State of Oregon
DEQ Department of Environmental Quality

# DEQ Certificate of Financial Responsibility

## Standby Trust Agreement form

Standby Trust Agreement, the “Agreement” entered into as of and by and between:

Date of standby trust agreement: _____

Name of corporate trustee (Trustee): _____

Trustee address:

_____

_____

Facility name: _____

Grantor state of incorporation: _____

Grantor organization type: _____

Owner or operator name: _____

Owner or operator address:

_____

_____

Whereas, the Department of Environmental Quality, "DEQ,” an agency of the state of Oregon, has established certain regulations applicable to the grantor, requiring that an owner or operator of regulated facilities prove they have financial responsibility for costs and damages of pollution claims and the unlawful spill or release of oil, liquid fuel or hazardous material to the waters, lands or air of the state of Oregon. The Grantor owns or operates the following facility covered by this Agreement:

(insert text box)

Whereas, the Grantor has elected to establish (insert dropdown: type of FA) to provide all or part of such proof of financial responsibility for the facility identified herein and is required to establish a standby trust fund, the "fund," able to accept payments from the instrument;

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:

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

The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

**Section 2: Identification of the Financial Responsibility Mechanism**

This Agreement pertains to the (insert dropdown box: accepted types of FA), from which the fund is established to receive payments.

If "other acceptable type", note the types as approved by DEQ below.

(insert text box)

**Section 3: Establishment of Fund(s)**

The Grantor and the Trustee hereby establish a standby trust fund for the benefit of DEQ. 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 a standby to receive payments and does not consist of any property. Payments made by the provider of financial assurance pursuant to DEQ's instruction are transferred to the Trustee and 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 must be held by the Trustee, IN TRUST, as thereinafter provided. The Trustee is not responsible, nor does it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of proof of financial responsibility, any payments necessary to discharge any liability of the Grantor established by DEQ.

**Section 4: Payment for costs and damages of pollution claims and the unlawful spill or release of oil, liquid fuel or hazardous material to the waters, lands or air of the State of Oregon**

The trustee must make payments from the fund as DEQ directs, in writing, to provide for the payment of costs and damages of pollution claims and the unlawful spill or release of oil, liquid fuel or hazardous material to the waters, lands or air of the state of Oregon arising from operating the facility covered by the proof of financial responsibility mechanism identified in this Agreement.

The fund may not be drawn upon to cover any of the following:

a. Any obligation of the Grantor under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
b. Bodily injury to an employee of the Grantor arising from, and in the course of, employment by the Grantor;

c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft other than bodily injury or property damage arising from a contract or agreement with a third-party entered into to meet the requirements of OAR Chapter 340 Division 141 or Division 142;
d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the Grantor that is not the direct result of pollution claims and the unlawful spill or release of oil, liquid fuel or hazardous materials;
e. Bodily injury or property damage for which the Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of OAR Chapter 340 Division 141 or Division 142.
f. Legal defense costs of any kind.

The Trustee must reimburse the Grantor, or other persons as specified by DEQ, from the fund in such amounts as DEQ directs in writing for costs and damages of pollution claims and the unlawful spill or release of oil, liquid fuel or hazardous material to the waters, lands or air of the state of Oregon. In addition, the Trustee must refund to the Grantor such amounts as DEQ specifies in writing. Upon refund, such funds no longer constitute part of the fund as defined herein.

**Section 5. Payments Comprising the Fund**

Payments made to the Trustee for the fund must consist of cash and securities acceptable to the Trustee.

**Section 6. Trustee Management**

The Trustee must 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 must discharge their duties with respect to the trust fund solely in the interest of the beneficiaries 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:

Securities or other obligations of the Grantor, or any other owner or operator of the facility(ies) or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(1), must not be acquired or held, unless they are securities or other obligations of the federal or a state government;

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

The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment**

The Trustee is expressly authorized in its discretion:

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

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. 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 must be paid from the fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee must be paid from the fund.

**Section 9. Advice of Counsel**

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee is fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 10. Trustee Compensation**

The Trustee is entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

**Section 11. Successor Trustee**

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement is not effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee has the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee must assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee must specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 calendar days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section must be paid as provided in Section 8.

**Section 12. Instructions to the Trustee**

All orders, requests, and instructions by the Grantor to the Trustee must be in writing. The Trustee is fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by DEQ to the Trustee must be in writing, signed by DEQ, and the Trustee must act and is fully protected in acting in accordance with such orders, requests, and instructions. The Trustee has 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 DEQ, hereunder has occurred. The Trustee has no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or DEQ, except as provided for herein.

**Section 13. Amendment of Agreement**

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and DEQ, if the Grantor ceases to exist.

**Section 14. Irrevocability and Termination**

Subject to the right of the parties to amend this Agreement as provided in Section 13, this trust is irrevocable and continues until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and DEQ, if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, must be delivered to the Grantor.

**Section 15. Immunity and Indemnification**

The Trustee does 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 DEQ, issued in accordance with this agreement. The Trustee is indemnified and saved harmless by the Grantor, 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 16. Choice of Law**

This Agreement must be administered, construed, and enforced according to the laws of the State of Oregon, or the Comptroller of the Currency in the case of National Association banks.

**Section 17. 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 does 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 (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording provided in DEQ’s COFR Standby Trust Agreement form as such regulations were constituted on the date written above.

**Signatures:**

(insert signature line: “Signature of Grantor”) (insert date box)

(insert printed name line)

(insert title line)

(insert signature line: “Signature of Trustee”) (insert date box)

(insert printed name line)

(insert title line) (box/line for seal)

(insert signature line: “Signature of Witness”) (insert date box)

(insert printed name line)

(insert title line) (box/line for seal)

## Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. For translations or alternate formats, visit DEQ's Civil Rights and Environmental Justice page.