

## **APPENDIX B**

### **Appendix B1-Financial responsibility and capability; discussion and forms**

#### **A. Discussion**

Any person or entity who owns or operates a solid waste facility is required under 10 VSA, Subsection 6611, to provide financial assurance in such form and amount as the Secretary of the Agency of Natural Resources may determine to insure that, upon abandonment, cessation or interruption of the operations of the facility, adequate funds are available to undertake all appropriate measures to prevent present and future damage to public health and safety and to the environment. The costs to be provided for will include the costs of closure and post-closure maintenance of landfills, waste transfer stations, recycling facilities and any other waste treatment or handling facilities identified by the Secretary. This financial assurance will be provided through the execution of one or a combination of the financial responsibility instruments which are described in Subchapter 9 and in Appendix A of the Vermont Solid Waste Management Rules. Sample copies of some of the documents which are required to be submitted are attached herewith. These financial responsibility guidelines are intended only as a supplement to the aforementioned publications.

It must be stressed that responsibility for maintaining valid financial responsibility instruments as specified in the Solid Waste Management Rules rests solely with the owner or operator. They are responsible for initiating the instruments, maintaining them for the length of time specified in the Rules, providing substitute instruments if required, insuring that any changes in the estimates of the costs which the instruments provide for are reflected in the instruments, providing the originals or copies (as appropriate) to the Secretary, and of notifying the Secretary of any changes in costs or conditions which affect the ability of the owner or operator to provide the required level of financial assurance.

#### **B. Financial Assurance Documentation for Public Facilities**

Financial assurance for facilities owned or operated by the State of Vermont, Vermont municipalities, Union Municipal Districts under 24 VSA, Chapter 121, or by other public entities is provided through a documentation of financial capability. The following documents are required:

1. To be submitted annually:
  - a. Auditor's Annual Report or a report containing at the minimum the information required of municipalities by 24 VSA, Sections 1681 through 1683.
2. To be submitted biennially:
  - a. A letter from the town treasurer or the chief financial officer detailing income and expense for the owned or operated solid waste facility and certifying that the entity will be financially capable of meeting estimated closure and post-closure costs.
  - b. A letter from the entity's auditor or independent certified public accountant expressing an opinion as to the entity's financial capability of meeting estimated costs of closure and post-closure.

#### **C. Financial Assurance Documentation for Private Facilities**

The requirements and procedures by which private owners and operators of solid waste facilities

will provide financial assurance are specified in Appendix A of the Solid Waste Management Rules. Private owners and operators can provide financial assurance through one or a combination of the following financial responsibility instruments:

1. Trust fund (Document 1) maintained by the applicant for the benefit of the agency with a surety bond (Document 2) guaranteeing full payment into the fund.
2. Surety bond guaranteeing performance of closure or post-closure care. (Document 3)
3. An irrevocable standby letter of credit. (Document 4)
4. Financial test and corporate guarantee which requires the following documentation:
  - a. A letter from the chief financial officer. (Document 5)
  - b. A copy of the auditor's opinion expressed on the corporations most recent annual financial statements.
  - c. A special report from the applicant's independent auditor.
  - d. If available, the latest form 10-K submitted to the SEC.
5. Escrow agreement with annuity payments. (Document 6).
6. Escrow agreement established with lump sum payment. (Document 7).
7. Other financial responsibility instruments deemed appropriate by the Secretary.

## TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_" or "a national bank"], the "Trustee."

Whereas, the Agency of Natural Resources, "ANR," an Agency of the State of Vermont, 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 and post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or a part of such financial assurance for the facility 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 a 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 [name of facility], [Vermont SWMF ID. #], located at [address]. The current closure cost estimate is [amount] and the current post-closure cost estimate is [amount]. These amounts were established by [identify document].

**Section 3. Establishment of the Fund.** The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State of Vermont. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund will be established with the initial deposit by the Grantor of the sum of [amount in U.S. Funds] and monthly deposits of [amount in U.S. Fund] to be paid on the first day of each subsequent month. All deposits subsequently transferred to the Trustee are 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 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 any duty to collect from the grantor, any payments necessary to discharge any liabilities of the Grantor established by the ANR.

**Section 4. Payment for Closure and Post-closure Care.** The Trustee shall make payments from the fund as the Secretary of the ANR shall direct, in writing, to provide for the payment of the costs of closure and post-closure care of the facility covered by this agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Secretary from the Fund for closure and post-closure expenditures in such amounts as the Secretary directs in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary 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 shall consist of cash or securities acceptable to the Trustee.

**Section 6. Trustee Management.** The Trustee shall invest and reinvest the principal and income from 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:

(i) Securities and other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) 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

(iii) The Trustee is authorized to hold cash awaiting investment or distribution un-invested 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 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 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, convey, exchange, 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 to the application 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 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 certificate 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 compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** All taxes of any kind that are assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid by 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, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Secretary of the ANR a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. 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 the Secretary 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.

**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 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 the 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 property 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 Secretary of the ANR, 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 by the Grantor. 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 Secretary of the ANR to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and 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 ANR

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 ANR, except as provided herein.

**Section 15. Notice of Nonpayment.** The Trustee shall notify the Grantor and the Secretary of the ANR, 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 that period. After the payment period is completed, the Trustee shall not be required to send a notice of nonpayment.

**Section 16. Amendment of Agreement.** This Agreement may be amended by an instrument in writing by the Grantor, the Trustee, and the Secretary of the ANR, or by the Trustee and the Secretary 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 at the written agreement of the Grantor, the Trustee, and the Secretary of the ANR, or by the Trustee and the Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration 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 the Secretary of the ANR 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 defence 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 Vermont.

**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 hereunto affixed and attested as of the date first above written:

[Signature of Grantor]  
[Title]

Attest:  
[Title]  
[Seal]

[Signature of Trustee]

Attest:  
[Title]  
[Seal]

**FINANCIAL GUARANTEE BOND**

Date bond executed: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Principal: [Legal name and business address of owner or operator]

Type of organization: [Insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

Vermont Solid Waste Management Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: \_\_\_\_\_

Total penal sum of bond: US\$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the State of Vermont Agency of Natural Resources (hereinafter called ANR), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under the Vermont Solid Waste Management Act as amended, to have a permit in order to own or operate each solid waste facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure if issued by the Secretary of the ANR,

Or, if the Principal shall provide alternate financial assurance, as specified in the Solid Waste Management Rules and obtain the Secretary's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Secretary of the ANR from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Secretary of the ANR that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Secretary.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Secretary of the ANR, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Secretary of the ANR, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for the termination of the bond by the Secretary of the ANR.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease takes place without the written permission of the Secretary of the ANR.

In Witness Whereof, The Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

The persons whose names appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this Surety bond is identical to the wording specified by the Secretary of the ANR.

**Principal**

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

**Corporate Surety(ies)**

[Name and address]  
State of incorporation: \_\_\_\_\_  
Liability Limit: US\$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and Title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: US\$ \_\_\_\_\_

**PERFORMANCE BOND**

Date bond executed: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Principal: [Legal name and business address of owner or operator]

Type of organization: [Insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

Vermont Solid Waste Management Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: \_\_\_\_\_

Total penal sum of bond: US\$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the State of Vermont Agency of Natural Resources (hereinafter called ANR), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under the Vermont Solid Waste Management Act as amended, to have a permit in order to own or operate each solid waste facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in the Vermont Solid Waste Management Rules, and obtain the written approval of the Secretary of the ANR of such assurance within 90 days after the date notice of cancellation is received by both the Principal and the Secretary from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Secretary of the ANR that the Principal has been found in violation of the closure requirements of the approved closure plan and the Vermont Solid Waste Management Rules, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Secretary.

Upon notification by the Secretary of the ANR that the Principal has been found in violation of the post-closure requirements of the approved post-closure plan and the Vermont Solid Waste Management Rules, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the Secretary.

Upon notification by the Secretary of the ANR that the Principal has failed to provide alternate financial assurance as specified in the Vermont Solid Waste Management Rules, and obtain the written approval of the Secretary of the ANR of such assurance within 90 days after the date notice of cancellation is received by both the Principal and the Secretary from the Surety(ies), the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Secretary of the ANR.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendments shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Secretary of the ANR, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Secretary of the ANR, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for the termination of the bond by the Secretary of the ANR.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease takes place without the written permission of the Secretary of the ANR.

In Witness Whereof, The Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

The persons whose names appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this Surety bond is identical to the wording specified by the Secretary of the ANR.

**Principal**

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

**Corporate Surety(ies)**

[Name and address]  
State of incorporation: \_\_\_\_\_  
Liability Limit: US\$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and Title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: US\$ \_\_\_\_\_

**IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_**

Secretary  
Vermont Agency of Natural Resources  
103 South Main Street  
Waterbury, Vermont 05671-0407

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [*owner's or operator's name and address*] up to the aggregate amount of [*in words*] U.S. dollars \$\_\_\_\_\_, available by your sight draft, accompanied by the following documents and under the following terms:

1. Copy of this Letter of Credit.
2. A statement signed by the Secretary stating that:
  - a. [*owner's or operator's name*] has failed to perform closure or post-closure care in accordance with the approved closure or post-closure plan or other certification requirements specified by the Secretary or the Vermont Solid Waste Management Rules; or
  - b. [*owner's or operator's name*] has failed to establish, with written approval from the secretary, alternate financial responsibility as specified in Subchapter 9 of the Vermont Solid Waste Management Rules, within ninety (90) days after receipt by [*owner's or operator's name*] and the Secretary of notice by certified mail from [*bank's name*] that [*bank's name*] has decided not to extend this letter of credit beyond the current expiration date.
3. A draft under this Irrevocable Letter of Credit must bear upon its face the words "drawn under [*bank's name*] Irrevocable Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_."

This Irrevocable Letter of Credit is effective as of [*issue date*], and shall expire on [*issue date plus one year*] (hereinafter "expiration date"). However, the said expiration date will be automatically extended for a period of one (1) year from the original expiration date or thereafter from any extended expiration date, unless 120 days prior to such date the [*bank's name*] notifies the Secretary and [*owner's or operator's name*] in writing by certified mail that the [*bank's name*] elects not to renew this Irrevocable Letter of Credit for such additional period. Within ninety (90) days of receipt of such notification as evidenced by the signed return receipt, [*owner's or operator's name*] must establish alternate financial responsibility as specified in Subchapter 9 of the Vermont Solid Waste Management Rules, with the approval of the Secretary. If [*owner's or operator's name*] fails to establish such alternate financial responsibility and to obtain the written approval of such responsibility from the Secretary within the ninety (90) days, the Secretary may draw his/her draft at sight on this Irrevocable Letter of Credit during the last thirty (30) days, accompanied by the foregoing documents listed under items 1, 2, and 3 above. Expiration may not occur while a compliance or enforcement action taken by the Secretary regarding the closure or post-closure plan for the facility is pending against [*owner's or operator's name*].

The [*bank's name*] hereby agrees with the Secretary that drafts drawn under and in compliance with the terms of this Irrevocable Letter of Credit shall be duly honored on due presentation to the bank. Except so far as otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (Revised 1983), International Chamber of Commerce Publication #400.

Sincerely yours,

for (Bank's Name)  
Duly Appointed Officer

**Financial Test and Corporate Guarantee  
Chief Financial Officer's Letter**

An owner or operator of a solid waste facility applying to the Division for certification may satisfy the subchapter 9 requirements for financial assurance by demonstrating that they pass a financial test as specified in Section A-5, Appendix A, of the Vermont Solid Waste Management Rules. The letter from the organization's chief financial officer addressed to the Secretary, Agency of Natural Resources, required under A-5,(b)(1) should include the following information and statement:

- a. Identification of the applicant organization.
- b. The name, title and address of the official providing the letter.
- c. Identification of the owned facility for which certification is being sought to include name, location, operator's name and address, and facility type.
- d. The closure and post-closure cost estimates for the facility.
- e. The following statement: "By way of this letter, [ *owner's or operator' name* ] provides the information necessary to document that it passes the financial tests required under 10 VSA Section 6611 and described in Appendix A of the Vermont Solid Waste Management Rules; guarantees that the funds to finance closure and post-closure activities according to the closure and post-closure plan and certification requirements are available; guarantees that the closure and post-closure will be completed according to the closure and post-closure plan and certification requirements; guarantees that within thirty days after written notification from the Secretary, Vermont Agency of Natural Resources, that (Applicant Organization) no longer meets the criteria of the financial test, (Applicant Organization) shall provide, with the approval of the Secretary, an alternative form of financial assurance consistent with the requirements of the Vermont Solid Waste Management Rules; guarantees that the chief financial officer of (Applicant Organization) will notify the Secretary within ninety days any time that (Applicant Organization) no longer meets the criteria of the financial test or is named as a debtor in a voluntary or involuntary proceeding under Title 11 U.S.C. (Bankruptcy); and acknowledges that this corporate guarantee is a binding obligation on the corporation and the chief financial officer has the authority to bind the corporation to the guarantee."
- f. A table illustrating the financial data which qualifies the applicant organization to provide financial assurance through financial test and corporate guarantee as delineated in Appendix A, Section A5(a) of the Vermont Solid Waste Management Rules and identification of the independently audited financial statements upon which this data is based.

Organizations which choose to use the financial test method and are required to file Form 10-K with the Securities and Exchange Commission, should furnish the latest 10-K submitted to the SEC along with the other documents.

Appendix B2-Form and checklist for financial responsibility data

This form is to be used by persons applying to the Vermont Solid Waste Division for interim or full certification of a Solid Waste Facility. Applications for landspread of sludge and septage are not required to file this form.

Part A-Identification of Facility

1. Facility Name-

2. Type of facility-  
(Landfill, transfer station, etc.)

3. Facility Location-

4. Name of Facility Applicant

Address-

City, State, Zip-

5. Is the referenced facility owned by a Public or Private entity?

6. If the answer to #5 is private, complete sections B and C.  
If the answer to #5 is public, complete sections B and D.

7. Applicant Certification-I hereby certify that the following financial information accurately represents the abilities of the applicant to perform closure and post-closure tasks for the above-referenced facility.

Signature of Applicant-

Date-

Part B-Amount of Financial Documentation

1. What is the total closure cost estimate as calculated in the facility closure plan?

Amount=

This amount is calculated in 19 dollars.

Appendix B2

2. What is the total post closure cost estimate as calculated in the facility closure plan?

Amount=

This amount is calculated in 19 dollars.

Part C-Methods of Financial Responsibility for Privately-Owned Facilities. Refer to Section 6-901 and Appendix A of the Rules.

1. Are the same methods of funding proposed for closure and post-closure care?

Yes No

If no, please indicate application for each method circled below.

2. Is more than one mechanism used for financial responsibility for this facility?  
Yes No

3. Circle the method(s) proposed for financial responsibility. Attach relevant Documents to this form.

A-Trust fund with surety guarantee.

B-Surety bond.

C-Irrevocable Standby letter of Credit.

D-Financial Test.

E-Financial Test and Corporate Guarantee.

F-Other mechanism. Describe.

Part D-Method of Financial Capability for Publicly-Owned Facilities. Please refer to section 6-902 of the Solid Waste Rules.

1. Please indicate the methods and amounts for each method that will be used to fund closure of this facility.

a-tipping fee accumulation amount =

b-general fund appropriation amount =

c-bonding revenue amount =

## Appendix B2

d-other methods of funding; amount =

TOTAL (should agree with the amount in B1)

2. Please indicate the methods and amounts for each method that will be used to fund post-closure care of this facility.

a-tipping fee accumulation amount =

b-general fund appropriation amount =

c-bonding revenue amount =

d-other methods of funding; amount =

TOTAL (should agree with the amount in B2)

Note that all financial responsibility documentation must remain in force until written release is received from the Secretary. Any changes to the above mechanism of responsibility must have prior review and approval from the Secretary before any change to the above mechanism is made.

### ESCROW AGREEMENT

Agreement made by and among [Owner or Operator Name], [Insert "a corporation", "a partnership", "a sole-proprietorship"] located in [Town], Vermont (hereinafter "Owner"), State of Vermont Agency of Natural Resources (hereinafter "ANR"), and the [Name of Bank],[Town or City], Vermont (hereinafter "Escrow Agent").

1. The [Name of Bank] shall serve as Escrow Agent for the purpose of this Agreement.
2. Owner shall open an interest-bearing account with the Escrow Agent on or before [Date], and shall deposit in said escrow account the sum of \$\_\_\_\_\_ (Amount in words)(United States funds). All interest accruing thereon shall become a part of the escrow account and shall be disbursed in accordance with the terms of this Agreement. All monies that are deposited into the escrow account are impressed with a trust in favor of the State of Vermont as beneficiary of such trust.
3. The purpose of the escrow account is to set aside funds to implement the financial assurance requirements of the certification, ID #[SWM Facility Number], requested of the ANR by Owner for the operation and maintenance of a solid waste [Type of facility] (hereinafter "Facility") located in [Town], Vermont.
4. Owner shall be responsible for paying any yearly charges that may be required for maintenance of the escrow account by the Escrow Agent.
5. Owner shall certify in writing to the ANR no later than [Date], that said escrow account has been opened and that said funds have been deposited pursuant to the terms of this agreement.
6. During the term of this agreement, the Escrow Agent shall disburse funds from the escrow account provided that the Escrow Agent has received a written authorization from the Secretary of the ANR, or a duly authorized representative of the Secretary, to disburse monies from the account and provided that:
  - a) the written authorization contains findings that (i) the facility has been abandoned or that there has been a cessation or interruption (excluding normal, seasonal interruptions) of the operation of the facility; (ii) monies are required to take all appropriate actions necessary for proper closure of the facility in accordance with the requirements of the Vermont Solid Waste Management Act 10 V.S.A. 6601 et seq and the Vermont Solid Waste Management Rules; and (iii) a certain specified amount of money is required to conduct the closure of the facility; or
  - b) the written authorization contains findings that:
    - (i) the operation of the facility has resulted in an undue adverse impact on the groundwater or surface water in the vicinity of the facility;

- (ii) monies are required to take all appropriate actions necessary for the remediation of the groundwater or surface water contamination in accordance with the requirements of the Vermont Solid Waste Management Act, 10 V.S.A. Section 6601 *et seq* and the Vermont Solid Waste Management Regulations and Guidelines; and
  - (iii) a certain specified amount of money is required to conduct the remediation.
- 7. At least ten days prior to submitting a request to the Escrow Agent for a disbursement of funds, the Secretary shall provide notice to Owner of his or her intent to request a disbursement unless the Secretary finds that immediate access to the funds is necessary to undertake appropriate measures to prevent present and future damages to the public health and safety and to the environment. Such notice shall be served on the register agent of Owner.
- 8. The Escrow Agent shall release to the ANR and to Owner any requested information concerning the escrow account, including information regarding deposits, disbursements, and accrued interest.
- 9. It is understood and agreed upon by the parties to this Agreement that Escrow Agent undertakes and assumes no duties, obligations, and legal liabilities hereunder other than to act as an escrow agent in disbursing funds in accordance with the terms and conditions set forth in this Agreement. Escrow Agent shall be acquitted and discharged from all further liability for making such disbursement.
- 10. Owner and the ANR agree that in the event any claims or demands, whether by legal process or otherwise, are made upon the Escrow Agent, by any person or entity, that are contrary to or in conflict with the terms of this Agreement, Owner and the ANR may take such actions as they shall deem necessary in their respective judgments to defend and protect their interests in the escrow account. In the event of any such claims or demands contrary to or in conflict with the terms of this Agreement, Escrow Agent shall have the right to commence an appropriate action in a court of competent jurisdiction to obtain an order regarding disposition of the escrow account.
- 11. This agreement shall terminate upon written notification to the Escrow Agent by the Secretary of the ANR, or a duly authorized representative of the Secretary, that the facility has been properly closed. Upon termination, all funds then remaining in the escrow account shall be released for Owner.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

*[Owner's Name]*

By: \_\_\_\_\_  
Signature Title Date

State of Vermont Agency of Natural Resources

By: \_\_\_\_\_  
Signature Title Date

*[Name of Bank]*

By: \_\_\_\_\_  
Signature Title Date

### ESCROW AGREEMENT

Agreement made by and among [Owner or Operator Name], [Insert "a corporation", "a partnership", "a sole-proprietorship"] located in [Town], Vermont (hereinafter "Owner"), State of Vermont Agency of Natural Resources (hereinafter "ANR"), and the [Name of Bank],[Town or City], Vermont (hereinafter "Escrow Agent"),

1. The [Name of Bank] shall serve as Escrow Agent for the purpose of this Agreement.
2. Owner shall open an interest-bearing account with the Escrow Agent on or before [Date], and shall deposit in said escrow account the sum of \$\_\_\_\_\_ (Amount in words)(United States funds). All interest accruing thereon shall become a part of the escrow account and shall be disbursed in accordance with the terms of this Agreement. All monies that are deposited into the escrow account are impressed with a trust in favor of the State of Vermont as beneficiary of such trust.
3. The purpose of the escrow account is to set aside funds to implement the financial assurance requirements of the certification, ID #[SWM Facility Number], requested of the ANR by Owner for the operation and maintenance of a solid waste [Type of facility] (hereinafter "Facility") located in [Town], Vermont.
4. Owner shall be responsible for paying any yearly charges that may be required for maintenance of the escrow account by the Escrow Agent.
5. Owner shall certify in writing to the ANR no later than [Date], that said escrow account has been opened and that said funds have been deposited pursuant to the terms of this agreement.
6. During the term of this agreement, the Escrow Agent shall disburse funds from the escrow account provided that the Escrow Agent has received a written authorization from the Secretary of the ANR, or a duly authorized representative of the Secretary, to disburse monies from the account and provided that the written authorization contains findings that (a) the facility has been abandoned or that there has been a cessation or interruption (excluding normal, seasonal interruptions) of the operation of the facility; (b) monies are required to take all appropriate actions necessary for proper closure of the facility in accordance with the requirements of the Vermont Solid Waste Management Act 10 V.S.A. 6601 et seq and the Vermont Solid Waste Management Rules; and (c) a certain specified amount of money is required to conduct the closure of the facility.
7. At least ten days prior to submitting a request to the Escrow Agent for a disbursement of funds, the Secretary shall provide notice to Owner of his or her intent to request a disbursement unless the Secretary finds that immediate access to the funds is necessary to undertake appropriate measures to prevent present and future damages to the public health and safety and to the environment. Such notice shall be served on the register agent of Owner.
8. The Escrow Agent shall release to the ANR and to Owner any requested information concerning the escrow account, including information regarding deposits, disbursements, and accrued interest.

- 9. The Escrow Agent may pay interest accrued to the account to Owner without the authorization of the Secretary. However, no payments will be made from the account to Owner, without the written authorization of the Secretary, that would cause the account balance to fall below *[\$Amount of escrow]*.
- 10. It is understood and agreed upon by the parties to this Agreement that Escrow Agent undertakes and assumes no duties, obligations, and legal liabilities hereunder other than to act as an escrow agent in disbursing funds in accordance with the terms and conditions set forth in this Agreement. Escrow Agent shall be acquitted and discharged from all further liability for making such disbursement.
- 11. Owner and the ANR agree that in the event any claims or demands, whether by legal process or otherwise, are made upon the Escrow Agent, by any person or entity, that are contrary to or in conflict with the terms of this Agreement, Owner and the ANR may take such actions as they shall deem necessary in their respective judgments to defend and protect their interests in the escrow account. In the event of any such claims or demands contrary to or in conflict with the terms of this Agreement, Escrow Agent shall have the right to commence an appropriate action in a court of competent jurisdiction to obtain an order regarding disposition of the escrow account.
- 12. This agreement shall terminate upon written notification to the Escrow Agent by the Secretary of the ANR, or a duly authorized representative of the Secretary, that the facility has been properly closed. Upon termination, all funds then remaining in the escrow account shall be released for Owner.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

*[Owner's Name]*

By: \_\_\_\_\_  
Signature Title Date

State of Vermont Agency of Natural Resources

By: \_\_\_\_\_  
Signature Title Date

*[Name of Bank]*

By: \_\_\_\_\_  
Signature Title Date