

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street, 9th Floor
Boston, Massachusetts 02114

Declaration of Trust

The Commonwealth of Massachusetts
Greenhouse Gas Expendable Trust

THIS DECLARATION OF TRUST made as of the 19th day of October,
by Robert W. Gollidge, Jr., in his capacity as Secretary of the Executive Office of
Environmental Affairs (the "Secretary") of the Commonwealth of Massachusetts (the
"Commonwealth");

WITNESSETH THAT:

WHEREAS, the Secretary is authorized by M.G.L. c. 7, s.4F and M.G.L. c. 6A, s.6 to establish on the books of the Commonwealth, expendable trust accounts for the purpose of accepting, on behalf of the Commonwealth, any funds, including grants, bequests, gifts or contributions from any person, other nongovernmental entity, or local or quasi-governmental agency;

WHEREAS, the Secretary is further authorized by 801 CMR 50.00 et seq. to adopt a declaration of trust setting forth the purposes, terms and conditions of any such expendable trust;

WHEREAS, the Secretary is establishing this expendable trust pursuant to and in furtherance of 310 CMR 7.00: Appendix B(7), the Greenhouse Gas Credit Banking and Trading regulation;

WHEREAS, pursuant to 310 CMR 7.00: Appendix B(7), affected facilities (as this term is defined in 310 CMR 7.29) may, under certain circumstances, be permitted and may choose to pay into this Greenhouse Gas Expendable Trust instead of funding projects or purchasing greenhouse gas credits or allowances;

WHEREAS, if contributions are made into the Greenhouse Gas Expendable Trust, the Commissioner of the Department of Environmental Protection ("MassDEP"), serving as Trustee of this expendable trust in consultation with the Secretary of Environmental Affairs, will use the funds to fund projects or purchase greenhouse gas credits or allowances to achieve greenhouse gas reductions. Projects, credits or allowances funded or purchased by the Expendable Trust will be real, additional, verifiable, permanent and enforceable, as these terms are defined at 310 CMR 7.00: Appendix B. The maximum amount of greenhouse gas reductions for the lowest cost will be sought, with a preference for Massachusetts-based reductions;

WHEREAS, MassDEP will publish for public review an annual report detailing the receipt and use of funds by the Expendable Trust;

NOW, THEREFORE, the Secretary establishes this Declaration of Trust, which supersedes any and all prior Declarations of Trust for the Commonwealth of Massachusetts Greenhouse Gas Expendable Trust, and appoints the Trustee hereinafter identified to hold, administer and manage all money received in trust as Trustee hereunder upon the following terms and conditions:

ARTICLE 1

NAME; PURPOSE OF EXPENDABLE TRUST APPOINTMENT OF TRUSTEE; APPLICABLE LAW

- 1.1 Name. This Declaration of Trust is to establish an expendable trust account formally designated as "**The Commonwealth of Massachusetts, Greenhouse Gas Expendable Trust**" and herein is referred to as the "Expendable Trust."
- 1.2 Purpose. The Expendable Trust is established to accept, expend or otherwise utilize, on behalf of the Commonwealth, the funds received from affected facilities (as this term is defined in 310 CMR 7.29) which may, under certain circumstances as set forth in 310 CMR 7.00: Appendix B(7), be permitted and may choose to pay into this Expendable Trust instead of funding projects or purchasing greenhouse gas credits or allowances. If payments are made into this Expendable Trust, the Commissioner of the Department of Environmental Protection ("MassDEP"), serving as Trustee of the Expendable Trust in consultation with the Secretary of Environmental Affairs, will use the funds to fund projects or purchase greenhouse gas credits or allowances to achieve greenhouse gas reductions. Projects, credits or allowances funded or purchased by the Trust will be real, additional, verifiable, permanent and enforceable, as these terms are defined at 310 CMR 7.00: Appendix B. The maximum amount of greenhouse gas reductions for the lowest cost will be sought, with a preference for Massachusetts-based reductions.
- 1.3 Trustee. The Secretary shall from time to time appoint an employee to serve as the Trustee hereunder. The initial Trustee shall be the Commissioner of the Department of Environmental Protection or designee. The Trustee shall carry out his duties in consultation with the Secretary.
- 1.4 Applicable Laws and Regulations. The Trustee shall administer the Expendable Trust hereunder at all times in conformity with the provisions of 801 C.M.R. 50.00 et seq., specifically, and with the laws and regulations of the Commonwealth, generally. The provisions of this Expendable Trust shall be governed by and construed and administered according to the laws of the Commonwealth.

ARTICLE 2

DEFINITIONS

Whenever used in this instrument, unless the context otherwise requires or specifically provides, the following terms shall be defined as follows:

- 2.1 Comptroller means the Office of the Comptroller established by M.G.L. c.7A.
- 2.3 Expendable Trust means the account established on MMARS and with the Treasurer and Receiver-General of the Commonwealth into which are deposited monies, and assets, or both which are held by the Trustee pursuant to this Declaration of Trust.
- 2.4 Expendable Trust Fund means all funds, monies and property received, held and managed by the Trustee hereunder as part of the Expendable Trust.
- 2.5 MMARS means the Massachusetts Management Accounting and Reporting System established by the Comptroller of the Commonwealth pursuant to M.G.L. c.7, s.7A.
- 2.6 Person means an individual, corporation, society, association or partnership.
- 2.7 Securities include, without limitation, bonds, debentures, notes, certificates and other evidences of indebtedness, whether or not in registered form, common and preferred stocks and all other forms of certificates representing an interest or participation in any enterprise, whether or not incorporated.
- 2.8 Trustee means the person appointed herein by the Secretary to hold, administer and manage all money and property contributed to, held by or expended by the Trust and his successor or successors while in office and as trustee hereunder.

ARTICLE 3

CONTRIBUTIONS TO THE EXPENDABLE TRUST

- 3.1 Acceptance of Contributions. Contributions to the Greenhouse Gas Expendable Trust will be accepted into the Expendable Trust in the form tendered subject to Paragraph 3.2. All such contributions together with the income therefrom, shall be held, managed and administrated pursuant to the provisions of the Expendable Trust.
- 3.2 Checks for contributions made to the Expendable Trust shall be made out to "**The Commonwealth of Massachusetts, Greenhouse Gas Expendable Trust**" and mailed to the Commonwealth of Massachusetts, Department of Environmental Protection, Post Office Box 4062, Boston, MA 02211.

ARTICLE 4

PAYMENTS FROM THE EXPENDABLE TRUST

- 4.1 The Expendable Trust is established and all Expendable Trust Funds shall be used and expended in accordance with the purpose of the Trust to fund projects or purchase greenhouse gas credits or allowances to achieve greenhouse gas reductions. If payments are made into this Expendable Trust, the Commissioner of the Department of Environmental Protection

("MassDEP"), serving as Trustee of this Expendable Trust, will use the funds to fund projects or purchase greenhouse gas credits or allowances to achieve greenhouse gas reductions, as well as to pay for the administrative costs of managing this Expendable Trust. Projects, credits or allowances funded or purchased by the Trust will be real, additional, verifiable, permanent and enforceable, as these terms are defined at 310 CMR 7.00: Appendix B. The maximum amount of greenhouse gas reductions for the lowest cost will be sought, with a preference for Massachusetts-based reductions.

- 4.2 If the uses and purposes provided in this Article 4 have been achieved or can no longer be fulfilled by the Expendable Trust, then any funds in the Expendable Trust that represent the unused portion of any payment made by an affected facility (as that term is defined in 310 CMR 7.29) shall revert to that affected facility.
- 4.3 If and when there is no longer any property in the Expendable Trust Fund and the Trustee shall determine that such action is appropriate, the Expendable Trust will terminate upon written notice from the Trustee to the Comptroller. In any event, the Expendable Trust shall be renewable in five-year cycles, subject to the prior approval of the Secretary of Administration and Finance, to coincide with MassDEP's five-year review schedule for the Greenhouse Gas Credit Banking and Trading program, with a first renewal date of December 31, 2010.

ARTICLE 5

ADMINISTRATIVE DUTIES AND POWERS

- 5.1 Management and Ownership of Assets. The Trustee or designee, in consultation with the Secretary of Environmental Affairs, shall have the responsibility for managing the Expendable Trust Fund on behalf of the Commonwealth. Title to all assets of the Expendable Trust Fund shall at all times be vested in the Commonwealth, subject to the trust established hereby.
- 5.2 Rights and Powers. In exercising the responsibility to manage the Expendable Trust Fund on behalf of the Commonwealth, the Trustee or designee shall have the following rights and powers, in each case to be exercised or exercisable from time to time, in their discretion;
- (a) To retain any investment received by the Trustee or designee and property contributed to the Expendable Trust Fund by any person or other non-governmental entity and to invest and reinvest in stocks, shares and obligations of corporations, trusts and investment companies, or in a common trust fund, or in any other kind of personal (tangible or intangible) or real property, such investments to be in such amounts, upon such terms, and of such character as the Trustee or her designee may deem advisable;
 - (b) To liquidate assets or take such other actions with respect to the Expendable Trust Fund in order to make purchases pursuant to Article 4 hereof;

- (c) To execute deeds, assignments, leases, notes, contracts or other instruments in writing, whether or not under seal, incident to any of the Trustee's powers;
- (d) To liquidate assets or take such other actions with respect to the Expendable Trust Fund in order to make purchases pursuant to Article 4 hereof;
- (e) To procure services, property and supplies in furtherance of the purpose of the Expendable Trust subject to laws and regulations applicable to the Executive Office of Environmental Affairs and of the Department of Environmental Protection.
- (f) To do all other acts necessary or desirable for the proper administration of the Expendable Trust Fund or with respect to the investment disposition or liquidation of any assets of the Expendable Trust Fund, although the power to do such acts is not specifically set forth herein.

- 5.3 Trustee Compensation. The Trustee shall not be entitled to any compensation for management and supervision of the Expendable Trust Fund or for fulfilling responsibilities as Trustee hereunder.
- 5.4 Books. The Trustee or designee shall keep full records and books of account in accordance with standard Commonwealth bookkeeping requirements and may make arrangements for the assistance of the Comptroller in connection therewith.
- 5.5 Public Process. The Trustee or designee will publish for public review an annual report detailing the receipt and use of funds by the Expendable Trust.

ARTICLE 6

AMENDMENTS

- 6.1 The Secretary, with the prior approval of the Secretary of Administration and Finance, may amend or otherwise supplement this instrument by making a declaration of trust supplemental hereto, which thereafter shall form a part hereof; provided, that the purpose of the Expendable Trust set forth in Paragraph 1.2 hereof shall not be substantially amended or supplemented without the written consent of all persons who have made contributions to the Expendable Trust prior thereto. Copies of the supplemental declaration of trust shall be filed as specified in Section 7.3.

ARTICLE 7

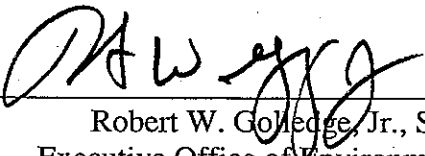
MISCELLANEOUS PROVISIONS

- 7.1 Definition of Words. Feminine or neuter provisions shall be substituted for those of the masculine form, and the plural shall be substituted for the singular, or vice versa, in any place or places herein where the context may require such substitution or substitutions.

- 7.2 Headings. Any paragraph or article headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provision of this instrument or any amendment to this instrument.
- 7.3 Filing of Copies. The original or a copy of this instrument and each declaration of trust supplement hereto shall be kept at the office of the Trustee, and the office of the Comptroller, where it may be inspected.
- 7.4 Fiscal Year. The fiscal year of the Expendable Trust shall be the twelve-month period ending June 30th of each year.
- 7.5 Effective Date. This Declaration of Trust shall be effective as of the date of its execution by the Secretary of Environmental Affairs.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of

19 October 2004



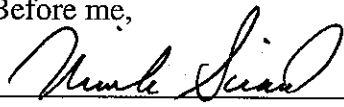
 Robert W. Golledge, Jr., Secretary
 Executive Office of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss; Boston, Massachusetts

Then personally appeared the above-named Robert W. Golledge, Jr., who acknowledged the foregoing instrument to be his free act and deed in his capacity as Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts.

Before me,



Notary Public

My Commission expires:

12/15/2011