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

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

BENEFICIARY'S LEAD AGENCY CONTACT INFORMATION:

Contact:	Waste Management and Radiological Protection Division Director, Jack Schinderle
Address:	Michigan Department of Environmental Quality, P.O. Box 30241, Lansing, Michigan 48909-7741
Phone:	517-284-6551
Fax:	517-373-4051
Email:	schinderlej@michigan.gov

2. Submission to Jurisdiction

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

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

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

4. Certification of Legal Authority

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

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

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trust for credit to the Beneficiary's allocation.

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

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

7. Publicly Available Information

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

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

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

(a) Shall not deny registration to any Subject Vehicle based solely on:

i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or

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

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

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

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

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

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

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

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

(d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 9(a)-(b).

10. Reliance on Certification

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

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

Signature: Rick Snyder

Name: Rick Snyder
Title: Governor
Date: Oct 23, 2017
Location: P.O. Box 30013, Lansing, Michigan 48909

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: C. Heidi Grether

Name: C. Heidi Grether
Title: Michigan Department of Environmental Quality Director
Date: Oct. 18, 2017
Location: P.O. Box 30473, Lansing, Michigan 48909

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: Neil Gordon

Title: Assistant Attorney General

Date: October 18, 2017

Location: P.O. Box 30755, Lansing, Michigan 48909

Attachment

Explanation pursuant to Paragraph 7 of Michigan's Certification for Beneficiary Status Under the Environmental Mitigation Trust Agreement

Records and documentation submitted by the State of Michigan ("Michigan") supporting each funding request and all expenditures of Trust Funds may be accessed pursuant to Michigan's Freedom of Information Act, MCL 15.231 *et seq.* ("FOIA"). The procedures for accessing such records and documentation are designed to support access and limit the burden on the general public. Upon submitting a request for public records to the FOIA Coordinator of the Michigan Department of Environmental Quality ("MDEQ"), a person has a right to inspect, copy, or receive copies of the requested public records. Michigan organizes the records and documentation supporting each funding request and expenditures of Trust Funds, thereby facilitating access to records and reducing any fees for a records search and copying. FOIA also authorizes Michigan to waive or reduce any such fees. MCL 15.234. In addition, information about Michigan's actions pursuant to the Environmental Mitigation Trust Agreement is available on the MDEQ's website.

Michigan has solicited and considered public input in developing its Beneficiary Mitigation Plan. On November 29, 2016, the MDEQ issued a Request for Information to solicit public input on a draft of the Beneficiary Mitigation Plan. The MDEQ requested input on, among other things, its proposal for allocating Mitigation Trust Fund monies, project types, and grantee match requirements. The Request for Information remained open until March 3, 2017, and was publicized via the MDEQ's website, a press release and two webinars. The MDEQ received comments from businesses, governmental and environmental organizations, and individuals. Further, the MDEQ prepared a document summarizing each comment and providing the MDEQ's response. The MDEQ also met with interested persons upon their request and gave presentations at several events to describe the draft Beneficiary Mitigation Plan and receive public input. The MDEQ has considered all comments and public input and is taking that information into account as it works to finalize Michigan's Beneficiary Mitigation Plan.

The certification in Paragraph 7 of Michigan's Certification for Beneficiary Status is subject to the FOIA provisions governing the publication of confidential business information and personally identifiable information. Those provisions authorize a public body to exempt from disclosure information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. Those provisions also authorize a public body to exempt from disclosure trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if certain conditions are met. MCL 15.243.