Trust Agreement ("Agreement") entered into as of [*date*] by and between [*company name*], a [*name of a state] [insert "corporation," "partnership," "association," or "proprietorship*"] ("Grantor"), and [*financial institution*], [*classification of financial institution*] ("Trustee").

Whereas, the Grantor has made application for a license to establish, maintain, and/or operate a hazardous waste management facility within the state of Michigan in accordance with the provisions of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the administrative rules promulgated thereunder ("Act");

Whereas, the Director, Michigan Department of Environment, Great Lakes, and Energy, has promulgated administrative rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities;

Whereas, the Grantor has elected to establish a standby trust fund into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility 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;

Whereas, the trust operations of the Trustee are regulated and examined by a state or federal agency and Trustee has authority to act as trustee; and

Whereas, 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 "Director" means the duly appointed and acting Director of the Department of Environment, Great Lakes, and Energy, or any successor department or agency or his authorized representative.

(b) The term "Fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

(c) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Coverages:

This agreement pertains to the following facility(ies) owned and/or operated by the Grantor as identified by name, EPA identification number, location, and the amount of liability coverage demonstrated by this agreement:

# Section 3. Establishment of Trust Fund:

The Grantor and the Trustee hereby establish a standby trust fund, hereinafter the "Trust Fund," for the benefit of any and all third parties injured or damaged by [*sudden and/or nonsudden*] accidental occurrences arising from operation of the facility(ies) covered by this Agreement in the amounts of $\_\_\_\_\_\_\_\_\_\_\_ per occurrence and $\_\_\_\_\_\_\_\_\_\_ annual aggregate for sudden accidental occurrences and $\_\_\_\_\_\_\_\_\_\_\_ per occurrence and $ \_\_\_\_\_\_\_\_\_\_\_ annual aggregate for nonsudden accidental occurrences, except that the Trust Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that Grantor would be obligated to pay in the absence of the contractor or agreement;

(b) Any obligation of Grantor under a workers' compensation, disability benefits, or unemployment compensation law or similar law;

(c) Bodily injury to an employee of Grantor arising from, and in the course of, employment by the Grantor, or bodily injury to the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by Grantor. This exclusion applies whether Grantor may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay another person who must pay damages because of the injury to the employee or the spouse, child, parent, brother, or sister of the employee;

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft; or

(e) Property damage to any of the following:

(1) Any property owned, rented, or occupied by Grantor;

(2) Premises that are sold, given away, or abandoned by Grantor if the property damage arises out of any part of those premises;

(3) Property loaned to Grantor;

(4) Personal property in the care, custody, or control of Grantor; or

(5) That particular part of real property on which Grantor or any contractors or subcontractors working directly or indirectly on behalf of Grantor are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Trust Fund shall be considered [*insert "primary" or "excess*"] coverage.

The Trust Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Trust Fund. Such proceeds and any other property subsequently transferred to the Trustee is collectively referred to as the Trust Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Trust Fund shall be held by the Trustee, in trust, as hereinafter provided.

# Section 4. Payment for Bodily Injury or Property Damage:

The Trust Fund so established shall be used solely to provide for the payment of third‑party liability awards and settlements for bodily injury and property damage caused by occurrences arising from the operations of the facilities covered by this Agreement. The Trustee shall satisfy such awards and settlements by drawing on the letter of credit described in attached Exhibit A, and by making payments from the Trust Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## CERTIFICATION OF VALID CLAIM

The undersigned, as parties [*insert Grantor*] and [*insert name and address of third party claimant(s*)], hereby certify that the claim of bodily injury and/or property damage caused by a [*sudden or nonsudden*] accidental occurrence arising from operating [*Grantor's*] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[\_\_\_\_\_\_\_].

[*Signatures*]

Grantor

[*Signatures*]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Payment shall be made directly to the third party(ies) and in the amount(s) as designated in the Certification of Valid Claim or Court Order, up to the value of the Trust Fund.

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# Section 5. Payments Comprising the Trust Fund:

Payments made to the Trustee by the Grantor shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the Michigan Administrative Code R 299.9710 and section 4 of this Agreement.

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 as required by the Act or any conditions of licensure.

# Section 6. Trustee Management:

The Trustee shall invest and reinvest the principle and income, in accordance with general investment policies and guidelines that 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 Trust Fund, the Trustee or any other Fiduciary shall discharge his duties with respect to the Trust Fund solely in the interest of the participants and the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that 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 Trust Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the United States of America or the State of Michigan; 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 Trust Fund to any common, commingled, or collective trust fund created by the Trustee in which the Trust 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. 80a‑1 *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 or its affiliate. The Trustee may vote such shares in its discretion.

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# 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 Trustees 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 Trust 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 of America, or any agency of 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 Trust Fund;

(d) To deposit any cash in the Trust Fund in interest‑ bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the United States of America or the State of Michigan; and

(e) To compromise or otherwise adjust all claims in favor of or against the Trust Fund.

# Section 9. Taxes and Expenses:

All taxes of any kind that may be assessed or levied against or in respect of the Trust Fund and all brokerage commissions incurred by the Trust Fund shall be paid from the Trust Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust Fund, 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 to the Trustee shall be paid from the Trust Fund.

Notwithstanding the foregoing, it is the express obligation of the Grantor and the Grantor agrees to pay directly to the Trustee for the benefit of the Trust Fund, on demand, any and all expenses, costs, and fees (other than taxes and disbursements pursuant to section 4 of this Agreement) occasioned by virtue of the Trust Fund so as to maintain the level, amount, and value of the Trust Fund exclusively available for the purposes for which the Trust Fund has been created; provided further, that should the Trustee utilize any portion of the Trust Fund for costs, expenses, and fees (other than taxes and disbursements pursuant to section 4 of this Agreement), the Grantor shall forthwith add to the Trust Fund an amount equal to the portion of the Trust Fund so utilized.

# Section 10. Advice of Counsel:

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, 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 11. 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 12. Successor Trustee:

The Trustee may resign by written notice to all parties, or the Grantor may replace the Trustee by written notice to all parties. Such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. 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 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 held on behalf of the Trust Fund. The successor trustee shall specify the date on which it assumes administration of the Trust Fund in writing sent to the Grantor, the Director, 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 13. Instructions to the Trustee:

All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's 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 the Director 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 the Director, except as provided for herein.

# Section 14. Amendment of Agreement:

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

Section 15. Irrevocability and Termination:

Subject to the right of the parties to amend this Agreement as provided in section 14, this Trust Fund shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

# Section 16. 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 and the Director 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 reasonable incurred in its defense in the event the Grantor fails to provide such defense.

# Section 17. Choice of Law:

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

# Section 18. 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 of 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 their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified by the Michigan Department of Environment, Great Lakes, and Energy as of the date first above written.

FOR THE GRANTOR

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

FOR THE TRUSTEE

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

)SS

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_corporation, on behalf of the corporation, the Grantor named in the foregoing instrument.

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

, Notary Public

\_\_\_\_\_\_\_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

)SS

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_corporation, on behalf of the corporation, the Trustee named in the foregoing instrument.

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

, Notary Public

\_\_\_\_\_\_\_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

TRUST ASSETS

The Trust Fund is established initially as consisting of the proceeds from Letter of Credit Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, issued on \_\_\_\_\_\_\_\_\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the amount of $\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_/100 U.S. Dollars), in the favor of the Trustee.

By their signatures below, the parties agree that this Exhibit A is incorporated and made a part of the Trust Agreement dated \_\_\_\_\_\_\_\_\_\_.

FOR THE GRANTOR

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

FOR THE TRUSTEE

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**EXHIBIT B**

AUTHORIZED SIGNATORIES FOR GRANTOR

The following persons are authorized to sign orders, requests, certifications of valid claims, and instructions to the Trustee on behalf of the Grantor:

By their signatures below, the parties agree that this Exhibit B is incorporated and made a part of the Trust Agreement dated \_\_\_\_\_\_\_\_\_\_.

FOR THE GRANTOR

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

FOR THE TRUSTEE

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ If you need this information in an alternate format, contact EGLE-Accessibility@Michigan.gov or call 800-662-9278.