**\_\_\_\_\_\_\_\_\_\_\_\_\_\_ MITIGATION BANK**

**LONG-TERM MANAGEMENT AND MAINTENANCE ENDOWMENT FUND**

**ESCROW AGREEMENT**

This Agreement, made and entered into this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between State of Washington, Department of Ecology (hereinafter, “Ecology”), the U.S. Army Corps of Engineers, Seattle District (hereinafter, the “Corps”), these two agencies acting in their capacity as Co-Chairs of the Interagency Bank Review Team (hereinafter collectively referred to as the “IRT Co-Chairs”); \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, the “Sponsor”); and \_\_\_\_\_\_\_\_\_\_\_\_ (*full name of the financial institution or escrow agency*)(hereinafter, the “Agent”),

WITNESSETH THAT:

WHEREAS, on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*date of last signature on the MBI*) the IRT Co-Chairs and the Sponsor entered into a Mitigation Bank Instrument (MBI) governing the establishment and long-term management and maintenanceof the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Mitigation Bank (hereinafter, the “Mitigation Bank”); and,

WHEREAS, pursuant to the MBI, the Sponsor is required to contribute in one or more installments, over the period of establishmentof the Mitigation Bank, specified amounts to a Long-Term Management and Maintenance Endowment Fund (hereinafter, the “Endowment Fund”), until the contributions and interest or other earnings accumulate to an escrow account balance that meets or exceeds the “full funding” level specified in the MBI, with the said contributions to be calculated inaccordance with the said MBI; and,

WHEREAS, the Sponsor and the IRT Co-Chairs have agreed that the required endowment fund may be deposited into an escrow account and held therein until the IRT Co-Chairs direct disbursement of the funds following assignment of the responsibility for long-term management and maintenance of the Mitigation Bank in accordance with the MBI; and,

WHEREAS, the Agent has agreed to serve as depositary for the Escrow Account and to accept appointment as Escrow Agent.

NOW, THEREFORE, the Parties agree as follows:

1. The Agent is hereby appointed as the escrow agent for the Endowment Fund and is designated the depositary for the monies delivered by the Sponsor pursuant to the aforementioned MBI. The Agent shall establish the \_\_\_\_\_\_\_\_\_\_\_\_\_ Mitigation BankFund (hereinafter, the “Escrow Account”), into which shall be deposited the funds delivered by the Sponsor.

2. The Sponsor shall absolutely and irrevocably deliver to the Agent the funds required to be contributed to the Endowment Fund during the establishment phase of the Mitigation Bank.

3. The Escrow Account shall be established in an accredited and Federally insured financial institution. It is understood and agreed that the Sponsor may make multiple incremental deposits to the Escrow Account principal, and the Agent shall accept any and all deposits submitted by the Sponsor into the Escrow Account. The funds held in the Escrow Account may earn interest or other earnings at a rate as the Agent and the Sponsor may mutually agree. To the extent the Sponsor authorizes the Agent to invest the funds in any instrument other than an interest-bearing account, savings certificate, or certificate of deposit, such investment shall only be in direct obligations of the Government of the United States of America, in obligations of agencies or insurers that are guaranteed by the Government of the United States of America, or in any money market mutual fund consisting solely of such obligations. Any such investment or deposit instrument must be subject to redemption on or prior to the date the funds will be disbursed by the Agent pursuant to the instructions in paragraph 4 of this Escrow Agreement. Interest or other earnings on the funds deposited shall accrue to the account and shall remain deposited with the principal Endowment Fund monies.

4. Upon receipt of written instructions signed by the Sponsor, and both Ecology and the Corps, the Escrow Account shall be terminated and all funds distributed pursuant to the instructions provided by the IRT Co-Chairs. These instructions may be submitted in separate correspondence from each of the Sponsor, Ecology, and the Corps. Written instructions of Ecology and the Corps shall be signed and submitted on the respective agency’s letterhead. Within 10 days of receipt of the demand, the Agent shall disburse to the third-party Long-Term Steward the amount directed, to the extent such amount does not exceed the balance available in the Escrow Account. Payment shall be in the form of a bank draft payable to the Long-Term Steward, and shall be mailed or otherwise delivered as directed in the letter of instruction from the IRT Co-Chairs. As further directed by the IRT Co-Chairs, the Agent will return the excess Escrow Account balance, if any, over and above the directed disbursement, to the Sponsor.

5. The fees to be paid to the Agent for the services provided hereunder shall be as the Agent and the Sponsor may mutually agree. Any escrow agency fees, account fees, or administrative costs payable to the Agent, or other associated costs payable to any entity in connection with the establishment, maintenance, or termination of the Escrow Account shall be the sole responsibility of the Sponsor. The Agent shall have no right to deduct monies from the principal, interest, or earnings sums in the Escrow Account to pay for its services or the services of any other entity provided in connection with this Escrow Account, nor shall the Agent withhold account statements, disbursement, or other Escrow Account services due to non-payment. In the event the Sponsor fails to make payment to the Agent for its services, all claims for such payment shall be directly against the Sponsor. Neither Ecology nor the Corps shall be responsible for any costs attributable to the establishment, maintenance, administration, termination, or any other aspect of the Escrow Account.

6. Account statements shall be rendered by the Agent to the Sponsor, Ecology, and the Corps at least annually for the period ending December 31st of each year, and shall show deposits, interest or other earnings, any disbursements, and balances, and the dates thereof. Upon receipt by the Agent of the written instructions specified in paragraph 4 above, the Agent shall prepare a final accounting showing all transactions relating to the Escrow Account and provide said accounting to the Sponsor, Ecology, and the Corps at the addresses shown in paragraph 8.

7. It is understood and agreed that the Agent shall not be liable or responsible to ascertain the terms or conditions of any provision of the aforementioned MBIbetween the Sponsor and the IRT Co-Chairs. It is further understood and agreed that if any controversy arises between the IRT Co-Chairs and the Sponsor, or with any other party with respect to the subject matter of this Escrow Agreement, the Agent is authorized, unless precluded by order of a court of competent jurisdiction, to disburse monies as directed by the IRT Co-Chairs in accordance with the terms of paragraph 4 of this Escrow Agreement.

8. All notices, requests, demands, and other communications required or permitted to be given under this Escrow 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:

**[FULL ADDRESS]**

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If to Ecology:

Washington State Department of Ecology

Mitigation Bank Specialist/Co-Chair of IRT

Shorelands and Environmental Assistance Program

P.O. Box 47600

300 Desmond Drive

Olympia, WA 98504

If to the Corps:

US Army Corps of Engineers, Seattle District

Mitigation Program/Co-Chair of IRT

Regulatory Branch

4735 East Marginal Way South

Seattle, Washington, 98134

If to the Agent:

**[FULL ADDRESS]**

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9. Nothing in this Escrow Agreement shall be considered as vesting title in the Agent to the amounts deposited or otherwise accrued, except as Trustee for the Sponsor and the IRT Co-Chairs for the purposes set forth herein. Title to said funds shall not vest in Ecology or the Corps, until and unless the Escrow Account funds are so disbursed in accordance with the written instructions provided pursuant to paragraph 4.

10. This Escrow Agreement shall take effect upon the initial deposit of funds into the Escrow Account by the Sponsor and shall continue in full force until the final disbursement instructions specified in paragraph 4 are received by the Agent and all funds in the Escrow Account are distributed pursuant thereto, unless earlier terminated by the written mutual agreement of the Sponsor and the IRT Co-Chairs.

11. The Agent may resign by furnishing written notice of its resignation to each of the parties hereto. Such resignation shall be effective ninety (90) days after the delivery of such notice or upon the earlier appointment of a successor, and the Agent’s sole responsibility thereafter shall be to safely keep the Escrow Account and to deliver the same to a successor escrow agent as shall be appointed by Ecology, the Corps, and the Sponsor, as evidenced by written instructions filed with the Agent pursuant to paragraph 4, above, or in accordance with a court order. If Ecology, the Corps, and the Sponsor have failed to provide written instructions pursuant to paragraph 4, above, prior to the expiration of ninety (90) days following the delivery of such notice of resignation, the Agent may petition any court of competent jurisdiction over this Escrow Agreement and its parties for the appointment of a successor escrow agent for other appropriate relief, and any such resulting appointment shall be binding upon the parties hereto.

12. This Agreement may not be amended, except by written modification signed by the Parties hereto.

IN WITNESS WHEREOF, the Sponsor, Ecology, the Corps, and the Agent have executed this Agreement on the date first above written.

Bank Sponsor

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

State of Washington, Department of Ecology

ATTEST:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

U.S. Army Corps of Engineers

ATTEST:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

The Agent

ATTEST:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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