**Trust Fund**

After your facility has set up a trust fund in accordance with NDAC Subsection 33.1-20-14-07(1), a trust agreement **and** certification of acknowledgment must be submitted. A trust agreement for a trust fund as specified in NDAC Subsection 33.1-20-14-07(1) should be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**TRUST AGREEMENT**

TRUST AGREEMENT, the "AGREEMENT" entered into as of [Effective date] by and between [Name of the Owner or Operator] a [Name of state] [Choose *one*: Corporation, Partnership, Association or Proprietorship], the "GRANTOR," and [Name of financial institution acting as TRUSTEE], [Insert "incorporated in the state of (State)" **or** "a national bank"], the "TRUSTEE".

Whereas, the North Dakota Department of Environmental Quality "DEPARTMENT" a regulatory agency of the state of North Dakota, has established certain regulations applicable to the GRANTOR requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for closure or post-closure, or both, care of the facility,

Whereas, the GRANTOR has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

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,

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

**Section 1. Definitions.** As used in this AGREEMENT:

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

(b) The term TRUSTEE means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

**Section 2. Identification of Facilities and Cost Estimate.** This agreement pertains to the facilities and cost estimates identified on attached *Schedule A*.

[*On Schedule A, for each facility, list the permit number, name, and the current closure or postclosure, or both, cost estimates or portions thereof for which financial assurance is demonstrated by this AGREEMENT*.]

**Section 3. Establishment of Fund.** The GRANTOR and the TRUSTEE hereby establish a trust fund, the FUND, for the benefit of the DEPARTMENT. The GRANTOR and the TRUSTEE intend that no third party have access to the FUND, except as herein provided. The FUND is established initially as consisting of the property which is acceptable to the TRUSTEE and described in *Schedule B* attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND must be held by the TRUSTEE, IN TRUST, as herein provided. The TRUSTEE is not responsible, nor may it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

**Section 4. Payment for Closure and Post-closure Care.** The TRUSTEE shall make payments from the FUND as the DEPARTMENT shall direct, in writing, to provide for the payment of the cost of closure, and/or post-closure care of the facilities covered by this AGREEMENT. The TRUSTEE shall reimburse the GRANTOR or other persons as specified by the DEPARTMENT from the FUND for closure and post-closure expenditures in such amounts as the DEPARTMENT shall direct in writing. In addition, the TRUSTEE shall refund to the GRANTOR such amounts as the DEPARTMENT specifies in writing. Upon refund such funds shall no longer constitute part of the FUND as defined herein.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND must consist of cash or securities acceptable to the TRUSTEE.

**Section 6. 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 general investment policies and guidelines which the GRANTOR 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 FUND, the TRUSTEE shall discharge his duties with respect to the trust 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:

(a) Securities or other obligations of the GRANTOR or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), may not be acquired or held unless they are securities or other obligations of a federal or state government;

(b) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or state government; and

(c) The TRUSTEE is authorized to hold cash 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:

(a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust 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 trusts participating therein; and

(b) To purchase 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. The TRUSTEE may vote such shares in its discretion.

**Section 8. Express Powers of TRUSTEE.** Without, in any way, eliminating 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 is bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or 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 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 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 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 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 compromise or otherwise adjust all claims in favor of or against 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 and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this TRUST, 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 of the TRUSTEE, must be paid from the FUND.

**Section 10. Annual Valuation.** The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the TRUST. Any securities in the FUND must be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT, constitutes a conclusively binding assent by the GRANTOR barring the GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

**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 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 is 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 or the GRANTOR may replace the TRUSTEE, but such resignation or replacement is not effective until the GRANTOR has appointed a successor trustee 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 DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section must be paid as provided in section 9.

**Section 14. Instructions to the TRUSTEE.** All orders, requests, and instructions by the GRANTOR to the TRUSTEE must be in writing, signed by such persons as are designated in the attached *Exhibit A*, or such other designees as the GRANTOR may designate by amendment to *Exhibit A*. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE must be in writing, signed by an authorized DEPARTMENT representative and the TRUSTEE shall act and be fully protected in acting in accordance with such orders, requests, and instructions. 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 DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR or the DEPARTMENT, or both, except as provided for herein.

**Section 15. Notice of Nonpayment.** The TRUSTEE shall notify the GRANTOR and the DEPARTMENT by certified mail within ten days following the expiration of the thirty-day period after the anniversary of the establishment of the TRUST if no payment is received from the GRANTOR during that period. After the pay-in period is completed, the TRUSTEE is not required to send a notice of nonpayment.

**Section 16. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in section 16, this TRUST is irrevocable and continues until terminated at the written agreement of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the TRUST, all remaining trust property, less final trust administration expenses, must be delivered to the GRANTOR.

**Section 18. Immunity and Indemnification.** The TRUSTEE may not incur personal liability of any nature in connection with any act or omission made in good faith in the administration of this TRUST or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE must be indemnified and saved harmless by the GRANTOR or from the TRUST, or both, 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 in the event the GRANTOR fails to provide such defense.

**Section 19. Choice of Law.** This AGREEMENT must be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 20. 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 do 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 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 meets the requirements specified in North Dakota Administrative Code (NDAC) Subsection 33.1-20-14-07(1) as such regulation was constituted on the date first above written.

[Signature of GRANTOR] [Signature of TRUSTEE]

[Title] [Title]

[Attest:] [Attest:]

[Title] [Title]

[Corporate Seal] [Seal]

**CERTIFICATION OF ACKNOWLEDGMENT**

State of

County of

On this [Date], before me personally came [Name of owner or operator (grantor)] to me known, who, being by me duly sworn, did depose and say that [she/he] resides at [Address, City, State, Zip], that [she/he] is [Title of owner/operator] of [Name of business], the corporation described in and which executed the above instrument, that [she/he] knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that [she/he] signed [her/his] name thereto by like order.

Signature of notary public: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Notary Seal]

**EXHIBIT A**

The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant to Section 14 of the Agreement:

Original Trust Agreement date: [xx/xx/xxxx]

Exhibit Revision date: [xx/xx/xxxx]

[Utilize Department information identified below unless otherwise directed by the Department]

Name Title Address

|  |  |  |
| --- | --- | --- |
| [Department Authorized Staff] | Division Director, Division of Waste Management, North Dakota Department of Environmental Quality | 4201 Normandy St.  Bismarck, ND 58503-1324 |
| [Other Authorized Facility Name] | [Title] | [Address] |

*[If more than one person has been designated by the GRANTOR to provide orders, requests, and instructions to the TRUSTEE, provide the name, title, and address for each person.]*

**SCHEDULE A**

On Schedule A, for each facility list the name, address, unit(s), and the current final closure, post-closure care cost estimates, or portions thereof, for which financial assurance is demonstrated by this agreement.

Original Trust Agreement date: [xx/xx/xxxx]

Schedule Revision date: [xx/xx/xxxx]

Name and address of Facility(ies):

Name:

Address:

City, State, Zip:

Business Contact person:

Contact phone:

Permit number:

Closure cost estimate: $

Post-closure cost estimate $

Total cost estimates $

*[If this Agreement demonstrates financial assurance for more than one facility, provide the name, address, and closure and/or postclosure estimated for each facility.]*

**SCHEDULE B**

On Schedule B, list the amount the trust is funded. If the trust is a standby trust, list the amount the trust would have in it, if it were funded. Select from **one or more** of the options below according to the type of financial assurance used. If none of the options pertain, contact the Department.

Original Trust Agreement date: [xx/xx/xxxx]

Schedule Revision date: [xx/xx/xxxx]

***Option 1***

**SCHEDULE B-Fully Funded**

This trust fund is funded on [Date] in the amount of [Dollar amount spelled out] U.S. dollars ($ ).

***Option 2***

**SCHEDULE B-Surety Bond**

The corpus of this trust is now empty and when funded the amount will be [Dollar amount spelled out] U.S. dollars ($ ) from [Name of surety bond company]. The surety bond number is .

***Option 3***

**SCHEDULE B-Letter of Credit**

The corpus of this trust is now empty and when funded the amount will be [Dollar amount spelled out] U.S. dollars ($ ) from [Name of financial institution]. The letter of credit number is .

***Option 4***

**Schedule B-Payment into Trust**

This trust is funded on the [Day] day of [Month], [Year], in the amount of [Dollar amount spelled out] U.S. dollars ($ ).

This amount represents the first payment into the trust as provided in NDAC Subdivision 33.1-20-14-07(1)(c).

The second installment in the amount of [Dollar amount spelled out] U.S. dollars ($ ) will be deposited into the trust on or before [Date].

The third and final installation in the amount of [Dollar amount spelled out] U.S. dollars ($ ) will be deposited into the trust on or before [Date].