

STATE OF FLORIDA
AND
U.S. ARMY CORPS OF ENGINEERS

Mitigation Bank Surety Bond
To Demonstrate Construction and Operation
Financial Assurance

Bank: _____ (name) Mitigation Bank

Bond Obligee(s): Agency (specific reference to permit/section)

Address (specific reference to permit/section)

Agency (specific reference to permit/section)

Address (specific reference to permit/section)

Date bond executed: _____

Period of coverage: This Bond shall continue to be effective until notification is received from the Agency that the Agency has released, in writing, the Principal from the financial assurance requirements in Rule 62-342.700, F.A.C., and the U.S. Army Corps of Engineers (“Corps”) has released, in writing, the Principal from the financial assurance requirements in 33 C.F.R. § 332.3(n).

Effective date: _____

Principal:

Legal Name and Business Address of Mitigation Bank Sponsor/Permittee

Type of Organization: _____ (such as individual, LLC, Corporation, etc.)

State of Incorporation: _____

Surety(ies): _____
Name(s) and Business Address(es) of the Bonding Companies

Scope of coverage: Construction and Operation of the _____ (name) Mitigation Bank pursuant to the requirements of permit number _____ ("Mitigation Bank Permit"), issued by the _____ Agency, and Mitigation Bank Instrument number _____ approved by the U.S. Army Corps of Engineers ("Corps") including the plans approved by said permit/instrument.

Total penal sum of bond: _____

Surety's bond number: _____

Know All Persons By These Presents, that we, the Principal and Surety(ies) hereto are firmly bound to the Agency and the Corps in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be full amount of the penal sum.

WHEREAS, in order to construct and operate the Mitigation Bank identified above, said Principal is required to have an environmental resource permit pursuant to Section 373.4136, Florida Statutes, as amended, and a Mitigation Banking Instrument, pursuant to 33 C.F.R part 332; and

WHEREAS, said Principal is required by Section 373.4136, Florida Statutes, 62-342.700, Florida Administrative Code, and 33 C.F.R. § 332.3(n), to provide financial assurance for the construction and operation of the Mitigation Bank as a condition of the permit(s)/instrument as further described in the scope of coverage above, and

WHEREAS, said Principal shall establish a standby mechanism as is required for the surety bond to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully construct and operate the _____ (name) Mitigation Bank, for which this bond guarantees construction and operation, as required by Agency permit number _____ ("Permit") and Corps Mitigation Banking Instrument number _____, ("Instrument") and the plans approved by such permit/instrument, as such permit/instrument and plans may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance, as specified in the administrative rules of the Agency, and obtain the Agency's and the Corps' written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the Agency, and the Corps from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of _____ (Mitigation Bank Sponsor's Name) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of _____ (Mitigation Bank Sponsor's Name) arising from, and in the course of, employment by _____ (Mitigation Bank Sponsor's Name);

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others 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 _____ (Mitigation Bank Sponsor's Name) that is not the direct result of a construction and operation activity for the _____ Mitigation Bank required pursuant to Agency permit number _____ and/or the Corps Mitigation Banking Instrument number _____;

(e) Bodily injury or property damage for which _____ (Mitigation Bank Sponsor's Name) is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon joint notification by the Agency and the Corps that the Principal has been found in violation of the requirements of the Permit and/or Mitigation Banking Instrument, by failing to perform the construction and operation activities for the _____ (name) Mitigation Bank for which this bond guarantees performance, the Surety(ies) shall, within 60 days of receiving such notice, either perform such construction and operation activities in accordance with the written directions of the Agency and Corps, or place the bond amount guaranteed for the _____ (name) Mitigation Bank (the total penal sum of this bond) into the standby trust fund as directed by the Agency and Corps. In no circumstance shall funds be released to the Corps.

Upon notification by the Agency or the Corps or both that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the Agency and the Corps during the 90 days following receipt by the Principal, the Agency, and the Corps of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the _____ Mitigation Bank (the total penal sum of this bond) into the standby mechanism as directed by the Agency and/or Corps. In no circumstance shall funds be released to the Corps.

The Surety(ies) hereby waive(s) notification of amendments to the _____ (name) Mitigation Bank plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

Notice Requirements.

In addition to all other requirements imposed on the Principal and Surety herein, the Surety shall provide the following notices to the Agency and Corps:

- a. The Surety shall provide notice to the Agency and the Corps at least 120 days in advance of any termination or revocation of this Bond by the Surety; and
- b. The Surety shall provide notice to the Agency and the Corps at least 120 days in advance of any increase or reduction in the Total Penal Sum of this Bond made in accordance with Paragraph 4 below.

PROVIDED HOWEVER, that this Bond is executed by the Surety and accepted by the Agency and the Corps and is further subject to the following conditions:

1. The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.
2. The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, Agency, and Corps; provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the Agency, and the Corps, as evidenced by the return receipts.
3. The Principal may terminate this bond only by sending written notice to the Surety(ies), the Agency, and the Corps; provided, however, that no such termination shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond from by the Agency and the Corps.
4. Principal and Surety(ies) hereby agree to adjust the penal sum of the bond at least every two years so that it guarantees increased or decreased construction and operation cost provided that no decrease in the penal sum takes place without the written permission of the Agency, after notice to the Corps, or if so required by the Corps, after notice to the Agency. The Principal can agree, during the notice period, to maintain the penal sum of the bond until released by the Corps, to satisfy the financial assurance requirements of the Mitigation Banking Instrument. If the Principal does not request the penal sum of the bond be maintained, the Principal must propose new financial assurances, as required by the Mitigation Banking Instrument.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Surety Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this Surety Bond is substantially similar to Form No. 62-342.700(5)(b) which form has been

incorporated by reference as an administrative rule in Rule 62-342.700 of the Florida Administrative Code.

PRINCIPAL

CORPORATE SURETY(IES)

For each co-surety provide the following

Signature

Name and Address

Type Name and Title

State of Incorporation

Liability Limit \$ _____

Signature

Type Name and Title

Corporate Seal

Corporate Seal