

**15A NCAC 01V .0107    REQUIRED LANGUAGE FOR FINANCIAL ASSURANCE MECHANISMS FOR NEW USSPS**

The financial assurance mechanisms set forth in Rule .0106 of this Section for new USSPs shall use the language provided in this Rule unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, and shall be in accordance with the rules of this Section.

- (1) Trust Agreement. A trust agreement for a trust fund, as specified in Rule .0106(1) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**TRUST AGREEMENT**

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

Whereas, the Department of Environmental Quality, the "Department," an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that a project owner of a utility-scale solar project (USSP) shall provide assurance that funds shall be available when needed for decommissioning of the USSP,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the USSPs 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 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 project owner 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 Projects and Cost Estimates. This Agreement pertains to the USSPs and cost estimates identified on schedule A [on schedule A, for each USSP list the name, address, project identification number, and the current decommissioning, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property that is acceptable to the Trustee described in Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by 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 Department.

Section 4. Payment for Decommissioning. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of decommissioning of the USSPs covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for decommissioning expenditures in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department 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 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 that the Grantor may communicate in writing to the Trustee from time to time, subject to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her 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 that 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 or other obligations of the Grantor, or any other project owners, 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 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 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:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., 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, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see 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 certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against, or in respect of, the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the fund.

Section 10. Annual Valuation. The Trustee shall annually, no less than 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department 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 Department 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 this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of 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 writing sent to the Grantor, the Department, and the present

Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the exhibit or such other designees as the Grantor may designate by amendment to Exhibit A. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, or his designee, 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 Department hereunder has occurred. The trustee shall have no duty to act in the absence of such orders, requests, and instructions from the grantor or Department, except as provided for herein.

Section 15. Notice of Payment. The Trustee shall notify the Grantor and the Department of payment to the Trust by certified mail within 10 days following receipt of said payment. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department 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 Department, or by the Trustee and the Department, 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 Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of North Carolina.

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: The parties below certify that the wording of this agreement is identical to the wording specified in 15A NCAC 01V .0107(1) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]"] as were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest: [insert name of Corporation's Senior Management]

[Title]

[Seal]

State of North Carolina

County of [Name of County]

On this [date], before me personally came [name of project owner] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]  
[Or for no corporate seal, see 15A NCAC 01V .0105(j) and utilize the certification of acknowledgement below]  
State of North Carolina

County of [Name of County]

I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

[Signature of Trustee]

[Title]

Attest: [insert name]

[Title]

[Seal]

State of North Carolina

County of [Name of County]

I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

Schedule A for Trust Agreement

[For Each Utility-Scale Solar Project (USSP):]

Project Name: [Project Name]

Project Address: [Project Address]

Project ID Number: [Project ID Number]

Total Amount of Decommissioning Costs to be Funded by this Trust: \$ [Amount]

Schedule B for Trust Agreement

[For Standby Trust]

Trust Property: This Fund shall consist of funds drawn from [insert type of mechanism; ex. Letter of credit] No. [insert number] dated [date] issued by [name of bank] at such time said funds are directly deposited into the Trust account.

[For Funded Trust]

Trust Property: This Fund shall consist of cash in the amount of \$[insert cash amount]. [Aggregate full amount of decommissioning from Schedule A.]

Account Information:

Account Number assigned to this Trust Agreement: [Account Number]

Amount of Deposit: [Amount of Deposit (zero dollars if used for a standby trust)]

Date: [Date]

Bank/Branch location for this trust account:

Bank/Branch Name: [Bank/Branch Name]

Location Address: [Location Address]

City & State: [City & State]

Contact Person at Bank:

Name: [Name]

Title: [Title]

Phone Number: [Phone Number]

Exhibit A for Trust Agreement

The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant to Section 14 of the Agreement:

Name: [insert name]

Position: [insert position]

- (2) A surety bond guaranteeing payment of decommissioning as specified in Rule .0106(2) of this Section shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### FINANCIAL GUARANTEE BOND

Date bond executed: [insert date of bond execution]

Effective date: [insert effective date]

Principal: [legal name and business address of project owner]

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

State of incorporation: [insert state of incorporation]

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

[For Each Utility-Scale Solar Project (USSP)]

Project ID number: [insert project ID number]

Project name: [insert project name]

Project address: [insert project address]

Decommissioning cost: [insert dollar amount for decommissioning]

Total penal sum of bond: \$[insert total cost of the bond]

Liability Limit: \$[insert underwriting limit of the surety company]

Surety's bond number: [insert bond number issued by surety]

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the N.C. Department of Environmental Quality (hereinafter called the Department), 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 by G.S. 130A-309.240 and 15A NCAC 01V to provide financial assurance for decommissioning for each utility-scale solar project (USSP) identified above, 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 the obligation are such that if the Principal shall faithfully, before the beginning of final decommissioning of each USSP identified above, fund the standby trust fund in the amount(s) identified above for the USSP,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin decommissioning is issued by the Department or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department 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 Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the USSP(s) into the standby trust fund as directed by the Department.

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 Principal and to the Department, 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 Department, 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 termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

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

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures 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 bond is identical to the wording specified in 15A NCAC 01V .0107(2) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]" ] as were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[For no corporate seal, see Rule .0105(j)]

Corporate Surety(ies)

[Name and address]

State of incorporation: [Surety's state of incorporation]

Liability limit: \$[Surety's liability limit]

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For no corporate seal, see Rule .0105(j)]

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

Bond premium: \$[bond premium]

- (3) A letter of credit, as specified in Rule .0106(3) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### IRREVOCABLE STANDBY LETTER OF CREDIT

N.C. Department of Environmental Quality

c/o Division of Waste Management

1646 Mail Service Center

Raleigh, N.C. 27699-1646

Dear Sir/Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [insert mechanism number] in your favor, at the request and for the account of [project owner's name and address] up to the aggregate amount of [in words] U.S. dollars \$[insert U.S. dollar amount], available upon presentation of

- (1) your sight draft, bearing reference to this letter of credit No. [insert mechanism number], and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to requirements of N.C.G.S. 130A-309.240 and 15A NCAC 01V because the applicant has failed to properly decommission the utility-scale solar project (USSP) in accordance with applicable statutes and rules."

This letter of credit is effective as of [date] and shall expire on [date no less than 1 year], but such expiration date shall be automatically extended for a period of [no less than 1 year] on [date] and on each successive expiration date, unless, no less than 120 days before the current expiration date, we notify both you and [project owner's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event

you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [project owner's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [project owner's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 15A NCAC 01V .0107(3) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]" ] as were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution], [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

- (4) A certificate of insurance, as specified in Rule .0106(4) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATE OF INSURANCE FOR DECOMMISSIONING

Name and Address of Insurer

(herein called the "Insurer"):

Name and Address of Insured

(herein called the "Insured"):

Projects Covered: [List for each utility-scale solar project (USSP): the name, address, project identification number, and the amount of insurance for decommissioning (these amounts for all USSPs covered shall total the face amount shown below).]

Face Amount: [insert dollar amount of face value]

Policy Number: [insert insurance policy number]

Effective Date: [insert effective date]

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for decommissioning for the utility-scale solar projects (USSPs) identified above.

The Insurer further warrants that such policy conforms in all respects with the requirements of G.S. 130A-309.240 and 15A NCAC 01V, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the N.C. Department of Environmental Quality (hereinafter called the Department), the Insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 15A NCAC 01V .0107(4) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]" ] as were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

- (5) A letter from the chief financial officer for a financial test, as specified in Rule .0106(5) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### FINANCIAL TEST

#### LETTER FROM THE CHIEF FINANCIAL OFFICER

[Date]

N.C. Department of Environmental Quality

c/o Division of Waste Management

1646 Mail Service Center

Raleigh, NC 27699-1646

Dear Sir/Madam:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for decommissioning of a utility-scale solar project (USSP) as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each USSP, including its project identification number, name, address, and decommissioning cost estimates.]

1. This firm is the project owner of the following USSPs for which financial assurance for decommissioning is demonstrated through the financial test as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V. The current cost estimates for decommissioning covered by the test are shown for each USSP:

Name: [insert legal entity /principal name]

Office Address: [insert physical address of legal entity/principal]

Project Address: [insert physical address of project]

Project ID Number: [insert project ID number]

Decommissioning Cost Estimate: [insert dollar amount for decommissioning]

[Repeat the information above for each USSP included in the corporate test]

2. This firm guarantees, through the corporate guarantee as specified in Rule .0106(6) of this Section, the current cost estimates for decommissioning of the following facilities owned or operated by the guaranteed party. The current cost estimates for decommissioning so guaranteed are shown for each USSP: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the project owner; (2) owned by the same parent corporation as the parent corporation of the project owner, and receiving the following value in consideration of this guarantee \_\_\_\_\_. or (3) engaged in the following substantial business relationship with the project owner \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_. [Attach a written description of the substantial business relationship or a copy of the contract establishing such relationship to this letter].
3. This firm is the project owner or guarantor of the following USSPs, or projects substantially similar to USSPs, for which they are demonstrating financial assurance for decommissioning in other states through the use of a financial test specified in Rule .0106(5) of this Section or a mechanism substantially equivalent to the financial test, the current decommissioning cost estimates covered by such a test are shown for each USSP: \_\_\_\_\_.
4. This firm is the project owner of the following USSPs, or projects substantially similar to USSPs for which financial assurance for decommissioning is not demonstrated either to EPA or another state through the financial test or any other financial assurance mechanism specified in Rule .0106 of this Section or substantially equivalent mechanism. The current decommissioning cost estimates not covered by such financial assurance are shown for each USSP: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of Rule .0106(5)(a) of this Section is used to pass the test.

[Fill in Alternative II if the criteria of Rule .0106(5)(b) of this Section is used to pass the test.

Alternative I

1. Sum of current decommissioning cost estimate [total of all cost estimates shown in the five paragraphs above] \$ \_\_\_\_\_

\*2. Total liabilities [if any portion of the decommissioning cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$ \_\_\_\_\_

\*3. Tangible net worth \$ \_\_\_\_\_

\*4. Net worth \$ \_\_\_\_\_

\*5. Current assets \$ \_\_\_\_\_

\*6. Current liabilities \$ \_\_\_\_\_

7. Net working capital [line 5 minus line 6] \$ \_\_\_\_\_

\*8. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_

\*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

10. Is line 3 no less than \$10 million? (Yes/No) \_\_\_\_\_



11. Is line 3 no less than 6 times line 1? (Yes/No) \_\_\_\_\_
12. Is line 7 no less than 6 times line 1? (Yes/No) \_\_\_\_\_
- \*13. Are no less than 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) \_\_\_\_\_
14. Is line 9 no less than 6 times line 1? (Yes/No) \_\_\_\_\_
15. Is line 2 divided by line 4 less than 2.0? (Yes/No) \_\_\_\_\_
16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) \_\_\_\_\_
17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) \_\_\_\_\_

Alternative II

1. Sum of current decommissioning cost estimates [total of all cost estimates shown in the five paragraphs above]  
\$ \_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_
3. Date of issuance of bond \_\_\_\_\_
4. Date of maturity of bond \_\_\_\_\_
- \*5. Tangible net worth [if any portion of the decommissioning cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ \_\_\_\_\_
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_
7. Is line 5 no less than \$10 million? (Yes/No) \_\_\_\_\_
8. Is line 5 no less than 6 times line 1? (Yes/No) \_\_\_\_\_
- \*9. Are no less than 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) \_\_\_\_\_
10. Is line 6 no less than 6 times line 1? (Yes/No) \_\_\_\_\_

[Signature]

[Name]

[Title]

[Date]

- (6) A corporate guarantee, as specified in Rule .0106(6) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE

Corporate Guarantee Terms for Decommissioning

For [Project Owner], [Project ID Number]

Guarantee made this [date] by [name of guaranteeing entity], [address and state of guaranteeing entity], herein referred to as Guarantor. The guarantee is made on behalf of the [project owner name] of [business address], which is [one of the following: "our subsidiary"; a subsidiary of [name and address of common parent corporation] or "an entity with which the Guarantor has a substantial business relationship"] to the N.C. Department of Environmental Quality (hereinafter called the Department).

Recitals:

1. Guarantor meets or exceeds the Financial Test criteria and agrees to comply with the reporting requirements for guarantors, as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V.

2. [Project owner] owns the following USSPs covered by this guarantee: List for each USSP the following information

Name: [insert project name]

Project Address: [insert project address]

Project ID No.: [insert Department-issued project number]

Decommissioning Cost Estimate: [insert dollar amount for decommissioning]

3. Decommissioning Cost Estimate as used above refers to the plans maintained as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V for decommissioning cost estimate of USSPs identified above.

4. For value received from [insert project owner name], pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V, Guarantor guarantees to the Department that in the event that [insert project owner name] fails to perform decommissioning of the above USSPs in accordance with the G.S. 130A-309.240, 15A NCAC 01V, and the decommissioning plan whenever required to do so, the Guarantor shall perform the required activities, or pay a third party to do so, or establish a fully-funded trust fund in conformance with G.S. 130A-309.240 and 15A NCAC 01V, in the name of the project owner in the amount of the current decommissioning cost estimate as specified in 15A NCAC 01V .0104.

5. Pursuant to G.S. 130A-309.240, Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the Guarantor fails to meet the Financial Test criteria the Guarantor shall, within 90 days, send by

certified mail notice to the Department and to [project owner name] that the Guarantor is providing alternate financial assurance in accordance with 15A NCAC 01V in the name of [project owner name]. Within 120 days after the end of such fiscal year, the Guarantor shall establish such financial assurance unless [project owner name] has done so.

6. Guarantor agrees to notify the Department by certified mail of voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that Guarantor no longer meets the Financial Test criteria or that they are disallowed from continuing as a Guarantor for decommissioning of a USSP, they shall establish alternate financial assurance as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V, as applicable, in the name of [project owner name] unless [project owner name] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: modification or amendment of the decommissioning plan, the extension or reduction of the time of performance of the decommissioning of a USSP, or any other modification or alteration of an obligation of the project owner pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V.

9. Pursuant to 15A NCAC 01V .0106(6)(c)(ii), Guarantor agrees to remain bound under this guarantee for as long as [project owner name] shall comply with N.C.G.S. 130A-309.240 and 15A NCAC 01V for the above-listed USSP(s), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the Guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the project owner]:

Guarantor may terminate this guarantee by sending noticed by certified mail to the Department and to [project owner name], provided that this guarantee may not be terminated unless and until [project owner name] obtains, and the Department approves, alternate financial assurance as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V. [Insert the following language if the Guarantor is a firm qualifying as a Guarantor due to its substantial business relationship with the project owner]:

Guarantor may terminate this guarantee 120 days following the receipt of notification of its intended cancellation by certified mail by both the Department and by [project owner name].

11. Guarantor agrees that if [project owner name] fails to provide alternate financial assurance as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation from the Guarantor is received by the Department, Guarantor shall provide such alternate financial assurance in the name of [project owner name].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [project owner name]. Guarantor also expressly waives notice of amendments or modifications of the decommissioning plan, and of rebuilding or expansion of the project.

Effective date: [insert mechanism effective date]

[Name of Guarantor]

[Corporate Seal]

[For no corporate seal, see Rule .0105(j)]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

[Telephone Number]

[Email Address]

State of North Carolina

County of [Name of County]

On this [day] day of [month], [year], before me personally came [name signing for Guarantor] to me known, who, being by me duly sworn, did depose and say that she/he resides at [Guarantor address], that she/he is [title at Guarantor Firm] described in and that executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

- (7) A special report from an independent certified public accountant (CPA) is a supplemental report mechanism to the financial test mechanism as specified in Rule .0106(5) and the corporate guarantee mechanism as specified in Rule .0106(6) of this Section, and shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

SPECIAL REPORT  
INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S REPORT  
ON APPLYING AGREED-UPON PROCEDURES

The Board of Directors

[Name of Company]

[Mailing and location address]

[Project No.]

We have performed the procedures enumerated below that were agreed to by management of [Name of Company] pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V with respect to the letter dated [insert date] from the [insert Corporate Official name and title] to the N.C. Department of Environmental Quality (hereinafter called the Department), solely to assist you in filing the Letter (prepared in accordance with the criteria specified therein) for the year ended [insert date of end of corporate fiscal year]. [Name of Company] is responsible for this Letter. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of [Name of Company] and the Department. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures, which were limited solely to the identified item numbers, are as follows:

We compared the amounts in Item Nos. [insert applicable item numbers based on Alternative I or II] of the Financial Test in the Chief Financial Officer's (CFO) Letter to corresponding amounts reported as total liabilities [amount], Tangible Net Worth [amount], and total assets [amount], respectively, in the audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

We computed the amounts in Item Nos. [insert applicable item numbers based on Alternative I or II] of the Financial Test in the CFO's Letter as of [insert date of end of corporate fiscal year] based on amounts reported as Net Worth [amount] and the net income plus depreciation, depletion, and amortization [amount] in the audited financial statements as of [insert date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or "to be in agreement"].

We computed the amount of environmental obligations (as determined by current decommissioning cost estimate or guarantees) that are recognized as liabilities in the amount of [amount] in the audited financial statement as of [insert date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or "to be in agreement"].

We compared the amount in Item No. [insert applicable item number based on Alternative I or II] of the Financial Test in the CFO's Letter and the Company's total assets located in the United States in the amount of [insert amount] in the audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

[If not in agreement, describe the procedures performed in comparing the data in the CFO's letter derived from the audited financial year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.]

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the selected financial information included in the Letter. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report is intended solely for the use of management of the Company and is not intended to be and should not be used by anyone other than these specified parties.

[Date]

[Name of Accounting Firm]

*History Note: Authority G.S. 130A-309.240(j);  
Eff. April 1, 2025.*