

ESCROW AGREEMENT

Between the Rice Creek Watershed District
and _____

This Agreement is made by and between the Rice Creek Watershed District, a watershed district under Minnesota Statutes Chapters 103B and 103D (RCWD), and _____, a _____, (“Permittee”), to establish a cash escrow in fulfillment of financial assurance requirements under RCWD Permit _____.

Recitals

- A. Pursuant to Minnesota Statutes § 103D.345, the RCWD has adopted and implements permitting rules governing development and other activity within the boundaries of the RCWD that may have an impact on water resources.
- B. RCWD 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 the RCWD may incur in monitoring and inspecting activity under the permit and in responding to violations of RCWD statutes, rules, permits and orders.
- C. This Agreement documents that Permittee has submitted a cash escrow to fulfill a financial assurance obligation under Permit _____ and specifies the conditions and procedures under which the RCWD will hold and may draw on the escrow. Permittee and the RCWD, in executing this Agreement, concur that it is legally binding.

Agreement

1. Permittee has submitted a cash escrow in the amount of \$_____. The RCWD will hold the escrow in an escrow account where it may be commingled with escrow funds held by the RCWD on behalf of parties other than Permittee. The RCWD 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 RCWD account, the RCWD may declare this Agreement null and void by written notice to Permittee.
2. Additional escrow funds will be submitted by Permittee, and unused funds will be released to Permittee, in accordance with the RCWD Rules and duly adopted resolutions and policies of the RCWD Board of Managers.
3. Escrow funds will become the sole property of the RCWD, and Permittee agrees to the relinquishment of all legal and equitable interest therein, as follows:

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

b. If after notice and opportunity to be heard the RCWD finds violation of a RCWD statute, rule, permit or order, the RCWD may 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 and arrangements acceptable to the RCWD have not been made, without further notice the RCWD 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 the RCWD will give 24 hours' notice before entry and exercise due care to avoid unnecessary disturbance or damage to the property. If the RCWD 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. The RCWD may invoice Permittee for reasonable costs incurred for activity under paragraph 3.b. If payment is not made within 30 days, the RCWD may transfer funds from the escrow account into RCWD accounts and credit Permittee accordingly.

4. Permittee represents unconditionally that all escrow funds submitted hereunder are funds of Permittee. All obligations of the RCWD 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 the RCWD or in any way waives or abridges any immunity, defense or liability limit of the RCWD. Permittee indemnifies the RCWD for any claim, liability or cost the RCWD 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 Permittee's permit and written RCWD approval.

5. 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 to which the RCWD may use the escrow funds.

6. The Permittee agrees that, should the escrow funds submitted hereunder remain unclaimed by the Permittee or his successor in interest so as to become "abandoned property" as that term is defined in Minnesota Law, the District may assess a service charge from the unclaimed assets to cover costs of attempting to locate the Permittee or his successor in interest and, if necessary, reporting and paying the unclaimed funds as required by law.

7. This Agreement is effective on the signature of the parties and terminates when the District 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 the RCWD for permit _____ does not constitute an amendment.

