



# SOLID WASTE LANDFILL FINANCIAL ASSURANCE ESCROW AGREEMENT

Required by Section 11523(1), Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being Section 324.11523 of the Michigan Compiled Laws Annotated. An operating license shall not be issued unless financial assurance has been filed as a part of an application for a license.

The Escrow Agreement must be worded as follows. PLEASE DO NOT RETYPE THIS DOCUMENT.

This Escrow Agreement, the "Agreement," entered into as of \_\_\_\_\_, by \_\_\_\_\_, by \_\_\_\_\_ Date

\_\_\_\_\_, (the "Grantor") with offices at \_\_\_\_\_ Name of Owner/Operator

\_\_\_\_\_; Address

\_\_\_\_\_; and City/State/Zip Code

\_\_\_\_\_, (the "Escrow Agent"), Name of Escrow Agent

incorporated in the state of \_\_\_\_\_ with an address at \_\_\_\_\_ Address

\_\_\_\_\_; City/State/Zip Code

and the Director of the Department of Environmental Quality (Department), or authorized representative (the "Beneficiary"), with an address at Waste and Hazardous Materials Division, P.O. Box 30241, Lansing, Michigan 48909-7741.

## RECITALS

1. The Grantor has made an application for a license to establish, maintain, and/or operate a sanitary landfill within the State of Michigan in accordance with Part 115 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (the "Act").
2. The Act requires owners and operators of solid waste landfills to provide financial assurance that funds will be available whenever they are needed to meet the cost of closure, post-closure maintenance and monitoring, and corrective action, as further defined in Section 11523a of the Act.
3. Section 11523(b) of the Act allows the required financial assurance to be established as a Trust Fund or an Escrow Account.
4. The Grantor has elected to establish an Escrow Account under the Agreement in compliance with the Act to provide all or part of such financial assurance for the facility identified herein.

5. The Grantor, acting through its duly authorized officers, has selected the Escrow Agent to be the Escrow Agent under this Agreement.

6. The Escrow Agent is willing to act as the Escrow Agent under the terms of the Agreement. The Escrow Agent is a bank or other financial institution that has the authority to act as an Escrow Agent and whose account operations are regulated and examined by a federal or state agency.

7. The Beneficiary approves the Escrow Agent selected by the Grantor.  
The parties agree as follows:

1. Definitions - As used in this Agreement:

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

(b) The term "Escrow Agent" means the Escrow Agent who enters into this Agreement and any successor Escrow Agent.

(c) The term "Facility" means the facility or facilities owned and/or operated by the Grantor and identified on "Attachment A" hereto.

(d) The term "Beneficiary" means the Director of the Department or authorized representative.

2. Identification of Facility or Facilities and Cost Estimates

This Agreement pertains to the facility or facilities, owned and/or operated by the Grantor, as identified on the attached Attachment A. (Complete Attachment A for each facility.) The current closure, post-closure, and corrective action cost estimates or portions thereof, for each facility covered by this Escrow Account are shown separately on Attachment A.

For each facility on Attachment A, include its name, facility ID number, address, and the amount of closure, post-closure, and/or corrective action financial assurance provided.

The current total cost estimate for the facility, covered by this Agreement is \$\_\_\_\_\_. The portion of this cost estimate which was initially deposited at the establishment of this Escrow Account is \$\_\_\_\_\_ shown separately on the attached "Attachment B," and is an itemization of the property or money that the Account consists of initially. Property must consist of cash or securities acceptable to the Escrow Agent. Other property (e.g., real estate) is not acceptable.

These cost estimates will be revised from time-to-time by the Grantor as required by Section 11523a of the Act.

Changes in cost estimates must be reflected in the Escrow Agreement and in subsequent payments. The owner/operator is expected to submit a revised Attachment A and Attachment B, whenever the cost estimates are affected by reasons stated in Section 11523a of the Act.

3. The Establishment of the Escrow Account

The Grantor and the Escrow Agent hereby establish an Escrow Account for the exclusive use and benefit of the Director as beneficiary, and intend that no other party shall have access to said Escrow Account without the express written approval and direction of the Director.

The Escrow Account is established initially as consisting of the cash and/or securities, acceptable to the Escrow Agent, described in Attachment B. Such property and all other property subsequently conveyed by the Grantor to the Escrow Agent is collectively referred to as the Escrow Account, together with all earnings and profits therein, less any payments or distributions made by the Escrow Agent pursuant to this Agreement. The Escrow Account shall be held by the Escrow Agent, in Escrow, as hereinafter provided.

The Grantor shall separately list on the attached "Attachment C," the persons designated to sign orders, requests, and instructions to the Escrow Agent.

4. Payments from the Escrow Account

The Escrow Agent shall make payments from the Escrow Account to the Director, the Grantor, or other persons, as instructed in writing by the Director. Payments from the Escrow Account shall be made solely in accordance with Sections 11523, 11523a, and 11523b of the Act.

The Escrow Account so established shall be used solely to provide for the payment of the costs of closure, post-closure, and/or corrective action at the facility or facilities, covered by this Agreement, to reimburse the Grantor for legitimate expenses in carrying out closure, post-closure, and/or corrective action activities as approved by the Director, or to disburse to the Grantor excess funds as determined by the Director not required to be part of this Escrow Account.

If the Director issues a notice of violation or other order to the Grantor alleging violation of the closure, post-closure, or corrective action requirements, the Director may, after providing the Grantor seven (7) days notice and opportunity for hearing, access the funds in the Escrow Account to complete closure, post-closure maintenance and monitoring, and/or corrective action to the extent necessary to correct such violations.

In accordance with Section 11523b(6), the owner/operator may request the Department to authorize the release of funds from an Escrow Account if the owner/operator demonstrates that the value of the account exceeds the owner's/operator's financial assurance obligation. A payment or disbursement from the Account shall not be made without the prior written approval of the Department.

The owner or operator shall receive all interest or earnings from an Escrow Account upon its termination.

The Escrow Agent shall ensure the filing of all required tax returns for which the Escrow Account is liable and shall disburse funds from earnings to pay lawfully due taxes owed by the Escrow Account, without permission of the Department.

5. Deposits into the Escrow Account

The Grantor shall deposit into the Escrow Account amounts as specified in Section 11523 and 11523b of the Act.

(a) The Escrow Agent undertakes no responsibility for the amount, or adequacy of, nor any duty to collect from the Grantor, any contributions required to be made by the Grantor to the Escrow Account or for contributions required of the Grantor to discharge any liabilities of the Grantor as required by the Act or any condition of a license issued pursuant to the Act.

(b) The Escrow Agent shall notify the Director in writing whenever contributions are made to the Escrow Account by the Grantor. The facility name and the facility ID number must be included on the notice from the Escrow Agent.

(c) Payments comprising the Account. Payments made to the Escrow Agent for the Account shall consist of cash or securities acceptable to the Escrow Agent.

6. Earnings and Investments of the Escrow Assets

Escrow Assets shall be invested, by the Escrow Agent, as directed by the Grantor. Earnings and interest of the Escrow Account shall be credited to the financial assurance Escrow Account.

7. Escrow Agent Management of the Escrow Account

The Escrow Agent shall invest and reinvest the principal and income of the Escrow Account and keep the Escrow Account invested, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Escrow Agent subject, however, to the provisions of this Agreement. In investing, reinvesting, exchanging, selling, and managing the Escrow Account, the Escrow Agent will discharge its duties with respect to the Escrow Account solely in the interest of the Grantor 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 matters, would use in the conduct of an enterprise of a like character and with like aims.

The Escrow Agent shall fully invest the Escrow Assets at all times whenever possible, but under no circumstances shall the Escrow Assets not be fully invested within three (3) business days of receipt of additional deposits or income.

8. Commingling and Investment

The Escrow Agent is expressly authorized in its discretion to transfer from time-to-time any or all of the assets of the Escrow Account to any common, commingled, or collective Escrow Account created by the Escrow Agent in which the Escrow Account 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 Escrow Account. To the extent of the equitable share of the Escrow Account in any such commingled escrow, such commingled escrow will be part of the Escrow Account.

9. Escrow Agent Compensation and Expenses

The Escrow Agent shall be entitled to reasonable fees for services hereunder and to reimbursement for all proper costs, charges and expenses including, but not limited to, attorney fees and expenses reasonably incurred in connection herewith, which fees and all such costs, charges, and expenses shall be paid from the Escrow Account or by the Grantor.

All taxes of any kind that may be assessed, or levied against, or in respect of the Escrow Account shall be paid from the Escrow Account. Notwithstanding the foregoing, it is the express obligation of the Grantor and the Grantor agrees to pay directly to the Escrow Agent for the benefit of the Escrow Account, on demand, any and all taxes, expenses, costs, and fees occasioned by virtue of the Escrow Account so as to maintain, according to Section 2 of this Agreement, the level, amount, and value of the Escrow Account exclusively available for the purposes for which the Escrow Account has been created, provided further, that should the Escrow Agent utilize any portion of the Escrow Account for costs, expenses, fees, taxes, and the like, the Grantor shall forthwith add to the Escrow Account such assets as will return the Escrow Account to the level, amount, and value required by Section 2 of this Agreement, notwithstanding disbursements by the Escrow Agent.

10. Express Powers of Escrow Agent

Without in any way limiting the powers and discretion conferred upon the Escrow Agent by any other provision of this Agreement or by law, the Escrow Agent is expressly authorized and empowered:

(a) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all instruments that may be necessary or appropriate to carry out the powers herein granted.

(b) To register any securities held in the Escrow Account 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 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 Escrow Agent will at all times show that all such securities are part of this Escrow Account.

11. Duties and Liabilities of Escrow Agent

The acceptance by the Escrow Agent of the duties and obligations of the Escrow Agent under this Agreement is subject to the following terms and conditions:

(a) The Escrow Agent shall be protected in acting, or refraining from acting, upon any written notice, request, waiver, consent, receipt or other paper or document signed by the Beneficiary that Escrow Agent in good faith believes to be genuine. The Escrow Agent shall have no responsibility to inquire into or determine genuineness or authenticity of any documents or instruments submitted to it as originals and may rely upon any order from a court of competent jurisdiction related to the disbursement of funds from the Escrow Account.

(b) The Escrow Agent shall not be responsible for the collection from the Grantor of payments required to be made by the Grantor to the Escrow Agent hereunder.

(c) If a lawsuit shall arise with respect to the disposition by the Escrow Agent of the Escrow Assets held in this Escrow Account pursuant to this Agreement, or any part thereof, the Escrow Agent shall not be liable for refusing to deliver any part of such property that is the subject of the lawsuit unless and until such lawsuit is resolved by a final judgment or order from a court of competent jurisdiction from which no right of appeal exists, or in respect of which any right of appeal has expired without being exercised, or by written Agreement acceptable to the Escrow Agent executed and delivered by the parties hereto.

(d) The Escrow Agent shall ensure the filing of all required tax returns for which the Escrow Account is liable and shall disburse funds from earnings of the Escrow Account to pay lawfully due taxes owed by the Escrow Account.

(e) The Escrow Agent shall, upon receipt of notice provided to the Escrow Agent under Section 16 of this Agreement, maintain records of ownership of the Facility during the time in which the Escrow Account is established.

## 12. Annual Valuation

The Escrow Agent shall keep all records of this Escrow Account on a calendar-year basis. The Escrow Agent shall make an annual accounting to the Beneficiary and Grantor thirty (30) days preceding the anniversary date of establishment of the Escrow Account that confirms the value of the Escrow Account. Any securities in the Escrow Account shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Escrow Account.

## 13. Advice of Counsel

The Escrow Agent 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 Escrow Agent shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

## 14. Successor Escrow Agent

Upon the written Agreement of the Grantor and the Beneficiary, with ninety (90) days prior written notice to the Escrow Agent, the Grantor may replace the Escrow Agent. The Escrow Agent may resign after giving ninety (90) days prior written notice to the Grantor and the Beneficiary. In either event, the Grantor will appoint a Successor Escrow Agent who will have the same powers and duties as those conferred upon the Escrow Agent hereunder. Upon acceptance of the appointment by the Successor Escrow Agent, the Escrow Agent will assign, transfer, and pay over to the Successor Escrow Agent, the Escrow Assets constituting the Escrow Account. If for any reason the Grantor cannot or does not act in the event of the resignation of the Escrow Agent, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a Successor Escrow Agent or for instructions. The Successor Escrow Agent shall specify the date on which it assumes administration of the Escrow Account in writing sent to the Grantor, the Beneficiary, and the present Escrow Agent by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Escrow Agent as a result of any of the acts contemplated by this Section will be paid as provided in Section 9.

15. Instructions to the Escrow Agent

All orders, requests, and instructions by the Beneficiary or the Grantor to the Escrow Agent will be in writing, signed by the Beneficiary or (as applicable) the Grantor, and the Escrow Agent shall act, and in so acting, will be fully protected if acting in accordance with such orders, requests, and instructions. The Escrow Agent will 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 Beneficiary hereunder has occurred. The Escrow Agent will have no duty to act in the absence of such orders, requests, and instructions from the Beneficiary, except as provided for herein.

16. Additional Duties of the Grantor

In addition to other duties of the Grantor in this Agreement, the Grantor shall provide written notice to the Escrow Agent if there is a change of ownership of the Facility.

17. Additional Duties of the Beneficiary

In addition to other duties of the Beneficiary in this Agreement, the Beneficiary shall:

(a) Notify the Grantor and the Escrow Agent in writing if the Beneficiary determines that the Grantor has refused to conduct closure, post-closure maintenance and monitoring, or corrective action at the Facility as necessary to protect the public health, safety or welfare, or the environment, along with the reasons for that determination upon expiration of thirty (30) years after closure of the Facility.

(b) Notify the Escrow Agent of the date of closure of the Facility.

18. Immunity and Indemnification

The Escrow Agent will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Escrow Account, or in carrying out any directions by the Beneficiary issued in accordance with this Agreement. Grantor shall indemnify and hold harmless Escrow Agent and Beneficiary from and against any and all liabilities, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever including, without limitation, the reasonable fees and disbursements of counsel for Escrow Agent or Beneficiary in connection with any investigative, administrative, or judicial proceeding which may be imposed on, incurred by or assessed against Escrow Agent or Beneficiary at any time in connection with their performance hereunder, or in any way relating to or arising out of this Agreement or any of the transactions contemplated herein. Neither the Escrow Agent nor the Beneficiary shall have the right to be indemnified hereunder for its sole negligence or willful misconduct.

19. Notices

All parties to this Agreement are to receive copies of any notices sent to any other party of this Agreement pertaining to the Escrow Account. Notices shall be mailed to the following addresses:

If to Grantor:

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If to Escrow Agent

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Escrow Account Number

If to Beneficiary:

Chief, Waste and hazardous Materials Division  
Michigan Department of Environmental Quality  
P.O. Box 30241  
Lansing, Michigan 48909-7741

20. Amendments

This Agreement may not be modified or amended, except by written Agreement executed by all parties to this Agreement, or by the Escrow Agent and the Beneficiary if the Grantor ceases to exist, except that this provision does not apply with respect to a change in address in Section 19 of this Agreement. Notice of the change in address shall be given to all parties to this Agreement at least ten (10) business days in advance of such change.

21. Applicable Law

This Agreement is to be, in all respects, governed by the laws of the State of Michigan.

22. Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. 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 will not affect the interpretation or the legal efficacy of this Agreement.

24. Irrevocability

Subject to the right of the parties to amend this Agreement as provided in Section 20, this Escrow Account will be irrevocable and will continue until terminated by the written Agreement of the Grantor, the Escrow Agent, and the Beneficiary, or by the Escrow Agent and the Beneficiary if the Grantor ceases to exist.

25. Successors and Assigns

Any successors or assigns to any party to this Agreement shall be likewise bound to its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

GRANTOR:

By \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

BENEFICIARY:

By \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

ESCROW AGENT:

By \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

**DEQ** MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, WASTE MANAGEMENT DIVISION  
SOLID WASTE LANDFILL FINANCIAL ASSURANCE - ESCROW AGREEMENT

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_ corporation, on behalf of the corporation, the Grantor named in the foregoing instrument.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Michigan

My Commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_ corporation, on behalf of the corporation, the Escrow Agent named in the foregoing instrument.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Michigan

My Commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by \_\_\_\_\_, \_\_\_\_\_ of the \_\_\_\_\_ of  
the Department of Environmental Quality, on behalf of the Director, Department of Environmental Quality, the  
Beneficiary named in the foregoing instrument.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Michigan

My Commission expires \_\_\_\_\_

## ATTACHMENT A

### IDENTIFICATION OF FACILITY AND COST ESTIMATES\*

**FACILITY IDENTIFICATION NUMBER:** \_\_\_\_\_

**NAME OF FACILITY:** \_\_\_\_\_

**ADDRESS OF FACILITY:** \_\_\_\_\_

The Escrow Fund is established to provide financial assurance for the above identified facility for the current cost estimates as follows (Please see the attached Financial Assurance Calculation Forms A, B, C, and D):

CLOSURE	\$ _____
POST-CLOSURE	\$ _____
CORRECTIVE ACTION	\$ _____
TOTAL	\$ _____

By their signature below, the parties agree that this Attachment A is incorporated into and made part of the Escrow Agreement dated \_\_\_\_\_.

#### FOR THE GRANTOR

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### FOR THE ESCROW AGENT

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### FOR THE DIRECTOR

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*Please make a copy of this form for each facility which will be covered under this Escrow Agreement.

**ATTACHMENT B**

**ESCROW ASSETS/ITEMIZATION OF PROPERTY OR MONEY  
THE ACCOUNT CONSISTS OF INITIALLY**

Instructions - Itemize below the property or money that the Escrow Account consists of:

By their signature below, the parties agree that this Attachment B is incorporated into and made part of the Escrow Agreement dated \_\_\_\_\_.

FOR THE GRANTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FOR THE ESCROW AGENT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FOR THE DIRECTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT C**

**PERSONS DESIGNATED TO SIGN ORDERS, REQUESTS,  
AND INSTRUCTIONS TO THE ESCROW AGENT**

FOR THE GRANTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name Signature Title

\_\_\_\_\_  
Name Signature Title

\_\_\_\_\_  
Name Signature Title

\_\_\_\_\_  
Name Signature Title

\_\_\_\_\_  
Name Signature Title

**When completed send this document to:**

WASTE AND HAZARDOUS MATERIALS DIVISION  
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
PO BOX 30241  
LANSING, MI 48909-7741