposed material modifications to the Indian Tribe Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions and Mitigation Action Expenditures), the modification shall become effective in accordance with the Order of the Court approving the modification.

**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").

**6.86.9 Counterparts and Electronic Signatures:** Notwithstanding anything to the contrary contained herein, this Agreement and all documents required to be delivered hereunder may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. Modifications to this Agreement under Paragraph 6.5, written agreements concerning such modifications, and certain other documents required to be delivered hereunder (as identified by the Trustee) may be signed electronically. When used in or in connection with any such document, the words "execute," "execution," "signed," and "signature," and words of similar import, shall include electronic signatures and the keeping of records in electronic form. For these documents, electronic signatures and electronic records shall have the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other similar state laws based on the Uniform Electronic Transactions Act. The Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to its security procedures approved by Trustee. The Trustee will send a notice to the Beneficiaries via Intralinks indicating which documents required hereunder may be signed or executed using an electronic signature and will update that notice in accordance with its current security procedures from time to time. The Trustee may subsequently request hard copies, with inked signatures, for any document previously accepted in electronic form, and the Beneficiaries shall provide such requested hard copies as soon as practicable. For purposes of the Indian Tribe Trust, any reference to "Intralinks" shall also include not only this particular method of secure electronic communication between the Trustee and the Beneficiaries but also any future secure method of electronic communications between the Trustee and the Beneficiaries used for delivery of documents and notices required hereunder.

**6.96.10 Appendices:** The following appendices are attached to and part of the Indian Tribe Trust Agreement:

- Appendix D-1 - Initial Allocation
- Appendix D-1A - Initial 3.0 Liter Allocation
- Appendix D-1B - Weighted Average Allocation Formula for 2.0 and 3.0 Liter Allocation
- Appendix D-2 - Eligible Mitigation Actions and Mitigation Action Expenditures
- Appendix D-3 - Certification for Beneficiary Status under Environmental Mitigation Trust Agreement
- Appendix D-4 - Beneficiary Eligible Mitigation Action Certification
- Appendix D-5 - Form of Certificate of Trust of Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries
- Appendix D-6 - Designated Beneficiary's Participation Notice
- Appendix D-7 - Beneficiary's Election to Opt Out Form

Appendix D-8 - Alignment Table of Federally Recognized Indian Tribes to 2010 U.S.  
Geographic Census Areas

**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

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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:

---

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~~GEORGE FEYGIN  
Vice President, Legal & 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