**Financial Assurances Escrow Agreement**

**For Establishment of a Long-Term ManagementFund for**

**USACE Permit Number**

**DEQ Permit Number**

**Final Mitigation Plan title and Date**

 THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ by and among **\_\_\_\_\_\_\_\_.**, a Virginia limited liability Corporation ("Permitee"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Escrow Agent) specifically described herein, and governs distribution of escrow funds associated with the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name and Date of Final Mitigation Plan as escribed below:

STATEMENT OF PURPOSE

 The Virginia Department of Environmental Quality and/or United States Army Corps of Engineers (USACE) issued Permits No. XXX and XXXX, respectively, for the construction of XXX. These permits require the construction, maintenance, monitoring and long-term management of the area described in the (name and date of the final mitigation plan) hereto referenced as the FMP. The FMP was approved by DEQ (and/or USACE) on (date). The Permitee desires to have the Escrow Agent hold certain funds in escrow and distribute said funds as required under the MBI and pursuant to the terms of this Escrow Agreement. NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows: 1. Appointment. The Permitee hereby appoints \_\_\_\_\_\_\_\_\_\_\_[preferably a law firm or title company] as Escrow Agent hereunder, and by its execution thereof, \_\_\_\_\_\_\_\_\_\_\_\_ agrees to accept such appointment. 2. Maintenance and Monitoring Proceeds. The Permittee shall deliver and deposit in escrow, with the Escrow Agent, a sum in the amount of $\_\_\_\_\_\_ as detailed in via submittal from the Permittee dated (Date). The Escrow Agent agrees to immediately deposit said funds in an escrow account at a federally insured depository institution, and to hold and disburse said funds, and any interest earned thereon (together the "Mitigation Maintenance and Monitoring Proceeds") only and specifically as hereinafter provided. 3. Notification of Receipt of Mitigation Maintenance and Monitoring Proceeds. Upon receipt of any funds referred to herein, Escrow Agent shall provide written confirmation to the Permittee of receipt of such funds. The Permittee shall forward copies of this confirmation to the following organizations:

U.S. Army Corps of Engineers

(Address)

Virginia Department of Environmental Quality

(Address)

 4. Release of Funds. The Escrow Agent may only disburse funds in accordance with a written and signed request of the Permitee or the Long-Term Steward (if applicable), and the USACE.

 5. Request for Release of Funds. The Permitee, the USACE, and/or the Long-Term Steward (if one has been designated) shall only request that Escrow Agent disburse said funds in accordance with the criteria established in (enter title of long term management plan), hereto after referred to as LTMP received by DEQ (or USACE) on (Date) and approved by DEQ (or USACE) on (DATE) and shall only make requests in writing. A copy of each request for disbursement shall be simultaneously sent by the Permitee, USACE, DEQ, or Long-Term Steward to: Upon receiving written approval from the USACE for the requested disbursement, the Escrow Agent shall release said funds requested by the Permitee, the USACE, or the Long-Term Steward (If one has been designated) within five (5) days of receiving said approval. 6 Instructions. Escrow Agent is instructed and directed by the parties to comply with approved FMP and LTMP by its execution hereof agrees to comply with all sections of the Letter and approved CMP and Long Term Management Plans that are applicable. . 6. Duties of Escrow Agent/Exculpation. The Permitee agrees that in performing any of its duties under this Agreement that Escrow Agent shall not be liable to the Permitee or Long Term Steward for any loss, costs or damage that may incur as a result of its service as Escrow Agent hereunder, except for any loss costs or damage arising out of its willful default or negligence. Accordingly, as between the Permitee and the Escrow Agent, the Escrow Agent shall not incur any liability with respect to (a) any action taken or admitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to its duties and responsibilities, or (b) to any action taken or admitted to be taken in reliance upon any document, including any written notice of instruction provided for in this Escrow Agreement, not only as to its due execution and validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which Escrow Agent in good faith believes to be genuine, believes to have been signed or presented by a proper person or persons and, in good faith believes to conform with the provisions of this Escrow Agreement. All requests for disbursement requires written approval by the USACE, so disbursements made without such approval are by definition willful or negligent and cannot provide exculpation to the Escrow Agent. Note that this Agreement does not affect Permitee’s responsibility, obligation and liability under the MBI.

 7. Indemnification. The Permitee hereby agrees to indemnify and hold harmless the Escrow Agent and any and all of its partners acting hereunder, against any and all losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by Escrow Agent in connection with its service as Escrow Agent, unless such losses, claims, damages, liabilities and expenses are the result of Escrow Agent's willful default or negligence. 8. Disputes. In an event of dispute between the Permitee and the USACE, the Escrow Agent shall comply with the USACE, and the Permitee agrees to defer to the USACE. With regard to disputes not involving the USACE, where circumstances warrant, in the Escrow Agent’s discretion, Escrow Agent shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or Property held by it under the terms of this Escrow Agreement, together with such legal pleadings as it deems appropriate and immediately thereupon it should be discharged from all duties and responsibilities hereunder.

9 Revocation, Modification/Termination. In accordance with regulations at 33 CFR 332.3(n)(5), the Escrow Agent shall provide notice to the USACE through the Chair(s) at least 120 days in advance of any planned termination or revocation of financial assurances.Revocation or termination of financial assurances is subject to approval by the USACE.

 IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and sealed as of the day and year first above written. By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PermitteeAND BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Escrow Agent