 Trust Agreement ("Agreement") entered into as of [*date*] by and between the [*company name*], a [*name of state*] [*corporation, partnership*] ("Grantor") [*financial institution*], [*classification of financial institution*] ("Trustee") and the Director of the Michigan Department of Environment, Great Lakes, and Energy ("Director") as beneficiary.

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, the licensing authority, has promulgated administrative rules applicable to the Grantor, requiring that the owner or operator of a hazardous waste management facility must provide financial assurance that funds will be available when needed for the cost of proper *[insert “closure” or “postclosure” or “corrective action” or “closure and postclosure” or “closure and corrective action” or “postclosure and corrective action” or “closure and postclosure and corrective action”*] of the facility;

Whereas, the Grantor has elected to establish this Trust Fund to provide all or part of such financial assurance for the facility(ies) identified herein;

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement;

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

Whereas, the Trustee is willing to act as trustee;

Now, therefore, the Grantor, Trustee, and Director 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 Environmental Quality 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

This Agreement pertains to the following facility or facilities owned and/or operated by the Grantor. The current *[insert “closure” or “postclosure” or “corrective action” or “closure and postclosure” or “closure and corrective action” or “postclosure and corrective action” or “closure and postclosure and corrective action”*] cost estimate(s), or portions thereof, for each facility covered by this Trust Fund are shown separately: [*For each facility, include its name, EPA identification number, address, and amount of closure, postclosure, and/or corrective action financial assurance provided.*]

These cost estimates will be revised from time to time by the Grantor as required by the Act.

# Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund ("Trust Fund") for the exclusive use and benefit of the Director as beneficiary, and intend that no other party shall have access to said Trust Fund without the express written approval and direction of the Director.

The Trust Fund is established initially as consisting of the cash and securities, which are acceptable to the Trustee, described in attached Exhibit A. Such property and all other property subsequently conveyed by the Grantor 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. Payments from the Trust Fund

The Trustee shall make payments from the Trust Fund to the Director, the Grantor, or other persons, as instructed in writing by the Director. The Grantor and Director shall comply with the provisions of R 299.9704 of the Michigan Administrative Code for payments from the Trust Fund. The Trustee shall not make any payments from the Trust Fund without the prior written approval from the Director.

The Trust Fund so established shall be used solely to provide for the payment of the costs of *[insert “closure” or “postclosure” or “corrective action” or “closure and postclosure” or “closure and corrective action” or “postclosure and corrective action” or “closure and postclosure and corrective action”*] at the facility(ies) covered by this Agreement; to reimburse the Grantor for legitimate expenses in carrying out *[insert “closure” or “postclosure” or “corrective action” or “closure and postclosure” or “closure and corrective action” or “postclosure and corrective action” or “closure and postclosure and corrective action”*] activities as approved by the Director; or to disburse to the Grantor excess funds as determined by the Director not required to be part of this Trust Fund.

If the Director issues a notice of violation or other order to the Grantor alleging violation of the *[insert “closure” or “postclosure” or “corrective action” or “closure and postclosure” or “closure and corrective action” or “postclosure and corrective action” or “closure and postclosure and corrective action”*] requirements, the Director may, after providing the Grantor 7 days' notice and opportunity for hearing, access the funds in the Trust Fund to correct the violations, complete *[insert “closure” or “postclosure” or “corrective action” or “closure and postclosure” or “closure and corrective action” or “postclosure and corrective action” or “closure and postclosure and corrective action”*], and maintain the facility in accordance with the approved plans.

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# Section 5. Contributions to the Trust Fund

Contributions to the Trust Fund by the Grantor shall consist of cash, certified check, and/or direct obligations of the United States of America or the state of Michigan, or obligations the principal and interest of which are unconditionally guaranteed by the United States of America or the state of Michigan, or certificates of deposit of any financial institution to the extent insured by an agency of the United States of America that certificates of deposit shall mature not later than one year from the date of deposit.

The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any contributions required to be made by Grantor to the Trust Fund or for contributions required of the Grantor to discharge any liabilities of the Grantor as required by the Act or any condition of a license issued pursuant to the Act.

The Trustee shall notify the Director in writing of contributions made to the Trust Fund by the Grantor.

# Section 6. Trustee Management

The Trustee shall invest and reinvest the principle and income of the Trust Fund, in accordance with general investment policies and guidelines that the Grantor shall communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Agreement. 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 best interests of the Director 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, provided that:

(a) Securities or other obligations of the Grantor or any other owner or operator of the facility, 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 on behalf of the Trust Fund, unless they are securities or other obligations of the United States of America or the state of Michigan;

(b) 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

(c) The Trustee is authorized to hold cash while 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 and in accordance with the investment policies and guidelines transmitted to the Trustee by the Grantor pursuant to section 6 hereof:

(a) To transfer from time to time any or all of the assets of the Trust Fund to any common, commingled, or collective trust 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 so long as such management does not conflict with the requirements of this Trust Fund; and

(b) To purchase, on behalf of the Trust Fund, shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a‑1 et seq., including one that 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 discretion 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 on behalf of the Trust Fund, 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 on behalf of 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 held on behalf 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 the Trust Fund, including fees for legal services rendered to the Trustee, the compensation of the Trustee (to the extent not paid directly by 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. Annual Valuations

The Trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the Trust Fund, furnish to the Grantor and to the Director a written statement of the current value of the Trust Fund. Any securities in the Trust Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Trust Fund.

# Section 11. 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 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 by written notice to all parties, or Grantor may replace the Trustee by written notice to all parties. Such resignation or replacement shall not be effective until Grantor has appointed a successor trustee and the successor trustee 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 will assume administration of the Trust Fund in writing sent to the Director, Grantor, 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

All orders, requests, and instructions to the Trustee by the Director shall be in writing and signed by the Director. All orders, requests, and instructions to the Trustee by the Grantor shall be in writing and signed by the Grantor. So long as such orders, requests, and instructions are consistent with the provisions of this agreement, the Trustee shall act in accordance with such orders, requests, and instructions, and in so acting will be fully protected to the extent permitted by law. 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 otherwise provided for herein.

# Section 15. 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 16. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in section 15, 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 Fund, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor, or if the Grantor ceases to exist, to the Director.

The parties agree that the purpose of this Trust Fund, which is to fund the *[insert “closure” or “postclosure” or “corrective action” or “closure and postclosure” or “closure and corrective action” or “postclosure and corrective action” or “closure and postclosure and corrective action”*] activities in order to control, minimize, or eliminate, to the extent necessary to protect human health and the environment, the escape of hazardous waste or hazardous constituents to the ground or surface waters or to the atmosphere, is beneficial to the public as a whole. Accordingly, the parties agree that this Trust Fund is for public welfare purposes and comes within the statutory exception to the rule against perpetuities set forth in Michigan Compiled Laws §554.381 (Mich. Stat. Annot. §26.1201).

# Section 17. 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 the Trust Fund, or in carrying out any directions by the Grantor and/or 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 capacity as trustee of the Trust Fund, including all expenses reasonably incurred in its defense against related litigation.

# Section 18. Choice of Law

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

# Section 19. 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 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOR THE DIRECTOR

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 or partnership*] on behalf of the [*corporation or partnership*], 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: \_\_\_\_\_

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

) SS.

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_), by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Michigan Department of Environment, Great Lakes, and Energy, on behalf of the Director 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 following:

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

FOR THE GRANTOR

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

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

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

FOR THE TRUSTEE

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

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

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

FOR THE DIRECTOR

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

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

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

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