KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2017

Hon. Charles R. Breyer
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

In RE: *United States v. Volkswagen AG et al.*, Case No. 15-MD-2672 CRB (N.D. Cal.): Submission of Certification for Beneficiary Status under the Environmental Trust Agreement for the State of Texas

Dear Judge Breyer,

The State of Texas, by and through Texas Attorney General Ken Paxton, files the attached Appendix D-3 Certification for Beneficiary Status under Environmental Mitigation Trust Agreement. The Court approved the Environmental Mitigation Trust Agreement for State Beneficiaries on September 19, 2017, and the fully executed Trust Agreement was filed on October 2, 2017. The State of Texas files and submits this certification for beneficiary status under the Environmental Trust Agreement on November 21, 2017.

Thank you,

/s/ Patrick K. Sweeten
Patrick K. Sweeten
State Bar of Texas No. 00798537
Senior Counsel for Civil Litigation

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

APPENDIX D-3

CERTIFICATION FOR BENEFICIARY STATUS UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT

1. Identity of Lead Agency

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

BENEFICIARY'S LEAD AGENCY CONTACT INFORMATION:

Contact:	Jon Niermann, Commissioner, Texas Commission on Environmental Quality
Address:	Mail Code-100, P.O. Box 13087, Austin, Texas 78711-3087
Phone:	(512) 239-5500
Fax:	(512) 239-5533
Email:	vwsettle@tceq.texas.gov

2. Submission to Jurisdiction

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

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

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

4. Certification of Legal Authority

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

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

5.tt Certification of Legal Compliance and Disposition of Unused Fundstt

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

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

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

7.tt Publicly Available Informationtt

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)tthe procedures by which the records may be accessed, which shall be designed to supporttt access and limit burden for the general public; (ii) for the Beneficiary Mitigation Plan requiredtt under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will bett solicited and considered; and (iii) a description of whether and the extent to which thett certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing thett publication of confidential business information and personally identifiable information.tt

8.tt Notice of Availability of Mitigation Action Fundstt

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.tt Registration of Subject Vehiclestt

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)ttShall not deny registration to any Subject Vehicle based solely on:tt

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

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

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

(b)ttShall not deny registration to any Subject Vehicle that has been modified intt accordance with an Approved Emissions Modification or an Emissions Compliantttt Recall based solely on:tt

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

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

iii.tt Other emissions-related vehicle characteristics that result from thett modification; ortt

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

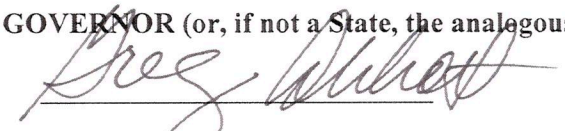
(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.

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

10. Reliance on Certification

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

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

Signature: 

Name: Greg Abbott
Title: Governor of Texas
Date: 11/15/17
Location: Travis County, Texas

[FOR OTHER REQUIRED SIGNATORIES]:

Signature:

Name: Ken Paxton
Title: Attorney General of Texas
Date: 11/20/17
Location: Travis County, Texas

[FOR OTHER REQUIRED SIGNATORIES]:

Signature:

Name: Jon Niermann

Title: Commissioner, Tx. Commission on Environmental Quality

Date: November 15, 2017

Location: Travis County, Texas

APPENDIX D-3
CERTIFICATION FOR BENEFICIARY STATUS

PARAGRAPH 7 - ATTACHMENT

Pursuant to Paragraph 7 of Appendix D-3, Certification for Beneficiary Status under Environmental Trust Agreement, the State of Texas submits the following information:

(i) The Procedures by which the Records may be accessed.

The Texas Commission on Environmental Quality (TCEQ) will provide general information regarding approved funding request applications on its publicly accessible website.

Additionally, copies of applications and contracts may be requested through the TCEQ's public information request process discussed below. The Texas Public Information Act (PIA), found at Texas Government Code, Chapter 552, governs the policies and procedures for public access to information, including the TCEQ's pubic information request process.

Instructions on how to submit a public information request may be found on the TCEQ's public website, which includes an online request form and a detailed tracking system. The tracking system assigns requests within the agency and ensures that requests are fulfilled within deadlines.

Under the PIA, certain information included in applications and contracts may be considered confidential and therefore excepted from public disclosure. If an exception may apply to requested information, there are procedures that the TCEQ follows to refer the matter to the Texas Office of the Attorney General for a ruling on whether that exception applies.

(ii) The Procedures by which public input will be solicited and considered for the Beneficiary Mitigation Plan.

The TCEQ will provide an opportunity for public review and comment on the draft Beneficiary Mitigation Plan. The draft plan and instructions for submitting comments will be provided on a publicly accessible website. There will be a comment period of at least 30 days, and notice of the comment period will be published in the *Texas Register*. The TCEQ will hold one or more public meetings to solicit input on the draft Beneficiary Mitigation Plan. Once the comment period has closed, a summary of comments received will be prepared and considered in approval of the final Beneficiary Mitigation Plan. The comment summary and a response to comments document will be provided on a publicly accessible website along with the final version of the Beneficiary Mitigation Plan.

(iii) Description of Beneficiary's applicable laws governing publication of confidential business information and personally identifiable information.

As stated previously, the Texas Public Information Act (PIA), found at Texas Government Code, Chapter 552, governs the policies and procedures for public access to information, including the TCEQ's pubic information request process. Under Chapter 552, certain information that may be included in applications and contracts under this program may be considered confidential and not subject to release if requested by the public. Examples of confidential information include:

- E-mail addresses of a member of the public. Exceptions to the confidentiality provisions may apply for e-mail addresses provided in conjunction with an application or contract.
- Social Security Numbers;
- Certain motor vehicle records, including driver's licenses or permits, vehicle title, vehicle registration, and vehicle identification numbers, except in certain circumstances;
- Account numbers and information that may provide access to financial accounts and records of an applicant; and
- Trade secrets and commercial or financial information where disclosure would cause substantial competitive harm.