STATE OF FLORIDA
AND
U.S. ARMY CORPS OF ENGINEERS
Mitigation Bank Trust Fund Agreement to Demonstrate
Construction and Operation Financial Assurance

TRUST AGREEMENT, the "Agreement," entered into as of _____ by and between _____, ("Grantor") and _____, ("Trustee").

WHEREAS, Grantor has received from the _____("Agency") that certain permit number _____ ("Mitigation Bank Permit"), as modified from time to time, and from the U.S. Army Corps of Engineers ("Corps") that certain Mitigation Banking Instrument number _____ ("Mitigation Banking Instrument"), as modified from time to time, which authorizes the establishment, operation, and use of the _____ Mitigation Bank;

WHEREAS, the Agency, a Florida (for DEP, use: state agency created under Section 20.255) (for a WMD, use: public entity created under Chapter 373) of the Florida Statutes, has established certain regulations applicable to the Grantor that require the Mitigation Bank permittee to provide assurance that funds will be available to the Agency when needed for corrective action if the Grantor fails to construct and implement _____ Mitigation Bank;

WHEREAS, the Corps has established certain regulations at 33 C.F.R. Part 332 that are applicable to the Grantor and require the Mitigation Banking Sponsor to provide financial assurance for the construction and implementation of the Mitigation Bank;

WHEREAS, the Grantor has elected to establish this trust fund to provide such financial assurance for the _____ Mitigation Bank identified herein; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means _____ who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means _____, the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Agency" means _____, a public entity in the State of Florida, or any successor thereof.

(d) The term "Corps" means the U.S. Army Corps of Engineers, a United States federal agency under the Department of Defense.

(e) The term "investment obligations" means:

(i) United States of America Treasury and Federal agency securities or other obligations issued or unconditionally guaranteed as to principal and interest by the United States of America, in each case with maturities of not more than one year from the date acquired;

(ii) Demand deposits, certificates of deposit, banker's acceptances and time deposits of any bank organized or licensed to conduct a banking business under the laws of the United States of America or any state thereof having capital, surplus and undivided profits of not less than $100,000,000, and whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereof;

(iii) Securities of entities incorporated under the laws of the United States of America or any State thereof commonly known as "commercial paper" that at the time of purchase have been rated and the ratings for which are not less than "P1" if rated by Moody's Investors Services, Inc., and not less than "A1" if rated by Standard and Poor's Corporation, in each case with maturities of not more than one year from the date acquired;

(iv) State or local government securities, which debt obligations at the time of purchase are rated investment grade by one or more nationally recognized rating agencies, in each case with maturities of not more than one year from the date acquired;

(v) Repurchase obligations with any banking or financial institution described in clause (ii) above which are fully collateralized at all times by any of the foregoing obligations;

(vi) Corporate fixed income securities whose ratings at the time of purchase are rated not less than "A-" if rated by Standard and Poor's Corporation and "A3" if rated by Moody's Investors Services, Inc., in each case with maturities of not more than one year from the date acquired;

(vii) Investments in any one or more professionally managed money market funds generally regarded as investment grade with a portfolio size of not less than $100,000,000;

Section 2. Identification of Cost Estimates. This Agreement pertains to the cost estimates for construction and implementation of the _____ Mitigation Bank identified in the Mitigation Bank Permit or provided to the Agency in accordance with Rule 62-342.700, F.A.C., and identified in the Mitigation Banking Instrument in accordance with 33 C.F.R. 332.3(n).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund ("Fund"), for the benefit of the Agency (hereafter sometimes referred to as the "Beneficiaries"). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided.

The Fund is established by the Grantor's deposit of $_____ into the Fund in accordance with Rule 62-342.700, F.A.C. Such monies and other monies subsequently placed in the Fund are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, for the benefit of the Agency as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Agency or the Corps.

Section 4. Additional Payments into the Fund. After the initial deposit of principal into the Fund, the Grantor shall increase the principal if so required by the Agency after notice to the Corps, or if so required by the Corps after notice to the Agency pursuant to the administrative regulations and the requirements of the Mitigation Bank Permit or Mitigation Banking Instrument. Such deposit may be in cash or securities acceptable under Section 1(e) hereof.

Section 5. Payment for Completing Construction and Operation Activities. The Agency shall provide joint instructions to the Trustee, with acknowledgment from the Corps, for disbursements from the Fund for the costs of completed construction and operation of the Mitigation Bank covered by this Agreement, except with regard to funds being held solely for one agency pursuant to sections 6 or 17, in which case instructions to the Trustee shall be solely from that agency. If the Grantor fails to achieve the requirements in the Mitigation Bank Permit and Mitigation Banking Instrument and the permit has been revoked, the funds shall be disbursed at the direction of the Agency and the Corps pursuant to this Section. Funds shall be used to complete construction and operation of the Mitigation Bank in accordance with the Mitigation Bank Permit and Mitigation Banking Instrument, or to otherwise obtain alternative compensatory mitigation sufficient to offset the credits sold prior to permit revocation. In no circumstance shall funds be released to the Corps.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of Grantor under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of Grantor arising from, and in the course of employment by Grantor;

(c) Bodily injury or non-realty property damage arising from the ownership, maintenance, use, or entrustment to others by Grantor of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by Grantor of the Mitigation Bank; or

(e) Bodily injury or property damage for which Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

Section 6. Distribution of Released Funds. Upon the successful completion of works required in the Mitigation Bank Permit or achievement of ecological performance standers under the Mitigation Banking Instrument, the Grantor may submit for approval a reduced cost estimate and corresponding

release of funds from the Trust. The Trustee shall refund to the Grantor such amounts as the Agency, after notice to the Corps, or the Corps, after notice to the Agency, approves in writing in accordance with its approval of the cost adjustment. However, the Grantor may, within the notice period in Section 18(b), request the Trustee maintain all or part of the monies in the Fund until released by the remaining beneficiary to satisfy its requirements under the Mitigation Bank Permit or Mitigation Banking Instrument, as applicable. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 7. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund in one or more investment obligations and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the trust fund solely in the interest of the Agency and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the Mitigation Bank, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a) (July 18, 2025), which is a subsection of the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. (July 18, 2025) that is incorporated by reference in Rule 62-342.700, F.A.C. (insert link), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or a state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. (July 18, 2025), which is incorporated by reference in Rule 62-342.700, F.A.C. (insert link), including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Power of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 11. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Agency to the attention of _____ _____for the _____ Mitigation Bank, Permit # _____ and to the Corps 701 San Marco Blvd., Jacksonville, FL 32207, to the attention of Regulatory Division for the _____ Mitigation Bank, Mitigation Banking Instrument number _____ a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor, the Agency, or the Corps to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor, the Agency, and the Corps shall constitute

a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 12. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Trustee Compensation. Grantor shall pay the Trustee any necessary fees for services rendered. Where the Grantor is no longer in existence, the Trustee is authorized to charge against the Trust its published Trust fee schedule in effect at the time services are rendered. However, all Trustee compensation charged against the Trust shall be paid only from trust income, unless the Agency and the Corps authorize payment from the trust principal in writing.

Section 14. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee, the successor is approved by the Agency and the Corps, and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Agency, with concurrence from the Corps, may nominate a successor. If the Agency does not act, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Agency, and the Corps, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 13.

Section 15. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by Grantor or such other designees as the Grantor may designate by amendment to this agreement. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All joint orders, requests, and instructions by the Agency and the Corps to the Trustee shall be in writing, signed by the Agency and the Corps, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor, the Agency, or the Corps hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Agency and the Corps, except as provided for herein.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Agency, with written consent from the Corps; or by the Trustee and the Agency, with written consent from the Corps, if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved or otherwise ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16 and the Notice requirements of Section 18, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, the Agency, and the Corps, or by the Trustee, the Agency, and the Corps if the Grantor is administratively or judicially dissolved or otherwise ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered pursuant to the written agreement terminating the trust or, if the Grantor has ceased to exist, then to the Agency. The Trust may be terminated only after a determination by the Agency, with notice to the Corps, or by the Corps, with notice to the Agency, that the financial assurance is no longer required pursuant to the Mitigation Bank Permit or Mitigation Banking Instrument. However, the Grantor may, within the notice period in Section 18(a), request the Trust be continued for the benefit of and until terminated by the remaining beneficiary to satisfy the requirements of the Mitigation Bank Permit or Mitigation Banking Instrument, as applicable. If the Grantor does not request the Trust be continued, the Grantor must propose new financial assurances, in accordance with the requirements of the Mitigation Bank Permit or Mitigation Banking Instrument, as applicable.

Section 18. Notice Requirements. In addition to all other requirements imposed on the Grantor and Trustee herein, the Grantor and the Trustee shall provide the following notices to the Agency and/or Corps:

(a) The Grantor and Trustee shall provide notice to the Agency and the Corps at least 120 days in advance of any termination or revocation of this Trust Agreement;

(b) The Trustee shall provide notice to the Agency and the Corps at least 120 days in advance of making any disbursements from the Fund made in accordance with Section 6, above;

(c) The Grantor and Trustee shall provide notice to the Agency or the Corps at least 120 days in advance of any change in the amount of the Fund made in accordance with Section 4, above.

Section 19. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor, the Agency, or the Corps issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 20. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the United States of America and the State of Florida.

Section 21. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

Grantor:

_____

_____

_____
Authorized Officer

[Optional language: notary acknowledgment--Grantor]

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me, **by means of ☐ physical presence or ☐ online notarization,** this _____ day of _____, 20___, by _____, the _____ of _____ Bank, on behalf of the corporation. Such person did not take an oath and:

_____is/are personally known to me
_____ produced a current Florida driver's license as identification
_____produced _____ as identification

_____
Signature of Notary

(Notary Seal)

_____
Name of Notary (typed, printed or stamped)
Commission number (if not legible on seal) _____
My commission expires: (if not legible on seal) _____

(Signatures Continue on Following Page)

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

Trustee:

_____ Bank

By: _____
Signature of Trustee

_____
Title

Attest:_____

_____
Title

Seal

[Optional language: notary acknowledgment--Trustee]

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me, **by means of ☐ physical presence or ☐ online notarization,** this _____ day of _____, 20___, by _____, the _____ of _____, a _____ corporation, on behalf of the corporation. Such person did not take an oath and:

_____ is/are personally known to me
_____produced a current Florida driver's license as identification
_____ produced _____ as identification

_____
Signature of Notary

(Notary Seal)

_____
Name of Notary (typed, printed or stamped)
Commission number (if not legible on seal) _____
My commission expires: (if not legible on seal) _____

ATTACHMENT A
[COST ESTIMATE FOR CONSTRUCTION AND OPERATION]