

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Materials Management Division

# Solid Waste Landfill Perpetual Care Fund Trust Agreement

(This agreement is required under the authority of Part 115 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.)

The Trust Agreement must be worded as follows. Please do not retype this document.

 This Trust Agreement (Agreement), entered into as of DATE, by OWNER/OPERATOR**,** (Grantor) with offices at ADDRESS; CITY, STATE ZIP CODE; and TRUSTEE (Trustee), incorporated in the state of STATE OF INCORPORATION with an address at ADDRESS; CITY, STATE ZIP CODE; and the Director of the Department of Environment, Great Lakes, and Energy, or his or her authorized representative, (Beneficiary), with an address at Department of Environment, Great Lakes, and Energy, Materials Management Division, Solid Waste Section P.O. Box 30241, Lansing, Michigan 48909‑7741.

## RECITALS

 1. The Grantor has a license to establish, maintain, and/or operate a sanitary landfill or coal ash impoundment within the State of Michigan in accordance with Part 115 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, the "Act."

 2. The Act requires owners and operators of solid waste landfills and coal ash impoundments to establish and maintain a Perpetual Care Fund, the "Perpetual Care Fund," to be used for closure, post-closure monitoring and maintenance, and corrective action, as necessary, and as further defined in Section 11525 of the Act.

 3. Section 11525(2) of the Act allows the Perpetual Care Fund to be established as a Trust or an Escrow account.

 4. The Grantor has elected to establish a trust account under the Agreement in compliance with the Act for the facility identified herein.

 5. The Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement.

 6. The Trustee is willing to act as the Trustee under the terms of the Agreement. The Trustee is a bank or other financial institution that has the authority to act as a custodian of the Perpetual Care Fund, and whose account operations are regulated and examined by a federal or state agency.

 7. The Beneficiary approves the Trustee selected by the Grantor.

The parties agree as follows:

1. Definitions. As used in this Agreement:

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

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

 (c) The term "Facility" means the facility owned and/or operated by the Grantor and identified in Section 2 hereof.

 (d) The term "Beneficiary" means the Director of the Michigan Department of Environment, Great Lakes, and Energy or his or her authorized representative.

2. Identification of Facility.

This Agreement pertains to the following facility owned and/or operated by the Grantor:

 Facility Name:

 Facility Location:

 Waste Data System Number (WDS):

 Federal Identification Number:

3. The Establishment of the Perpetual Care Fund.

The Grantor and the Trustee hereby establish the Perpetual Care Fund under this Agreement for the purpose of establishing financial assurance, as defined in the Act and intend that no other person or entity shall have access to this Perpetual Care Fund without the express written approval and direction of the Beneficiary. The Perpetual Care Fund will be held by the Trustee, in Trust, under the terms of this Agreement. The Perpetual Care Fund is established initially as consisting of cash and/or securities, acceptable to the Trustee (the Trust Assets). These Trust Assets, or any other assets subsequently transferred to the Trustee, are collectively referred to as the Perpetual Care Fund, together with all earnings, interests, and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement.

4. Deposits into the Perpetual Care Fund.

1. The Grantor shall deposit into this Perpetual Care Fund amounts as specified in Section 11525 of the Act.
2. The Grantor may contribute additional amounts to the Perpetual Care Fund at its discretion.
3. Payments comprising the fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

5. Earnings of Trust Assets.

Until the fund amount reaches the applicable amount specified in Sections 11525(3) or 11525(9) (whichever is applicable) of the Act, earnings and interest of the Perpetual Care Fund shall be credited to the Perpetual Care Fund. After the Perpetual Care Fund reaches the maximum required fund amount, earnings shall be distributed as directed by the Grantor in accordance with Section 11525(8) of the Act.

6. Disbursements from the Perpetual Care Fund

1. Disbursements from the Perpetual Care Fund shall be made in accordance with Sections 11525(8), (9) (10) or (11) of the Act. Except as provided in Sections 11525(8) or (9) of the Act, no disbursement may be made from the Perpetual Care Fund without the prior written approval of the Beneficiary.

(b) If the Grantor refuses to take action required by Section 11525(10) of the Act or refuses to pay the solid waste administration fee per Section 11525a or 11525(10) of the Act, then the Beneficiary may require the disbursement of money from the Perpetual Care Fund and may expend the money for the purposes as indicated in Section 11550(4) and/or as applicable in Section 11525(10) of the Act. The Beneficiary may assess a Perpetual Care Fund for administrative costs associated with actions taken under Section 11525(10) of the Act.

(c) In accordance with Section 11525(11) and upon the Beneficiary’s approval to terminate financial assurance for a landfill or coal ash impoundment under Section 11525b, any money in the Perpetual Care Fund shall be disbursed to the owner of the disposal area unless a contract between the owner and the operator of the disposal area provides otherwise.

7. Trustee Management of the Perpetual Care Fund.

The Trustee shall invest and reinvest the principal and income of the Perpetual Care Fund and keep the Perpetual Care Fund invested, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee, subject, however, to the provisions of this Agreement. In investing, reinvesting, exchanging, selling and managing the Perpetual Care Fund, the Trustee will discharge its duties with respect to the Perpetual Care Fund solely in the interest of the Grantor and 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.

The Trustee shall fully invest the Perpetual Care Fund at all times whenever possible, but under no circumstances shall the Perpetual Care Fund not be fully invested within three (3) business days of receipt of additional deposits or income. All earnings and interest shall be credited to it.

8. Commingling and Investment.

The Trustee is expressly authorized in its discretion to transfer from time to time any or all of the assets of the Perpetual Care Fund to any common, commingled or collective Trust fund created by the Trustee in which the Perpetual Care 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 Perpetual Care Fund. To the extent of the equitable share of the Perpetual Care Fund in any such commingled Trust, such commingled Trust will be part of the Perpetual Care Fund.

9. Trustee Compensation and Expenses.

The Trustee shall be entitled to reasonable fees for services hereunder and to reimbursement for all proper costs, charges and expenses including, but not limited to, attorney fees and expenses reasonably incurred in connection herewith, which fees and all such costs, charges and expenses shall be paid from the Perpetual Care Fund or by the Grantor.

10. Express Powers of The Trustee.

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

 (a) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all instruments that may be necessary or appropriate to carry out the powers herein granted.

 (b) To register any securities held in the Perpetual Care 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 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 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 will at all times show that all such securities are part of this Perpetual Care Fund.

11. Duties and Liabilities of the Trustee.

The acceptance by the Trustee of the duties and obligations of the Trustee under this Agreement is subject to the following terms and conditions:

(a) The Trustee shall be protected in acting, or refraining from acting, upon any written notice, request, waiver, consent, receipt or other paper or document signed by the Beneficiary that the Trustee in good faith believes to be genuine. The Trustee shall have no responsibility to inquire into or determine genuineness or authenticity of any documents or instruments submitted to it as originals and may rely upon any order from a court of competent jurisdiction related to the disbursement of funds from the Perpetual Care Fund.

(b) The Trustee shall not be responsible for the collection from the Grantor of payments required to be made by the Grantor to the Trustee hereunder.

(c) If a lawsuit shall arise with respect to the disposition by the Trustee of the Trust Assets held in this Perpetual Care Fund pursuant to this Agreement, or any part thereof, the Trustee shall not be liable for refusing to deliver any part of such property that is the subject of the lawsuit unless and until such lawsuit is resolved by a final judgment or order from a court of competent jurisdiction from which no right of appeal exists, or in respect of which any right of appeal has expired without being exercised, or by written agreement acceptable to the Trustee executed and delivered by the parties hereto.

(d) The Trustee shall ensure the filing of all required tax returns for which the Perpetual Care Fund is liable and shall disburse funds from earnings of the Perpetual Care Fund to pay lawfully due taxes owed by the Perpetual Care Fund.

(e) The Trustee shall, upon receipt of notice provided to the Trustee under Section 16 of this Agreement, maintain records of ownership of the Facility during the time in which the Perpetual Care Fund is established.

12. Annual Valuation.

The Trustee shall keep all records of this Perpetual Care Fund on a calendar-year basis. The Trustee shall make an annual accounting to the Beneficiary and Grantor within thirty (30) days following the close of the State’s fiscal year, but no later than October 30, that reflects the total Perpetual Care Fund balance as of the preceding September 30 during each year this Agreement is operative.

13. 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.

14. Successor Trustee.

Upon the written agreement of the Grantor and the Beneficiary, with ninety (90) days prior written notice to the Trustee, the Grantor may replace the Trustee. The Trustee may resign after giving ninety (90) days prior written notice to the Grantor and the Beneficiary. In either event, the Grantor will appoint a Successor Trustee who will have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the Successor Trustee, the Trustee will assign, transfer, and pay over to the Successor Trustee, the Trust Assets constituting the Perpetual Care 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 Perpetual Care Fund in writing sent to the Grantor, the Beneficiary, and the present Trustee by certified mail ten (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 will be paid as provided in Section 9.

15. Instructions to the Trustee.

All orders, requests, and instructions by the Beneficiary, or the Grantor, to the Trustee will be in writing, signed by the Beneficiary, or (as applicable) the Grantor, and the Trustee shall act, and in so acting, will be fully protected if acting in accordance with such orders, requests, and instructions. The Trustee will 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 Beneficiary hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests, and instructions from the Beneficiary, except as provided for herein.

16. Additional Duties of the Grantor.

In addition to other duties of the Grantor in this Agreement, the Grantor shall provide written notice to the Trustee if there is a change of ownership of the Facility.

17. Additional Duties of the Beneficiary.

In addition to other duties of the Beneficiary in this Agreement, the Beneficiary shall:

(a) Notify the Grantor and the Trustee in writing if the Beneficiary determines that the Grantor has refused to conduct closure, monitoring, maintenance, or response activities at the Facility necessary to protect public health, safety and welfare, or the environment, along with the reasons for that determination upon expiration of thirty (30) years after closure of the Facility.

(b) Notify the Trustee of the date of closure of the Facility.

18. Immunity and Indemnification.

The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Perpetual Care Fund, or in carrying out any directions by the Beneficiary issued in accordance with this Agreement. Grantor shall indemnify and hold harmless the Trustee and Beneficiary from and against any and all liabilities, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever including, without limitation, the reasonable fees and disbursements of counsel for the Trustee or Beneficiary in connection with any investigative, administrative, or judicial proceeding which may be imposed on, incurred by or assessed against the Trustee or Beneficiary at any time in connection with their performance hereunder, or in any way relating to or arising out of this Agreement or any of the transactions contemplated herein. Neither the Trustee nor the Beneficiary shall have the right to be indemnified hereunder for its sole negligence or willful misconduct.

19. Notices.

All parties to this Agreement are to receive copies of any notices sent to any other party of this Agreement pertaining to the Perpetual Care Fund. Notices shall be mailed to the following addresses:

 If to Grantor:

 If to Trustee:

 Trust Account Number

 If to Beneficiary:

 Department of Environment, Great Lakes, and Energy

 Materials Management Division

 Solid Waste Section

 P.O. Box 30241

 Lansing, Michigan 48909-7741

20. Amendments.

This Agreement may not be modified or amended, except by written agreement executed by all parties to this Agreement, or by the Trustee and the Beneficiary if the Grantor ceases to exist, except that this provision does not apply with respect to a change in address in Section 19 of this Agreement. Notice of the change in address shall be given to all parties to this Agreement at least ten (10) business days in advance of such change.

21. Applicable Law.

This Agreement is to be, in all respects, governed by the laws of the State of Michigan.

22. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. 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 will not affect the interpretation or the legal efficacy of this Agreement.

24. Irrevocability.

Subject to the right of the parties to amend this Agreement as provided in Section 20, this Perpetual Care Fund will be irrevocable and will continue until terminated by the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary if the Grantor ceases to exist.

25. Successors and Assigns.

Any successors or assigns to any party to this Agreement shall be likewise bound to its terms and conditions.

26. Agreement Does Not Alter or Take Precedence Over the Act.

This Agreement does not alter or take precedence over any right or obligation described in Section 11525 of the Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

## GRANTOR:

By: Date:

Name:

Title:

STATE/PROVINCE OF )

COUNTY OF )

The foregoing instrument was acknowledged before me this day of ,

20 , by , the

of , a

corporation, on behalf of the corporation, the Custodian named in the foregoing instrument.

 Notary Public – State/Province

 County of

 My Commission Expires

 Acting in the County of

## TRUSTEE:

By: Date:

Name:

Title:

STATE OF )

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 – State

 County of

 My Commission Expires

 Acting in the County of

## BENEFICIARY:

By: Date:

Name:

Title:

STATE OF )

COUNTY OF )

The foregoing instrument was acknowledged before me this day of ,

20 , by , the

of the , of the Department of Environment, Great Lakes, and Energy, on behalf of the Director, Department of Environment, Great Lakes, and Energy, the Beneficiary name in the foregoing instrument.

 Notary Public – State

 County of

 My Commission Expires

 Acting in the County of

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