

ESCROW AGREEMENT
[NAME OF MITIGATION BANK]
CONSTRUCTION AND ESTABLISHMENT FUND

This Agreement, made this _____ day of _____, 20____, by and between [NAME OF SPONSOR] (the “Sponsor”), the United States Army Corps of Engineers, New Orleans District (the “CEMVN”), and [NAME OF FINANCIAL INSTITUTION] (the “Bank”), memorializes the following agreements of the parties,

WITNESSETH THAT:

WHEREAS, on _____, 20____, the Sponsor and the CEMVN entered into a Interagency Agreement/Mitigation Banking Instrument for the [NAME OF MITIGATION BANK] (hereinafter referred to as the “Instrument”) for the establishment of the [NAME OF MITIGATION BANK] (hereinafter referred to as the “Mitigation Bank”);

WHEREAS, pursuant to the Instrument, the Sponsor is required to ensure that sufficient funds are available to assure the construction, establishment, completion and long-term viability of the Mitigation Bank, which sum was calculated according to the needs and projected costs of the Mitigation Bank;

WHEREAS, the Sponsor and the CEMVN have agreed that the required funds should be deposited into an escrow account and held therein in accordance with the Instrument and this Escrow Agreement; and

WHEREAS, the Bank has agreed to serve as depository for the escrow account and to act as Escrow Agent for Sponsor and CEMVN.

NOW, THEREFORE, the parties agree as follows:

1. The Bank is hereby appointed the Escrow Agent for the Sponsor and CEMVN and is designated the depository for the monies delivered to it by the Sponsor pursuant to the aforementioned Instrument. The Bank shall establish the [NAME OF MITIGATION BANK] Construction and Establishment Fund (hereinafter referred to as the “Escrow Account”), Account No. _____, into which shall be deposited the funds delivered by the Sponsor.

2. In accordance with the provisions of the Instrument, the Sponsor shall absolutely and irrevocably deliver to the Bank funds in the amount of \$[AMOUNT OF INITIAL FUNDING] in accordance with Section XI of the Instrument.

3. The funds held in the Escrow Account shall earn interest at a rate as the Bank and the Sponsor may mutually agree. To the extent the Sponsor authorizes the Bank to invest the funds in any instrument other than an interest-bearing account, savings certificate, or certificate of deposit of the Bank itself, such investment shall be only in direct obligations of the United States of America, in obligations of agencies or insurers that are guaranteed by the United States of America, or in a money market mutual fund consisting solely of such obligations. Interest on the funds deposited shall accrue and belong to the Sponsor and shall be released to Sponsor on such terms and at such intervals as Bank and Sponsor agree.

4. It is understood and agreed that no monies other than accrued interest will be released by Escrow Agent from the Escrow Account unless it receives a written approval for the disbursement from CEMVN.

5. The Sponsor when requesting the Escrow Agent to disburse funds deposited in the Escrow Account shall do so as a written demand for withdrawal with a copy of said demand provided by Sponsor to the CEMVN. After receiving written approval from the CEMVN for the requested disbursement, the Escrow Agent shall release the amount requested within ten days of such approval, provided the amount does not exceed the balance available in the Escrow Account. The Escrow Agent agrees that it shall only honor requests for disbursements made in writing and approved in writing by the CEMVN. All payments shall be in the form of bank drafts payable to the Sponsor or to such other party as designated by CEMVN pursuant to paragraph 7 or 8 of this Agreement and shall be mailed or otherwise delivered to the Sponsor or to CEMVN's designate as specified below in paragraph 12.

6. The Sponsor, with written approval from CEMVN, may request the Escrow Agent to disburse funds deposited in the Escrow Account as certain performance milestones are met and success criteria are achieved in accordance with the following schedule:

[INSERT TERMS FOR RELEASE OF FUNDS FROM SECTION XI OF THE MBI]

7. In the event the IRT determines that the Mitigation Bank has failed to reach its performance milestones as set forth in the Instrument and that the Sponsor is non-compliant with or is in default of its obligations under the Instrument, CEMVN may direct the Bank to release such amount of the principal as it determines appropriate to correct the deficiencies to a stand-by trust or to a third party as designated by CEMVN. If a stand-by trust is designated, the release of funds shall be directly into the stand-by trust fund for distribution by the CEMVN-designated trustee in accordance with instructions by the CEMVN.

8. In the event of a natural disaster or other catastrophic event, CEMVN, after consultation with the IRT, may direct the release of such amount of the principal as it determines appropriate to restore, reconstruct, and/or rehabilitate the Mitigation Bank to the Sponsor or to a third party as designated by CEMVN.

9. The fee to be paid to the Bank for the services provided hereunder shall be as the Bank and the Sponsor may mutually agree. The Bank's fee may be paid out of the interest generated from the Escrow Account. The Bank shall have no right to deduct monies from the principal escrow sum to pay for its services unless the accumulated interest fails to cover Bank fees. The Bank shall provide the CEMVN with 60-day notice prior to any deduction from principal. The CEMVN shall not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the Escrow Account.

10. Account statements shall be rendered by the Bank to the Sponsor and the CEMVN once monthly and shall show deposits, disbursements, accrued interest, released interest, fees, balances and the corresponding dates of each.

11. It is understood and agreed that the bank shall have no responsibility to ascertain the terms or conditions of any provision of the aforementioned Instrument between the Sponsor and the CEMVN. It is further understood and agreed that if any controversy arises between the CEMVN and the Sponsor, or with any other party with respect to the subject matter of this Agreement, the Bank is entitled to initiate a concursus or similar proceeding and with notice to Sponsor and to CEMVN to deposit into the registry of any court of competent jurisdiction all money or property held by it under the terms of this Agreement and to file with such court any legal pleadings it deems appropriate, and immediately thereon, it shall be discharged from all duties and responsibilities hereunder.

12. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Sponsor:
[ADDRESS& CONTACT]

If to the CEMVN:
U.S. Army Corps of Engineers
New Orleans District
CEMVN-OD-S
Post Office Box 60267
New Orleans, LA 70160-0267
Attn: Mr. Pete Serio

If to the Bank:
[ADDRESS & CONTACT]

13. Nothing in this Agreement shall be considered as vesting title in the Bank to the funds deposited or interest accrued thereon, except as Trustee for the Sponsor and the CEMVN for the purposes set forth herein. Title to said funds shall not vest in the CEMVN at any time.

14. This Agreement shall take effect upon the initial deposit of funds into the Escrow Account by the Sponsor and shall continue in full force in perpetuity or until written notice of termination is provided by the Sponsor and approved in writing by the CEMVN. Upon receipt of a signed termination notice and written CEMVN approval thereof, the Bank shall complete a final accounting as required under paragraph 10 of this Agreement and shall pay over any remaining balance to the Sponsor or his designee for the continued benefit of the Mitigation Bank.

15. This Agreement may not be amended, except by written modification signed by all parties hereto.

16. Any modification, amendment, revocation or termination of this document requires that the Bank send a 120-day advance notice with the proposed modification, amendment, termination or revocation to the CEMVN.

17. This Escrow Agreement may be executed in multiple counterpart originals, each of which shall constitute one and the same instrument, provided that each of the parties hereto signs at least one of the counterpart originals.

IN WITNESS WHEREOF, the Sponsor, the CEMVN, and the Bank have executed this Agreement on the date(s) herein below written.

Sponsor, [NAME OF SPONSOR]

ATTEST: _____

Print Name: _____

Title: _____

Date: _____

U.S. Army Corps of Engineers, New Orleans District

ATTEST: _____

Print Name: _____

Title: _____

Date: _____

Escrow Agent, [NAME OF FINANCIAL INSTITUTION]

ATTEST: _____

Print Name: _____

Title: _____

Date: _____