

Standby Trust Fund

(A Standby Trust Fund, as specified in OAR 340-094-0145(6)(b), (c), and (d) for municipal solid waste disposal sites, and OAR 340-095-0095(6)(b), (c), and (d) for non-municipal solid waste disposal sites, must be worded as follows, except that instructions in brackets [] are to be replaced with the relevant information and the brackets deleted.)

This Standby Trust Fund Agreement (the "Agreement") is entered into as of [insert month, day, year], by and between the Permittee, [insert name, corporate status and address of the Permittee] (the "Grantor") and [insert the name of the Corporate Trustee, (and) incorporated in the state of _____, or the name of the Bank, a (type of) bank] (the "Trustee").

Whereas, the State of Oregon, acting by and through the Department of Environmental Quality ("DEQ"), has established certain regulations which require that Grantor, as an owner or operator of a solid waste disposal site or group of sites, must demonstrate financial responsibility for all costs of properly closing the site and providing post-closure maintenance, in accordance with the closure or post-closure plan, solid waste permit requirements, and for corrective action according to a remedial action option developed and selected pursuant to OAR 340, Division 40; and

Whereas, the Grantor has elected to establish a Standby Trust Fund into which the proceeds from a [insert Surety Bond or Irrevocable Letter of Credit] (as defined below) may be deposited to assure all or part of such financial responsibility for the Facility (as defined below); and

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; and

Whereas, Trustee is authorized to perform the duties of a trustee under the laws of the state of Oregon.

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

Section 1. Definitions. As used in this Agreement:

- (a) "Beneficiary" means DEQ.
- (b) "Facility" means Grantor's facility identified on Schedule A which is attached hereto and by this reference incorporated herein.
- (c) [insert "Surety" or "Institution"] means [insert name of Surety Company or name of the Institution issuing the Irrevocable Letter of Credit].
- (d) [insert "Surety Bond" or "Irrevocable letter of Credit"] means the [insert Surety Bond or Irrevocable Letter of Credit] identified in Exhibit B attached hereto and by this reference made a part hereof.

Section 2. Identification of Facilities. This Agreement pertains to the Facility.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a Standby Trust Fund (the "Fund") for the benefit of the State of Oregon acting by and through its

Department of Environmental Quality. The Grantor and Trustee intend that no third party have access to the Fund, except as herein provided.

The Fund will remain empty until (and if), the proceeds of the [insert Surety Bond or Irrevocable Letter of Credit] are deposited into the Fund. The Fund will consist of such proceeds transferred to the Trustee, 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 shall the Trustee have any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by DEQ.

Section 4. Payments to the Fund. Payments made to the Trustee for the Fund shall consist solely of the proceeds from the [insert Surety Bond or Irrevocable Letter of Credit] which, upon notification to the [insert Surety or Institution] by the Beneficiary that the Grantor has failed to perform (closure, post-closure or corrective action) as required by the [insert Surety Bond or Irrevocable Letter of Credit] and in accordance with the requirements of [insert OAR 340-094-0140(8)(a)(A), (B), and (C) for municipal solid waste disposal sites or OAR 340-095-0090(8)(a)(A) and (C) for non-municipal solid waste disposal sites], will be made to the Trustee, and deposited into the Fund.

Section 5. Payments from the Fund. The Trustee shall satisfy claims on the Fund, and will make payments as directed, only upon receipt of a *Certification of Valid Claim* executed by the Beneficiary, substantially in the form as follows:

<p style="text-align: center;"><i>Certification of Valid Claim</i></p> <p><i>The undersigned, as Beneficiary, hereby certifies that the claim arising from closing, providing post-closure maintenance, or providing required corrective action at Grantor's Solid Waste Facility, be paid in the amount of \$_____.</i></p> <p style="text-align: center;"><i>BENEFICIARY:</i></p> <p style="text-align: center;"><i>STATE of OREGON acting by and through the DEPARTMENT of ENVIRONMENTAL QUALITY</i></p> <p style="text-align: center;">_____ <i>DEQ Director – Signature</i></p> <p style="text-align: center;">_____ <i>DEQ Director – Printed Name</i></p>

The Beneficiary shall provide the Grantor a copy of the above certification, concurrently with the submittal thereof to Trustee, if the Grantor is still in existence at the time of the claim. Trustee shall pay the claim within thirty (30) days from the date of the Trustee's receipt of the *Certification of Valid Claim* executed by the DEQ Director.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income in the Fund, in accordance with general investment policies and guidelines which the

Beneficiary 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 assets in the Fund, the Trustee shall discharge his/her duties with respect to the 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 securities or other obligations of the Grantor, or any other owner or operator of the sites, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government.

The Trustee is authorized and directed to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government and to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Investment. The Trustee shall not purchase any shares of stock of any company or any 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 affiliates.

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 the applications 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 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 institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To employ persons, corporations or associations, including attorneys, auditors, custodians, depositories, actuaries, investment advisers, financial consultants, agents or other professionals, even if they are associated or affiliated with the Trustee, to advise or assist the Trustee in the performance of its duties and obligations hereunder; to act without independent investigation upon their recommendations; and to pay related reasonable fees, expenses and compensation from 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 shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this 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 Fund.

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 to at the time of the signing of this Agreement.

Section 12. 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 that qualifies under the rules and regulations of DEQ 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 Beneficiary and the present Trustee by certified mail, postage prepaid, ten (10) days before such change becomes effective, to the addresses listed below. 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.

GRANTOR:

[insert name, corporate status, and address of the Permittee]

BENEFICIARY:

DEQ Director

Attn: Manager – [insert regional DEQ Office where Permittee is located]
Department of Environmental Quality
[insert address of regional DEQ Office]

TRUSTEE:

[insert name and address of Corporate or Bank Trustee]

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claim, and instructions to the Trustee shall be in writing, signed by such persons as are designated by the Grantor or Beneficiary, as the case may be, in the attached Schedule C or such other designees as the Grantor or Beneficiary, respectively, may designate by amendments to Schedule C. The Trustee may conclusively rely on, and shall be fully protected, in acting or refraining from acting upon any resolution, certificate, statement, instrument, report, notice, request, consent, order, approval or other paper or document believed by Trustee to be genuine and to

have been signed or presented by the proper party or parties. 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 Beneficiary 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 DEQ, 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 Beneficiary, or by the Trustee and the Beneficiary if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties and DEQ to amend this Agreement, as provided in Section 14, this Agreement shall be irrevocable and shall 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. Upon termination of the Agreement, all remaining Fund property, after payment of Fund administration expenses pursuant to the terms of this Agreement, shall be paid to the Grantor. If the Grantor no longer exists at the termination of the Agreement, then all remaining Fund property, after payment of Fund administration expenses pursuant to the terms of this Agreement, shall be paid to the Beneficiary.

The Beneficiary will agree to the termination of this Agreement when:

- (a) All closure, post-closure and/or corrective action measures have been completed for this Facility by the Grantor, and approved in writing by DEQ, and the costs and expenses of such measures have been paid; or
- (b) The Grantor substitutes Alternative Financial Assurance as specified in Chapter 340, Division 95, of Oregon Administrative Rules, which does not require a Standby Trust Fund, and that is approved in writing by DEQ; or
- (c) The Grantor ceases to exist, and all closure, post-closure and/or corrective action measures have been completed for this Facility by a third party approved by DEQ, and the costs and expenses of such measures have been paid.

Section 16. Immunity and Indemnification. The Trustee shall not incur any liability of any nature in connection with any act or omission, made in good faith, in the administration of this Agreement, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or the Beneficiary, or both, from and against any and all 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; provided however that Trustee shall not be entitled to be indemnified for any liability arising from its own gross negligence or willful misconduct or the gross negligence or willful misconduct of its officers, employees or agents.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties or the Beneficiary that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event

shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 18. Interpretation. As used in the 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.

GRANTOR:

[insert name and corporate status of Permittee]

By: _____
Signature Printed Name
Title: _____

Attest: _____
Signature Printed Name
Title: _____

TRUSTEE:

[insert name of Corporate or Bank Trustee]

By: _____
Signature Printed Name
Title: _____

Attest: _____
Signature Printed Name
Title: _____

ACKNOWLEDGED:

**STATE OF OREGON, acting by and through the
DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: _____
Signature Printed Name
Title: _____

SCHEDULE A

Facility Name: [insert name of Facility]

Facility Address: [insert address of Facility]

DEQ Solid Waste Permit Number/s:
[insert solid waste permit number/s for the Facility or Facilities]

**Current Closure
Cost Estimate/s:** [insert]

**Current Post-Closure
Cost Estimate/s:** [insert]

**Current Corrective
Action Cost
Estimate/s:** [insert]

SCHEDULE B

Type of Financial Instrument: [insert Surety Bond guaranteeing payment, Surety Bond guaranteeing performance, or Irrevocable Letter of Credit]

Executed by: [insert name and address of Surety or Institution]

Date of [insert Bond or Irrevocable Letter of Credit] Execution:
[insert the date]

[insert Bond or Irrevocable Letter of Credit] Number:
[insert number]

[insert Bond or Irrevocable Letter of Credit] Amount:
[insert amount]

SCHEDULE C

GRANTOR

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

Signature: _____

BENEFICIARY

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

Signature: _____