

ESCROW AGREEMENT

This Escrow Agreement (the “Escrow Agreement”), dated as of the ___ day of _____ 20__, by and between _____ (the “Trust Company”) and _____ (the “Escrow Agent”).

Whereas, the Trust Company wishes to establish an escrow account to comply with SDCL 51A-6A-19.2 and desires that Escrow Agent is willing to act in such capacity;

Now Therefore, the Trust Company and the Escrow Agent agree to the terms of the Escrow Agreement as set forth herein.

1. Escrow Agent

The Escrow Agent is not a party to, or bound by, any agreement which may be evidenced by or arise out of the instructions in this Escrow Agreement contained, except as to its duties as Escrow Agent hereby expressly undertaken.

2. Bank as Depository

The Escrow Agent acts hereunder as depository only, and is not responsible or liable in any manner for the sufficiency, correctness, genuineness or validity of this Escrow Agreement, any instrument deposited with it hereunder, or with respect to the form or execution of the same, or the identity, authority, or right of any person executing or depositing the same.

3. Operation of the Escrow

The Trust Company shall deposit cash or other securities owned by it with the Escrow Agent to be held by it as Escrow Agent. The Trust Company shall have the right to all income earned on any securities held in the escrow account and shall have the right to obtain release or substitution of any securities deposited with the Escrow Agent so long as the value of the Escrow Account, after such release or substitution, shall continue to meet the requirements of SDCL 51A-6A-19.2. Any request for substitution by the Trust Company shall be accompanied by a certificate from the Trust Company showing the value of each asset being substituted as well as each asset to be withdrawn. A copy of this certification shall be sent to the Director of the South Dakota Division of Banking (the “Director”), and the Escrow Agent may rely on such certification. Notwithstanding the foregoing language, the Trust Company may, with the written consent of the Director, withdraw any securities and cash held by the Escrow Agent.

4. Investments

The Escrow Agent shall invest and reinvest monies, and earnings thereon, held pursuant to this Escrow Agreement as instructed in writing by the Trust Company. The investments pledged to the division shall be of the same nature and quality as those required for public funds as provided in SDCL 4-5-6 and SDCL 4-5-6.1.

5. Indemnification

To the extent permitted by law, the Trust Company agrees to indemnify and save the Escrow Agent harmless from all loss, cost, damages, fees and expenses (except for those caused by the negligence or willful misconduct of the Escrow Agent), including, but not limited to, attorney's fees suffered or incurred by the Escrow Agent as a result thereof.

6. Documents

The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, opinion of counsel, authorization, power of attorney, or other paper or document which the Escrow Agent in good faith believes to be genuine and what it purports to be.

7. Limited Liability

The Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

8. Legal Counsel

The Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel.

9. Dispute

In the event of any disagreement between the undersigned or the person or persons named in the instructions in this Escrow Agreement contained, or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein, or affected hereby, the Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected hereby, the Escrow Agent shall not be or become liable to the undersigned or to any person named in such instructions for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until:

- (a) The rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or
- (b) All differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the parties interested.

10. Security Interest

The parties acknowledge the Trust Company has or will grant the South Dakota Division of Banking a security interest in the escrow account described in this Escrow Agreement. Escrow Agent will hold the escrow account on behalf of the South Dakota Division of Banking as secured party, subject to the provisions of this Agreement. Investments made from the escrow account will be identified as held for the benefit of the South Dakota Division of Banking as secured party. Trust Company authorizes Escrow Agent to comply with directions of the South Dakota Division of Banking without further consent from the Trust Company.

11. Resignation of Escrow Agent

The Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least 30 days before the date specified for such resignation or removal to take effect; upon the effective date of such resignation or removal:

- (a) All cash and other payments and all other property then held by the Escrow Agent hereunder shall be delivered by it to such successor Escrow Agent as may be designated in writing by the Trust Company, whereupon the Escrow Agent's obligations hereunder shall cease and terminate;
- (b) If no such successor Escrow Agent has been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate, and the Escrow Agent's sole responsibility thereafter shall be to keep all property then held by it and to deliver the same to a person designated in writing by the Trust Company or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.
- (c) Further, if no such successor Escrow Agent has been designated by such date, the resigning or removed Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor agent; further, the resigning or removed Escrow Agent may pay into court all monies and property deposited with Escrow Agent under this Escrow Agreement.

12. Severability

Any invalidity, in whole or in part, of any provision of this Escrow Agreement shall not affect the validity or enforceability of any other provisions of this Escrow Agreement.

13. Fees and Expenses

The Escrow Agent shall be entitled to fees and expenses for its regular services as Escrow Agent. Additionally, the Escrow Agent is entitled to fees for extraordinary services and reimbursement of any out of pocket and extraordinary costs and expenses, including, but not limited to, attorney fees. All of the Escrow Agent's compensation, costs, and expenses shall be invoiced to the Trust Company.

14. Termination

This Escrow Agreement shall be terminated upon disbursement of the assets held in the Escrow Fund and may be terminated prior to that date by written mutual consent signed by all the parties, including the Escrow Agent. Any termination by mutual consent shall be effective on the date specified in the termination document, or, if not specified, then on the date when signed by all parties including Escrow Agent.

15. Entire Agreement

This Escrow Agreement contains all of the terms agreed upon by the parties with respect to an escrow fund. The Escrow Agent is not a party to any other agreement with the Trust Company and the Escrow Agent's duties shall be determined solely by reference to this Escrow Agreement.

16. Successors and Assigns

This Escrow Agreement and all actions taken hereunder in accordance with its terms shall be binding upon and inure to the benefit of the Trust Company and the Escrow Agent and their respective successors and assigns.

17. Governing Law

This Escrow Agreement and the Escrow Agent's employment hereunder shall be construed and enforced in accordance with the laws of the State of South Dakota.

18. Counterparts

This Escrow Agreement may be executed in one or more counterparts with the same effect if signatures and all counterparts are upon the same instrument.

19. Amendment of Agreement

The Escrow Agent shall not be bound by any amendment of this Escrow Agreement and no amendment shall be effective unless:

- (a) The amendment is in writing;
- (b) The amendment is agreed to by the parties hereto; and
- (c) The amendment is agreed to by the Escrow Agent.

20. Notices

All notice shall be deemed conclusively to have been given upon receipt if the same is in writing, signed by any one of its officers and (1) mailed, by registered or certified mail, postage prepaid, or (2) hand delivery, to the notice address.

(a) If to Escrow Agent: _____

(b) If to Trust Company : _____

(c) If to the Director: South Dakota Division of Banking
1601 N. Harrison Avenue, Suite 1
Pierre, SD 57501

In Witness Whereof, the parties hereto have each caused this Escrow Agreement to be executed on their behalf as of the date first above written.

By: _____

By: _____

SECURITY INTEREST

Effective as of the date hereof, Trust Company grants the South Dakota Division of Banking a security interest in any and all funds or assets now or hereafter held in the escrow account described in the foregoing Escrow Agreement to secure the performance of all of Trust Company's obligations under SDCL Chapter 51A-6A. The Trust Company acknowledges that the escrow account and all assets therein are held by Escrow Agent on behalf of the South Dakota Division of Banking as secured party consistent with the Uniform Commercial Code as adopted in South Dakota.

Dated this ____ day of _____, 20__.

By _____

Its _____