

NEBRASKA

DEPT. OF ENVIRONMENT AND ENERGY

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05-175Pa1

Revised September, 2021

Irrevocable Escrow Agreement

Irrevocable Escrow Agreement, the "Agreement" entered into as of *(date)* by and between *(name and address of the owner)*, a *(insert "corporation", "partnership", "city", "municipality", "village", "association", or "proprietorship")*, and *(name of bank or financial institution which is examined and regulated by a state or federal agency)*, the Escrow Agent.

RECITALS:

WHEREAS, *(name of owner)* is required under the Integrated Solid Waste Management Act and Title 132 - Integrated Solid Waste Management Regulations (hereinafter Title 132) to have a permit in order to own or operate each of the following solid waste management facilities: *(Permit Number, Name and Address, and Cost Estimate for Facility)*; and

WHEREAS, the Nebraska Department of Environment and Energy (NDEE) has established certain regulations requiring an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for closure and/or post- closure of the facility; and

WHEREAS, *(name of owner)* has elected to establish an escrow account to provide such financial assurance for the benefit of NDEE.

NOW, THEREFORE, *(name of owner)* and the Escrow Agent *(insert name of bank)* agree as follows:

Deposit of Funds - Investment. The initial deposit of funds by *(name of owner)* consists of \$ _____, which is equal to or greater than the current closure and/or post-closure cost estimate for each facility identified, the receipt of which is acknowledged by *(name of bank)*. *(Name of Bank)* will invest the escrow funds as may be requested by *(name of owner)* in an interest-bearing savings account, a certificate of deposit, or U.S. government securities; a copy or proof of deposit, of which, is attached hereto.

Escrow Account. The escrow account shall be named the Closure/Post-Closure Escrow Account for *(name of facility)*. *(Name of owner)* and NDEE intend that no third party have access to the escrow funds. All interest, and other escrow account earnings and profits shall be accumulated in the escrow account. *(Name of bank)* as Escrow Agent agrees to provide NDEE and *(name of owner)* an annual valuation of the escrow account including a written statement of the amount of income and any disbursements during the preceding year, at least 30 days prior to the anniversary date of the establishment of the escrow account. The funds, together with all interest, earnings, and profits, shall be held, in escrow, subject to the terms and conditions set forth below.

Payment of Escrow Account Funds. The *(name of bank)* shall make payments from the escrow account, as the NDEE Director shall direct, in writing, to provide for the payment of

the cost of closure or post-closure of the facility covered by this Escrow Agreement. The *(name of bank)* shall reimburse *(name of owner)* or other persons from the escrow account for closure and/or post-closure care, such amounts as the NDEE Director specifies in writing or make a refund to the *(name of owner)* such amounts as the NDEE Director specifies in writing as exceeding the current cost estimate for closure and/or post-closure.

Termination of Escrow Agreement. This Escrow Agreement shall continue until; (a) certified closure or post-closure of the facility subject to Title 132 regulations and written approval of termination by the NDEE Director; (b) termination by the written agreement of *(name of owner)*, *(name of bank)*, and the NDEE Director, or by *(name of bank)* and the NDEE Director, if *(name of owner)* ceases to exist; or (c) terminated upon written notice by the NDEE Director to *(name of owner)* and *(name of bank)* that *(name of owner)* is no longer required to demonstrate financial responsibility in accordance with Title 132 or has substituted an approved alternate financial assurance mechanism. Upon termination of the escrow account any remaining escrow funds shall be paid to *(name of owner)*.

Choice of Law. This Escrow Agreement shall be administered, construed, and enforced according to the laws of the State of Nebraska.

Amendment of Agreement. This Escrow Agreement may be amended by an instrument in writing executed by *(name of owner)*, *(name of bank)*, and NDEE, or by *(name of bank)* and NDEE if *(name of owner)* ceases to exist.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement on the date first written above.

(Signature of Owner) (Date)
(Title) (Seal)

(Signature of Bank) (Date)
(Title)

(Signature of Notary Public) (Date)
(Title) (Seal)