**ESCROW AGREEMENT**

**Between the Nine Mile Creek Watershed District**

And Permit Applicant Name or Company for Permit No. YYYY-### (can be found on conditional approval letter)

This agreement is made by and between the Nine Mile Creek Watershed District, a watershed district under Minnesota Statutes chapters 103B and 103D (NMCWD), and Permit Applicant Name or Company, a Description (ex. a private MN corporation) (permittee) to establish a cash escrow in fulfillment of financial assurance requirements imposed for NMCWD Permit No. YYYY-###.

**Recitals**

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

NMCWD 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 NMCWD may incur in monitoring and inspecting activity under the permit and in responding, if necessary, to violations of NMCWD rules, permits and orders.

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

**Agreement**

1. Permittee has submitted a cash escrow in the amount of $#,### (amount found on conditional approval letter) NMCWD will hold the escrow in an escrow account where it may be commingled with escrow funds held by NMCWD on behalf of parties other than Permittee. NMCWD 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 NMCWD account, NMCWD 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 NMCWD Rules and duly adopted resolutions and policies of the NMCWD Board of Managers.

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

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

b. If after notice and opportunity to be heard NMCWD finds violation of a NMCWD rule, permit or order, NMCWD 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 NMCWD have not been made, without further notice NMCWD may take steps it deems reasonable to correct the violation. NMCWD may access the property during reasonable times to correct the violation, provided that NMCWD will give 24 hours’ notice before entry and exercise due care to avoid unnecessary disturbance of or damage to the property. If NMCWD finds that entry is required to address an extant 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. NMCWD may invoice Permittee for reasonable costs incurred for activity under paragraph 3b. If payment is not made within 30 days, NMCWD may transfer funds from the escrow account into NMCWD accounts and credit Permittee accordingly. Permittee will be liable for any costs incurred by NMCWD 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. YYYY-###. 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. YYYY-### in compliance with all applicable laws, including applicable statutes, rules, permit conditions, orders, agreements and stipulations of NMCWD and pays, when due, all fees or other charges required by law, including all costs to NMCWD of administering and enforcing the terms of the above-stated permit and this agreement, including reasonable attorneys’ fees, then NMCWD will release the escrowed funds to Permittee within 30 days of written notification to NMCWD of same and NMCWD’s confirmation thereof.

5. All obligations of NMCWD 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 NMCWD or in any way waives or abridges any immunity, defense or liability limit of NMCWD. Permittee indemnifies NMCWD for any claim, liability or cost NMCWD 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 NMCWD.

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 NMCWD 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 NMCWD under Minnesota Statutes chapter 345, NMCWD 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 NMCWD 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 NMCWD for permit no. YYYY-### 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 NMCWD 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.

*[signature page follows]*

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

# NINE MILE CREEK WATERSHED DISTRICT

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

NMCWD Administrator

# PERMITTEE

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(signature)* Date:

[print name:] Your Name

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_(month), \_\_\_\_\_\_\_\_\_ (year)by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Just type a period, “.” if you are signing in an individual capacity, include this section if you are signing as a representative (ex. Coordinator for Company)]

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| *(notary signature block and stamp)* |  |

**ESCROW PROVIDER ACKNOWLEDGEMENT & RELEASE**

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

Acknowledged, intending to be legally bound,

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(signature)* Date:

[print name:] Your Name

Title *(if acting in a representative capacity)*: Title

Company: Permittee Name or Company

|  |  |
| --- | --- |
| State of Minnesota |  |
| County of County Name |  |
|  |  |

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_(month), \_\_\_\_\_\_\_\_\_ (year)by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Just type a period, “.” if you are signing in an individual capacity, include this section if you are signing as a representative (ex. Coordinator for Company)]

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| *(notary signature block and stamp)* |  |
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