

## **TRUST AGREEMENT**

### **Department of Environment and Conservation, Division of Solid Waste Management**

Trust Agreement, the “Agreement,” entered into as of [date] by and between \_\_\_\_\_, a Tennessee corporation, the “Grantor,” and \_\_\_\_\_, the “Trustee.”

Whereas, the Tennessee Department of Environment and Conservation, “TDEC,” a department of the State Government of Tennessee has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste processing and/or disposal facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

#### Section 1. Definitions.

As used in this Agreement:

- (a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
  
- (b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.
  
- (c) The term “Beneficiary” means the Department of Environment and Conservation.
  
- (d) The term “Anniversary Date of Establishment of the Fund” means the date of receipt of payment into the trust by the Trustee.

- (e) The term “Commissioner” means the Commissioner of the Department of Environment and Conservation for the State of Tennessee.

Section 2. Identification of Facilities and Cost Estimates.

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A.

Section 3. Establishment of Fund.

**The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of TDEC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. All monies or property to be deposited with the trustee, either initially or hereafter, shall consist of cash, negotiable certificates of deposit, negotiable United States Treasury Securities, negotiable general obligation municipal or corporate bonds which have at least an “A” rating by Moody’s and/or Standard and Poor’s rating services, or any other obligations guaranteed as to principal and interest by the United States or any of its agencies. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TDEC.**

Section 4. Payments for Closure and Post-Closure Care and Release.

The Trustee shall make payments from the Fund as the Commissioner of TDEC (hereinafter “the Commissioner”) shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Commissioner from the Fund for closure and/or post-closure expenditures in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall release to the Grantor such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein. During the period of closure and/or post-closure care, the Commissioner may approve a release of funds if the owner or operator demonstrates to the Commissioner that the value of the trust fund exceeds the remaining cost of closure and/or post-closure care. If the Grantor substitutes other financial assurance for all or part of the trust fund, he may submit a written request to the Commissioner for release of an amount from the trust fund that equals the amount of

the substituted financial assurance mechanism. After receiving a request from the owner or operator for release of funds as specified above, the Commissioner will instruct the trustee, in writing, to release to the Grantor a specified amount of funds.

#### Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee. The fund created hereby, expressly including the initial and subsequent deposits thereto made by the Grantor, shall consist of cash, negotiable certificates of deposit, negotiable United States Treasury Securities, negotiable general obligation municipal or corporate bonds which have at least an "A" rating by Moody's and/or Standard and Poor's rating services, or any other obligations guaranteed as to principal and interest by the United States or any of its agencies. Upon receipt of initial payment and subsequent payments to the trust fund, the trustee shall send notification to the Commissioner of receipt of such payments.

#### Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80-al et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or

arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institutions affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Annual Valuation Revision of Cost Estimates and Calculation of Annual Payments Into Trust.

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Commissioner a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 60 days after the statement has been furnished to the Grantor and

the Commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

The closure and/or post-closure cost estimate must be updated for inflation 30 days prior to the anniversary date of the establishment of the fund. The adjustment may be made by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

- (1) The first adjustment is made by multiplying the closure and/or post-closure cost estimate by the inflation factor. The result is the adjusted closure and/or post-closure cost estimate.
- (2) Subsequent adjustments are made by multiplying the latest adjusted closure and/or post-closure cost estimate by the latest inflation factor.

Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in-period." The payments into the closure and/or post-closure trust fund must be made as follows:

- (1) For a new facility, the first payment must be made before the initial operation is begun. A receipt from the trustee for this payment must be filed by the owner or operator before the operation begins. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in-period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

In this formula, CE is the current closure and/or post-closure cost estimate; CV is the current value of the trust fund; Y is the number of years remaining in the pay-in period.

- (2) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current closure and/or post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made at specified in item (1) of this subpart.
- (3) Any increases or decreases in the amount of the closure and/or post closure cost estimate due to permit modifications shall be factored into the formula for calculating the next annual payment and, therefore, subsequent payments into the trust. Any increases in the amount of the closure and/or post closure cost estimate due to corrective action requirements are excluded from this procedure and may require post a separate financial assurance mechanism.

#### Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel to the Grantor and/or the Commissioner, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Commissioner, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee and Notices.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Commissioner to the Trustee shall be in writing, signed by the Commissioner, or his designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TDEC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TDEC, except as provided for herein. Any notice required or permitted under the provisions hereof shall be given, in writing, and addressed to the persons designed in Exhibit A at the addresses shown therein.



Section 15. Notice of Payment of Nonpayment.

The Trustee shall notify the Grantor and the Commissioner within 10 days following the last day of each of the 12 consecutive calendar months from the establishment of this Trust, of the receipt of a payment from the Grantor, as specified in Schedule B, during the preceding calendar month or if no payment has been received.

Section 16. Semiannual Accounting

The Trustee shall provide the Grantor and the Commissioner a full accounting of the status of Trust semiannually.

Section 17. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Commissioner, or by the Trustee and the Commissioner if the Grantor ceases to exist.

Section 18. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 17, this Trust shall be irrevocable and shall continue until terminated at any time by the written agreement of the Grantor, the Trustee, and the Commissioner, or by the Trustee and the Commissioner, if the Grantor ceases to exist or until 30 days following the end of the period of closure and/or post-closure care for the facility. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 19. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust

Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 20. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the State of Tennessee.

Section 21. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written: The parties below certify that the Agreement complies with Rule 0400-11-01-.03 as such rule was constituted on the date this Agreement is executed.

GRANTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Title: \_\_\_\_\_

TRUSTEE:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Title: \_\_\_\_\_

[Seal]

State of \_\_\_\_\_ )

ss.:

County of \_\_\_\_\_ )

On this \_\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that she/he resides at \_\_\_\_\_, that she/he is \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

State of \_\_\_\_\_ )

) ss.:

County of \_\_\_\_\_ )

On this \_\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that she/he resides at \_\_\_\_\_, that she/he is \_\_\_\_\_ of ----- described in and which executed the above instrument; that she/he knows the seal of said national bank; that the seal affixed to such instrument is such national bank seal; that it was so affixed by order of the Board of Directors of said national bank, and that she/he signed her/his name thereto by like order.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

**Schedule A**

Name and Address of Grantor: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tennessee Permit Number of the Facility: \_\_\_\_\_

Closure Cost Estimate: \_\_\_\_\_

Post-Closure Care Cost Estimate: \_\_\_\_\_

**Schedule B**

The trust fund initially consists of the sum of \_\_\_\_\_ in cash and the additional sum of \_\_\_\_\_ in securities described below.

**Exhibit A**

Name of Chief Executive Officer or Principal of the Grantor facility:

Commissioner's designee:

Patrick J. Flood, P.E., Director

Tennessee Department of Environment and Conservation

Division of Solid Waste Management

401 Church Street, 5th Floor

Nashville, Tennessee 37243-1535

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Name of Chief Financial Officer of the Grantor facility:

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Name of the Primary Administrator of the Grantor facility:

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## **Exhibit B**

Letter from the Trustee to the Grantor acknowledging receipt of the deposit.