**ESCROW AGREEMENT**

**Between Brown’s Creek Watershed District**

**and [NAME]**

This agreement is made by and between the Brown’s Creek Watershed District, a watershed district with duties and powers established by Minnesota Statutes chapters 103B and 103D (BCWD), and [NAME], a [DESCRIPTION] (Permittee), to establish a cash escrow in fulfillment of financial assurance requirements under BCWD permit \_\_\_\_\_\_\_\_.

**Recitals**

A. Pursuant to Minnesota Statutes section 103D.345, BCWD has adopted and implements rules governing development and other activity within the jurisdiction of BCWD that may have an impact on water resources.

B. BCWD rules require that as a condition of permit approval, a permittee must provide and maintain a financial assurance in the form of a bond, letter of credit or cash escrow for the purpose of covering costs BCWD may incur in monitoring and inspecting activity under the permit and in responding, if necessary, to violations of BCWD rules, permits and orders.

C. This agreement documents that a cash escrow has been submitted by Permittee or on Permittee’s behalf to fulfill a financial assurance obligation under permit no. \_\_\_\_\_\_\_ and specifies the terms and procedures under which BCWD will hold and may draw on the escrow, as well as terms for return. Permittee and BCWD, in executing this agreement, concur that it is legally binding.

**Agreement**

1. Permittee has submitted a cash escrow in the amount of $\_\_\_\_\_\_\_\_\_. BCWD will hold the escrow in an escrow account where it may be commingled with escrow funds held by BCWD on behalf of parties other than Permittee. BCWD need not hold the funds in an interest-bearing account and Permittee 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 BCWD account, BCWD may declare this agreement null and void by written notice to Permittee.

2. Additional escrow funds will be submitted by Permittee or on Permittee’s behalf, and unused funds will be released to Permittee and additional escrow funds will be submitted by Permittee or on Permittee’s behalf in accordance with the BCWD rules and duly adopted resolutions and policies of the BCWD Board of Managers.

3. Escrow funds will become the sole property of BCWD, and Permittee agrees to relinquish all legal and equitable interest therein, as follows:

a. BCWD may invoice Permittee for permit review, compliance monitoring and other eligible costs in accordance with duly established BCWD procedures.

b. If after notice and opportunity to be heard BCWD finds a violation of a BCWD rule, permit or order, BCWD will issue an order describing the violation and the action required to correct it. If within twenty (20) days of delivery of the order the violation has not been corrected or arrangements acceptable to BCWD have not been made, without further notice BCWD may take steps it deems reasonable to correct the violation, and may access the property during reasonable times to correct the violation, provided that BCWD will give 24 hours’ notice before entry and exercise due care to avoid unnecessary disturbance of or damage to the property. If BCWD finds that entry is required to address an extent 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. BCWD may invoice Permittee for reasonable costs incurred for activity under paragraph 3b. If payment is not made within 30 days, BCWD may transfer funds from the escrow account into BCWD accounts and credit Permittee accordingly. Permittee will be liable for any costs incurred by BCWD for activity under paragraph 3.b in excess of escrow funds provided by Permittee.

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 any agent, employee or contractor well and faithfully performs all activities and things undertaken and authorized by permit no. \_\_\_\_\_\_\_ in compliance with all applicable laws, including applicable statutes, rules, permit terms, orders, agreements and stipulations of BCWD, and pays, when due, all fees or other charges required by law, including all costs to BCWD of administering and enforcing the terms of permit no. \_\_\_\_\_\_\_ and this agreement, including reasonable attorneys’ fees, then within 45 days of written notification to BCWD that the activities that are the subject of the permit have been completed and all fees paid, and BCWD’s confirmation thereof, BCWD will release the escrowed funds to Permittee.

5. All obligations of BCWD under this agreement in holding and using the escrow funds are to Permittee only. Nothing in this agreement creates any right in any third party as against BCWD or in any way waives or abridges any immunity, defense or liability limit of BCWD. Permittee indemnifies BCWD for any claim, liability or cost BCWD incurs as a result of a party other than Permittee asserting ownership in or a right to the escrow funds or any part thereof. Permittee 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 permit no. \_\_\_\_\_\_\_\_ approved in writing by BCWD.

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

7. The Permittee agrees that, should the escrow funds submitted hereunder remain unclaimed by the Permittee or a successor in interest and thereby becomes “abandoned property” as that term is defined in Minnesota Statutes chapter 345, BCWD may assess a service charge from the unclaimed assets to cover costs of attempting to locate the Permittee or a successor in interest and, if necessary, reporting and transferring the unclaimed funds as required by law.

8. This agreement is effective on the signature of the parties and terminates when BCWD 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 BCWD for permit no. \_\_\_\_\_\_\_\_\_\_\_\_\_ does not constitute an amendment.

9. Notice to Permittee under this agreement is effective when sent by certified mail to Permittee’s address as stated in the permit application or such other address as Permittee subsequently has notified BCWD of in writing. The laws of the State of Minnesota will govern any legal proceeding concerning this agreement. Venue for any such proceeding will be in Washington County the real property that is the subject of this agreement is located. The recitals are incorporated as a part of this agreement.

*(Signature page follows.)*

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

# BROWN’S CREEK WATERSHED DISTRICT

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

Administrator

# PERMITTEE

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

*[print name here]*

*as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_.*

This instrument was acknowledged before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   
by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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| --- | --- |
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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| *[notary stamp]* |  |

**ESCROW PROVIDER ACKNOWLEDGEMENT & RELEASE**

The undersigned acknowledges having received and understood the agreement to which this acknowledgement is attached. By signing, the undersigned agrees to hold the Brown’s Creek Watershed District (BCWD) harmless and releases BCWD from any and all claims the undersigned may have to the funds or any part thereof provided to BCWD for the purposes described in and under the terms of the agreement.

# Acknowledged, intending to be legally bound:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

By: *[print name]*

Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| State of Minnesota |  |
| County of: |  |

This instrument was acknowledged before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   
by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.