



### TRUST AGREEMENT

This document provides instructions on the use of a Trust Agreement to fulfill the requirements for financial assurance pursuant to Section 20114d(4)(b) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This document and the attached model document are provided to the public as preliminary guidance as to the content, format, and terms of the Financial Assurance Mechanism and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Section 20114d of the NREPA states that upon completion of remedial actions that satisfy the requirements of Part 201, a person may submit a No Further Action Report (NFA Report) to the Michigan Department of Environmental Quality (MDEQ). If a Postclosure Agreement (Postclosure Agreement) is required as part of the NFA Report, Section 20114d(4)(b) requires financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action unless the financial assurance is de minimis. The de minimis threshold is \$2,500 per year in 2001 dollars. A link to a Consumer Price Index Inflation Calculator is provided to determine if the current annual costs exceed the 2001 dollar value: [CPI Inflation Calculator](#). Section 20101(u) of the NREPA defines financial assurance as a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or combination thereof.

If a person elects to use a Trust Fund to meet their financial assurance obligations, a Trust Agreement must be executed between the MDEQ and the financial institution that provides for the following:

1. Be worded in accordance with the model Trust Agreement. Any modification to the model language may only be made with the concurrence of the MDEQ.
2. Be executed on the letterhead of the Trustee and be between the MDEQ, the Trustee and the entity or person submitting the NFA. It must also name the MDEQ as the sole beneficiary.
3. Be in an amount equal to, or greater than, the amount necessary to fund all monitoring, operation and maintenance, oversight, and other costs required to assure the effectiveness and integrity of the remedial action for the time frame(s) specified in the Postclosure Agreement.
4. That the Trustee be approved by the MDEQ and can be replaced at the direction of the MDEQ.
5. That the assets of the Trust Fund only consist of cash and/or direct obligations of the United States of America (U.S.A.) or the State of Michigan, or obligations for which the principal and interest are unconditionally guaranteed by the U.S.A. or the State of Michigan, or certificates of deposit with any financial institution to the extent they are insured by an agency of the United States Government.

6. That routine monthly maintenance fees, including advice of counsel, cannot be paid for from the Trust Fund.
7. That the Trust Agreement can only be terminated at the direction of the MDEQ.

Please contact Mr. Leonard Lipinski, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), MDEQ, at lipinskil@michigan.gov or 517-284-5128 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Copy and paste the text portion of the model document onto appropriate letterhead. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as **[regular bold font within bold brackets]**.

--END OF GUIDANCE AND INSTRUCTIONS--

## **TRUST AGREEMENT MODEL**

### **TRUST AGREEMENT**

This Trust Agreement is entered into by and between **[insert legal name of person submitting the NFA report (SUBMITTER)]**; **[insert name of Trustee]**; and the Michigan Department of Environmental Quality (MDEQ) to provide financial assurance to assure the effectiveness and integrity of the remedial action documented in the No Further Action Report (NFA Report) submitted by **[SUBMITTER]** on **[insert date of submittal]** for the **[insert name of the Part 201 facility]** (Facility), Site ID No. **[insert Site ID number]**.

Whereas, Section 20114d(4)(b) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) requires that **[SUBMITTER]** provide financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action; and

Whereas, the Grantor has elected to establish a Trust to meet **[insert as appropriate: its or his or her]** financial assurance obligations specified in the Postclosure Agreement; and

Whereas, the Grantor, acting through its duly authorized officers, has proposed a Trustee under this Trust Agreement; and

Whereas, the MDEQ approves the Trustee proposed by the Grantor; and

Whereas, the Trustee is willing to act as the Trustee;

NOW, THEREFORE, the Grantor and Trustee agree as follows:

#### **I. DEFINITIONS**

“Beneficiary” means the Director of the Michigan Department of Environmental Quality, or his designee, or any successor department or agency, or the Director’s authorized representative.

“Trustee” means the Trustee who enters this Trust Agreement and any successor or assigns of the Trustee.

“Trust Agreement” means this Trust Agreement executed between **[SUBMITTER]**, the Trustee and the MDEQ.

“Trust Assets” means cash and/or direct obligations of the United States of America (U.S.A.) or the State of Michigan, or obligations for which the principal and interest are unconditionally guaranteed by the U.S.A. or the State of Michigan, or certificates of deposit of any financial institution to the extent insured by an agency of the United States Government.

“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 monies or other property of this Trust, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this Trust.

“Fund” or “Trust” means the account by which deposits and earnings are maintained.

“Grantor” means **[SUBMITTER]**, and any successors or assigns of **[SUBMITTER]**.

“MDEQ” means the Director of the Michigan Department of Environmental Quality or his designee, or any successor department or agency, or the Director’s authorized representative.

“Postclosure Agreement” means the postclosure agreement executed between the **[SUBMITTER]** and the MDEQ on **[insert date that postclosure agreement was executed]**, to meet the requirements of Section 20114d (3) (c) of the NREPA, MDEQ Reference No. **[insert executed Postclosure Agreement MDEQ Reference No.]**.

All other terms used in this Trust Agreement which are defined in Part 201 of the NREPA shall have the same meaning as in Part 201 of the NREPA.

## **II. AMOUNT OF TRUST FUND**

The Grantor shall provide financial assurance in the form of a Trust Fund as required by the Postclosure Agreement. The Trust shall be secured in the amount of **[amount in written text]** (**[\$number]**) and be maintained consistent with the provisions of the Postclosure Agreement.

## **III. NOTICES**

All notices, deliveries, or other communications required or permitted hereunder shall be deemed given when sent by facsimile transmission and confirmed by certified or registered mail addressed as follows:

(A) For Trustee:

**[insert Trustee name]**  
ATTN: **[insert contact person’s name]**  
**[Address or P.O. Box]**  
**[City], [State] [Zip Code]**  
Telephone No.: **[insert telephone no.]**  
FAX No.: **[insert fax no.]**

(B) For MDEQ:

(1) For questions regarding invoice reimbursement, Trust review and/or financial issues:

**[insert name of Case Coordinator], [insert Unit]**  
Compliance and Enforcement Section  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926  
Telephone No.: **[insert telephone no.]**

FAX No.: **[insert fax no.]**

(2) For payments sent to the MDEQ:

Accounting Services Center  
Cashier's Office for MDEQ  
P.O. Box 30657  
Lansing, Michigan 48909-8157

(Via Courier)

Accounting Services Center  
Cashier's Office for MDEQ  
Van Wagoner Building, 1<sup>st</sup> Floor  
425 West Ottawa Street  
Lansing, Michigan 48933-2125

(C) For Grantor:

**[SUBMITTER]**  
ATTN: **[insert contact person's name]**  
**[Address or P.O. Box]**  
**[City], [State] [Zip Code]**  
Telephone No.: **[insert telephone no.]**  
FAX No.: **[insert fax no.]**

The Facility name, Postclosure Agreement MDEQ Reference No. **[insert Postclosure Agreement MDEQ Reference No.]**, and Site Identification No. **[insert Site ID number]** shall be included on any notices sent to the MDEQ.

#### **IV. ESTABLISHMENT OF FUND**

The Grantor and the Trustee hereby establish the Fund for the use and benefit of the MDEQ with the intent to assure the effectiveness and integrity of the remedial action as described in the NFA Report. The Fund is established initially as consisting of the Trust Assets described in Exhibit A of this Trust Agreement, all of which are acceptable to the Trustee. Such Trust Assets or any other assets subsequently transferred to the Trustee are collectively referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Trust Agreement. The Trust will be held by the Trustee, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments required to be made by the Grantor to the Trustee or for payments required of the Grantor. The Trustee shall notify the Beneficiary in writing of contributions made to the Trust by the Grantor.

#### **V. SECURE PERFORMANCE**

The Fund so established shall be used solely to pay the MDEQ for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action documented in the NFA Report and to meet **[SUBMITTER'S]** financial assurance obligations as set forth in the Postclosure Agreement. Upon receipt of a notice of request for

reimbursement from the Beneficiary, the Trustee shall reimburse the MDEQ. All notices of request for disbursement, except for the Trustee's fee which is to be paid to the Trustee directly by the Grantor, are to be made by the Beneficiary to the Trustee with a copy sent to the Grantor. The Trustee shall remit payment to the MDEQ within thirty (30) days of receipt of the notice. Funds disbursed to the MDEQ under this Paragraph shall be delivered to the address indicated in Subsection (B) (2) of Section III (Notices).

## **VI. PAYMENTS COMPRISING THE FUND**

The Trust Assets placed with the Trustee by the Grantor shall consist of cash and/or direct obligations of the U.S.A. or the State of Michigan, or obligations for which the principal and interest are unconditionally guaranteed by the U.S.A. or the State of Michigan, or certificates of deposit of any financial institution to the extent insured by an agency of the United States Government.

## **VII. 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 prudent investment guidelines. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee or any other fiduciary will discharge ***[insert as appropriate: its or his or her]*** duties with respect to the Fund solely in the interest of the participants 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 matter, would use in the conduct of an enterprise of like character and with like aims, except 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 Companies and Advisors Act of 1940, as amended, 15 U.S.C. Section 80a-2(a), shall not be acquired or held on behalf of the Fund unless they are securities or other obligations of the U.S.A. or the State of Michigan;

(B) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee or any other financial institution to the extent such Trust Assets are insured by an agency of the United States Government and to the extent such time and demand deposits shall mature not later than one (1) year from the date of the investment;

(C) The Trustee is authorized to hold cash while awaiting investment or investment distribution for a reasonable time and without liability for the payment of interest thereon.

## **VIII. COMMINGLING AND INVESTMENTS**

The Trustee is expressly authorized in ***[insert as appropriate: its or his or her]*** discretion and in accordance with the investment policies and guidelines transmitted to the Trustee pursuant to this Trust Agreement to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective 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 escrows participating therein so long as such management does not conflict with the requirements of this Fund. To the extent of the equitable share of the Fund in any such commingled fund, such commingled funds will be part of the Fund.

## **IX. EXPRESS POWERS OF TRUSTEE**

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

(A) To make, execute, acknowledge, and deliver any and all documents of transfers and conveyances and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(B) 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 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 will at all times show that all such securities are part of the Fund;

(C) To deposit any cash in the Fund maintained in interest-bearing accounts or saving 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 Government;

(D) To sell, exchange, convey, transfer or otherwise dispose of any other property held on behalf of the Fund, by public or private sale. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire onto the validity of expediency of any such sale or other disposition; and

(E) To comprise or otherwise adjust all claims in favor of or against the Fund.

## **X. TAXES AND EXPENSES**

All taxes of any kind that may be assessed or levied against or in respect to the Fund and monthly maintenance fee (such fee shall include any necessary advice of counsel) incurred by the Trustee or Fund will be paid directly by the Grantor.

## **XI. ACCOUNTING FOR THE FUND**

The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund; furnish to the Grantor and the Beneficiary a written statement of the current value of the Fund. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date established for the Fund.

The accounting shall show in reasonable detail the following:

(A) The total funds deposited into the Fund;

(B) Accrued earnings on the funds deposited into the Fund;

- (C) The amount of the funds that have been paid out of the Fund; and
- (D) The remaining balance of the Fund.

## **XII. ADVICE OF COUNSEL**

The Trustee may from time to time consult with counsel, who may be counsel to the Beneficiary, with respect to any questions arising as to the construction of this Trust 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 [*insert as appropriate: its or his or her*] own counsel.

## **XIII. TRUSTEE COMPENSATION**

The Trustee will be entitled to reasonable compensation for [*insert as appropriate: its or his or her*] services as agreed upon in writing from time to time with the Grantor. Payment shall be made directly by the Grantor and not from the Fund.

## **XIV. SUCCESSOR TRUSTEE**

The Trustee may be replaced upon providing ninety (90) days written notice to the Trustee from the Beneficiary or the Grantor. The Trustee may resign after giving ninety (90) days written notice to the Grantor and the Beneficiary. In either event, upon written concurrence of the Beneficiary, 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 of a successor Trustee by the MDEQ, the successor Trustee and the Grantor will sign a new Trust Agreement with identical terms as this Trust Agreement and forward it to the MDEQ for signature. Upon MDEQ signature, the Trustee will assign, transfer and pay over to the successor Trustee, the funds 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 notify the Beneficiary, the Grantor, and the present Trustee in writing by certified mail of the date upon which it will assume administration of the Fund ten at least ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the actions performed under this Section will be paid as provided in Section X (Taxes and Expenses).

## **XV. INSTRUCTIONS TO THE TRUSTEE**

All orders, requests, and instructions by the Beneficiary to the Trustee will be in writing, and signed by the Beneficiary's authorized representative (in accordance with the MDEQ delegation authority). 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 no duty to act in the absence of such orders, requests, and instructions from the Beneficiary, except as provided for herein.

## **XVI. AMENDMENT OF THE TRUST AGREEMENT**

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

## **XVII. IRREVOCABILITY AND TERMINATION**

Subject to the right of the parties to amend this Trust Agreement as provided in Sections XIV (Successor Trustee) and XVI (Amendment of the Trust Agreement), this Fund will be irrevocable and continue until terminated by the written notification of the Beneficiary.

If the Trust Agreement is terminated for any reason, the Trust Amount shall be transferred to the Beneficiary for deposit in the Environmental Response Fund.

The Trust Agreement shall be terminated when the Trustee receives written notice from the Beneficiary that the Fund is no longer necessary.

## **XVIII. 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 Fund, or in carrying out any directions by the MDEQ issued in accordance with this Trust Agreement.

The Trustee will be indemnified and saved harmless by the Grantor, 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.

## **XIX. CHOICE OF LAW**

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

## **XX. INTERPRETATION**

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

The parties herein enter into and duly execute this Trust Agreement. Furthermore, the Grantor and Trustee below certify that the wording of this Trust Agreement is identical to the wording specified by the MDEQ as of the effective date of this Trust Agreement which is the date it is entered by the last signatory.







**EXHIBIT A**

**Trust Assets**

The Trust Fund is established initially as consisting of the following:

***[Describe the nature and amount(s) of the Trust Assets.]***

By their signatures below, the parties agree that this Exhibit A is incorporated into and made a part of the Trust Agreement dated ***[insert effective date of Trust Agreement]***.

**FOR *[insert name of Grantor]*, THE GRANTOR**

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

Name: \_\_\_\_\_  
Print or Type

Title: \_\_\_\_\_  
Print or Type

**FOR *[insert name of Trustee]*, THE TRUSTEE**

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

Name: \_\_\_\_\_  
Print or Type

Title: \_\_\_\_\_  
Print or Type

**FOR THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,  
THE BENEFICIARY**

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

Name: \_\_\_\_\_  
Print or Type

Title: \_\_\_\_\_  
Print or Type