

IRREVOCABLE ESCROW AGREEMENT

Wetland Mitigation Bank Maintenance

In order to provide proof of financial responsibility in accordance with Wis. Stat. § 281.36 and Wis. Admin. Code Ch. NR 350 and in order to ensure the maintenance and monitoring of a wetland mitigation bank located in the Town/City/Village of _____, County of _____, Wisconsin, as more particularly described in Exhibit _____, _____ (OWNER) enters into this irrevocable escrow agreement (AGREEMENT) and transfers to _____ Bank, N.A. (ESCROW AGENT), _____ (insert bank address), a bank or financial institution located in the State of Wisconsin, which is examined and regulated by a state or federal agency, as escrow agent, the sum of \$ _____ in escrow to be held subject to the terms and conditions set forth in this AGREEMENT. The escrow account is established on the date that this AGREEMENT is signed and will continue until terminated as in accordance with this AGREEMENT. The escrow account will be named the “_____ Mitigation Bank Maintenance Escrow Account.”

The escrow funds will be available to the DNR for performance of the scope of work described in the “_____ Wetland Mitigation Bank Document and Compensation Site Plan” (PLAN) dated _____; the maintenance of the wetland mitigation bank in accordance with Wis. Admin. Code § NR 350; the procedures described in this AGREEMENT; and compliance with the provisions of the Wetland Compensatory Mitigation Easement entered into between OWNER and the DNR.

This Agreement is subject to the following terms:

1. All interest and other escrow account earnings and profits will be accumulated in the account. There will be no withdrawals from the escrow account except as authorized in writing by the Secretary of the DNR.
2. All or any part of the accumulated principal and income in the escrow account may be withdrawn by the DNR upon written request of the Secretary of the DNR to be used to perform any maintenance and monitoring activities it deems necessary with regard to the wetland mitigation bank. The DNR will mail notification of its intent to use funds to the OWNER’s last known address. ESCROW AGENT will disburse the escrow account funds as directed by the Secretary of the DNR under the provisions of this Agreement.
3. ESCROW AGENT has full power to:
 - a. retain, invest, and reinvest the escrow account property in cash, certificates of deposit, or U.S. Government securities.
 - b. sell or exchange any or all of the escrow account property as ESCROW AGENT deems proper for like-kind property.
 - c. register and hold the escrow account property in the name of a nominee without qualification or restriction.

- d. exercise any conversion privilege or subscription right given to ESCROW AGENT of any property constituting a portion of the escrow account.
4. OWNER may apply to the DNR for reimbursement from the escrow account of an amount equal to OWNER's maintenance and monitoring costs incurred during the preceding 3-month period. The DNR will review the application and provide the ESCROW AGENT with written authorization to pay OWNER the amount of any costs that the DNR determines to have been incurred in accordance with the PLAN.
5. The DNR will provide written notice to OWNER and ESCROW AGENT within 30 days following the expiration of the monitoring period described in PLAN that all maintenance and monitoring activities have been completed, reviewed, and approved or that deficiencies exist that must be corrected. If all activities are approved, the DNR will authorize ESCROW AGENT to deliver the balance remaining in the escrow account to OWNER. If deficiencies exist, the DNR will identify the deficiencies that are to be corrected, but may provide for partial payment pursuant to Wis. Admin. Code § NR 350.008.
6. ESCROW AGENT will render to OWNER and the DNR, commencing on a date specified by the DNR and annually each year thereafter, a written statement showing the correct amount of income and disbursements during the preceding year and a description and statement of value of the escrow account. The statement will identify and indicate the current market value of any cash, certificates of deposit, and U.S. governmental securities placed in the escrow account during the reporting period.
7. ESCROW AGENT will receive reasonable and customary compensation for its services, the amount of which is to be fixed by agreement of OWNER, ESCROW AGENT, and the DNR. In case the parties are unable to agree on the amount, compensation will be fixed by arbitration pursuant to Wis. Stat. Ch. 788.
8. This AGREEMENT cannot be canceled or modified unless OWNER provides the DNR with written notice by certified mail at least 90 days prior to the proposed effective date of the cancellation or modification. OWNER must deliver a replacement financial assurance to the DNR at least 30 days prior to the proposed effective date of cancellation or modification. If the replacement financial assurance is not provided or is not acceptable to the DNR, then this AGREEMENT will remain in effect.
9. Neither this AGREEMENT nor any of its terms may be rescinded except as expressly provided herein without the written consent subscribed to by OWNER, the DNR, and ESCROW AGENT.
10. ESCROW AGENT may resign upon the appointment of a qualified successor escrow agent by delivering a written resignation to both OWNER and the DNR. Either OWNER or the DNR may terminate ESCROW AGENT's authority by delivering written notice of termination to ESCROW AGENT and upon transfer of all funds to a qualified successor escrow agent.

11. If OWNER or any successor in interest intends to transfer all or any of its interest in the wetland mitigation bank, the new owner or successor in interest must provide financial assurance in an amount to be determined by the DNR. The escrow account established by this AGREEMENT will continue until other financial assurance is provided to the DNR that satisfies the intent of Wis. Stat. § 281.36 and Wis. Admin. Code Ch. NR 350 Wis. Adm. Code or until the DNR approves disbursement of the escrow funds pursuant to paragraph 6 above.
12. This AGREEMENT will terminate when all of the funds in the escrow account have been paid or delivered to OWNER.

Signed, sealed, and dated this _____ day of _____, 20__.

_____(OWNER)_____

By: _____

Name: _____

Title: _____

STATE OF WISCONSIN
Department of Natural Resources
For the Secretary

By: _____

Name: _____

Title: _____

The undersigned ESCROW AGENT hereby accepts the terms and provisions of the foregoing AGREEMENT and acknowledges receipt of the sum of \$_____ from OWNER to be held and disbursed under the terms of this AGREEMENT.

_____ BANK, N.A.

By: _____

Name: _____

Title: _____