



United States Department of the Interior  
Office of Surface Mining Reclamation and Enforcement

**ESCROW AGREEMENT**

Escrow Agreement No. \_\_\_\_\_

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the United States, Office of Surface Mining Reclamation and Enforcement, (herein called "OSM"), the \_\_\_\_\_, a National Banking Association (herein called "Bank"), and the \_\_\_\_\_ (herein called "Operator");

**WITNESSETH:**

WHEREAS, Operator has heretofore filed with OSM \_\_\_\_\_ issued by \_\_\_\_\_ in compliance with the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. (SMCRA), and the rules and regulations adopted pursuant to that Act, in connection with Operator's Permit No. \_\_\_\_\_;

WHEREAS, pursuant to provisions of 30 CFR §800.21(d), Operator desires to deposit into escrow Cash having a value of \$ \_\_\_\_\_; Cash meaning lawful currency of the United States of America; and

WHEREAS, Operator desires to engage Bank as a depository and escrow agent for the purpose of taking custody of such Cash;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the mutual benefits derived hereunder, it is agreed by and between the parties as follows:

1. Upon execution of this agreement by the parties, Operator shall deposit with the Bank, \_\_\_\_\_, cash instruments having a face value of \$ \_\_\_\_\_. Upon the Bank's receipt of custody of such Cash from the Operator, it shall confirm such receipt in writing to OSM.

2. Such Cash shall be held by the Bank for the purpose of assuring to OSM that the Operator shall faithfully perform all the reclamation requirements specified in the mining and reclamation plan or plans approved under Permit No. \_\_\_\_\_.

3. The parties hereto recognize that OSM will periodically review the Operator's mining operation and may from time to time require increases in the reclamation bond

amount. The parties specifically agree that Operator may from time to time, as required by OSM, increase the amount of Cash or bond to conform to the requirements of OSM without the execution by all parties of a further agreement to reflect increases in bond amount. Operator may, upon receipt of proper notice from OSM, increase the amount of escrowed Cash to conform with OSM requirements upon written notice to OSM and Bank; all additional Cash so escrowed and any increase in bond amounts shall be subject to all terms, conditions and provisions of this Escrow Agreement.

4. The Bank shall receive all interest or income on such Cash and shall pay such interest or income as and when received to Operator, in care of or as otherwise directed by Operator in writing. The Bank shall not invest any portion of the funds in its possession or control.

5. Upon receipt by OSM of Bank's written confirmation that said Cash has been deposited by Operator, the OSM shall execute and deliver to Operator, if desired, any and all necessary documents and forms to allow Operator in its sole discretion to cancel or terminate any bond being replaced by this Escrow Agreement, pursuant to 30 CFR §800.30.

6. In the event Operator violates the SMCRA, or any rules and regulations promulgated thereunder, as the same applies to the reclamation requirements of Permit No. \_\_\_\_\_ and fails to remedy or correct such violations, OSM shall institute forfeiture proceedings against Operator in accordance with 30 CFR §800.50, and any implementing procedures. Written notice of the forfeiture proceedings shall be furnished to the Bank by OSM.

Upon receipt of certified and authenticated notice from OSM showing, 1) the amount of bond declared forfeited; 2) that all legal or administrative remedies available to Operator have been waived or exhausted and no action, proceeding or appeal is pending thereon; and 3) that a final order of forfeiture has been entered, the Bank shall surrender to OSM the requested portion of the Cash in its possession.

In the event the Bank shall for any reason fail, refuse or neglect to surrender the requested amount of the Cash to OSM within ten (10) calendar days after receipt of notice of forfeiture and demand for payment as herein above provided, the Operator agrees in such an event or events to, 1) hold OSM free, harmless and indemnified of and from any cost, expense or loss, actually incurred by reason of such refusal, including but not limited to court costs and attorney's fees, and 2) to pay unto OSM interest on the amount of the Cash required to be surrendered at the highest legal rate authorized by United States law computed from the date on which said Cash was required to be surrendered to and including the date on which such Cash deposits are actually received by OSM.

7. This agreement shall be deemed terminated in whole or in part: 1) when and as OSM certifies in writing to the Bank that the Operator has successfully completed of the requirements of the surface mining and reclamation activities required under Permit No. \_\_\_\_\_, for which the Cash was posted; 2) when and as OSM certifies in writing to the Bank that the Operator has provided a corporate surety bond, collateral or self-bond, in substitution for and release of the Cash; or 3) when OSM otherwise authorizes release of the Cash in whole or part to the Operator.

Until this agreement is terminated in whole or part, the Bank shall not release, assign, transfer or deliver any of the Cash to Operator; or to any other party, PROVIDED,

HOWEVER, Operator shall have the right at any time to post a corporate surety bond, collateral bond or, if qualified, a self-bond in substitution for and release of all or part of said Cash upon the prior approval of OSM.

During each month of every calendar year this agreement is in force and effect, the Bank shall report to OSM and Operator in writing the amount and value of the Cash then on deposit.

Upon the complete termination of this agreement, the Bank shall deliver all said Cash deposited hereunder to Operator or its nominee. Upon the partial termination of this agreement, the Bank shall deliver to the Operator or its nominee the Cash held hereunder in the amount certified in writing to the Bank by OSM as being the amount of reclamation work which has been successfully completed, other bond substituted, or the amount certified by OSM.

8. All notices required to be given by the Bank shall be effective when received by the respective parties at their addresses specified below, namely:

Office of Surface Mining Reclamation and Enforcement  
Address:

The \_\_\_\_\_ Company  
Address:

or other address as such party may have furnished the Bank and to the other party in writing. Any notice to the Bank shall be effective when received by the Bank addressed as follows:

The \_\_\_\_\_ Bank  
Trust Department  
Attn.: Escrow Division  
Escrow No. \_\_\_\_\_

Personal delivery shall have the same effect as notice given by mail.

9. Operator agrees to pay the Bank its fees for its services, including, but not limited to, the actual cost of legal services should the Bank deem it necessary to retain counsel with respect to any matters pertaining to this instrument. The fees an escrow agent shall be determined in accordance with, and shall be payable as specified in the Schedule of Fees for Escrow Services dated \_\_\_\_\_, a receipt of which is hereby acknowledged by Operator.

10. This agreement contains the entire agreement of the parties hereto with respect to said Cash, and the Bank agrees to hold and dispose of said Cash delivered to it by the Operator in accordance with the terms and conditions hereof. However, the Bank is not a party to, nor bound by, any instrument or agreement other than this agreement, and the Bank, as custodian of the Cash deposited within hereunder shall not be required to take notice of any default or any other matter, nor be bound by or required to give any notice or demand, nor be required to take any action whatsoever, except as hereinbefore provided.

11. The parties have satisfied themselves as to the authority of any persons signing this agreement in a representative capacity. Should it be necessary for the Bank to accept or act upon any instructions, directions, documents or instruments signed or issued by or on behalf of any corporation, partnership, governmental entity, trade name, fiduciary or individual, it shall not be necessary for the Bank to inquire into the authority of the signer(s) unless and to the extent expressly provided in this agreement.

12. This agreement may be altered or amended only with the consent of the parties and with the consent of the Bank. Should the parties attempt to change this agreement in a manner which, in the Bank's sole discretion, is deemed undesirable, the Bank may resign as escrow agent by notifying the parties in writing; otherwise, the Bank may resign as escrow agent at any time upon thirty (30) days prior notice to OSM. In the case of Bank escrow agent resignation, the only duty of the Bank, until a successor escrow agent shall have been appointed and shall have accepted such appointment, shall be to hold and dispose of the Cash in accordance with the original provisions contained in this agreement (but without regard to any notices, request, instructions or demands received by the Bank from either or both of the parties after the notice of resignation shall have been given, unless the same shall be a direction by both parties that the entire funds be paid or delivered out of escrow).

13. Operator warrants to and agrees with the Bank and OSM that, unless otherwise expressly set forth in this agreement, there is no security interest in the Cash fund or any part thereof; no financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the Cash fund or any part thereof; and the Bank and OSM shall have no responsibility at any time to ascertain whether or not any security interest exists in the Cash fund or any part thereof or to file any financing statement under the Uniform Commercial Code with respect to the Cash fund or any part thereof.

14. Bank warrants to and agrees with the Operator and OSM that the Cash fund is federally insured and made payable upon demand to OSM in accordance with section 6 of this agreement.

IN WITNESS WHEREOF; the parties have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

THE \_\_\_\_\_ COMPANY

OPERATOR: \_\_\_\_\_

BY: \_\_\_\_\_

(President)

**ATTEST:**

\_\_\_\_\_  
Secretary

(Affix Corporate Seal)

\_\_\_\_\_  
BANK

BY: \_\_\_\_\_  
Title

**ATTEST:**

The foregoing instrument was acknowledged, subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ and  
\_\_\_\_\_.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**Paperwork Reduction Act Notice**

We use the information required by this form to ensure that the requirements for posting cash accounts as a collateral bond under 30 CFR 800.21 are met. You must provide the requested information to obtain a benefit (a collateral bond that relies upon cash accounts). Under 30 CFR 842.16, the information collected is a matter of public record.

The time needed to complete this form and submit the requested information will vary depending on individual circumstances. We estimate that the average time will be 10.5 hours per response. This number includes the time spent reviewing instructions, learning about the regulations, gathering and maintaining information, and completing and reviewing the form. If you have comments concerning the accuracy of this estimate or suggestions for simplifying the form or instructions, you may write to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1849 C Street, NW, Room 4559, Washington, DC 20240.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), you are not required to respond to, nor will you be subject to a penalty for a failure to comply with, a collection of information unless it displays a currently valid OMB control number.

OMB Control No. 1029-0043; expires 10/31/2021