

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
BUREAU OF WASTE MANAGEMENT  
Solid Waste Form 1230  
**TRUST AGREEMENT**

**Trust Agreement**, the "Agreement", made effective on \_\_\_\_\_  
by and between \_\_\_\_\_,  
incorporated in the state of \_\_\_\_\_, as **Grantor**, and \_\_\_\_\_  
\_\_\_\_\_  
incorporated in the state of \_\_\_\_\_, as **Trustee**.

**Whereas**, the Kansas Department of Health and Environment ("KDHE"), an administrative department of the State of Kansas, has established certain regulations at K.A.R. 28 Article 29 implementing solid waste provisions of K.S.A. 65-3401 *et. seq.*, and Subtitle D of the Resource Conservation and Recovery Act as amended (RCRA), applicable to the Grantor, requiring that the owner or operator of a Kansas solid waste disposal area or processing facility shall provide assurance that funds will be available to pay the costs of closure, post-closure care, corrective action, or any combination of these, when needed; and

**Whereas**, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the solid waste disposal area or processing facility (the "facilities") identified in Schedule A to this Agreement; 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;

**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 Estimates:** This Agreement pertains to the facilities and cost estimates identified on attached Schedule A.

**Section 3. Establishment of the Fund.** The Grantor and the Trustee hereby establish a trust fund, "the Fund", for the benefit of KDHE. 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, 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 shall be held by 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 any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by KDHE.

**Section 4. Payment for Closure, Post-Closure Care, Corrective Action, or Any Combination of These.**

The Trustee shall make payments from the Fund as KDHE shall direct, in writing, to provide for the payment of the costs of closure, post-closure care, corrective action, or any combination of these, at the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by KDHE from the Fund for closure, post-closure care, corrective action, or any combination of these, in such amounts as KDHE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as KDHE shall specify in writing. The amounts duly reimbursed or refunded shall no longer constitute a part of the Fund as defined herein.

**Section 5. Payments Comprising the Fund.** Payments made to the Trustee for deposit into the Fund shall 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 KDHE, and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in 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 of any other owner or operator of the facilities, or of any of their affiliates as defined in the Investment Company Act of 1940, 15 U.S.C. 80a-2.(a), as amended, shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Fund in any time or demand deposits of the Trustee, to the extent insured by an agency of the federal or a state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution 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.*, as amended, 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 the 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 application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

**Section 8. (Cont.)**

- (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 a part of the Fund;
- (d) To deposit 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 a 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 shall be paid from the Fund.

**Section 10. Annual Valuation.** The Trustee shall annually furnish to the Grantor and to KDHE a statement confirming the value of the Fund held in trust. The valuation statement shall show the tax cost and current market value of the Fund as of the annual valuation date, and shall include a record of transactions since the preceding annual valuation date. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and to KDHE shall constitute 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. Annual valuation statements sent to KDHE shall be addressed to Kansas Department of Health and Environment, Bureau of Waste Management, at the bureau's current address.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with 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 12. Trustee Compensation.** The Trustee shall be 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 shall not be 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 a 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

**Section 13. (Cont.)**

a writing sent to the Grantor, KDHE and the present Trustee by certified mail 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 shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests, and instructions by the Grantor to the Trustee shall 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, provided that the acts required by such orders, requests, and instructions are not contrary to this Agreement. All orders, requests, and instructions by KDHE shall be signed by the Secretary, KDHE, or his designate, and the Trustee shall 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 KDHE has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, or instructions from the Grantor or KDHE, except as provided for herein.

**Section 15. Notice of Nonpayment.** The Trustee shall notify the Grantor and KDHE, by certified mail, within 10 days following the expiration of the 30 day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during the preceding annual period. After the pay-in period is complete, KDHE shall notify the Trustee that it shall no longer be required to issue notices of nonpayment. Notices to KDHE shall be mailed to the Kansas Department of Health and Environment, Bureau of Waste Management, at the bureau's current address.

**Section 16. Amendment of the Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and KDHE, or by the Trustee and KDHE 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 shall be irrevocable and shall continue until terminated by the written agreement of the Grantor, the Trustee, and KDHE, or by the Trustee and KDHE if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final administrative expenses, shall be delivered to the Grantor.

**Section 18. Immunity and Indemnification.** The Trustee shall 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 KDHE issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, 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 shall be administered, construed, and enforced according to the laws of the state of Kansas.

**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 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 their corporate seals to be hereunder affixed and their signatures attested, as of the dates appearing by the signatures below.

**SIGNED FOR THE GRANTOR**

**SIGNED FOR THE TRUSTEE**

/S/ \_\_\_\_\_

/S/ \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

**Seal**

**Seal**

**Signature Attested by the Notary**

**Signature Attested by the Notary**

**SCHEDULE A TO THE TRUST AGREEMENT DATED \_\_\_\_\_**

SCHEDULE A Amendment Date \_\_\_\_\_

**THIS SCHEDULE A**, being an attachment to the Trust Agreement made effective on the date first written above, identifies the solid waste disposal area(s) or processing facility(ies) and cost estimates for closure(C), post-closure care(PC), or corrective action(CA), or any combination of these, for which financial assurance is provided herein.

<b>Facility Name(s) and Address(es)</b>	<b>Permit # (s)</b>	<b>C, PC or CA</b>	<b>Cost Estimate(s)</b>
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**SCHEDULE B TO THE TRUST AGREEMENT DATED \_\_\_\_\_**

SCHEDULE B Amendment Date \_\_\_\_\_

**THIS SCHEDULE B**, being an attachment to the Trust Agreement made effective on the date first written above, identifies the property transferred, or to be transferred, to the Fund if this is a funded trust fund; or, identifies the dedicated financial instrument which will be the source of monies deposited into the Fund, if this is a standby trust fund.

**Identification of Funds or the Source of Funds**

**Amount(s)**

**EXHIBIT A TO THE TRUST AGREEMENT DATED** \_\_\_\_\_

EXHIBIT A Amendment Date \_\_\_\_\_

**THIS EXHIBIT A**, being an attachment to the Trust Agreement made effective on the date first written above, identifies the officers of the Grantor who are authorized to provide written instructions to the Trustee.

**Name(s)**

**Title(s)**