**COLLATERAL ASSIGNMENT OF CERTIFICATE OF DEPOSIT**

South Carolina Department of Health and Environmental Control

Division of Compliance and Enforcement

*Instructions:*

1. *DHEC requires an original signed copy with Italic Text replaced. Bank and Assignor may also require original signed copies.*
2. *This certificate of deposit may not be canceled or withdrawn without written prior approval from DHEC.*
3. *No individual certificate of deposit or the total of all deposits of the assignor at any individual financial institution should exceed $250,000 or the current maximum amount allowable by the Federal Deposit Insurance Corporation (FDIC).*
4. *In addition to the Collateral Assignment Certificate of Deposit, the assignor shall establish a standby trust fund agreement to receive payments using a trustee that has the authority to act as a trustee and that is regulated and examined by a Federal or State agency. The text of the standby trust fund will be provided by DHEC.*

**PART I**

(To be completed by Assignor)

The undersigned assignor (“Assignor”), as responsible operator or owner for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Name and Address of Facility)* (“Facility”), Facility ID No. \_\_\_\_\_\_\_\_\_\_\_\_\_, does hereby assign, transfer to, and pledge to the Division of Compliance and Enforcement of the South Carolina Department of Health and Environmental Control (“DHEC”) all right, title, and interest in and to the Certificate of Deposit issued by or carried with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and its successors or assigns, currently with an office located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(Address and Telephone Number of Bank or Savings Institution)* and identified as Certificate of Deposit #\_\_\_\_\_\_\_\_\_ (“CD”) including its principal amount and any interest that will accrue or already has accrued on the CD (“Assignment”). This Assignment is binding on Assignor, its/his/her/their heirs, devises, personal representatives, successors, and assigns.

**PURPOSE**

This Assignment is made as, and shall constitute, collateral security for closure, post-closure, and corrective action costs associated with the Facility in accordance with the South Carolina Solid Waste Policy & Management Act of 1991 and applicable Regulations. The aforesaid costs shall be updated annually to account for inflation by using the implicit price deflator for the gross domestic product or its successor as published by the U.S. Department of Commerce.

The principal amount of the CD shall be equal or greater than the current Cost Estimate. If the Cost Estimate increases to an amount greater than the principal amount of the CD, the owner or operator, during the seven (7) day grace period after the maturity date of the CD (“Grace Period”), shall contribute additional funding to the CD so that the principal amount of the CD is at least equal to the Cost Estimate or, as an alternative, if the remaining term of the CD is greater than six months, the Facility may implement another financial assurance mechanism, as set forth in the Regulations, to satisfy the disparity between the principal amount of the CD and the Cost Estimate. The owner and operator shall provide written confirmation that the principal amount of the CD or the alternative financial mechanism covers the Cost Estimate to DHEC within ten (10) days of the aforesaid contribution or establishment of other financial assurance mechanism.

If the Cost Estimate decreases during the operating life of the Facility, the principal amount of the CD may be reduced to the amount of the Cost Estimate, with written approval from DHEC.

Upon request by DHEC, the Assignor shall provide within ten (10) days to DHEC a complete copy of the most recent account statement of the CD, which, at a minimum, shows its principal amount and accrued interest. The Assignor also irrevocably consents and authorizes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to release any information regarding this CD or other related financial mechanisms and a recent account statement to DHEC if DHEC should contact this bank directly and request such information.

**DURATION OF ASSIGNMENT**

This Assignment shall be for a period from the date hereof until DHEC declares this Assignment to be terminated by written notice to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Assignor. Consequently, the CD shall be automatically renewed for successive new terms identical to the CD’s original term unless and until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ receives written notice of termination of the Assignment. **Assignor hereby agrees to not cancel, withdraw funds or otherwise act on the CD without DHEC’s written approval and that Assignor is liable for any fees or penalties associated with any payment of the CD to DHEC.**

DHEC will return the original Assignment and CD, as applicable, to the issuing institution for termination within 30 days of DHEC’s determination that the Assignor is no longer required to maintain financial assurance.

**DHEC’S RIGHT TO DRAW UPON CERTIFICATE OF DEPOSIT**

Following a determination by DHEC that the owner or operator has failed to perform final closure, post-closure, or corrective action, in accordance with the closure, post-closure, or corrective action plan, permit requirements, or any other requirement pursuant to applicable law, DHEC may draw on the CD without further notice to or the consent of Assignor.

The undersigned hereby constitutes and appoints DHEC as Power of Attorney of the undersigned to demand, collect, and receive all amounts that may become due under the terms of this Assignment, and to endorse the CD for payment or negotiation and to endorse any commercial paper given in payment of the CD.

**PRESENTATION OF CERTIFICATE OF DEPOSIT**

The undersigned represents and warrants that a receipt for the CD is contemporaneously being delivered to DHEC with the execution of this Assignment; that the CD is to remain assigned to DHEC until authorized for release in writing by DHEC; that the CD is genuine and is in all respects what it purports to be; that the undersigned is the owner thereof free and clear of all liens and encumbrances of any nature whatsoever; and that the undersigned has full power, right, and authority to execute and deliver this Assignment.

The undersigned further represents and warrants no assignments of this CD will be made while the CD is pledged to DHEC.

On each anniversary date of the establishment of the CD, the Assignor shall provide DHEC with a current statement of account (issued by the financial institution) that confirms the CD’s status and value.

**NOTICES**

All notices required under this Assignment shall be sent to:

Director - Division of Compliance & Enforcement

 SC DHEC

 2600 Bull Street

Columbia, SC 29201

**ASSIGNOR:** (Name of the Owner or Operator of the Facility)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Print) Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

**PART II**

(To be completed by bank or savings institution)

**SIGNATURE GUARANTEE AND UNDERTAKING BY THE FINANCIAL INSTITUTION**

The signature of the Assignor appearing on PART I of this document was made in the presence of the undersigned officer of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and such signature is herewith guaranteed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This institution is an association/bank doing business in this state whose accounts are insured by the Federal Deposit Insurance Corporation. The above Assignment carries with it the right in and to the insurance of this account provided by the FDIC.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereby certifies that the CD identified on page one (1) has a principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_; that the signature of the Assignor above is comparable to signatures on file with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has no knowledge of any other lien, encumbrance, right, hold, claim to, or obligation on the assigned CD.

The CD is issued for a period of \_\_\_\_ year(s), beginning on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and shall be automatically renewable for a like term and at the Bank’s standard interest rate in effect as of the applicable renewal date for a CD of such term and principal amount, with interest automatically rolling into the principal on each maturity date.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall provide a thirty (30) day written notice of maturity of the CD to the Assignor and DHEC. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may elect not to renew the CD as of a particular maturity date, subject to the requirement that, at least sixty (60) days before the applicable maturity date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall notify the Assignor and DHEC by certified mail or overnight express mail of such decision. Such cancellation shall not be effectual unless substitute financial assurance has been provided and DHEC has authorized the cancellation in writing.

Upon maturity of the CD following \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s notice of non-renewal, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall disburse all funds as directed by DHEC.

Following a determination by DHEC that the owner or operator has failed to perform final closure, post-closure, or corrective action, in accordance with the closure, post-closure, or corrective action plan, permit requirements, or any other requirement pursuant to applicable law, DHEC may draw on the CD without further notice to or the consent of Assignor.

Upon \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s receipt of written notice from DHEC that the Facility has not complied with its requisite final closure, post-closure, or corrective action plan and demand for payment, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will forward to DHEC within ten (10) days the principal amount of the CD plus any accrued interest, less any early withdrawal penalty, without further notice to the Assignor [or payment shall be made into a standby trust fund].

 On this date, the maximum penalty for early withdrawal of this Certificate of Deposit is:

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Any penalty shall be deducted from interest accrued, and if to the extent that such amount is insufficient, shall be deducted from the principal of the CD.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ herein states that so long as this guarantee remains in effect, it has the responsibility to act as the agent for the purpose of holding the CD for DHEC’s exclusive use until otherwise approved by DHEC in writing, and agrees not to act on the CD except as pursuant to written approval by DHEC. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agrees that any claim or lien, which may result from this Assignment, or which it may acquire in the future against the Assignor, will be subordinate and junior to DHEC’s interest in the CD.

The Assignor also irrevocably consents and authorizes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to release any information regarding this CD or other related financial mechanisms and a recent account statement to DHEC if DHEC should contact this bank directly and request such information.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agrees that except as otherwise provided in this Agreement, no modification will be made to the terms and conditions of the CD which would affect the interest of the DHEC under this assignment, without first notifying and obtaining written approval from DHEC. Written notice of any proposed modification or change in the terms or conditions of this CD shall be provided to DHEC at the address listed in PART I above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ understands that this Certificate of Deposit is being pledged to DHEC by the Assignor as financial assurance under the applicable South Carolina statutes and regulations. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has retained a copy of this Assignment and has properly documented this Assignment in the appropriate records of this institution.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Financial Institution

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

**Accepted By:**

South Carolina Department of Health and Environmental Control

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Signature Date

Division of Compliance & Enforcement