

Nevada Diesel Emission Mitigation Fund Competitive Application Form

For the Volkswagen Environmental Mitigation Trust Agreement
for State Beneficiaries



Applications are due by July 31, 2018



Please electronically submit completed applications to Joe
Perreira at NevadaDEMF@ndep.nv.gov and use the subject line:
NV Diesel Emission Mitigation Fund 2018 Application

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Acronyms and Abbreviations

AFLEET	Alternative Fuel Life-Cycle Environmental and Economic Transportation
CNG	Compressed Natural Gas
CO	Carbon Monoxide
CO ₂	Carbon Dioxide
DEQ	Diesel Emission Quantifier
DERA	Diesel Emission Reduction Act
EPA	United States Environmental Protection Agency
GOE	Nevada Governor's Office of Energy
GSE	Airport ground support equipment
GVWR	Gross Vehicle Weight Rating
LNG	Liquid Natural Gas
LPG	Liquid Propane Gas or Liquefied Petroleum Gas
NDEP	Nevada Division of Environmental Protection
NO _x	Oxides of nitrogen
OGV	Ocean going vessels
PM _{2.5}	Particulate matter 2.5 micrometers and smaller in diameter
State Trust	Environmental Mitigation Trust Agreement for State Beneficiaries

General Information

How to Apply

We request that you complete and electronically submit this competitive application using either Microsoft Word or Adobe Acrobat. Applicants must completely fill out this application form in order to be considered for funding. Incomplete applications will not be considered. This application and any supplemental information provided will serve as the primary means by which all applications are evaluated and projects are selected. The Nevada Division of Environmental Protection (NDEP) may contact you or your organization for clarification and/or supplemental information so make sure that the contact information you provide is accurate; applicants will have 10 calendar days to respond to any such request.

This is an annual, competitive application process. To be considered for funding in this 2018 cycle, completed applications must be received no later than July 31, 2018. If you have any questions about this application, please contact the NDEP prior to submitting your application and well in advance of the deadline to submit.¹

Quantifying Emissions Reductions

The NDEP will quantify the emission reductions resulting from the project by using the information included in a complete application. Generally, emission reductions will be quantified using the Alternative Fuel Life-Cycle Environmental and Economic Transportation (AFLEET) Tool² or the Diesel Emission Quantifier (DEQ)³. The quantifier being used will be determined by the Category of the funding request. Categories 1, 2, and 6 will be quantified using AFLEET and Categories 3, 4, 5, 7, 8, and 10 will be quantified using the DEQ. There are other tools for quantifying emission reductions, but the above tools are what the NDEP is generally planning to use. If you are having trouble gathering all of the required information for this application, please contact the NDEP well in advance of the deadline to submit as we may be able to provide some assistance.

Additional Information

Applicants selected for funding shall have two years to complete their project. If an application shows that the project cannot be completed in two years, it will not be selected for funding. If, after two years, a project has not been completed, funds will no longer be guaranteed for the project and the applicant will need to reapply. Prior to submitting an application for funding, it is recommended that all applicants also review the portions of Appendix D-2 of the Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust)⁴ that apply to their funding request as well as Nevada's Beneficiary Mitigation Plan⁵. Finally, the majority of the Categories of Eligible Mitigation Actions require the existing vehicle and/or engine to be rendered permanently inoperable. From Appendix D-2 of the State Trust:

¹ All questions regarding this application should be directed to Joe Perreira at NevadaDEMF@ndep.nv.gov

² The AFLEET Tool is available at: <https://greet.es.anl.gov/afleet>

³ The DEQ is available at: <https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq>

⁴ The State Trust (Appendix D-2 begins on page 52) is available at: <https://www.vwenvironmentalmitigationtrust.com/pdfs/Final%20Filed%20Dkt%2051-1%20%20State%20Beneficiary%20Trust%20Agreement.pdf>

⁵ Nevada's Beneficiary Mitigation Plan can be found at: https://ndep.nv.gov/uploads/air-vw-bmp-docs/beneficiary_mitigation_plan.pdf

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“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.

Eligible Mitigation Action Funding Eligibility Requirements

Category 1 – Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

Eligible Large Trucks include 1992-2009 engine model year diesel-powered class 8 Local Freight or Drayage.

Category 2 – Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)

Eligible Buses include 2009 engine model year or older diesel-powered class 4-8 school buses, shuttle buses, or transit buses.

Category 3 – Freight Switchers

Eligible Freight Switchers include pre-Tier 4 diesel-powered switcher locomotives that operate 1,000 or more hours per year.

Category 4 – Ferries/Tugs

Eligible Ferries and/or Tugs include unregulated, Tier 1, or Tier 2 diesel-powered marine engines.

Category 5 – Ocean Going Vessels (OGV) Shorepower

Eligible Marine Shorepower includes systems that enable a compatible vessel’s main and auxiliary engines to remain off while the vessel is at berth.

Category 6 – Class 4-7 Local Freight Trucks (Medium Trucks)

Eligible Medium Trucks include 1992-2009 engine model year diesel-powered class 4-7 Local Freight trucks.

Category 7 – Airport Ground Support Equipment

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.

Category 8 – Forklifts and Port Cargo Handling Equipment

Eligible Forklifts includes forklifts with greater than 8,000 pounds lift capacity.

Category 10 – Diesel Emission Reduction Act (DERA) Option

For applicants seeking funding through Category 10 – the DERA Option, please review the EPA’s current State Clean Diesel Grant Program Information Guide⁶ and the EPA’s Clean Diesel State Allocations webpage⁷. Only those eligible diesel emission reduction solutions that are not

⁶ EPA’s current State Clean Diesel Grant Program Information Guide is available at:

<https://www.epa.gov/sites/production/files/2018-04/documents/fy17-18-state-program-guide.pdf>

⁷ EPA’s Clean Diesel State Allocation webpage is: <https://www.epa.gov/cleandiesel/clean-diesel-state-allocations>

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also listed in the State Trust (that is, Categories 1-8) will be eligible for funding through this application.

Funding Levels for Eligible Mitigation Actions

Funding for selected projects depends on the Category of Eligible Mitigation Action, the fuel type of the replacement/repower (diesel, alternative fuel⁸, and all-electric), and whether or not it is a Government or Non-Government owned fleet. Applicants are expected to use the funding levels provided in this section. However, if a level of funding above the amounts listed is needed, a detailed justification in the Project Funding section of this application is required.⁹ Note that even if a project requesting funds above the listed amounts is selected, there is no guarantee that the award will match the amount requested.

For Categories 1, 2, and 6, replacement projects selected for funding will be eligible to receive, on a per vehicle basis, the dollar amount or the percent incentive cap, whichever is less. For example, a Government owned post-1997 engine model year diesel-powered school bus being replaced with a new, alternative fuel school bus is selected for funding. The final purchase price of the new, alternative fuel school bus is \$175,000. Looking at the Category 2 table below, this vehicle is eligible for \$45,000 or 35 percent of the total cost of the bus, whichever is less. Because 35 percent of the replacement cost is \$61,250, the applicant would be eligible to receive \$45,000, because that is the lesser of the two values. Repower projects selected for funding will be eligible to receive, on a per vehicle basis, the percentages listed in the tables.

Category 1 – Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

Replacement	Diesel	Alternative Fuel	All-Electric
Government	\$ 25,000	\$ 40,000	\$ 50,000
	35%	35%	35%
Non-Government	\$ 25,000	\$ 40,000	\$ 40,000
	25%	25%	35%

Repower	Diesel	Alternative Fuel	All-Electric
Government and Non-Government	30%	40%	50%

⁸ Some examples of alternative fuels include compressed natural gas (CNG), hybrid-electric, liquid natural gas (LNG), and liquid propane gas or liquefied petroleum gas (LPG).

⁹ Appendix D-2 of the State Trust includes funding limits that all State Beneficiaries must follow. Appendix D-2 of the State Trust (Appendix D-2 begins on page 52) is available at:

<https://www.vwenvironmentalmitigationtrust.com/pdfs/Final%20Filed%20Dkt%2051-1%20%20State%20Beneficiary%20Trust%20Agreement.pdf>

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Category 2 – Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)

Replacement	Diesel	Alternative Fuel	All-Electric
School Bus	\$ 30,000	\$ 45,000	\$ 60,000
	25%	35%	35%
Transit Bus	\$ 40,000	\$ 60,000	\$ 80,000
	25%	35%	35%
Non-Government Owned Bus	\$30,000	\$ 45,000	\$ 45,000
	25%	25%	35%

Repower	Diesel	Alternative Fuel	All-Electric
Government and Non-Government	30%	40%	50%

The NDEP is also creating a special funding category for 1997 and older engine model year school buses that are regularly operated in the state. These vehicles, if selected, will be eligible to receive up to \$80,000 or 50 percent, whichever is less, of the replacement cost of the school bus. The school bus must have passed the most recent Nevada Department of Public Safety school bus safety inspection and must have a current Nevada Department of Motor Vehicles registration. In order to be eligible, the applicant must also provide a copy of their most recent safety inspection for each school bus being requested for replacement with this application.

Category 6 – Class 4-7 Local Freight Trucks (Medium Trucks)

Replacement	Diesel	Alternative Fuel	All-Electric
Government	\$ 20,000	\$ 30,000	\$ 40,000
	35%	35%	35%
Non-Government	\$ 20,000	\$ 30,000	\$ 30,000
	25%	25%	35%

Repower	Diesel	Alternative Fuel	All-Electric
Government and Non-Government	30%	40%	50%

Category 7 – Airport Ground Support Equipment

For both Government and Non-Government owned fleets, selected airport ground support equipment replacement or repower projects will be eligible to receive 60% of the cost to replace or repower their existing equipment with an all-electric replacement or all-electric engine.

Category 10 – Diesel Emission Reduction Act (DERA) Option

Funding for Category 10 will be based on the percentages in the State Clean Diesel Program’s Information Guide. Only those eligible diesel emission reduction solutions that are not also listed in the State Trust will be eligible for funding through this application.

All Other Categories of Eligible Mitigation Actions

Funding levels for Categories 3, 4, 5, and 8 will be determined on a per project basis and it is anticipated that they will follow the Non-Government funding percentages listed in Appendix D-2 of the State Trust.

Applicant Information

Government	Non-Government	
Organization Name		
Mailing Address		
City	State	Zip Code
Contact Name		
Contact Email Address		
Contact Phone Number		

Project Information

Select the category of Eligible Mitigation Action this Application is seeking funding for below. Please complete separate applications for projects that fall under more than one category. If you are planning on submitting an application for a Category 3, 4, 5, or 8 project, please contact the NDEP prior to submitting your application and no later than 30 days prior to the deadline to submit.

Category 1 – Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

Category 2 – Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)

Category 3 – Freight Switchers

Category 4 – Ferries/Tugs

Category 5 – Ocean Going Vessels (OGV) Shorepower

Category 6 – Class 4-7 Local Freight Trucks (Medium Trucks)

Category 7 – Airport Ground Support Equipment

Category 8 – Forklifts and Port Cargo Handling Equipment

Category 10 – Diesel Emission Reduction Act (DERA) Option

Note: for Category 9 – Light Duty Zero Emission Vehicle Supply Equipment. These funds are being spent in partnership with the Nevada Governor’s Office of Energy (GOE) and are being dedicated toward the Nevada Electric Highway Initiative. For more information please visit their website (<http://energy.nv.gov/>).

Is this a vehicle replacement project or an engine repower project? Submit separate applications if your fleet is requesting funds for both.

Vehicle Replacement

Engine Replacement

Other

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Project Information

Description of Proposed Project

1. Please provide a detailed description of the proposed project.

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Project Information

2. Explain how this request fits into Nevada's Beneficiary Mitigation Plan.

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Project Information

3. What is the likelihood that the project will incentivize future indirect NOx and other emission reductions? That is, will this be the beginning or continuation of a transition of the fleet to an alternative fuel or electricity? If so, provide a timeline for that transition.

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Project Information

4. Are there any societal co-benefits of the project? Are there any “sensitive” populations including, but not limited to asthmatics, children, or the elderly that are likely to be directly benefitted by the project? While it isn’t necessary, if you are using a tool to identify “sensitive” populations that would likely be impacted by your project (one such example being the EPA’s EJSCREEN, available at <https://www.epa.gov/ejscreen>) include the data/analysis from the tool in your application.

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5. Where will the project be located? Provide, at a minimum, the city and/or county where the project will occur. Clark and Washoe counties have identified high priority areas within their counties, see pages 19-22 of Nevada's Beneficiary Mitigation Plan, these areas are a primary concern for the Nevada Diesel Emission Mitigation Fund. The NDEP is also considering Carson City, Douglas County, and urban centers in the counties adjacent to Clark and Washoe counties as priority areas. Additional details such as vehicle route information, fleet yard location, or where the vehicle typically operates will also be considered.

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Project Information

6. Project funds are provided only after the replacement/repower has occurred, the existing vehicle/engine has been appropriately scrapped, and sufficient evidence has been provided to the NDEP. When do you expect this to occur?

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Project Information

7. **Project Feasibility:** Provide a proposed schedule detailing the steps necessary for executing the project and a description of how you as the applicant have the necessary technical, managerial, procurement, and financial capability and experience to execute on your proposed project.

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Project Information

8. Is there any additional information that you'd like to provide?

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Project Information

9. For applicants seeking funding through Category 10 – the DERA Option, please review the EPA’s current State Clean Diesel Grant Program Information Guide and the EPA’s Clean Diesel State Allocations webpage. Using the space below and attaching additional information as necessary, provide a summary of your project including the eligible diesel emission reduction solution you are requesting funds for and any other relevant information that you would like to be considered.

Vehicle/Equipment Information

Highway Certified Vehicle Replacement/Repower Information

ONLY FILL OUT THIS TABLE FOR CATEGORY 1, 2, AND 6 FUNDING REQUESTS

For multiple vehicle replacements/engine repowers, copy and paste the blank table or complete and submit with this application the optional spreadsheet for multiple vehicles, equipment, and DERA applications available on the NDEP website at <https://www.ndep.nv.gov/air/vw-settlement>. The information below is required and must be provided for each vehicle/engine being replaced/repowered.

Existing Vehicle/Engine Information		
What is the vehicle's intended use? Examples include school bus, transit bus, freight truck, refuse truck, street sweeper, etc.		
Vehicle GVWR		Vehicle License Plate Number
Vehicle Make	Vehicle Model	Vehicle Model Year
Vehicle Identification Number		
Engine Make	Engine Model	Engine Model Year
Engine Serial Number		
Fuel Type		Annual Fuel Used (gallons)
Annual Vehicle Mileage		Total Vehicle Mileage
Total Engine Mileage (only if different from Total Vehicle Mileage)		
Remaining Vehicle Life (years)		
Normal Attrition Year (year in which vehicle would normally be retired/sold by the fleet owner if not for this grant)		
Is this vehicle registered with a Nevada intrastate license? <div style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> If no, in order for the vehicle to be eligible for funding in Nevada, the vehicle must be registered with a Nevada interstate license and must annually report that at least half of its mileage occurs in-state. Please attach with this application evidence that the vehicle reports at least half its mileage occurring in-state. This request can be satisfied by submitting a copy of the completed "Mileage Schedule" from the vehicle's most recent Registration Renewal Application with this application.		
Replacement/Repower Vehicle/Engine Information		
Vehicle GVWR*		
Vehicle Make*	Vehicle Model*	Vehicle Model Year*
Engine Make	Engine Model	Engine Model Year
Fuel Type	Unit Replacement/Repower Cost	

* Information not needed for repower requests.

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Vehicle/Equipment Information

Airport Ground Support Equipment

ONLY FILL OUT THIS TABLE FOR CATEGORY 7 FUNDING REQUESTS

For multiple equipment replacements/engine repowers, copy and paste the blank table or complete and submit with this application the optional spreadsheet for multiple vehicles, equipment, and DERA applications available on the NDEP website at <https://www.ndep.nv.gov/air/vw-settlement>. The information below is required and must be provided for each piece of equipment/engine being replaced/repowered.

Existing Equipment/Engine Information	
What is the equipment's intended use? Examples include baggage tug or tractor, belt loader, aircraft tug, etc.	
Equipment Manufacturer	Equipment Model
Equipment Model Year	Engine Make
Engine Model	Engine Model Year
Engine Serial Number	Engine Horsepower
Fuel Type	Annual Fuel Used (Gallons)
Annual Hours of Operation (include idling hours)	Total Hours of Operation (include idling hours)
If diesel-powered, what is the engine tier?	If gasoline-powered, what is the engine's NOx emission standard?
Remaining Equipment Life (years)	
Normal Attrition Year (year in which vehicle would normally be retired/sold by the fleet owner if not for the grant)	

Replacement/Repower Equipment/Engine Information	
Equipment Manufacturer*	Equipment Model*
Engine Make	Engine Model
Fuel Type	Unit Replacement/Repower Cost

* Information not needed for repower requests.

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Vehicle/Equipment Information

Category 10 – The DERA Option

Applications seeking funding through Category 10 – the DERA Option must complete and submit with this application the DERA portion of the spreadsheet for multiple vehicle, equipment, and DERA applications available on the NDEP website at <https://www.ndep.nv.gov/air/vw-settlement>. In addition, requests for funding through Category 10 should provide a detailed response to question 9 above in the Description of Proposed Project section of this application. Only those eligible diesel emission reduction solutions that are not also listed in the Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust) will be eligible for funding through this application.

All Other Categories of Eligible Mitigation Actions

If you are planning on submitting an application for a Category 3, 4, 5, or 8 project, please contact the NDEP prior to submitting your application and no later than 30 days prior to the deadline to submit.

Project Funding

1. What is the total estimated cost of the project?

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Project Funding

2. After reviewing the funding levels for your project (refer to page 3 for Funding Levels for Eligible Mitigation Actions), what is the amount you are requesting from the Nevada Diesel Emission Mitigation Fund?

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Project Funding

3. Separately as attachments and in the space below, provide detailed information relating to the total cost of your project. Include estimates and/or initial invoices from selected or potential vendors for the project and specify what specifically you are seeking funding for. Detailed cost estimates from selected or potential vendors are required for all individual expenditures exceeding \$25,000.

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Project Funding

4. If requesting funding for an alternative fuel vehicle/engine (examples include CNG, hybrid-electric, LNG, or LPG), provide information about the required fueling infrastructure and indicate if that infrastructure is already in place or the details on the timeline when it will be installed. Note that Appendix D-2 of the State Trust does not allow for the funding of alternative fuel vehicle fueling infrastructure.

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Project Funding

5. If requesting an All-Electric vehicle/engine, provide information about the required charging infrastructure and indicate if that infrastructure is already in place or the timeline to having it installed. Note that the NDEP is not funding the costs associated with charging infrastructure for any project.

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6. If requesting funds above the amounts listed in Funding Levels for Eligible Mitigation Actions, provide a detailed justification as to why the higher level of funding is needed. Note that even if a project requesting funds above the listed amounts is selected, there is no guarantee that the award will match the amount requested.

Scoring Criteria

Only complete applications with eligible project proposals will be evaluated according to the criteria set forth below. Applicants should provide information in their applications that specifically addresses these criteria. While the scoring criteria provided in this section are the primary means of determining a selected project, final selection of projects will be made by the NDEP and, in certain instances, we reserve the right to deviate from the information provided below. That is, the NDEP may also consider other factors not included in these scoring criteria

Criteria	Points
Total Possible Points	/100
NOx Emission Reductions and Cost-Effectiveness: NDEP will quantify the emissions reductions of the project (see pages 26-27 of Nevada’s Beneficiary Mitigation Plan for an example). For every Trust Fund dollar that is spent, the cost per ton of emission reductions associated with the project will be considered.	/25
Project Location: Pages 19-22 of Nevada’s Beneficiary Mitigation Plan detail high priority areas within Clark and Washoe counties that will be of primary focus for Environmental Mitigation Trust Funds. Other areas within those counties would also receive points, albeit fewer. The NDEP is also considering Carson City, Douglas County, and urban centers in the counties adjacent to Clark and Washoe counties to be priority areas that will be eligible to receive points in this criterion.	/20
Environmental Co-Benefits: NDEP will quantify the emissions reductions of the project. Reductions of NOx are of primary concern but other emissions reductions of the project (e.g. CO, CO ₂ , and PM _{2.5}) will also be considered.	/15
Likelihood of additional, future, emission reductions: For example, will this be the beginning of a transition of the fleet to an alternative fuel/electricity and if so the timeline of that transition.	/15
Project Feasibility: The NDEP will consider whether the applicant supplied a proposed schedule detailing the necessary steps for executing the project. The NDEP will also consider whether there was a description provided by the applicant that included the details showing the necessary technical, managerial, procurement, and financial capabilities and experience of the applicant organization and its personnel to execute on the project.	/15
Societal Co-Benefits: The quality and extent to which the proposal demonstrates how the proposed project will address the needs and concerns of affected communities, including any communities or populations that have faced or are facing environmental justice concerns. The likelihood that “sensitive” populations including, but not limited to, asthmatics, children, or the elderly are directly benefited by the project.	/10

Example Subgrant Agreement and Additional Division Terms and Conditions

Should a project be selected for funding, a completed Subgrant Agreement will need to be signed by both parties. The following pages include an example of the NDEP's Subgrant Agreement and Additional Division Terms & Conditions that will be used to create a final Subgrant Agreement between the NDEP and the Subgrantee. The completed Subgrant Agreement will include this application, the two example documents that follow, and an Appendix D-4 Beneficiary Eligible Mitigation Action Certification funding request that will then be submitted to Wilmington Trust (the Trustee managing the State Trust monies) for their consideration by the NDEP. Please note regarding Appendix D-4 submissions, Wilmington Trust has 60 days to approve or deny any funding request (subparagraph 5.2.16 of the State Trust).

Example Subgrant Agreement

A Subgrant awarded by:

**Department of Conservation and Natural Resources
Division of Environmental Protection
Bureau of Air Quality Planning
901 S. Stewart Street, Suite 4001, Carson City, NV 89701-5249
Phone: (775) 687-4670 Fax: (775) 687-5856**

hereinafter the "Division"

and awarded to Subgrantee:

**Organization
Subtitle/Name
Street, Town, State Zip
Phone: (000) 000-000**

hereinafter the "Subgrantee"

WHEREAS, NRS 445.230 authorizes the Division to receive grants or other funds from a public or private agency; and

WHEREAS, it is deemed that the project purposes hereinafter set forth are consistent with the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries that provides support for this Subgrant;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Subgrant shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees, and immune contractors as defined in NRS 41.0307.
3. SUBGRANT TERM. This Subgrant shall be effective to _____, unless sooner terminated by either party as set forth in this Subgrant.
4. TERMINATION. This Subgrant may be terminated by either party prior to the date set forth in paragraph 3, provided that termination shall not be effective until 30 days after a party has served written notice upon the other party. This Subgrant may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Subgrant shall be terminated immediately if for any reason the funding ability to satisfy this Subgrant is withdrawn, limited, or impaired by Wilmington Trust, acting on behalf of the Environmental Mitigation Trust Agreement for State Beneficiaries.

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Example Subgrant Agreement

5. NOTICE. All notices or other communications required or permitted to be given under this Subgrant shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.

6. INCORPORATED DOCUMENTS. The parties agree that the services to be performed shall be specifically described; this Subgrant incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT: Completed Appendix D-4 – Beneficiary Eligible Mitigation Action Certification of the Environmental Mitigation Trust Agreement for State Beneficiaries (consisting of _____ pages)

ATTACHMENT: Additional Division Terms and Conditions (consisting of 3 pages)

ATTACHMENT: Subgrantee’s Completed Nevada Diesel Emission Mitigation Fund Competitive Application Form (consisting of _____ pages)

7. CONSIDERATION. Subgrantee agrees to provide the services set forth in paragraph 6 at a cost not exceeding \$ _____. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Subgrant term) or a termination as the results of legislative appropriation may require.

8. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Subgrant are also specifically a part of this Subgrant and are limited only by their respective order of precedence and any limitations expressly provided.

9. INSPECTION & AUDIT.

a. Books and Records. Each party agrees to keep and maintain under generally accepted accounting principles full, true, and complete records, agreements, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.

b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related, or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Subgrant must be retained a minimum of 3 years from the date of final payment by or on behalf of the State to the Subgrantee, and only after all other pending matters are closed. Retention time shall be extended when an audit is scheduled

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Example Subgrant Agreement

or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. BREACH; REMEDIES. Failure of either party to perform any obligation of this Subgrant shall be deemed a breach. Except as otherwise provided for by law or this Subgrant, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages. If the court awards reasonable attorney's fees to the prevailing party, reasonable shall be deemed \$125 per hour.

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Subgrant liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Subgrant, but not yet paid, for the fiscal year budget in existence at the time of the breach.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Subgrant if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Subgrant after the intervening cause ceases.

13. INDEMNIFICATION.

a. To the fullest extent of limited liability as set forth in paragraph 11 of this Subgrant, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees, and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

b. The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

14. INDEPENDENT PARTIES. The parties are associated with each other only for the purposes and to the extent set forth in this Subgrant. In respect to performance of services pursuant to this Subgrant, each party is and shall be separate and distinct from the other party and, subject only to the terms of this Subgrant, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Subgrant. Nothing contained in this Subgrant shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

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Example Subgrant Agreement

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Subgrant or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

16. SEVERABILITY. If any provision contained in this Subgrant is held to be unenforceable by a court of law or equity, this Subgrant shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Subgrant unenforceable.

17. ASSIGNMENT. Neither party shall assign, transfer, or delegate any rights, obligations, or duties under this Subgrant without the prior written consent of the other party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code, or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Subgrant shall be the joint property of both parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed, or received by that party to the extent that such information is confidential by law or otherwise required by this Subgrant.

21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Subgrant on behalf of each party has full power and authority to enter into this Subgrant and that the parties are authorized by law to perform the services set forth in paragraph 6.

22. GOVERNING LAW; JURISDICTION. This Subgrant and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Subgrant.

23. ENTIRE AGREEMENT AND MODIFICATION. This Subgrant and its integrated attachments constitute the entire agreement of the parties and as such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Subgrant specifically displays a mutual intent to amend a particular part of this Subgrant, general conflicts in language between any such attachment and this Subgrant shall be construed consistent with the terms of this Subgrant. Unless otherwise expressly authorized by the terms of this Subgrant, no modification or amendment to this Subgrant shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

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IN WITNESS WHEREOF, the parties hereto have caused this Subgrant to be signed and intend to be legally bound thereby.

SUBGRANTEE

By: _____
Signature

Name: _____

Title: _____ Date: _____

SUBGRANTEE

By: _____
Signature

Name: _____

Title: _____ Date: _____

DIVISION ADMINISTRATOR

By: _____
Signature

Name: _____

Title: _____ Date: _____

Example Additional Division Terms & Conditions
ATTACHMENT TO SUBGRANT
SUBGRANT CONTROL #DEP-S
BENEFICIARY PROJECT ID#

1. The Division shall pay no more compensation than the federal Executive Service Level 4 (U.S. Code) daily rate (exclusive of fringe benefits) for individual consultants retained by the Subgrantee or by the Subgrantee's contractors or subcontractors. This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate.

2. *NDEP shall only reimburse the Subgrantee for actual cash disbursed.*

3. The Subgrantee shall, as part of its approved Beneficiary Eligible Mitigation Action Certificate and budget under this Subgrant, provide third party match funds of not less than: \$_____.

4. Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving this Subgrant's goals. The Subgrantee shall use a template provided by the Division for completing and submitting these quarterly reports. The Subgrantee shall submit quarterly reports to the Division according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.

January 1 – March 31 Reporting Period: Report due date April 10

April 1 – June 30 Reporting Period: Report due date July 10

July 1 – September 30 Reporting Period: Report due date October 10

October 1 – December 31 Reporting Period: Report due date January 10

If a project start date falls within a defined Reporting Period, the Subgrantee must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the Subgrant.

5. All payments under this Subgrant are contingent upon the notice of approval of sufficient funds to the Division, necessary to carry out the provisions of this Subgrant, from Wilmington Trust, the Trustee acting behalf of the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries, (can take up to 60 days). The Division shall determine if it has received the specific approval necessary to fund this Subgrant. If Wilmington Trust denies the request to funds this Subgrant, the Division is under no obligation to supply funding for this Subgrant. The approval of sufficient funds by Wilmington Trust is a condition precedent to the Division's obligation to ensure Wilmington Trust disburses payment under this Subgrant (disbursement of payment can take up to an additional 15 days). Nothing in this Subgrant shall be construed to provide the Subgrantee with a right of payment over any other entity. If any payments that are otherwise due to the Subgrantee under this Subgrant are deferred because of unavailability of sufficient funds, such payments will promptly be made to the Subgrantee if sufficient funds later become available.

6. Notwithstanding the terms of paragraph 5, and at the sole discretion of the Division, payments will not be made by the Division unless all required reports or deliverables have been submitted to and approved by the Division within the schedule stated in paragraph 2 of these Additional Division Terms & Conditions

and the schedule included in Attachment B of ATTACHMENT: Completed Appendix D-4 – Beneficiary Eligible Mitigation Action Certification of the Environmental Mitigation Trust Agreement for State Beneficiaries.

7. Any funds obligated by the Division under this Subgrant that are not expended by the Subgrantee upon the completion, termination or cancellation of this Subgrant shall be returned to Wilmington Trust, the Trustee acting behalf of the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries. The Division shall not have any obligation to re-award or to provide, in any manner, such unexpended funds to the Subgrantee. The Subgrantee shall have no claim of any sort to such unexpended funds.

8. The books, records, documents, and accounting procedures and practices of the Subgrantee or any subcontractor relevant to this Subgrant shall be subject to inspection, examination, and audit by the State of Nevada, the Division, the Attorney General of Nevada, the Nevada State Legislative Auditor, the federal or other funding agency, the Comptroller General of the United States, or any authorized representative of those entities.

9. All books, reports, studies, photographs, negatives, annual reports, other documents, data, materials, or drawings prepared by or supplied to the Subgrantee in the performance of its obligations under this Subgrant shall be the joint property of both parties. Such items must be retained by the Subgrantee for a minimum of three years from the date of final payment by the Division to the Subgrantee, and only after all other pending matters are closed. If requested by the Division at any time within the retention period, any such materials shall be remitted and delivered by the Subgrantee, at the Subgrantee's expense, to the Division. The Division does not warrant or assume any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, report, or product of any kind that the Subgrantee may disclose or use for purposes other than the performance of the Subgrantee's obligations under this Subgrant. For any work outside the obligations of this Subgrant, the Subgrantee must include a disclaimer that the information, report, or products are the views and opinions of the Subgrantee and do not necessarily state or reflect those of the Division nor bind the Division.

10. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with funds provided under this Subgrant, the Subgrantee shall clearly state that funding for the project or program was provided by the Nevada Division of Environmental Protection's Diesel Emission Mitigation Fund. The Subgrantee will insure that the Division is given credit in all official publications relative to this specific project and that the content of such publications will be coordinated with the Division prior to being published.

11. The Subgrantee shall use recycled paper for all reports that are prepared as part of this Subgrant and delivered to the Division. This requirement does not apply to standard forms.

12. The Subgrantee, to the extent provided by Nevada law, shall indemnify and save and hold the State of Nevada, its agents and employees harmless from any and all claims, causes of action, or liability arising from the performance of this Subgrant by the Subgrantee or the Subgrantee's agents or employees or any subcontractor or their agents or employees. The Division, to the extent provided by Nevada law, shall

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indemnify and save and hold the Subgrantee, its agents, and employees harmless from any and all claims, causes of action, or liability arising from the performance of this Subgrant by the Division or the Division's agents or employees.

13. The Subgrantee shall be construed and interpreted according to the laws of the State of Nevada and conditions established in the Volkswagen Environmental Mitigation Agreement for State Beneficiaries. Nothing in this Subgrant shall be construed as a waiver of sovereign immunity by the State of Nevada. Any action brought to enforce this Subgrant shall be brought in the First Judicial District Court of the State of Nevada.

14. The Subgrantee shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Subgrant without the prior written consent of the Division.

EXAMPLE