

APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

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**CERTIFICATION FOR BENEFICIARY STATUS
UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT**

1. Identity of Lead Agency

Confederated Tribes of the Colville Reservation (“Beneficiary”), by and through the Office of the Governor (or the analogous Chief Executive) of the Indian Tribe on whose behalf the Certification Form is submitted: (i) hereby identifies Natural Resource Department (“Lead Agency”) as the Lead Agency for purposes of the Beneficiary’s participation in the Environmental Mitigation Trust (“Trust”) as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

BENEFICIARY’S LEAD AGENCY CONTACT INFORMATION:

Contact:	Cody Desautel
Address:	Natural Resources Department, P. O. Box 150 Nespelem WA 99155,
Phone:	509-634-2249
Fax:	
Email:	Cody.Desautel@colvilletribes.com

2. Submission to Jurisdiction

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

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

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

4. Certification of Legal Authority

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

to requesting any funds from the Trust, the Beneficiary has obtained full legal authority to receive and/or direct payments of such funds. If the Beneficiary fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary under the Trust Agreement until it has obtained such legal authority.

5. Certification of Legal Compliance and Disposition of Unused Funds

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

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

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

7. Publicly Available Information

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

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any

other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

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

- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.
- (b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or an Emissions Compliant Recall based solely on:
 - i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or
 - ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or
 - iii. Other emissions-related vehicle characteristics that result from the modification; or
 - iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.
- (c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions


Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.

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


10. Reliance on Certification

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

FOR THE GOVERNOR (or the analogous Chief Executive):

Signature: 
Name: Rodney Cawston
Title: Chairman of the Colville Business Council
Date: _____
Location: Nespelem WA

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: 
Name: Cody Desautel
Title: Natural Resources Director
Date: 1/4/19
Location: Nespelem WA

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____

Title: _____

Date: _____

Location: _____



The Confederated Tribes of the Colville Reservation

Colville Business Council
P.O. Box 150, Nespelem, WA 99155

(509) 634-2200
FAX: (509) 634-4116



INCUMBENCY CERTIFICATE

The undersigned is the _____ Chairman of the Business Council _____ of the
Confederated Tribes of the Colville Reservation
listed on the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130. Pursuant to
25 U.S.C. § 5131, the Bureau of Indian Affairs of the Department of the Interior published a
current list of federally acknowledged Indian Tribes at 82 Fed. Reg. 4,915 (Jan. 17, 2017)].

In connection with the authority granted to _____ Rodney Cawston
, as the _____ Chairman of the Business Council
pursuant to [insert name of authority document that names this official as Governor or
Analogous Chief Executive] _____ for the Confederated Tribes of the
Colville Reservation , I hereby confirm that as the Chairman of the Business Council
, that I have the power to legally bind the Confederated Tribes
of the Colville Reservation _____ to all of the terms and conditions of the Indian
Tribe Trust Agreement.

The undersigned as the Chairman of the Business Council
hereby certifies that the following individual(s) are authorized to have Intralinks access on behalf
of _____ Confederated Tribes of the Colville Reservation _____ :

Cody Desautel _____ Natural Resource Director _____ *Cody Desautel*
Name: Title: Specimen Signature

Charissa Eichman _____ Attorney _____ *Ch Ei*
Name: Title: Specimen Signature

Kris Ray _____ Air Quality Program Manager _____ *Kris Ray*
Name: Title: Specimen Signature

The undersigned as Chairman of the Business Council also hereby acknowledge that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying upon this Delegation of Authority and Incumbency Certificate, or a subsequent Delegation of Authority and Incumbency Certificate from the Confederated Tribes of the Colville Reservation designating a new individual(s) entitled to have access to Intralinks on behalf of Confederated Tribes of the Colville Reservation has been delivered by the Chairman of the Business Council .

June 14, 2018 IN WITNESS WHEREOF, I have hereunto signed my name on this _____, Incumbency Certificate

By: [Signature]
Name: Rodney Cawston
Title: Chairman of the Colville Business Council

Official of the Indian Tribe certifying to the names, specimen signatures and Tribal Officers listed above:

I, Rodney Cawston, being the duly elected, qualified and acting Chairman of the Colville Business Council of the Confederated Tribes of the Colville Reservation as a Beneficiary under the Indian Tribe Trust, do hereby certify that each of the Tribal Officers named above of the Confederated Tribes of the Colville Reservation are as of the date hereof are duly elected or appointed and qualified officer of the Confederated Tribes of the Colville Reservation and holds the title or office indicated opposite such person's name, and that the signature appearing opposite such person's name is the true and genuine signature of such person.

June 14, 2018 IN WITNESS WHEREOF, I have hereunto signed my name on this _____, Incumbency Certificate

By: [Signature]
Name: Rodney Cawston
Title: Chairman of the Colville Business Council

Notary Block for Indian Tribe Chief Executive Contact:

STATE OF [where the tribe is located] WA

COUNTY OF Okanogan

On the 3rd day of January in the year 2019 before me, the undersigned, personally appeared Andy Joseph Jr, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Trisha Timentwa

Notary Public

Printed Name: Trisha Timentwa

My Commission Expires:

10.03.20

