

## ESCROW AGREEMENT FOR RAW WATER LINE PROJECT

**THIS ESCROW AGREEMENT** (Agreement) is made by and between City of Fort Bragg (Permittee), the California Department of Fish and Wildlife (CDFW), and U.S. Bank National Association, as Escrow Agent (collectively, Parties).

WHEREAS, CDFW issued a Consistency Determination (Permit) to the Permittee for the (Raw Water Line Project), a copy of which is attached hereto as Exhibit A for reference purposes only;

WHEREAS, the Permit requires the Permittee to [Insert either/both, as applicable, fully mitigate Project-related impacts to Coho salmon (*Oncorhynchus kisutch*), referred to as the "Covered Species" in the Permit, by meeting the mitigation requirements described in Condition(s) [Insert condition of approval number(s)] of the Permit" and/or "implement specified measures to protect fish and wildlife resources, as described in Measure(s) [Insert protective measure number(s)] (Mitigation Requirements);

WHEREAS, Condition [Insert condition of approval number(s)] of the Permit (Security Requirement) requires the Permittee to provide CDFW financial security to ensure performance of Mitigation Requirements if project activities will commence prior to completion of the Mitigation Requirements; and

WHEREAS, CDFW agrees the Permittee may deposit funds into an escrow account pursuant to the terms of this Agreement to satisfy the Security Requirement.

**NOW, THEREFORE**, the Parties hereby agree as follows:

**1. Designation of the Escrow Agent and Creation of Escrow Account.**

- a. The Permittee and CDFW hereby appoint U.S. Bank National Association as the escrow agent, and U.S. Bank National Association (Escrow Agent) hereby accepts such appointment.
- b. Promptly after execution of the Agreement, the Escrow Agent shall establish an escrow account entitled Raw Water Line Project Escrow Account for Consistency Determination (CD) (Escrow Account). The Parties agree the sole purpose of the Escrow Account is to ensure performance of the Mitigation Requirements.
- c. The Escrow Agent shall provide quarterly Escrow Account statements to the Permittee and CDFW.
- d. The Permittee shall be solely responsible for payment of the Escrow Agent's reasonable and customary fees.

**2. Deposit of Monies in Escrow Account.**

- a. Within two business days of the Effective Date of this Agreement, The Permittee shall deposit \$150,000 Dollars (\$150,000) (Principal Sum) into the Escrow Account, and thereafter the Escrow Agent shall promptly provide CDFW written confirmation that the Principal Sum has been deposited.

- b. The Escrow Agent shall invest the Principal Sum, which at the Permittee's direction may be invested into an interest-bearing money market account, provided that the Principal Sum shall at all times be immediately available for disbursement in accordance with this Agreement. Any interest earned on the Principal Sum shall be available for CDFW to draw upon through a Letter of Drawing. Any interest earned on the Principal Sum that is remaining when CDFW issues a Letter of Cancellation shall be returned to the Permittee.
- c. No monies other than the Principal Sum and interest earned thereon shall be deposited into the Escrow Account.
- d. The Escrow Agent shall disburse the Principal Sum and any interest thereon only in accordance with the instruction set forth below.

**3. Disbursement of Part or All of Principal Sum to CDFW.**

- a. Attached hereto as Exhibit B is a form of Letter for Drawing and attached hereto as Exhibit C is a form of Letter for Cancellation. CDFW and the Permittee hereby agree CDFW shall have sole power to complete, execute, and submit to Escrow Agent one or more Letters for Drawing if CDFW determines, based on a reasonable assessment of the Mitigation Requirements required by the Permit, that the Permittee has failed to comply with part or all of the Mitigation Requirements, and in such event Escrow Agent receives a Letter for Drawing, it shall be entitled to rely conclusively as to CDFW's determination set forth therein, without further investigation.
- b. The Letter for Drawing shall be completed and signed by CDFW's General Counsel or CDFW's Regional Manager for CDFW's Northern Region (each an Authorized Representative). Presentation by CDFW of a Letter for Drawing may be made by overnight courier mail to the Escrow Agent office address listed in Section 6 and Email: [tfmcorporateescrowshared@usbank.com](mailto:tfmcorporateescrowshared@usbank.com)
- c. Upon presentation of a duly executed Letter for Drawing, the Escrow Agent shall deliver to CDFW, or to an account designated by CDFW, as specified in the letter, the "Demand Amount" in immediately available funds within five business days after receipt of the letter.
- d. If a demand for drawing does not conform to the Letter for Drawing, attached hereto as Exhibit B, the Escrow Agent shall give CDFW prompt notice the demand for drawing was not in accordance with the Letter for Drawing, state the reasons therefore, and await further instructions from CDFW. Upon receiving such notice, CDFW may correct any such non-conforming demand for drawing.
- e. All drawings under this Agreement shall be paid from and shall not exceed the Principal Sum and any interest earned thereon as of the date of the Letter of Drawing and shall reduce, *pro tanto*, the Principal Sum.

**4. Disbursement of Principal Sum and Interest to the Permittee.**

- a. If CDFW determines the Permittee has fully satisfied the Mitigation Requirements, the Permittee shall be entitled to the Principal Sum, or the remainder of the Principal Sum if

one or more disbursements have been made to CDFW pursuant to Section 3, and any remaining interest accrued thereon (Dispersal Amount) upon presentation by the Permittee of a duly executed Letter for Cancellation in the same form as Exhibit C, attached hereto, by overnight courier mail to the Escrow Agent's office address listed in Section 6 and Email: tfmcorporateescrowshared@usbank.com.

- b. The Letter for Cancellation shall be completed and signed by the Permittee and subject to CDFW's written consent, which consent shall not be unreasonably withheld, and shall be provided by an Authorized Representative of CDFW. Presentation by the Permittee of the Letter for Cancellation may be in person or by overnight mail only. Escrow Agent shall be entitled to rely conclusively on a duly executed Letter for Cancellation, without further investigation, provided CDFW's Authorized Representative has signed the Letter for Cancellation indicating CDFW's consent.
- c. Upon presentation of a duly executed Letter for Cancellation, the Escrow Agent shall deliver to the Permittee, or to an account designated by the Permittee, as specified in the letter, the Dispersal Amount in immediately available funds within five business days after receipt of the letter.
- d. If a demand for cancellation does not conform to the Letter for Cancellation, attached hereto as Exhibit C, the Escrow Agent shall give the Permittee prompt notice the demand for cancellation is not in accordance with the Letter for Cancellation, state the reasons therefore, and await further instructions. Upon receiving such notice, the Permittee may correct any such non-conforming demand for payment.

**5. Reduction of Principal Sum and Partial Disbursement to the Permittee.**

- a. If CDFW determines the Permittee has partially satisfied the Mitigation Requirements, the Permittee shall be entitled to a reduction in the Principal Sum (Reduction Amount) upon presentation by the Permittee of a duly executed Letter for Reduction in the same form as Exhibit D, attached hereto, by overnight courier mail to the Escrow Agent's office address listed in Section 6 and Email: tfmcorporateescrowshared@usbank.com..
- b. The Letter for Reduction shall be completed and signed by the Permittee and subject to CDFW's written consent, which consent shall not be unreasonably withheld, and which shall be provided by an Authorized Representative of CDFW. Presentation by the Permittee of the Letter for Reduction may be in person or by overnight mail only. Escrow Agent shall be entitled to rely conclusively on a duly executed Letter for Reduction, without further investigation, provided CDFW's Authorized Representative has signed the Letter for Reduction indicating CDFW's consent.
- c. Upon presentation of a duly executed Letter for Reduction, the Escrow Agent shall deliver to the Permittee, or to an account designated by the Permittee, as specified in the letter, the Reduction Amount in immediately available funds within five business days after receipt of the letter.
- d. If a demand for reduction does not conform to the Letter for Reduction, attached hereto as Exhibit D, the Escrow Agent shall give the Permittee prompt notice the demand for reduction is not in accordance with the Letter for Reduction, state the

reasons therefore, and await further instructions. Upon receiving such notice, the Permittee may correct any such non-conforming demand for payment.

6. **Notices.** Any notice, demand, request, consent, approval, or communication that the Permittee, CDFW, or the Escrow Agent desires or is required to give to another shall be in writing and be served personally or sent by overnight courier mail, addressed as follows:

To Permittee: John Smith  
City of Fort Bragg – Director of Public Works  
416 North Franklin Street  
Fort Bragg, CA 95437  
Add phone number and email address

With Copy to: Isaac Whippy  
City of Fort Bragg – City Manager  
416 North Franklin Street  
Fort Bragg, CA 95437

To CDFW: Tina Bartlett  
Regional Manager – Northern Region  
601 Locust Street  
Redding, CA 96001  
Add Phone number and email address

With Copy to: Office of the General Counsel  
California Department of Fish and Wildlife  
Post Office Box 944209  
Sacramento, CA 94244-2090  
Add phone number and email address

To Escrow Agent: U.S. Bank National Association  
1 California Street, Suite 1000  
San Francisco, CA 94111  
Attention: Global Corporate Trust  
Phone: (415) 677-3596  
Email: tfmcorporateescrowshared@usbank.com

Or to such other address(es) as the Parties shall designate by written notice to one another. Notice shall be deemed effective upon deliver in the case of personal delivery or by overnight mail; in the case of delivery by first class mail, five calendar days after deposit in the United States mail.

7. **Authority of Escrow Agent and Limitation of Liability.**

- a. The Escrow Agent shall have only such duties as are specified herein or are otherwise required under applicable law or the Escrow Agent's duties as a fiduciary. No implied duties shall be read into this Agreement, and the Escrow Agent shall not be liable for

any error of judgment or any act done, or omitted to be done, hereunder by it in the absence of its gross negligence or willful misconduct.

- b. The Escrow Agent may act in reliance upon any writing, instrument or signature executed by CDFW and/or the Permittee which it, in good faith, reasonably believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and shall not be required to investigate the truth or accuracy of any statement contained in any such writing or instrument. Also, the Escrow Agent may assume that any Authorized Person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized.
- c. The Escrow Agent shall be entitled to consult with legal counsel if a question or dispute arises with regard to the construction of any of the provisions hereof as they relate to the Escrow Agent's duties and rights.
- d. The Escrow Agent shall not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers under the Agreement and shall not be required to take any action which, in the Escrow Agent's reasonable judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its reasonable discretion, to be satisfactory.
- e. As an inducement for the Escrow Agent to enter into this Agreement, prior to or at the time such compensation is earned, the Permittee shall pay to the Escrow Agent compensation for its services hereunder.
- f. Except in the case of a final, unappealable order of a court of competent jurisdiction which holds the Escrow Agent liable on account of its own gross negligence or willful misconduct, the Permittee shall indemnify and hold harmless the Escrow Agent from and against any and all liabilities, losses, actions, suits or proceedings at law or in equity, and any other reasonable expenses, fees or charges of any character or nature, which the Escrow Agent may incur by reason of its acting as the Escrow Agent under this Agreement or arising out of the existence of the Escrow Account. The terms of this paragraph shall survive termination of this Agreement.
- g. The Escrow Agent may at any time resign by giving sixty (60) business days prior written notice of resignation to the Permittee and CDFW. If the Escrow Agent resigns, a successor Escrow Agent shall be appointed by the Permittee with the written consent of CDFW and delivered to the Escrow Agent and to such successor Escrow Agent and, thereupon, the resignation of the predecessor Escrow Agent shall become effective and such successor Escrow Agent, without any further act, deed or conveyance, shall succeed to all the rights and obligations with respect to the securities, money and property held hereunder of such predecessor Escrow Agent. In that event, such predecessor Escrow Agent shall, on the written request of the Permittee and CDFW, deliver to successor Escrow Agent the Principal Sum and any interest earned thereon. If no successor Escrow Agent is appointed within sixty (60) business days of a notice of resignation by the Escrow Agent, the Escrow Agent shall, at the Escrow Agent's option: (1) continue to hold the Principal Sum and any interest earned thereon pursuant to this

Agreement; or (2) deliver the Principal Sum and any interest earned thereon to CDFW, in which event the Escrow Agent shall have no further responsibilities or obligations with respect thereto, and CDFW shall hold such payment until a successor Escrow Agent is appointed.

8. **Amendment.** This Agreement may not be amended, modified, supplemented, or otherwise altered except by an instrument in writing signed by the Parties.
9. **Termination.** This Agreement will terminate and the Escrow Agent shall close the Escrow Account upon the disbursement by the Escrow Agent of the Principal Sum and any interest accrued thereon in accordance with the terms of this Agreement. The Permittee acknowledges and agrees that any and all indemnities made by the Permittee shall survive the termination or earlier expiration of this Agreement.
10. **Governing Law.** This Agreement shall be governed by the laws of the State of California.
11. **Severability; Interpretation.** If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule or law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to accomplish the Parties' original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.
12. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and undertakings, both written and oral, among the Parties with respect to the subject matter hereof.
13. **Headings.** The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.
14. **Effective Date.** This Agreement shall take effect upon the last date of signature below.
15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

**IN WITNESS WHEREOF,** the Parties hereto have caused their names to be hereto subscribed by their respective authorized representatives.

**CITY OF FORT BRAGG, Permittee**

\_\_\_\_\_  
John Smith  
Director of Public Works

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

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

\_\_\_\_\_  
Tina Bartlett  
Regional Manager  
Northern Region

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

**U.S. BANK NATIONAL ASSOCIATION, Escrow Agent**

\_\_\_\_\_  
Authorized Officer

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

## EXHIBIT A

### Consistency Determination



**EXHIBIT B**

**Letter for Drawing**

[Department of Fish and Wildlife letterhead]

[Insert date]

[Insert either BY OVERNIGHT MAIL or BY PERSONAL DELIVERY]

[Insert Escrow Agent Addressee]

Re: Raw Water Pipeline Project Escrow Account for Consistency Determination (CD)

Escrow Agent:

This notice is delivered to you pursuant to Section 3 of the Escrow Agreement dated [Insert date] by and between City of Fort Bragg (Permittee), California Department of Fish and Wildlife (CDFW), and **U.S. Bank National Association**, as the Escrow Agent. Unless otherwise defined herein, or the context otherwise requires, terms used herein have the meanings provided in the Escrow Agreement.

CDFW has determined the Permittee has failed to comply with terms and conditions as required under the above-referenced Consistency Determination. Therefore, CDFW hereby requests you disburse to CDFW [Insert Demand Amount] (Demand Amount”) from the Raw Water Line Project Escrow Account for Consistency Determination (CD) within five business days of receipt of this letter, in accordance with the Escrow Agreement.

[Insert payment instructions describing payment as “Demand Amount”]

[Insert CDFW contact information]

Sincerely,

[Name of CDFW Authorized Representative]

[Title]

**EXHIBIT C**

**Letter for Cancellation**

[Permittee letterhead]

[Insert date]

[Insert either BY OVERNIGHT MAIL or BY PERSONAL DELIVERY]

[Insert Escrow Agent Addressee]

Re: Raw Water Line Project Escrow Account for Consistency Determination (CD)

Escrow Agent:

This Notice is delivered to you pursuant to Section 4 of the Escrow Agreement, dated [Insert date] by and between City of Fort Bragg (Permittee), California Department of Fish and Wildlife (CDFW), and **U.S. Bank National Association**, as the Escrow Agent. Unless otherwise defined herein, or the context otherwise requires, terms used herein have the meanings provided in the Escrow Agreement.

CDFW has determined the permittee has satisfied its Mitigation Requirements as required under the above-referenced Consistency Determination. Therefore, the Permittee, with CDFW's express written consent as evidenced below, hereby requests you disburse to the Permittee the remaining Principal Sum of [Insert Amount], and any interest accrued thereon (Remainder Amount) from the above-referenced Escrow Account within five business days of receipt of this letter, and thereafter close the Escrow Account, in accordance with the Escrow Agreement.

[Insert payment instructions]

Sincerely,

John Smith  
Director of Public Works

**CONSENT**

The California Department of Fish and Wildlife hereby consents to this Letter of Cancellation by the Permittee.

\_\_\_\_\_  
[Name of CDFW Authorized Representative]  
[Title]

\_\_\_\_\_  
Date

**EXHIBIT D**

**Letter for Reduction**

[Permittee letterhead]

[Insert date]

[Insert either BY OVERNIGHT MAIL or BY PERSONAL DELIVERY]

**U.S. Bank National Association**

Re: Raw Water Line Project Escrow Account for Consistency Determination (CD)

Escrow Agent:

This Notice is delivered to you pursuant to Section 4 of the Escrow Agreement, dated [Insert date] by and between City of Fort Bragg (Permittee), California Department of Fish and Wildlife (CDFW), and **U.S. Bank National Association**, as the Escrow Agent. Unless otherwise defined herein, or the context otherwise requires, terms used herein have the meanings provided in the Escrow Agreement.

CDFW has determined the permittee has partially satisfied its Mitigation Requirements as required under the above-referenced Consistency Determination. Specifically, the Permittee has completed all required activities pursuant to Condition(s) of Approval [Insert number for all conditions of approval that have been fully satisfied]. Therefore, the Permittee, with CDFW's express written consent as evidenced below, hereby requests you disburse to the Permittee [Insert Amount] (Reduction Amount) from the above-referenced Escrow Account within five business days of receipt of this letter, and thereafter close the Escrow Account, in accordance with the Escrow Agreement.

[Insert payment instructions]

Sincerely,

John Smith  
Director of Public Works

**CONSENT**

The California Department of Fish and Wildlife hereby consents to this Letter of Reduction by the Permittee.

\_\_\_\_\_  
[Name of CDFW Authorized Representative]  
[Title]

\_\_\_\_\_  
Date