**Financial Test and Corporate Guarantee**

A. **Financial Test**. To demonstrate the financial test you should use a letter from the chief financial officer. It should be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. Don’t forget to send in the Accountant’s Opinion on your firm’s financial statement and the Special Report from the Independent CPA with the Letter from Chief Financial Officer\*\*.

\*\* If your company/corporation does not have a Chief Financial Officer then the highest official dealing with financial operations should sign the letter and his/her title should be inserted into the letter in place of "Chief Financial Officer".

*If the owner/operator is a government entity (i.e., a City or County), replace “firm” with the appropriate entity designation and edit accordingly where necessary.*

**LETTER FROM CHIEF FINANCIAL OFFICER**

Division Director

North Dakota Dept of Environmental Quality

Division of Waste Management – Solid Waste Program

4201 Normandy St.

Bismarck, ND 58503-1324

I am the chief financial officer of [Insert name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in North Dakota Administrative Code (NDAC) Sections 33.1-20-14-02 through 33.1-20-14-07.

**Instructions:**  *Fill out the following paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "****None****" in the space indicated. For each facility, include its permit number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care. If an owner/entity has multiple permits, they should all be included in one financial test.*

1. This firm is the owner or operator of the following facilities for which financial assurance for closure and/or post-closure care is demonstrated through the financial test specified in NDAC Sections 33.1-20-14-02 through 33.1-20-14-07. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:

Name:

Address:

City, State, Zip:

Permit No.:

Closure cost estimate: $

Post-closure cost estimate: $

Total cost estimate: $

2. This firm guarantees, through the guarantee specified in NDAC Sections 33.1-20-14-02 through 33.1-20-14-07, the closure and/or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure and/or post-closure care so guaranteed are shown for each facility:

Name:

Address:

City, State, Zip:

Permit No.:

Closure cost estimate: $

Post-closure cost estimate: $

Total cost estimate: $

The firm identified above is [Insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee; or (3) engaged in the following substantial business relationship with the owner or operator, and receiving the following value in consideration of this guarantee]. *[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter]*.

This firm [Choose *one*: "is required" **or** "is not required"] to file a form 10K with the Securities and Exchange Commission for the latest fiscal year.

The fiscal year of this firm ends on [Insert month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [Insert date].

(Comment: the figures for the following items must be contained in the audited financial statements from the most recently completed fiscal year.)

**Instructions:** *Choose only one of the following alternatives.*

**Alternative I**

 1. Sum of current closure and post-closure cost estimate(s) *(total of all cost*

*estimates shown above)* $

\*2. Total liabilities *(if any portion of the closure or post-closure cost estimates*

*is included in total liabilities, you may deduct the amount of that portion*

*from this line and add that amount to lines 3 and 4)* $

\*3. Tangible net worth *(if any portion of the closure and post-closure cost*

 *estimates is included in “total liabilities” on your firm’s/entity’s financial*

 *statements, you may add the amount of that portion to this line)* $

\*4. Net worth *(if any portion of the closure and post-closure cost estimates is*

 *included in “total liabilities” on your firm’s/entity’s financial statements, you*

 *may add the amount of that portion to this line)* $

\*5. Current assets $

\*6. Current liabilities $

\*7. Net working capital *(line 5 minus line 6)* $

\*8. The sum of net income plus depreciation, depletion,

and amortization……………………………………………………………………. $

\*9. Total assets in the United States*……………………………………………….....*$

 YES NO

10. Is line 5 divided by line 6 greater than 1.5? \_\_\_\_\_ \_\_\_\_\_

11. Is line 7 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

12. Is line 3 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

13. Is line 3 at least $2 million? ……………………………………………..…….. \_\_\_\_\_ \_\_\_\_\_

14. Is line 9 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

**Alternative II**

 1. Sum of current closure and post-closure cost estimate(s) *(total of all cost*

*estimates shown above)* $

 2. Current bond rating of most recent issuance of this firm and

name of rating service

 3. Date of issuance of bond

 4. Date of maturity of bond

\*5. Total liabilities *(if any portion of the closure or post-closure cost estimates*

*is included in total liabilities, you may deduct the amount of that portion*

*from this line and add that amount to lines 6 and 7)* $

\*6. Tangible net worth *(if any portion of the closure and post-closure cost*

*estimates is included in "total liabilities" on your firm's financial*

*statements, you may add the amount of that portion to this line)* $

\*7. Net worth *(if any portion of the closure and post-closure cost estimates is*

 *included in “total liabilities” on your firm’s/entity’s financial statements, you*

 *may add the amount of that portion to this line)* $

\*8. Current assets $

\*9. Current liabilities $

\*10. Net working capital *(line 8 minus line 9)* $

\*11. The sum of net income plus depreciation, depletion,

and amortization$

\*12 Total assets in the United States……………………………………………… $

 YES NO

 13. Is line 10 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

 14. Is line 6 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

 15. Is line 6 at least $2 million?............................................................................\_\_\_\_\_ \_\_\_\_\_

 16. Is line 12 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

I hereby certify that the wording of this letter is meets the requirements specified in NDAC Subsection 33.1-20-14-07(5) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

B. **Corporate Guarantee**. If you are using a corporate guarantee, as specified in NDAC Subsection 33.1-20-14-07(5), it must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. You will also need to submit the Letter from Chief Financial Officer to prove that you meet the requirements of NDAC Subdivisions 33.1-20-14-07(5)(a) through (e) NDAC. If an owner/entity has multiple permits, they should all be included in one corporate guarantee (financial test).

**CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE**

Guarantee made this [Date] by [Name of guaranteeing entity], a business corporation organized under the laws of the state of [Insert name of state], herein referred to as guarantor. This guarantee is made on behalf of the [Name of owner or Operator] of [Business address], which is [Insert one of the following: “our subsidiary”; “a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary”; or “an entity with which guarantor has a substantial business relationship”] to the Department.

**Recitals**

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in North Dakota Administrative Code (NDAC) Subsection 33.1-20-14-07(5).

2. [Name of Owner or Operator] owns or operates the following solid waste management facility(ies) covered by this guarantee:

[Identify each permit separately with the following information:]

Name:

Address:

City, State, Zip:

Permit No.:

Closure cost estimate: $

Post-closure cost estimate: $

Total cost estimate: $

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by NDAC Sections 33.1-20-04.1-05, 33.1-20-04.1-09, and 33.1-20-14-02 for the closure and post-closure care of facilities as identified above.

4. For value received from [Name of Owner or Operator], guarantor guarantees to the Department that in the event that [Name of Owner or Operator] fails to perform [Insert one of the following choices: "closure", "post-closure care", or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements when required to do so, the guarantor shall do so or establish a trust fund as specified in NDAC Chapter 33.1-20-14, as applicable, in the name of [Name of Owner or Operator] in the amount of the current closure and/or post-closure cost estimates as specified in NDAC Sections 33.1-20-14-02 through 33.1-20-14-07.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the Department and to [owner or operator] that he intends to provide alternate financial assurance as specified in NDAC Sections 33.1-20-14-02 through 33.1-20-14-07, as applicable, in the name of [Name of Owner or Operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [Name of Owner or Operator] has done so.

6. The guarantor agrees to notify the Department by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in NDAC Sections 33.1-20-14-02 through 33.1-20-14-07, as applicable, in the name of [Name of Owner or Operator] unless [Name of Owner or Operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure and/or post-closure, or any other modification or alteration of an obligation of the owner or operator.

9. Guarantor agrees to remain bound under this guarantee for as long as [Name of Owner or Operator] must comply with the applicable financial assurance requirements of NDAC Sections 33.1-20-14-02 through 33.1-20-14-07 for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. **Instructions:** *Insert the following paragraph only if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator otherwise ignore it.*

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [Name of Owner or Operator], provided that this guarantee may not be terminated unless and until [Name of Owner or Operator] obtains, and the Department approve(s), alternate closure and/or post-closure care coverage complying with NDAC Subsection 33.1-20-14-03(3).

**Instructions:**  *Insert the following paragraph only if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator otherwise ignore it.*

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the Department and by [Name of Owner or Operator].

11. Guarantor agrees that if [Name of Owner or Operator] fails to provide alternate financial assurance as specified in NDAC Subsection 33.1-20-14-03(3), as applicable, and obtain written approval of such assurance from the Department within ninety days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [Name of Owner or Operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [Name of Owner or Operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee meets the requirements specified in NDAC Subsection 33.1-20-14-07(5) as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness of notary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Notary Seal]