

Nevada Diesel Emission Mitigation Fund Draft Application Form

For the Volkswagen Environmental Mitigation Trust Agreement
for State Beneficiaries

Application Date

Click to enter date.

Applications are due by July 31, 2018



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

General Information

How to apply for funds

We request that you complete and electronically submit this 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.

To be considered for funding, 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 Emission 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 and 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 these tools are what the NDEP is generally planning to use.

Additional Information

Applicants selected for funding shall have two years to complete their project. If an application shows that it 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:

“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.

¹ All questions regarding this application should be directed to Joe Perreira at jperreira@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

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

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

<https://www.epa.gov/sites/production/files/2017-02/documents/fy17-state-program-guide-2017-02.pdf>

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

Applicant Information

<input type="radio"/> Government <input type="radio"/> Non-Government		
Organization Name Click to enter text.		
Mailing Address Click to enter text.		
City Click to enter text.	State Click to enter text.	Zip Code Click to enter text.
Contact Name Click to enter text.		
Contact Email Address Click to enter text.		
Contact Phone Number Click to enter text.		

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 well in advance of 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 funding requests please contact the Nevada Governor’s Office of Energy (<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

Description of Proposed Project

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

Click to enter text.

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

Click to enter text.

3. What is the likelihood that the project will incentivize future indirect NO_x 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.

Click to enter text.

4. Are there any societal co-benefits of the project? Are there any "sensitive" populations such as asthmatics, children, or the elderly that are likely to be directly benefitted by the project?

Click to enter text.

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 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. Additional details such as vehicle route information, fleet yard location, or where the vehicle typically operates will also be considered.

Click to enter text.

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?

Click to enter text.

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

Click to enter text.

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

Click to enter text.

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.

Click to enter text.

Vehicle/Equipment Information

Highway Certified Vehicle Replacement/Repower Information

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

Copy and paste the blank table for multiple vehicle replacements/engine repowers. This table should be completed 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. Click to enter text.		
Vehicle GVWR Click to enter text.	Vehicle License Plate Number Click to enter text.	
Vehicle Make Click to enter text.	Vehicle Model Click to enter text.	Vehicle Model Year Click to enter text.
Vehicle Identification Number Click to enter text.		
Engine Make Click to enter text.	Engine Model Click to enter text.	Engine Model Year Click to enter text.
Engine Serial Number Click to enter text.		
Fuel Type Click to enter text.	Annual Fuel Used (gallons) Click to enter text.	
Annual Vehicle Mileage Click to enter text.	Total Vehicle Mileage Click to enter text.	
Total Engine Mileage (only if different from Total Vehicle Mileage) Click to enter text.		
Remaining Vehicle Life (years) Click to enter text.		
Normal Attrition Year (year in which vehicle would normally be retired/sold by the fleet owner if not for the grant) Click to enter text.		
Is this vehicle registered with a Nevada intrastate license? <input type="radio"/> Yes <input type="radio"/> No 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* Click to enter text.		
Vehicle Make* Click to enter text.	Vehicle Model* Click to enter text.	Vehicle Model Year* Click to enter text.
Engine Make Click to enter text.	Engine Model Click to enter text.	Engine Model Year Click to enter text.
Fuel Type Click to enter text.	Unit Replacement/Repower Cost Click to enter text.	

* 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

Copy and paste the blank table for multiple equipment/engine replacement/repowers. This table should be completed 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. Click to enter text.	
Equipment Manufacturer Click to enter text.	Equipment Model Click to enter text.
Engine Make Click to enter text.	Engine Model Click to enter text.
Engine Serial Number Click to enter text.	Engine Horsepower Click to enter text.
Fuel Type Click to enter text.	Annual Fuel Used (Gallons) Click to enter text.
Annual Hours of Operation (includes idling hours) Click to enter text.	Total Hours of Operation Click to enter text.
If diesel-powered, what is the engine tier? Click to enter text.	If gasoline-powered, what is the engine's NOx emission standard? Click to enter text.
Remaining Equipment Life (years) Click to enter text.	
Normal Attrition Year (year in which vehicle would normally be retired/sold by the fleet owner if not for the grant) Click to enter text.	

Replacement/Repower Equipment/Engine Information	
Equipment Manufacturer* Click to enter text.	Equipment Model* Click to enter text.
Engine Make Click to enter text.	Engine Model Click to enter text.
Fuel Type Click to enter text.	Unit Replacement/Repower Cost Click to enter text.

* Information not needed for repower requests.

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Vehicle/Equipment Information

Category 10 – The DERA Option

Requests for funding through Category 10, the DERA option should complete the spreadsheet available on the NDEP website and include it with this application. 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 well in advance of the deadline to submit.

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Project Funding

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

Click to enter text.

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

Click to enter text.

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.

Click to enter text.

4. If requesting funding for an alternative fuel vehicle/engine (e.g. CNG, 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.

Click to enter text.

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.

Click to enter text.

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Project Funding

Funding Levels for Eligible Mitigation Actions

Funding for selected projects depends on the Category of Eligible Mitigation Action, the type of replacement/repower (diesel, alternative fuel, all-electric), and whether or not it is a Government or Non-Government owned fleet. While the funding levels provided in this section are the primary means of determining project funding, final funding decisions will be made by NDEP and, in certain instances, we reserve the right to deviate from the information provided below.

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 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%

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%

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%

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Project Funding

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 Environmental Mitigation Trust Agreement for State Beneficiaries (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.

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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 NDEP and, in certain instances, we reserve the right to deviate from the information provided below. That is, 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 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. Areas of interest to NDEP across the state for other emission reductions can also receive points.	/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 particulate matter) 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 such as asthmatics, children, or the elderly are directly benefited by the project.	/10

Draft Subgrant Agreement and Additional Terms and Conditions

The following pages include the NDEP's Draft Subgrant Agreement and Additional Agency Terms and Conditions that will be used to create a final agreement between the NDEP and the Subgrantee. Should a project be selected for funding, this Subgrant Agreement and the Additional Terms and Conditions will need to be signed by both the NDEP and the Subgrantee before an Appendix D-4 Beneficiary Eligible Mitigation Action Certification is submitted to Wilmington Trust.

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SUB-GRANT AGREEMENT

A Sub-grant 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**

and awarded to Sub-grantee:

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

hereinafter the "Sub-grantee"

WHEREAS, NRS 445.230 authorize the Division of Environmental Protection to receive grants or other funds from public or private agency; and

WHEREAS, it is deemed that the project purposes hereinafter set forth are consistent with the Volkswagen Mitigation Environmental Trust Fund that provides support of the sub-grant;

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

1. **REQUIRED APPROVAL.** This Sub-grant 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. **SUB-GRANT TERM.** This Sub-grant shall be effective from ____ to ____, unless sooner terminated by either party as set forth in this Sub-grant.
4. **TERMINATION.** This Sub-grant may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until ____ days after a party has served written notice upon the other party. This Sub-grant may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Sub-grant shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Sub-grant is withdrawn, limited, or impaired.
5. **NOTICE.** All notices or other communications required or permitted to be given under this Sub-grant 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 Sub-grant incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT: BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION (consisting of pages)

ATTACHMENT: SUB-GRANTEE INITIAL APPLICATION FOR FUNDING (consisting of _____ pages)
ATTACHMENT: ADDITIONAL AGENCY TERMS & CONDITIONS (consisting of 4 pages)

7. CONSIDERATION. Public Agency agrees to provide the services set forth in paragraph (6) at a cost of \$_____ per _____ with the total Sub-grant or installments payable: _____, not exceeding \$_____. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Sub-grant 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 Sub-grant are also specifically a part of this Sub-grant 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 general 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 Sub-grant must be retained a minimum three years from the date of final payment by the State to the Public Agency, and all other pending matters are closed. Retention time shall be extended when an audit is scheduled 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 Sub-grant shall be deemed a breach. Except as otherwise provided for by law or this Sub-grant, 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. Sub-grant 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 Sub-grant, 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 Sub-grant 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 Sub-grant after the intervening cause ceases.

13. INDEMNIFICATION.

- a. To the fullest extent of limited liability as set forth in paragraph (11) of this Sub-grant, 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 PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Sub-grant, and in respect to performance of services pursuant to this Sub-grant, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Sub-grant, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Sub-grant. Nothing contained in this Sub-grant 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.
15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Sub-grant 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 Sub-grant is held to be unenforceable by a court of law or equity, this Sub-grant 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 Sub-grant unenforceable.
17. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Sub-grant 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 (which is intended to be consideration under this Sub-grant), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Sub-grant 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 Sub-grant.
21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Sub-grant on behalf of each party has full power and authority to enter into this Sub-grant and that the parties are authorized by law to perform the services set forth in paragraph (6).
22. GOVERNING LAW; JURISDICTION. This Sub-grant 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 Sub-grant.

23. ENTIRE AGREEMENT AND MODIFICATION. This Sub-grant and its integrated attachment(s) constitute the entire agreement of the parties and 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 Sub-grant specifically displays a mutual intent to amend a particular part of this Sub-grant, general conflicts in language between any such attachment and this Sub-grant shall be construed consistent with the terms of this Sub-grant. Unless otherwise expressly authorized by the terms of this Sub-grant, no modification or amendment to this Sub-grant shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. **IN WITNESS WHEREOF, the parties hereto have caused this Sub-grant to be signed and intend to be legally bound thereby.**

SUB-GRANTEE

By: _____
Signature

Name: _____

Title: _____ Date: _____

SUB-GRANTEE

By: _____
Signature

Name: _____

Title: _____ Date: _____

DIVISION ADMINISTRATOR

By: _____
Signature

Name: Greg Lovato

Title: Administrator Date: _____

NDEP ADDITIONAL AGENCY TERMS & CONDITIONS
ATTACHMENT TO SUB-GRANT
SUB-GRANT CONTROL #DEP-S
BENEFICIARY'S PROJECT ID#

1. The Nevada Division of Environmental Protection 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 Sub-grantee or by the Sub-grantee'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. The current Level 4 rate is \$77.84 per hour.
2. ***NDEP shall only reimburse the Sub-grantee for actual cash disbursed.***
3. The Sub-grantee shall, as part of its approved Beneficiary Eligible Mitigation Action Certificate and budget under this Sub-grant, provide third party match funds of not less than: \$_____.
4. Unless otherwise provided in Scope of work attachment, the Sub-grantee shall submit quarterly reports or other deliverables within ten (10) calendar days after the end of each quarter.
5. All payments under this Sub-grant are contingent upon the notice of approval of sufficient funds to NDEP, necessary to carry out the purposes of this Sub-grant, from Wilmington Trust (can take up to 75 days). NDEP shall determine if it has received the specific approval necessary to fund this Sub-grant. If Wilmington Trust denies the request to fund this Sub-Grant, NDEP is under no obligation to supply funding for this Sub-grant. The approval of sufficient funds by Wilmington Trust is a condition precedent to NDEP's obligation to ensure Wilmington Trust disburses payment under this Sub-grant. Nothing in this Sub-grant shall be construed to provide the Sub-grantee with a right of payment over any other entity. If any payments that are otherwise due to the Sub-grantee under this Sub-grant are deferred because of unavailability of sufficient funds, such payments will promptly be made to the Sub-grantee if sufficient funds later become available.
6. Notwithstanding the terms of paragraph 5, at the sole discretion of NDEP, payments will not be made by NDEP unless all required reports or deliverables have been submitted to and approved by NDEP within the schedule stated in Attachment A.
7. Any funds obligated by NDEP under this Sub-grant that are not expended by the Sub-grantee shall automatically revert back to Volkswagen Mitigation Environmental Trust Fund upon the completion, termination or cancellation of this Sub-grant. NDEP shall not have any obligation to re-award or to provide, in any manner, such unexpended funds to the Sub-grantee. The Sub-grantee shall have no claim of any sort to such unexpended funds.
8. The books, records, documents and accounting procedures and practices of the Sub-grantee or any subcontractor relevant to this Sub-grant shall be subject to inspection, examination and audit by the State of Nevada, the Division of Environmental Protection, 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 or other documents, data, materials or drawings prepared by or supplied to the Sub-grantee in the performance of its obligations under this Sub-grant shall be the joint property of both parties. Such items must be retained by the Sub-grantee for a minimum of three years from the date of final payment by

NDEP to the Sub-grantee, and all other pending matters are closed. If requested by NDEP at any time within the retention period, any such materials shall be remitted and delivered by the Sub-grantee, at the Sub-grantee's expense, to NDEP. NDEP 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 Sub-grantee may disclose or use for purposes other than the performance of the Sub-grantee's obligations under this Sub-grant. For any work outside the obligations of this Sub-grant, the Sub-grantee must include a disclaimer that the information, report or products are the views and opinions of the Sub-grantee and do not necessarily state or reflect those of NDEP nor bind NDEP.

10. Unless otherwise provided in Attachment A, 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 Sub-grant, the Sub-grantee 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 Sub-grantee will insure that NDEP is given credit in all official publications relative to this specific project and that the content of such publications will be coordinated with NDEP prior to being published.

11. The Sub-grantee shall use recycled paper for all reports that are prepared as part of this Sub-grant and delivered to NDEP. This requirement does not apply to standard forms.

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

13. The Sub-grantee shall be construed and interpreted according to the laws of the State of Nevada and conditions established in the Volkswagen Mitigation Environmental Trust Fund. Nothing in this Sub-grant shall be construed as a waiver of sovereign immunity by the State of Nevada. Any action brought to enforce this Sub-grant shall be brought in the First Judicial District Court of the State of Nevada.

14. The Sub-grantee shall neither assign, transfer nor delegate any rights, obligations or duties under this Sub-grant without the prior written consent of NDEP.