

## ESCROW AGREEMENT

**Between the Riley Purgatory Bluff Creek Watershed District  
and \_\_\_\_\_**

This agreement is made by and between the Riley Purgatory Bluff Creek Watershed District, a watershed district under Minnesota Statutes chapters 103B and 103D (RPBCWD), and \_\_\_\_\_, a \_\_\_\_\_ (Permittee), to establish a cash escrow in fulfillment of financial assurance requirements under RPBCWD permit no. \_\_\_\_\_.

### Recitals

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

B. RPBCWD 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 the RPBCWD may incur in monitoring and inspecting activity under the permit and in responding, if necessary, to violations of a watershed statute or RPBCWD rule, permit or order.

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 conditions and procedures under which the RPBCWD will hold and may draw on the escrow. Permittee and the RPBCWD, in executing this agreement, concur that it is legally binding.

### Agreement

1. Permittee has submitted a cash escrow in the amount of \$ \_\_\_\_\_. The RPBCWD will hold the escrow in an escrow account where it may be commingled with escrow funds held by the RPBCWD on behalf of parties other than Permittee. The RPBCWD 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 RPBCWD account, the RPBCWD 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, in accordance with the RPBCWD rules and duly adopted resolutions and policies of the RPBCWD Board of Managers.

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

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

b. If after notice and opportunity to be heard the RPBCWD finds violation of a watershed statute or RPBCWD rule, permit or order, the RPBCWD 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 RPBCWD have not been made, without further notice the RPBCWD 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 RPBCWD will give 24 hours' notice before entry and exercise due care to avoid unnecessary disturbance or damage to the property. If the RPBCWD 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 RPBCWD may invoice Permittee for reasonable costs incurred for activity under paragraph 3b. If payment is not made within 30 days, the RPBCWD may transfer funds from the escrow account into RPBCWD accounts and credit Permittee 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 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 conditions, orders, agreements and stipulations of the RPBCWD, and pays, when due, all fees or other charges required by law, including all costs to the RPBCWD of administering and enforcing the terms of the above-stated permit and this agreement, including reasonable attorneys' fees, then on 30 days' written notification to the RPBCWD of same and the RPBCWD's confirmation thereof, the RPBCWD will release the escrowed funds to Permittee.

5. All obligations of the RPBCWD 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 RPBCWD or in any way waives or abridges any immunity, defense or liability limit of the RPBCWD. Permittee indemnifies the RPBCWD for any claim, liability or cost the RPBCWD 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 approved in writing by the RPBCWD.

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 to which the RPBCWD may use the escrow funds.

7. 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" for purposes of the obligations on RPBCWD under Minnesota Statutes chapter 345, the RPBCWD 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.

8. This agreement is effective on the signature of the parties and terminates when the RPBCWD 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 RPBCWD 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 the RPBCWD 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 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.

**RILEY PURGATORY BLUFF CREEK WATERSHED DISTRICT**

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

**PERMITTEE**

By: \_\_\_\_\_ Date:  
(signature)  
\_\_\_\_\_  
(print name here)

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

State of  
Minnesota

County of :

This instrument was acknowledged before me on \_\_\_\_\_,  
by \_\_\_\_\_, as  
\_\_\_\_\_  
of \_\_\_\_\_.  
\_\_\_\_\_(Signature of notarial officer) (Stamp)

template

**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 Riley Purgatory Bluff Creek Watershed District (RPBCWD) harmless from and releases any and all claims the undersigned may have to the funds or any part thereof provided to the RPBCWD 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 \_\_\_\_\_.

\_\_\_\_\_ (Signature of notarial officer)

\_\_\_\_\_  
(Stamp)

Notary Public

My commission expires: