

LETTER OF CREDIT

(effective March 13, 2017)

[NAME OF BENEFICIARY]
[ADDRESS OF BENEFICIARY]

Attn: [BENEFICIARY POINT OF CONTACT]

We hereby establish our Letter of Credit dated [DATE], in favor of [NAME OF BENEFICIARY] as beneficiary (the "Beneficiary"), at the request and for the account of [MITIGATION BANK NAME], with an address at [ADDRESS] (the "Account Party"), in the amount of [AMOUNT OF LETTER OF CREDIT], subject to reduction and/or cancellation as provided herein, and available upon presentation by Beneficiary of:

1. A time draft in the form of Exhibit A hereto, appropriately completed and bearing reference to this Letter of Credit and stating the amount being drawn, together with
2. A signed statement by an authorized representative of the Wilmington District, U.S. Army Corps of Engineers ("Corps") describing in reasonable detail in what respect(s) the Account Party is in violation of the terms and conditions of the [NAME] Mitigation Banking Instrument ("MBI") and declaring that the amount of the draft is payable pursuant to the MBI and the applicable law described therein.

1. Purpose and Use of Letter of Credit; Non-assignability. The Account Party has caused this Letter of Credit to be issued to provide security against a default by the Account Party in its execution of the Project described in the MBI, and shall inure to the benefit of the Beneficiary. Neither this Letter of Credit nor any rights with respect thereto may be assigned or otherwise transferred, in whole or in part, to any other person or entity without the express written consent of the Corps.

2. Effectiveness and Expiry of Letter of Credit. This Letter of Credit is irrevocable and effective on [DATE], and shall expire on [DATE], in each case subject to reduction and earlier expiration and cancellation as provided in Section 4 of this Letter of Credit.

3. Honoring of Draws. Whenever this Letter of Credit is drawn on under and in compliance with the terms of this Letter of Credit, we will duly honor such draft upon presentation to us. Multiple drawings are permitted hereunder. Draws under this Letter of Credit shall be presented to us at the [NAME OF GRANTOR], [ADDRESS OF GRANTOR] Attn: [GRANTOR POINT OF CONTACT]. All or any part of this Letter of Credit may be drawn upon by the Beneficiary, upon written request of the Beneficiary, and in accordance with the terms of the MBI, to be used to complete the Project as provided in the MBI, if the Account Party or any successor-in-interest of the Account Party fails to do so, subject to the other terms and provisions of this Letter of Credit. Draws under this Letter of Credit may not be reinstated, but each such draw shall permanently reduce the amount available under this Letter of Credit by the amount drawn.

4. Cancellation of Letter of Credit. In addition to reductions in the amount available under this Letter of Credit described in the foregoing Section and notwithstanding any other term or provision of this Letter of Credit or the MBI to the contrary:

- (a) upon fulfillment, as reasonably determined in writing by the Corps, of the requirements set forth in the “[NAME] Mitigation Plan”, this Letter of Credit shall automatically expire and be of no further force and effect; such determination shall be made by letter and or electronic communication;
- (b) in the event that (i) the Account Party at any time sells, exchanges, gifts, donates or otherwise directly or indirectly transfers, in one or more transactions, all or a substantial part of the Property or its rights in the Property, or (ii) the Account Party enters into any agreement to make any such transfer (each such transfer or agreement to transfer, a “Transfer”), to any person or entity (each a “Transferee”), the Corps will receive notification at least 120 days in advance of any termination or revocation of this letter of credit. This Letter of Credit shall continue in force until the earlier to occur of (A) the provision by or for the account of such Transferee of a substitute letter of credit or other financial assurance reasonably acceptable to the Corps, or (B) one hundred and twenty (120) days following such notification to the Corps, whereupon this Letter of Credit shall automatically expire and be cancelled without the consent of the Beneficiary or the Account Party; provided, however, that the provisions of the Section 4(d) shall not apply to any Transfer of Credits in the ordinary course of the Account Party's execution of the Project as contemplated by the MBI and Mitigation Plan.
- (c) Should the Account Party not be able to complete the work as covered by the MBI and Mitigation Plan, the beneficiary is to complete the Project as provided in the MBI and Mitigation Plan.

5. Applicable Law; Incorporation. Except as far as otherwise expressly stated herein, this shall be governed by and construed in accordance with the laws of the State of [NAME] and applicable U.S. law.

6. Representation of Authority. The undersigned person does hereby represent and warrant that he/she is authorized to execute this Letter of Credit on behalf of the [NAME OF GRANTOR], a [STATE] corporation.

[The rest of this page is intentionally left blank. Signature page follows.]

[DATE]

[NAME OF LETTER OF CREDIT GRANTOR]

By: _____

Its: _____
Authorized Officer

[Letter of Credit Signature Page]

ACKNOWLEDGMENT

By its signature below, the undersigned acknowledges issuance of the above Letter of Credit, but such acknowledgment is given without receipt of any consideration therefor, and without the undersigned becoming an obligor or otherwise assuming any liability whatsoever under the Letter of Credit.

Dated: MM/DD/YYYY.

[NAME OF MITIGATION BANK SPONSOR]

By: _____

Its: _____

Authorized Officer

[Acknowledgment by NAME OF SPONSOR]

Exhibit A

Form of Time Draft

\$ _____

[month/day], 20____

_____ Five Business Days after sight _____

Pay to the

Order of _____ [NAME OF BENEFICIARY]

_____ and _____ /100 Dollars _____

Value Received and charge same to the account of _____ [SPONSOR] _____

[NAME OF BENEFICIARY]

By: _____

Its: _____