

APPENDIX D-4
Maine Beneficiary Eligible Mitigation Action Certification

State of Maine
State Multimodal Improvements Option 2019
EMA Category 1-Class 8 Local Freight Trucks and Port Drayage Trucks
MaineDOT ID (23901.00)
Advance Fund Request 6

BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary: State of Maine

Lead Agency Authorized to Act on Behalf of the Beneficiary: Maine Department of Transportation (MaineDOT) *(Any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency)*

Action Title:	State Multimodal Improvement (MMPI) 2019 EMA Category 1-Class 8 Local Freight Trucks and Port Drayage Trucks
Beneficiary's Project ID:	23901.00
Funding Request No.	6
Request Type: (select one or more)	<input type="checkbox"/> Reimbursement <input type="checkbox"/> Other (specify): _____
Payment to be made to: (select one or more)	<input checked="" type="checkbox"/> Advance <input type="checkbox"/> Beneficiary <input type="checkbox"/> Other (specify): _____
Funding Request & Direction (Attachment A)	<input checked="" type="checkbox"/> Attached to this Certification <input type="checkbox"/> To be Provided Separately

SUMMARY

Eligible Mitigation Action	<input checked="" type="checkbox"/> Appendix D-2 item (specify): <u>MMPI- EMA Category 1-Class 8 Local Freight Trucks and Port Drayage Trucks</u>
Action Type	<input type="checkbox"/> Item 10 - DERA Option (5.2.12) (specify and attach DERA Proposal):
Explanation of how funding request fits into Beneficiary's Mitigation Plan (5.2.1): Maine's BMP allocated 8.4 million for the State Multimodal Priorities category. The funding request will fund 4 drayage trucks qualify under EMA category 1.	
Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2): See Maine BMP, Section VII	
Estimate of Anticipated NOx Reductions (5.2.3): See Maine BMP, Section VII	
Identification of Governmental Entity Responsible for Reviewing and Auditing Expenditures of Eligible Mitigation Action Funds to Ensure Compliance with Applicable Law (5.2.7.1): MaineDOT, Bureau of Finance & Administration	
Describe how the Beneficiary will make documentation publicly available (5.2.7.2). As stated in Paragraph 7 of Maine's Appendix D-3 filing, 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)	To satisfy the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public. MaineDOT has established a website (http://www.maine.gov/mdot/vw) to house state-specific documents, guidance, public comments, funding process descriptions, and web links to other sites for useful background information and resources related to the VW Environmental Mitigation Settlement;

- (ii) As part of Maine’s Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered included the solicitation of public comments via web notice and comment period on Maine’s Beneficiary Mitigation Plan. Two public meetings were held in geographically diverse locations prior to closing of the comment period. Comments were and will continue to be considered through program implementation.
- (iii) 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. The certification in Paragraph 7 is subject to Maine’s Freedom of Access Act (FOAA), 1 M.R.S. §§ 400-414, and other applicable Maine law. All documentation and records submitted by the State in support of each funding request and supporting all expenditures of Trust Funds by the State shall be accessible to the public unless an exception from disclosure under Maine law applies to the document or part thereof. For example, Maine’s FOAA, 1 M.R.S. § 402(3), includes in the list of exceptions a general exception for records that have been designated confidential by statute. Any claims for confidentiality under this exception, other enumerated exceptions, or under other Maine law would be reviewed by the Maine Department of Transportation and legal counsel. Documents, or parts of documents, would be protected from disclosure only to the extent required by Maine law. The State has identified the following specific provisions potentially applicable to confidential business information and personally identifiable information.

The enumerated exceptions under Maine’s FOAA include records that would be within the scope of a privilege against discovery or use as evidence recognized by Maine courts in civil or criminal trials if the records were sought during the course of a court proceeding. 1 M.R.S. § 402(3)(B). Maine Rule of Civil Procedure 26(c) provides that a trade secret or other confidential research, development, or commercial information may be the subject of a protective order by a court, when sought during discovery. Also, Rule 507 of the Maine Rules of Evidence contains a privilege to refuse to disclose, and prevent others from disclosing, a trade secret. The Maine Supreme Judicial Court has looked to the definition of “trade secret” in Maine’s Uniform Trade Secrets Act, 10 M.R.S. § 1542(4), in interpreting “trade secret” claims for non-disclosure under FOAA. That definition includes information that “[d]erives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use” and “[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Maine’s FOAA contains exceptions to disclosure for certain personally identifiable information such as social security numbers. 1 M.R.S. § 402(3)(N).

Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8).
Under Maine’s BMP, there is an 20% cost share for which will be met using federal and/or state funds already committed.

Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9).
Lead agency contact emailed the State Trust Agreement to specified recipients on February 12, 2018.

If applicable, describe how the mitigation action will mitigate the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions (5.2.10).
The IMT is located in the approximate center of Portland, Maine, which is the state’s largest city. Activities related to operation and idling of cruise ships, freight rail, and ocean freight are concentrated in the downtown area along Casco Bay.

ATTACHMENTS
(CHECK BOX IF ATTACHED)

- | | | |
|----------|---------------------|---|
| X | Attachment A | Funding Request and Direction. |
| X | Attachment B | Eligible Mitigation Action Management Plan Including Detailed Budget and Implementation and Expenditures Timeline (5.2.4). |
| X | Attachment C | Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11). |
| X | Attachment D | Detailed cost estimates from selected or potential vendors for each proposed expenditure exceeding \$25,000 (5.2.6). [Attach only if project involves vendor expenditures exceeding \$25,000.] |
| | Attachment E | DERA Option (5.2.12). [Attach only if using DERA option.] |
| | Attachment F | Attachment specifying amount of requested funding to be debited against each beneficiary's allocation (5.2.13). [Attach only if this is a joint application involving multiple beneficiaries.] |

CERTIFICATIONS

By submitting this application, the Lead Agency makes the following certifications:

1. This application is submitted on behalf of Beneficiary State of Maine, and the person executing this certification has authority to make this certification on behalf of the Lead Agency and Beneficiary, pursuant to the Certification for Beneficiary Status filed with the Court.
2. Beneficiary requests and directs that the Trustee make the payments described in this application and Attachment A to this Form.
3. This application contains all information and certifications required by Paragraph 5.2 of the Trust Agreement, and the Trustee may rely on this application, Attachment A, and related certifications in making disbursements of trust funds for the aforementioned Project ID.
4. Any vendors were or will be selected in accordance with a jurisdiction's public contracting law as applicable. (5.2.5)
5. Beneficiary will maintain and make publicly available all documentation submitted in support of this funding request and all records supporting all expenditures of eligible mitigation action funds subject to applicable laws governing the publication of confidential business information and personally identifiable information. (5.2.7.2)

DATED:

4/24/19



David Gardner
Director, Environmental Office

Maine Department of Transportation
[LEAD AGENCY]

for

State of Maine
[BENEFICIARY]

ATTACHMENT A

FUNDING REQUEST AND DIRECTION

(Attachment to Appendix D-4, Beneficiary Eligible Mitigation Action Certification, pursuant to Paragraph 5.2 of the Environmental Mitigation Trust Agreement)

Pursuant to the authority granted to the Maine Department of Transportation (MaineDOT) to act on behalf of Beneficiary State of Maine under the Mitigation Trust, the Maine Department of Transportation directs the Trustee to make the following payments from its subaccount no. 122969-023 to the following payees, for the amounts specified on the dates specified below.

LEAD AGENCY INFORMATION

Beneficiary Name: State of Maine	Lead Agency Contact Person: David Gardner
Lead Agency Name: Maine Department of Transportation (MaineDOT)	Lead Agency Email Address: david.gardner@maine.gov
Lead Agency Address: 16 State House Station Augusta, ME 04333	Lead Agency Fax: 207-624-3099
Lead Agency Phone: 207-592-2471	Lead Agency TIN: 016000001

Contact information entered above may correspond to Lead Agency or any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency

MITIGATION ACTION INFORMATION

Action Title: State Multimodal Priorities (SMMI) 2019-EMA 1	Funding Request Number: 6
Beneficiary's Project ID: 23901.00	

PAYMENTS REQUESTED

(attach additional pages if needed)

Amount	Requested Date	Payee	Request Type
\$367,049.68	April 24, 2019	MaineDOT	Advance

PAYEE CONTACT AND WIRE INFORMATION

(fill out both tables below for each payee and payment identified in "Payments Requested" table on p. 1; attach additional pages if needed)

PAYEE CONTACT INFORMATION

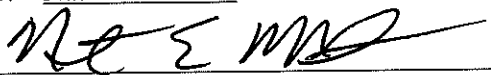
Action Title:	SMMI 2019-EMA 1	Beneficiary Project ID:	23901.00
Payee Name:	MaineDOT	Payee Contact Person:	David Gardner
Payee Address:	16 State House Station Augusta, ME 04333	Payee Email Address:	david.gardner@maine.gov
Payee Phone:	207-592-2471	Payee Fax:	207-624-3099
Payee TIN:	016000001		

Payment Amount	Requested Date	Request Type
\$367,049.68	4/24/19	Advance

PAYMENT FORM

- CHECK
 WIRE TRANSFER

SIGNATURE OF AUTHORIZED INSTRUCTOR

Printed Name:	<u>Nathan Moulton</u>
Signature:	<u></u>
Date:	<u>4/24/19</u>

ATTACHMENT B
Eligible Mitigation Action Management Plan

Project Schedule and Milestones (July 2018-June 2019)

MILESTONE	DATE
Multimodal committee selects round 1 projects for VW funding	5/3/18
Notification of 4 drayage trucks to be purchased by Maine Port Authority	10/3/18
Receive pricing agreement	10/12/18
Request funds from Wilmington Trust	1/31/19
Proponents complete orders with approved vendors.	10/3/18 + 10 months
Proponents submit evidence of scrapping, invoices, other docs	10/31/18 +24 months
Lead Agency reviews and reports	Jan 30/July 30

Project Budget (July 2018 – June 2019)

BUDGET CATEGORY	TOTAL APPROVERD BUDGET	SHARE TO BE FUNDED BY TRUST	COST SHARE (project sponsor/federal)
Expenditure on Multimodal Priorities (EMA 1)-4 New Drayage Trucks	\$458,812.10	\$367,049.68	\$91,762.42
Percentage	100%	80%	20%

Projected Trust Allocations

	FY 2019 July 2018-June 2019	FY 2020	FY 2021-2028
1. Anticipated Annual Project Funding Requests to be paid through Trust	\$6,300,000	\$10,000,000	\$3,253,064
2. Anticipated Annual Cost Share	\$3,504,600	\$4,320,000	\$5,855,515
3. Anticipated Total Project Funding by Year (line 1 plus line 2)	\$9,804,600	\$14,320,000	\$9,108,579
4. Cumulative Trustee Payments made to Date against Cumulative Approved Beneficiary Allocations	\$1,500,000	7,800,000	\$17,800,000
5. Current Beneficiary Project Funding to be paid through the Trust (line 1)	\$6,300,000	\$10,000,000	\$3,253,064
6. Total Funding Allocated to Beneficiary, inclusive of current Action by Year (line 4 plus line 5)	\$7,800,000	\$17,800,000	\$21,053,051
7. Beneficiary Share of estimated Funds Remaining in Trust	\$19,553,064	\$13,253,064	-
8. Net Beneficiary Funds Remaining in Trust, Net of Cumulative Beneficiary Funding Actions (line 7 minus line 5)	\$13,253,064	\$3,253,064	-

ATTACHMENT C
Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11)

Records of selected projects will be made available on the Maine VW webpage:
<http://www.maine.gov/mdot/vw/>.

ATTACHMENT D
COST ESTIMATES and AWARDS

Detailed Cost Estimates from Selected or Potential Vendors for each Proposed expenditure exceeding \$25,000 (5.2.6)

The Maine Department of Transportation received specification and pricing estimates on 10/12/18. The costs are shown in the matrix below.

TYPE	COST	VW FUNDS	COST SHARE
(2) Drayage Trucks	\$228,811.90	\$183,049.52	\$45,762.38
(2) Drayage Trucks	\$230,000.20	\$184,000.16	\$46,000.04
Total (4 Drayage buses)	\$458,812.10	\$367,049.68	\$91,762.42

The total VW share for the Multimodal Priorities Funding 2019- EMA Category 1-Class 8 Local Freight Trucks and Port Drayage Trucks is \$367,049.68

Information can be located on the Maine VW webpage: <http://www.maine.gov/mdot/vw/>.