

**COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR NATURAL RESOURCES
FRANKFORT, KENTUCKY 40601**

THIS AGREEMENT, made, executed, and delivered this the _____ day of _____, _____, by and between _____ as Applicant and _____, as Escrow Agent, and the Kentucky Energy and Environment Cabinet, Department for Natural Resources, hereinafter called Cabinet,

WITNESSETH:

WHEREAS, Applicant desires to obtain a permit to conduct surface coal mining and reclamation operations in the Commonwealth of Kentucky; and

WHEREAS, the regulations and laws of the Commonwealth require that a bond be posted to insure the complete reclamation of the area so mined and to otherwise guarantee performance with all applicable regulations and laws of the Commonwealth administered by the Cabinet; and

WHEREAS, Applicant desires to meet the bonding requirements for mining in the Commonwealth of Kentucky by executing such bond and posting surety in the sum of _____ Dollars and 00/100 (\$ _____) with the Cabinet to be held by the Escrow Agent, which sum is hereby acknowledged by the Cabinet to be sufficient and acceptable for permit application number _____, relating to _____ acres in _____ County, Kentucky; and

WHEREAS, such sum shall be placed in the safe custody of the Escrow Agent, and the Escrow Agent is directed to purchase Certificates of Deposit of the _____, which Certificates of Deposit are hereinafter referred to as the *Certificates*, and are more fully described as follows, to-wit:

<u>CERTIFICATE NO.</u>	<u>DATE OF ISSUANCE</u>	<u>PRINCIPAL AMOUNT</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

AND WHEREAS, this Agreement is a supplement to the bond(s) filed by the Applicant with permit application number _____, increment number _____ (if applicable) for a permit to engage in surface coal mining and reclamation operations.

NOW, THEREFORE, in consideration of the premises set forth herein, the parties hereto mutually agree as follows:

- The Escrow Agent hereby acknowledges receipt of the *Certificates* above listed, to be safely and securely kept by it for the stated purposes of this Agreement and subject to the terms and conditions herein, and hereby binds itself to perform completely under the terms of this Agreement and to dispose of the *Certificates* or the proceeds therefrom only as provided herein. The Escrow Agent hereby acknowledges the individual *Certificates* of Deposit have been issued by a F.D.I.C. or F.S.L.I.C. insured financial institution and the denomination is not in excess of the maximum insurable amount as determined by the insuring institution. The Escrow Agent further agrees to exercise due care in the safekeeping and delivery of the *Certificates*.
- The parties agree the *Certificates* or any subsequent *Certificates* are and shall be made payable in favor of the Escrow Agent only, and the parties further agree that until such time as the Cabinet orders that the bond(s) for the permit application be forfeited or until such time as the bond is released, all interest accruing on the *Certificates* shall be disposed of in accordance with paragraphs 4, 5, and 6 of this Agreement;
- The parties agree that the Escrow Agent is hereby authorized and directed to ensure that the *Certificates* remain in full force during the term of this Agreement and the Escrow Agent may, upon notice to all parties, and upon the maturity of the *Certificates*, issue new *Certificates* of face value equal to the outstanding amount of the bond. In the event of such issuance, the new *Certificates* shall replace the *Certificates* herein for all purposes and shall be subject to the conditions of this Agreement;

4. Any interest accruing on the *Certificates* shall be held by the Escrow Agent until such time as the bond has been released or forfeited or the *Certificates* have matured and been replaced by new *Certificates*. No interest shall be paid to the Applicant on any *Certificate* until such time as the *Certificate* matures or a full release has been obtained from the Cabinet or until the bond has been forfeited and any penalty resulting from the cashing of the *Certificate* has been satisfied;

5. Upon the Cabinet's written notice to the Escrow Agent of the Cabinet's certification of the satisfactory completion of all surface coal mining and reclamation operations and the release of such bond in whole or in part, the Applicant may direct the Escrow Agent to either issue one or more new *Certificates* in the name of the Applicant for the amount so released or to return the principal amount so released to the Applicant by Cashier's Check with accrued interest less any penalty for premature cashing of such *Certificates*;

6. In the event of forfeiture of the performance bond herein and upon the Cabinet's written notice of such forfeiture to the Escrow Agent, the Escrow Agent shall promptly cash the *Certificates* and forward to the Cabinet a Cashier's Check in the outstanding amount of the bond, pay any penalties which result from the cashing of the *Certificates* from the interest accrued thereon, and remit any remaining interest and principal to the Applicant;

7. The parties agree that neither the Escrow Agent nor the Cabinet shall be liable for any loss of interest which may result to the Applicant as a result of an Order of Forfeiture;

8. The Escrow Agent shall not be liable for inquiring whether there has been performance by the Applicant or to see the application of any monies paid on the instruction of the Cabinet, and in such matters the Escrow Agent may rely upon the instructions of the Cabinet executed by the Secretary of the Cabinet, his designee, or his successor or the successor agency as provided by law. The Escrow Agent need not verify the apparent authority of an agent of the Cabinet in carrying out the Cabinet's instructions. Nothing herein shall prevent the Commonwealth from designating a person authorized to act for it in any other lawful manner;

9. That for value received, the Applicant does hereby assign, transfer, and set over to the Commonwealth all right, title, and interest which the Applicant may have in the *Certificates*. The parties agree that the *Certificates* are being held solely for the benefit of the Commonwealth and that the Applicant has relinquished all right, title, and interest to the *Certificates* as provided herein. The Applicant shall not pledge or encumber in any manner the *Certificates*, or the interest due thereon, so long as the same are subject to the conditions of the bond herein. The Escrow Agent waives all rights of setoff or liens which it has or might have against the *Certificates*;

10. The Cabinet agrees that upon the satisfactory completion of all surface coal mining and reclamation operations and the payment of any and all outstanding civil penalties and fees pursuant to the regulations and laws of the Commonwealth by the Applicant, and upon the Cabinet's inspection and certification of the same, the Cabinet shall release the bond herein and promptly notify the Escrow Agent and the Applicant of such release;

11. It is agreed, as between the parties, that in the event the Escrow Agent closes or goes into receivership, any Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Administration insurance proceeds paid on, to, or as a result of the *Certificates*, shall first be applied to cover the *Certificates*;

12. The parties agree that the Escrow Agent shall be the Cabinet's agent for holding the *Certificates* for the purpose of protecting the Cabinet's security interest in those *Certificates* under KRS Chapter 355;

13. This agreement shall be binding upon the successors and assigns of the respective parties; and

14. Upon receipt by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of the *Certificates* or the proceeds therefrom and any interest accrued thereon, the Escrow Agent shall be discharged of any and all duties and liabilities arising out of or as a result of this Agreement.

SIGNED, SEALED, AND DELIVERED, the day and date first above written by the appropriately authorized officers.

APPLICANT: _____ ESCROW AGENT: _____

BY: _____ BY: _____

TITLE: _____ TITLE: _____

ENERGY AND ENVIRONMENT CABINET

BY: _____ TITLE: _____