

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

Mitigation Bank Irrevocable Letter of Credit
To Demonstrate Construction and Operation
Financial Assurance

_____ (Agency)

_____ (Agency)

_____ (Permit #)

_____ (Mitigation Banking Instrument #)

_____ Address of Agency

_____ Address of Agency

_____ (Issuing Institution)

_____ Address of Agency

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of

_____ Mitigation Bank Sponsor's Name and Address

up to the aggregate amount of _____ (in words) U.S. dollars
\$ _____, available upon presentation of

- 1) your sight draft, bearing reference to this letter of credit No. _____, and either:
- 2) a Joint Certificate issued by the _____ ("Agency") and the U.S. Army Corps of Engineers ("Corps") in the form of Certificate I attached hereto and made a part hereof; or
- 3) a Joint Certificate issued by the Agency in the form of Certificate II attached hereto and made a part hereof.

This letter of credit may be drawn on to cover Construction and Operation activities of the _____ (name) Mitigation Bank as authorized and required by Agency Permit number _____ and Corps Mitigation Banking Instrument (Instrument) number _____, as such permit/Instrument may be amended and including all plans approved by such permit/Instrument.

This letter of credit may not be drawn on to cover 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 non-realty 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 the Construction and Operation of the _____ (name) Mitigation Bank pursuant to Agency permit 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.

This letter of credit is effective as of _____ and shall expire on _____ but such expiration date shall be automatically extended without amendment for additional periods of one year from the present or future expiration date unless, at least 120 days before an expiration date, we notify the Agency, the Corps, and _____ (Mitigation Bank Sponsor's name) by certified mail that we have decided not to extend this letter of credit for any such additional period. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by the Agency, the Corps, and _____ (Mitigation Bank Sponsor's name) as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this letter of credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into an account or trust established for this purpose, in accordance with your instructions.

We certify that the wording of this letter of credit is substantially similar to the wording specified in Form No. 62-342.700(6) which has been adopted by reference in Rule 62-342.700 of the Florida Administrative Code, as such regulations were constituted on the date shown immediately below.

Signature(s), Title(s) of Official(s) of Issuing Institution

Date

This credit is subject to _____

Insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce, " or " the Uniform Commercial Code".

JOINT CERTIFICATE I
TO
BANK OF _____
IRREVOCABLE LETTER OF CREDIT NO. _____

Date: _____, 20____

Issuing Bank's Name and Address

Mitigation Bank Sponsor's Name and Address

Ladies and Gentlemen:

The undersigned _____, the (insert one of the following: Secretary of the Florida Department of Environmental Protection or Executive Director of the XX Water Management District) ("Agency"), and _____, the Corps' signatory, hereby certify to _____ (Issuing Bank's Name) and _____ (Mitigation Bank Sponsor's Name), with reference to Irrevocable Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the _____ (Issuing Bank's Name) in favor of the Agency as follows:

1. The (select one: Agency or the Corps) has heretofore provided written notice by U.S. Mail to _____ (Mitigation Bank Sponsor's Name) of the (select one: Agency's or Corps') present right to draw upon the Letter of Credit in accordance with the provisions of that certain Mitigation Bank Permit # _____, issued by the Agency and that certain Mitigation Banking Instrument # _____, approved by the Corps in favor of _____ (Mitigation Bank Sponsor's Name).
2. _____ (Mitigation Bank Sponsor's Name) has failed to comply with the terms and conditions of the Permit/Instrument.

Funds paid pursuant to the provisions of the Letter of Credit shall be transferred to a standby financial assurance mechanism established for the benefit of the Agency in accordance with the following instructions:

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Agency as of this _____ day of _____, 20____.

(choose FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

or XX WATER MANAGEMENT DISTRICT)

By: _____
Name:

and

U.S. Army Corps of Engineers

By: _____
Name:

JOINT CERTIFICATE II
TO
BANK OF _____
IRREVOCABLE LETTER OF CREDIT NO. _____

Date: _____, 20____

Issuing Bank's Name and Address

Mitigation Banker's Name and Address

Ladies and Gentlemen:

The undersigned _____, the (choose: Secretary of the Florida Department of Environmental Protection or Executive Director of the XX Water Management District) ("Agency"), and _____, the Corps signatory hereby certifies to _____ (Issuing Banks' Name) (the "Bank") and _____ (Mitigation Bank Sponsor's name), with reference to Irrevocable Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Agency, as follows:

1. The Bank has heretofore provided written notice to the Agency, the Corps, and _____ (Mitigation Bank Sponsor's name) of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof.
2. The Agency and the Corps have provided prior written notice by U.S. Mail to _____ (Mitigation Bank Sponsor's name) of the requirement that _____ (Mitigation Bank Sponsor's name) provide the Agency and the Corps with substitute Financial Assurance in compliance with the provisions of that certain Mitigation Bank Permit # _____, (the "Permit"), issued by the Agency and that certain Mitigation Banking Instrument # _____, approved by the Corps.
3. _____ (Mitigation Bank Sponsor's name) has failed to provide the Agency and the Corps with substitute Financial Assurance in compliance with the provisions of the Permit/Instrument within the ninety (90) days of receipt of the notice described in paragraph 1 above.

Funds paid pursuant to the provisions of the Letter of Credit shall be transferred to an account established for this purpose for the benefit of the Agency, in accordance with the following instructions:

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Agency as of this _____ day of _____, 20____.

(choose
FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
or XX WATER MANAGEMENT DISTRICT)

By: _____

Name: _____

and

U.S. Army Corps of Engineers

By: _____

Name: _____