

ESCROW AGREEMENT

Between the Minnehaha Creek Watershed District and _____

This Agreement is made by and between the Minnehaha Creek Watershed District, a watershed district under Minnesota Statutes chapters 103B and 103D (MCWD), and _____, ("Escrow Provider"), to establish a cash escrow in fulfillment of financial assurance requirements under MCWD Permit No. _____.

If Permittee is providing the escrow funds, Permittee is Escrow Provider for purposes of this Agreement.

Recitals

- A. Pursuant to Minnesota Statutes § 103D.345, MCWD has adopted and implements permitting rules governing development and other activity within MCWD boundaries that may have an impact on water resources.
- B. MCWD rules require as a condition of permit approval that a permittee provide and maintain a financial assurance in the form of a bond, letter of credit or cash escrow for the purpose of covering costs MCWD may incur in monitoring and inspecting activity under the permit and in responding to violations of MCWD statutes, rules, permits and orders.
- C. This Agreement documents that Escrow Provider has submitted a cash escrow to fulfill a financial assurance obligation under Permit No. _____, as or on behalf of Permittee, and specifies the conditions and procedures under which MCWD will hold and may draw on the escrow. Escrow Provider and MCWD, in executing this Agreement, concur that it is legally binding.

Agreement

1. Escrow Provider has submitted a cash escrow in the amount of \$ _____. MCWD will hold the escrow in an escrow account where it may be commingled with escrow funds held by MCWD on behalf of parties other than Escrow Provider. MCWD need not hold the funds in an interest-bearing account and Escrow Provider will not be entitled to interest on the escrow. If the escrow is submitted in a form other than cash and the escrow amount is not credited promptly to the MCWD account, MCWD may declare this Agreement null and void by written notice to Permittee and Escrow Provider.
2. Submittal of additional escrow funds by, and release of unused funds be released to, Escrow Provider will accord with MCWD Rules and duly adopted resolutions and policies of the MCWD Board of Managers.
3. Escrow funds will become the sole property of MCWD, and Escrow Provider agrees to relinquish all legal and equitable interest therein, as follows:
 - a. MCWD may invoice Permittee for permit review, compliance monitoring, and other eligible costs in accordance with duly established MCWD procedures.
 - b. If after notice and opportunity to be heard MCWD finds violation of a MCWD statute, rule, permit or order, MCWD will give written notice to Permittee. The notice will describe the violation and the action required to correct it. If within twenty (20) days of notice delivery the violation has not been

corrected or arrangements acceptable to MCWD have not been made, without further notice MCWD may take steps it deems reasonable to correct the violation, and may have access to the property during reasonable times for that purpose. Provided, that MCWD will give 24 hours' notice before entry and exercise due care to avoid unnecessary disturbance or damage to the property. If MCWD finds that entry is required to address an occurring or imminent threat to water resources, it may enter and correct without prior hearing or opportunity to cure, but only to the extent reasonably necessary to address the threat.

c. MCWD may invoice Escrow Provider for reasonable costs incurred for activity under paragraph 3b. If payment is not made within 30 days, MCWD may transfer funds from the escrow account into MCWD accounts and adjust the escrow account accordingly.

4. Escrow funds submitted hereunder are submitted to secure the performance of Permittee under Permit No. _____. If the permit is issued, and if the Permittee and its agents, employees or contractors well and faithfully perform in all respects all activities and things undertaken and authorized in the permit in compliance with all applicable laws, including applicable statutes, rules, permit conditions, orders, agreements and stipulations of MCWD and pay, when due, all fees or other charges required by law, including all MCWD costs to administer and enforce the terms of the above-stated permit and this Agreement, including reasonable attorney fees, then within 30 days of written notice to MCWD of same and MCWD's confirmation thereof, MCWD will release the escrowed funds to Escrow Provider.

5. All MCWD obligations under this Agreement in holding and using escrow funds are to Escrow Provider only. Nothing in this Agreement creates any right in any third party as against the MCWD or waives or abridges any MCWD immunity, defense or liability limit. Escrow Provider will indemnify MCWD for any claim, liability or cost MCWD incurs as a result of a party other than Escrow Provider asserting ownership in or a right to the escrow funds or any part thereof. Escrow Provider will not assign or purport to assign any interest in the escrow funds or this Agreement to any third party, except in conjunction with a transfer of Permittee's permit approved in writing by MCWD.

6. Nothing in this Agreement affects Permittee's legal right, if any, to appeal a violation finding or seek a legal determination of the purposes to which MCWD may use the escrow funds.

7. Escrow Provider agrees that, should escrow funds submitted hereunder remain unclaimed by Escrow Provider or Escrow Provider's successor in interest so as to become "abandoned property" within the meaning of Minnesota Statutes chapter 345, MCWD may withdraw a service charge from the unclaimed assets to cover costs of attempting to locate the Escrow Provider or Escrow Provider's successor in interest and, if necessary, reporting and paying the unclaimed funds as required by law.

8. This Agreement is effective on the signature of the parties and terminates when MCWD releases the escrow or declares the Agreement null and void under paragraph 1, above. The Agreement may be amended only in a writing signed by the parties. An increase or decrease in the amount of escrow funds held by MCWD for Permit No. _____ does not constitute an amendment.

9. Notice to Escrow Provider under this Agreement is effective when sent by certified mail to the address as stated in the permit application or such other address as Escrow Provider subsequently has notified MCWD in writing. The law of the State of Minnesota will govern any legal proceeding concerning this Agreement. Venue for any such proceeding will be in the county where the real property that is the subject of this Agreement is located. The recitals are incorporated as a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
District Administrator

Date: _____

PERMITTEE or ESCROW PROVIDER

By: _____
[signature]

Date: _____

[print name here]

State of _____
County of _____

This instrument was acknowledged before me this ____ day of _____ (month), ____ (year),
by _____ (name of signer) as _____ of

_____.

(Signature of Notary Public)

(Seal)