Outlook

FW: Revised Draft Rule 62-342 and FA Forms

From Kendall, Donna <Donna.Kendall@FloridaDEP.gov>
Date Mon 8/31/2026 10:13 AM
To WQEA_2023 <WQEA_2023@floridadep.gov>

8 attachments (1 MB)

62_342_700_5b_Surety Bond (with ACOE)_REV.docx; 62_342_700_6b_Letter Of Credit (with ACOE)_REV1.docx; 62_342_700_10b_Standby Trust (with ACOE)_REV1.docx; 62_342_700_11c_CO Trust (with ACOE)_REV1.docx; 62_342_700_11d_Perpetual Trust (with ACOE)_NEW1.docx; 62-342 Draft Rule Updates (July2026)_GOVDEL1.docx; 62-342_700_7b_Insurance_Form (with ACOE)_REV1.docx; 62-342_700_12(b)_Perpetual Endowment (with ACOE)_NEW1.docx;

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Subject: RE: Revised Draft Rule 62-342 and FA Forms

Good morning, Donna,

Thank you for the opportunity to comment on the proposed forms. Attached you will find comments and questions from the team here. If you would like to schedule a call to discuss anything, we can find some time and make ourselves available.

Have a wonderful week.

v/r

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Subject: [Non-DoD Source] Revised Draft Rule 62-342 and FA Forms

Good afternoon,

We've been granted approval to share the revised draft Rule 62-342 and associated financial assurance forms. We sincerely appreciate all of the very thoughtful and insightful comments we received from you on the previous draft. We carefully reviewed everything we received and tried to include as much as possible. There were, however, several points where comments were in direct conflict with one another, so we consulted with our attorney and did our best to revise the language.

A GovDelivery notice will be coming out soon notifying the registered recipients that revised materials have been posted, but we wanted to make sure you were able to receive them first in preparation for any calls you may receive from the public.

We again are asking for your review of these revised documents. Please submit your comments, consolidated by agency, by COB August 24th. We anticipate receiving additional input from the private sector as well, and we'll consider all feedback and hope to have a final product to send to OFARR by September 8th.

Thank you again for your time and thoughtful feedback. We appreciate your continued support and collaboration.

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Submerged Lands & Environmental Resources
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STATE OF FLORIDA

AND

U.S. ARMY CORPS OF ENGINEERS

MITIGATION BANK INSURANCE COVERAGE FORM

This policy provides financial responsibility for construction and operation authorized by the Mitigation Bank Permit(s) (or Permit(s)) as required by Rule 62-342.700, F.A.C. and 33 C.F.R. 332.3(n). The specific construction and implementation activities to be covered under this Policy are described in the Mitigation Bank Permit(s) as identified in the Declarations page of this Policy, and further detailed in the associated cost estimates, as modified from time to time.

Words and phrases that appear in quotation marks have special meaning. Refer to Section II – Definitions.

In consideration of the payment of the premium by you, we agree with you, subject to all terms, exclusions, and conditions of this Coverage Part, as follows:

I. INSURING AGREEMENT

If the Regulatory Agency determines, at its sole discretion, that the Mitigation Banker has failed to comply with the conditions of the Mitigation Bank Permit up to the point of achieving final success (or "bank closure"), and reports the claim to the Insurer during the policy period, then the Insurer agrees to satisfy the claim at the sole election and in the sole manner that is approved by the Regulatory Agency in writing.

II. DEFINITIONS

1. "Insurer" means:

[Insurer's name and address]

2. "Insured Location" means the physical location of the Mitigation Bank site as identified in the Declarations of this policy.

3. "Mitigation Bank" means the project permitted under Chapter 373, Florida Statutes, and Chapter 62-342, F.A.C, or authorized by the U.S. Army Corps of Engineers.

4. "Mitigation Bank Permit(s)" or "Permit(s)" means all permits and U.S. Army Corps of Engineer Mitigation Bank Instruments, referenced in the Declarations page, and as amended from time to time, issued to a person or entity to create, operate, manage, and maintain a mitigation bank. The term "Mitigation Bank Permit" shall also include the entire contents of the Regulatory Agency's permit file, including but not limited to cost estimates submitted by the Permittee pursuant to Rule 62-342.700, F.A.C., or as required by the U.S. Army Corps of Engineers.

5. "Permittee" means the entity authorized to create, operate, manage, or maintain a Mitigation Bank pursuant to a Mitigation Bank Permit. The Permittee is also the "Named Insured" as set forth in the Declarations page of this policy.

6. “Policy Period” means the period set forth in the Declarations page, or any shorter period due to the cancellation or termination of the policy pursuant to the terms and conditions of the policy.

7. “Regulatory Agency” means the entity or entities set forth in the Declarations page of this policy pursuant to Rule 62-342.700, F.A.C. and 33 C.F.R. 332.3.

III. LIMIT OF LIABILITY AND DEDUCTIBLE

1. The limits of liability shown in the Declarations page are the maximum amounts the Insurer will pay for claims reported during the policy period. The Regulatory Agency may make partial or multiple claims which shall not exceed the policy limit at the time of the claim. The Insurer will pay to the Regulatory Agency the full amount of any claim and may seek reimbursement for any deductible amounts included in the limits of liability from the Permittee.

2. The Permittee agrees to reimburse the Insurer for any deductible amounts as specified in the Declarations page. However, the Permittee’s failure to reimburse the Insurer for all or part of a deductible amount does not reduce the amount the Insurer must pay the Regulatory Agency for a claim.

IV. LIMIT OF LIABILITY CHANGE — The limits of liability shall remain unchanged unless the Permittee requests in writing a modification in the limits of liability. Such requests must include a copy of the Regulatory Agency’s written approval of the specific modification to the limits of liability. No modification to the limits of liability shall be authorized by the Insurer except upon prior written approval by the Regulatory Agency.

The Insurer shall modify the limits of liability to the amount approved by the Regulatory Agency by issuing an endorsement to the policy setting forth the new limits of liability. The Insurer shall provide all copies of endorsements modifying the limits of liability to the Permittee and Regulatory Agency at the address identified in the Declarations page to this policy.

Any change in the limit of liability without the prior written approval of the Regulatory Agency shall be invalid.

V. EXCLUSIONS

This insurance does not apply to claims or to any costs arising out of any claims based upon:

1. Any claim for which the Regulatory Agency did not provide notice in writing during the policy period.

2. Any property or location other than the insured property.

3. Any defense costs, including court fees, attorneys’ fees, legal fees, expert witness fees, or other expenses or costs incurred in your defense for any reason.

VI. CLAIMS

1. The Regulatory Agency may provide written notice of a claim in the event the Regulatory Agency determines that the Permittee has:

A. failed to comply with the conditions and terms of the Mitigation Bank Permit; or

B. failed to replace this policy with an alternate financial responsibility mechanism within 90 days following receipt of notice of nonrenewal or notice of cancellation of the policy.

2. The Regulatory Agency shall provide written notice to the Insurer of a claim. Such claim notification must be in writing and may, at the Regulatory Agency's discretion, include copies of correspondence or other notification that the Regulatory Agency provided to the Permittee documenting the noncompliance that resulted in the claim and any other information the Regulatory Agency deems relevant to the claim.

The Insurer agrees that the Regulatory Agency's knowledge of the Permittee's noncompliance with the terms of the Mitigation Bank Permit does not constitute late reporting of a claim. The Insurer also acknowledges and agrees that prior to filing a claim, the Regulatory Agency may first choose to advise the Permitee of how to come back into compliance with the Permit and allow reasonable time for the Permittee to correct any noncompliance of the Permit, may proceed against the Permittee in an enforcement action for violations of the Permit, or may discontinue the withdrawal of credits from the Mitigation Bank as authorized under Florida Administrative Code Chapter 62-342 or the enforcement authorities of the U.S. Army Corps of Engineers, and that doing any of these shall not act as a waiver of any claim. The Insurer also acknowledges and agrees that the Regulatory Agency is not required to exhaust its enforcement remedies against the Permittee prior to filing a claim.

3. The Regulatory Agency shall have the sole discretion and responsibility to determine which of the following methods shall be used by the Insurer to satisfy a claim under this policy:

A. pay into a standby trust account or standby escrow account the amount the Regulatory Agency deems necessary to bring the Permittee into compliance with the Mitigation Bank Permit and the Regulatory Agency's statutes, rules, and regulations;

B. perform such construction and implementation, as directed and approved by the Regulatory Agency and in accordance with the Mitigation Bank Permit, until success is achieved as set forth in the conditions of the Mitigation Bank Permit [and Bank Closure is achieved under the Mitigation Banking Instrument].

In no circumstance shall any funds be paid to the U.S. Army Corps of Engineers. Upon satisfaction of a claim in accordance with this paragraph, the limit of liability will only reduce by the amount paid into a standby trust or standby escrow account, or by the approved amount actually paid by the Insurer to perform the construction and implementation activities in accordance with the Permit.

4. The Regulatory Agency has the sole obligation, responsibility, and authority for determining compliance with the conditions of the Mitigation Bank Permit including successful performance of the construction and implementation requirements of the Permit.

5. The Regulatory Agency has the sole authority and discretion to determine whether action taken or proposed to be taken by the Insurer is sufficient to satisfy a claim made by the Regulatory Agency. The Insurer shall not be released from its obligations to satisfy a claim until the Regulatory Agency provides written notice that the claim may be closed.

VII. NOTICE OF A CLAIM

1. All claims must be reported to the Insurer in writing at the claim's notice address as identified in the Declarations of this policy.

VIII. CONDITIONS

1. ASSIGNMENT — This policy is not assignable except with the prior written consent of the Insurer, which consent shall be granted at our sole discretion, and with prior written approval by the Regulatory Agency of a transfer of the Mitigation Bank Permit to the new proposed permittee.

2. BANKRUPTCY — Bankruptcy or insolvency of the Permittee or the Permittee's agents, contractors, or subcontractors, shall not relieve the Insurer or Permittee of the obligations under this policy, including our obligation to pay claims to the Regulatory Agency not to exceed the limits of liability.

3. RENEWAL — The policy will automatically renew for the same terms and conditions as this policy unless the Insurer provides written notice of nonrenewal to the Permittee, the Regulatory Agency, and the U.S. Army Corps of Engineers no less than 120 days prior to the expiration of the policy period. The Insurer shall identify the project name and Mitigation Bank Permit number in any notice of nonrenewal.

4. CANCELLATION —This policy shall not be cancelled during the policy period and shall remain in effect until it is terminated or released upon written approval of the Regulatory Agency unless the Insurer provides written notice of cancellation to the Named Insured, the Regulatory Agency, and the U.S. Army Corps of Engineers no less than 120 days prior to cancellation of the policy. The Insurer shall identify the project name and Mitigation Bank Permit number in any notice of cancellation.

5. AMENDMENTS TO THE POLICY— No change or amendment to this policy is authorized except upon prior written approval of such change by the Regulatory Agency. If approved by the Regulatory Agency in writing, such change shall not become effective until the Insurer issues an endorsement to the policy identifying the approved amendment to the policy. The Insurer shall provide all copies of endorsements to the policy to the Permittee and Regulatory Agency at the addresses identified in the Declarations page to this policy. Any endorsement to the policy issued without the prior written approval of the Regulatory Agency shall be invalid.

6. INDEPENDENT AGREEMENT — This policy is a separate, independent agreement between the Insurer and the Permittee for the benefit of the Regulatory Agency as a third-party beneficiary. The Insurer and the Permittee hereby agree that only the Mitigation Bank Permit, including any attachments and exhibits attached therein, and applicable Florida statutes and rules, shall be used to interpret the provisions of this policy, and this policy shall not be used to interpret any other contract or agreement.

7. THIRD-PARTY BENEFICIARY — The Regulatory Agency identified in the Declarations of this policy is the only third-party beneficiary created as a result of this Policy. This policy gives no rights by or on behalf of any other parties.

8. WAIVER OF NOTIFICATION — The Insurer waives notification of amendments to the Mitigation Bank Permit, applicable laws, statutes, and regulations, and agrees that no such amendment shall in any way relieve the Insurer's obligations under this policy.

9. ACCESS TO PROPERTY— The Permittee shall provide reasonable access to the Mitigation Bank site for the purpose of inspecting and investigating any claims made by the Regulatory Agency. The Permittee shall also provide the Insurer, and its contractors or agents, reasonable access to perform any construction and implementation activities as directed by the Regulatory Agency in satisfaction of a claim.

10. OTHER FINANCIAL ASSURANCE – The Insurer acknowledges and agrees that the Permittee is authorized under Rule 62-342.700, F.A.C., to have more than one form of financial responsibility collectively covering all construction and implementation activities required by the Permit. If more than one financial responsibility mechanism is used to provide financial assurance for the construction and implementation activities of the Mitigation Bank, this policy will insure the specific construction and implementation activities indicated in the cost estimates as being covered by this policy. The existence of more than one form of financial responsibility for the construction and implementation of the Mitigation Bank shall in no way limit the Regulatory Agency's ability to file a claim under this policy or limit the Insurer's obligation to satisfy a claim for specific construction and implementation activities covered by this policy.

11. RELIANCE UPON REPRESENTATIONS — It is agreed by the Insurer and Permittee that the Permit, and any modifications thereto, shall be on file with the Insurer and is deemed attached hereto as if physically attached to the policy. By acceptance of this policy, the Permittee agrees that the statements in the Declarations page and the Permit are the Permittee's agreements and representations, that this policy is being issued in reliance upon the truth of these representations and that this policy embodies all agreements existing between Permittee and Insurer. Misrepresentations by the Named Insured shall not invalidate the Insurer's obligation to the Regulatory Agency in the event of a claim.

12. INSPECTION, REVIEW AND AUDIT — The Insurer is authorized but is not obligated to inspect, sample, audit, review or monitor the Permittee or the Mitigation Bank site upon providing reasonable advance notice with consideration for the timing of such notice and any site access requirements. These actions by the Insurer cannot interfere with, or delay, the completion of any activities by the Permittee as set forth in the Permit.

13. FULLY EARNED PREMIUM — The policy premium set forth in the Declarations page is fully earned on the inception date of this policy. Any cancellation or termination of the policy under the provisions allowable in this policy, regardless of the party instituting the cancellation or termination, shall not result in the return of any policy premium.

14. SUBROGATION — In the event that the Insurer makes any payment under this policy, the Insurer shall be subrogated to all of the rights of recovery that the Permittee may have against any person or organization other than the Regulatory Agency or its designee. The Permittee shall execute all papers and take all necessary actions to secure such rights, including the execution of any documents necessary to enable the Insurer to effectively bring suit in the name of the Permittee. The failure of the Permittee to execute all papers and take all necessary actions to secure such rights shall not relieve the Insurer's obligation under this policy in the event of a claim by the Regulatory Agency.

15. VENUE — This policy is governed by the laws of Florida. It is understood and agreed that any litigation which may arise under or in connection with this policy, including any determination of the amount of loss, shall be brought only in a state court in _____ County, which shall have exclusive jurisdiction over such litigation. This provision does not apply to the Corps.

16. SERVICE OF SUIT — Florida law requires that the Chief Financial Officer of the State of Florida be designated as the Insurer's agent for service of process. In Florida, the Insurer designates the Chief Financial Officer as the Insurer's true and lawful attorney upon whom service of process on the Insurer's behalf may be made. The Insurer also authorizes the Chief Financial Officer to mail process received on the Insurer's behalf to the person named below:

{name/address of company person}

17. WAIVER IN THE EVENT OF FRAUD OR MISREPRESENTATION – The Insurer acknowledges and agrees that in no way shall fraud or misrepresentation by the Permittee relieve the Insurer of its obligation in the event of a claim made by the Regulatory Agency under this Policy.

18. COOPERATION CLAUSE – The Permittee agrees to provide the Insurer with any information, assistance, and cooperation requested in writing by the Insurer in the event of a claim made by the Regulatory Agency. The Insurer acknowledges and agrees that any failure of the Permittee to cooperate with the Insurer shall not relieve the Insurer of its obligation to satisfy a claim made by the Regulatory Agency under this Policy.

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 and the Mitigation Bank (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 and the Mitigation Bank 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 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 th~~e 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 the Mitigation Bank 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.

<u>Grantor</u>:

____

____

____
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]

STATE OF FLORIDA
AND
U.S. ARMY CORPS OF ENGINEERS
Mitigation Bank Trust Fund Agreement to Demonstrate
Perpetual Management 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 requires the Perpetual Management 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, requiring that a Mitigation Bank permittee shall provide assurance that funds will be available when needed for corrective action if Grantor fails to perpetually manage the Mitigation Bank;

WHEREAS, the Corps has established certain regulations at 33 C.F.R. Part 332, applicable to the Grantor that requires the Mitigation Banking Sponsor to provide a funding mechanism for the long-term financing 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;

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;

(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;

(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;

(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 "BBB" if rated by Standard and Poor's Corporation and "Baa3" if rated by Moody's Investors Services, Inc.;

(vii) Fixed income securities issued by foreign governments and corporate entities whose ratings at the time of purchase are rated not less than "BBB-" if rated by Standard and Poor's Corporation and "Baa3" if rated by Moody's Investors Services, Inc.;

(viii) 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;

(ix) Equity securities or securities convertible into equity securities, provided that the issuer is: (1) Organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia; or (2) Listed on one or more of the recognized national stock exchanges and conforms to requirements of the Securities Act of 1933 and Securities Exchange Act of 1934; and

(x) Mutual funds or exchange-traded funds comprised of securities listed above, provided that the issuer conforms to federal laws such as the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the

Investment Advisors Act of 1940.

Section 2. Identification of Cost Estimates. This Agreement pertains to the cost estimates for Perpetual Management 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. 332.7(d)(2).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund ("Fund"), for the benefit of the Agency, the Mitigation Bank and the Perpetual Management Steward (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 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, the Mitigation Bank and the Perpetual Management Steward 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 Perpetual Management Activities. The Agency shall provide instructions to the Trustee, with acknowledgement from the Corps, for the disbursement of payments from the Fund for the costs associated with the performance of perpetual management activities at the Mitigation Bank covered by this Agreement in accordance with the Mitigation Bank Permit and the Mitigation Banking Instrument. 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. 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 investment policies and guidelines as outlined in the Investment Policy Statement for Perpetual Management Financial Assurance/Long-Term Management Funding. 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 7. 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. 80a1 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 8. 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 9. 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, fees for investment management or advisory fees, 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 10. Annual Valuation. The Trust 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.

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Section 13. 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, 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 12.

Section 14. 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 15. 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 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 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15 and the Notice requirements of Section 17, 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.

Section 17. 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 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.

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Section 19. 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 20. 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:

____

By:_______________________________

____
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 ______________________, a Florida 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) ____________

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

(Signatures Continued from Previous Page)

[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 ______________________ 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) ____________

Investment Policy Statement
for
Perpetual Management Financial Assurance

Adopted – [December 2025]

TABLE OF CONTENTS

I. DEFINITIONS

As used in this Investment Policy Statement ("IPS"):

(a) The term "Agreement" means the Mitigation Bank Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance.

(b) The term "Grantor" means _________________ who enters into the Agreement and any successors or assigns of the Grantor.

(c) The term "Trustee" means _______________, who enters into the Agreement and any successor Trustee.

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

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

(f) The term "Fund" means the trust fund established by the Grantor and the Trustee for the benefit of the Agency and the Corps (hereafter referred to as "Beneficiaries").

II. INTRODUCTION AND PURPOSE

Introduction:

The Fund was established as a long-term funding mechanism to provide ongoing disbursements for the specified land management, maintenance, and monitoring costs of the real property as described in the Agreement. The Fund should be viewed as a perpetual trust managed to benefit both present and future payments as required by the terms of the Agreement.

The Fund's investment portfolio ("Portfolio") should preserve and enhance the real or inflation-adjusted market value of the Fund's assets over the long-term, net of annual disbursements and expenses. To achieve this objective the Portfolio has adopted a long-term investment horizon such that market volatility will be monitored and balanced with the long-term real return objective.

The investment of Portfolio assets must be made in accordance with the standards put forth in the Uniform Prudent Investor Act (UPIA) and Florida Investment of Trust Funds Act (FIPA), as adopted by the state of Florida. UPIA and FIPA require fiduciaries to apply the standard of prudence with reasonable care and skill to any investment as part of the total portfolio and overall investment strategy, rather than to individual investments. All investment actions and decisions must be based solely on the over-arching long-term interests of the Fund's Beneficiaries.

This IPS applies to all investable assets of the Fund All assets available for investment will be invested through the Portfolio and must adhere to the guidelines included herein.

Purpose:

The purpose of this IPS is to define investment objectives, guidelines, policies and procedures established by the Agency to support the funding of perpetual maintenance costs as described in the Agreement. This IPS will serve as a framework, with sufficient flexibility in order to be practical, for the management and review of all investable assets and intended to:

- Identify roles and responsibilities;

- Establish investment objectives;
- Establish long-term asset allocation targets and ranges; and
- Establish guidelines to monitor the performance in comparison to stated objectives

Additionally, this IPS serves as a guide and general framework within which the Fund's assets are managed in achieving the long-term objectives of those assets. The Grantor, Trustee, and Beneficiaries recognize that from time to time, short-term market fluctuations and dynamics could make it impossible to precisely reflect all aspects of this policy at all times. This IPS is established to accommodate these short-term fluctuations, which should not necessitate IPS adjustments. It is expected that this IPS be reviewed over time by the Agency to ensure alignment with forward-looking market expectations and that guidelines, policies, and procedures support the long-term objectives of the Fund's Beneficiaries.

II. ROLES AND RESPONSIBILITIES

The Trustee has ultimate fiduciary responsibility for the Fund. The Trustee has the responsibility to ensure that all investments are managed in a manner that is consistent with this IPS. The Trustee must ensure that appropriate policies governing the management of the investable assets are in place and being effectively implemented.

The Trustee's responsibilities include but are not limited to:

- Develop the investment goals that are consistent with the financial needs of the Fund's Beneficiaries and the appropriate asset allocation consistent with meeting those objectives, or delegate these decisions to an appropriate fiduciary, e.g., the Advisor;
- Select, monitor and terminate Custodian, Advisor, and other service providers involved with servicing all or parts of the Portfolio;
- Periodically review and evaluate investment results; and
- Periodically review compliance with IPS guidelines;

The Trustee may, at its discretion, delegate the execution of above responsibilities, in full or in part, to external parties with appropriate expertise to assist the Trustee in discharging its fiduciary obligations. Other specialists may be employed by the Trustee from time to time, on an as-needed basis, to ensure its responsibilities in providing management and oversight of Portfolio assets are prudently executed.

The Advisor's responsibilities may include but are not limited to:

- Assist the Trustee with the selection, retention, and termination of Portfolio investments and strategies
- Assist the Trustee with rebalancing and implementation of this IPS, as approved
- Proactively recommend investment strategies as warranted
- Prepare and present performance measurement analysis and reporting
- Work with the Trustee to ensure sufficient liquidity to meet the Fund's disbursement obligations

The Advisor agrees that in carrying out its responsibilities, it will act within the framework established by Agency as outlined in this IPS.

The Agency's responsibilities include:

- Provide the current IPS to the Trustee;
- Periodically review the IPS; and
- Provide any IPS updates to the Trustee;

Custodian's responsibilities include:

- Provide security safekeeping, collection of income, settlement of trades, collections of proceeds of maturing securities, and daily investment of cash; and

- Provide monthly reports detailing investment holdings and transactions to Trustee and/or Advisor.

III. INVESTMENT OBJECTIVES

The primary objective of the Fund is to ensure the Portfolio generates a real rate of return, above an appropriate inflation rate (i.e., the Consumer Price Index or CPI), that is sufficient to support the disbursement needs of the Fund in perpetuity. It is particularly important to preserve the value of the assets in real terms (i.e., inflation adjusted) to maintain its purchasing power without eroding the principal corpus of the Portfolio over long-term periods. Thus, the long-term return objective will account for inflation, administrative expenses, and annual disbursement needs, as appropriate.

Time Horizon

The Grantor, Trustee, and Beneficiaries acknowledge that fluctuating rates of return characterize the securities markets, particularly during short-term time periods. Accordingly, all parties view interim fluctuations with an appropriate perspective, given the long-term perpetual objectives. Long-term investment objectives are to be evaluated over a minimum long-term horizon, defined as a full market cycle (e.g., peak-to-peak, trough-to-trough).

Diversification

The Trustee believes that the likelihood of realization of the investment objectives is enhanced through diversification. The Trustee, with the aid of the Advisor as needed, will aim to diversify the Fund's assets among complementary portfolio strategies to maintain acceptable risk levels and enhance long-term investment return opportunities.

Volatility and Risk

The Fund's goal shall be to achieve its investment objective while assuming acceptable risk levels. The general policy will be to diversify investments based on their role in the Portfolio to provide a balance that will enhance total return while avoiding undue risk concentration in any single asset class or investment strategy.

To minimize the probability of failure and thereby minimize risk, the variables to be considered by the Trustee in all aspects of portfolio construction include, but are not limited to:

- Probability of missing objective;
- Impact of inflation;
- Asset class diversification;
- Potential, magnitude and duration of investment drawdowns;
- Time horizon of investments versus spending needs;
- Historical and prospective information regarding capital markets;
- Broad economic factors; and
- Current regulatory environment;

IV. ASSET ALLOCATION GUIDELINES

Given the perpetual nature of the Fund, asset allocation will be the most important determinant of long-term success. The target allocation balances the need to satisfy the long-term return objective and to minimize total investment risk. The target allocation is based on long-term capital market assumptions (expected returns, risk, and correlations) of investment strategies and asset classes within the established asset classes and, over time, should provide an expected return equal to or greater than the primary objective of the Fund, while avoiding undue risk concentrations in any single role or strategy. To achieve these objectives, the asset allocation will be set with the target percentages and within the ranges provided below:

	Min (%)	Target (%)	Max (%)
Global Public Equity	**45%**	**60%**	**65%**
U.S. Equity	30%	39%	50%
Non-U.S. Developed Equity	10%	15%	20%
Emerging Markets Equity	0%	6%	15%
Fixed Income & Cash	**35%**	**40%**	**55%**
U.S. Investment Grade Bonds	30%	40%	45%
Non-U.S. Investment Grade Bonds	0%	0%	10%
Total Portfolio		**100%**	

The Trustee will ensure that the Portfolio maintains a prudent level of diversification by asset class, investment strategy, geography, sector, and market capitalization. No individual security shall comprise greater than 5% of the Fund's total assets at the time of purchase. Use of derivatives for hedging or speculative purposes is not permitted.

Permitted investment strategies and securities are defined in the Agreement and any strategy or security excluded from those definitions is prohibited. Should the Fund hold an investment strategy or security that is not permitted, the Trustee will take corrective action in a timely manner.

Rebalancing Guidelines

The Grantor, Trustee, and Beneficiaries understand that the Portfolio's actual allocations may vary from these targeted allocations due to market movements and other factors. Generally, these divergences should be of a short-term or tactical nature in response to fluctuating market conditions. The Trustee is aware that some deviation from asset class targets will occur and that the determination to rebalance will take into account the cost of executing the rebalancing, trade settlement periods, and normal market volatility.

Execution of the rebalancing may be implemented through any combination of actions, including the purchase and sale of funds/securities or allocation of normal cash flows (e.g., distributions to cover the Fund's disbursement obligations). The Portfolio will be liquidated (and funded) in a manner that allows for orderly transition of asset allocation in the most efficient means possible. As applicable, the Advisor will aid the Trustee to determine Portfolio rebalancing actions necessary to move the asset allocation to the appropriate targets given current market conditions, the Fund's asset levels, and IPS acceptable ranges.

V. DISBURSEMENT POLICY

Disbursements from the Fund will adhere to the terms of the Agreement. The Trustee will ensure that sufficient liquidity is available from the Portfolio to satisfy disbursement obligations. As applicable, the Advisor will aid the Trustee to determine required rebalancing to fund required disbursements.

VI. PERFORMANCE MEASUREMENT AND EVALUATION

Total Portfolio Performance

The principal goal of the Portfolio is to maximize the likelihood of achieving and/or exceeding the Fund's long-term investment objectives as stated in this IPS. The primary benchmark for evaluating performance of the Portfolio will be a weighted benchmark consisting of broad market indices for the underlying strategies combined according to the strategy allocation targets as described in Section IV: Asset Allocation Guidelines. Total Portfolio performance will be evaluated on a net-of-all-fees basis relative to the representative weighted benchmark over various trailing time periods, as applicable.

Asset Class / Strategy Performance

Rates of return will be compared with the risk and return of an appropriate market index. The Trustee, with the aid of the Advisor, will monitor the relative performance of these returns on a regular basis. The roles and strategy types that fall under this purview can be found in Appendix A.

Active / Passive Management

The Trustee shall review the relative advantages of passive versus active investment management in the context of expenses, performance, and exposure to an asset class, versus the potential excess return from active management. In general, active managers will be expected to achieve long-term net-of-fee returns greater than their appropriate benchmark given acceptable risk levels. In contrast, index/passive managers will be expected to provide returns equal to the appropriate benchmark, before reasonable fees, with minimal tracking error to the benchmark.

VII. PROXY VOTING

As applicable, the Portfolio's investment managers are responsible for voting the proxies, and other decisions regarding rights, which may be connected to the Fund's ownership of securities through mutual funds, index funds, and other investment vehicles. Proxies should be voted and rights exercised exclusively in the best interest of the Fund's Beneficiaries.

VIII. BROKERAGE AND OTHER INVESTMENT RELATED EXPENSES

Brokerage commissions, incurred in the normal course of trading securities, are expenses of the Portfolio and therefore must be managed in the best interest of the Fund.

As applicable, the Portfolio's investment managers will have discretion to select brokers and negotiate commissions. In executing this responsibility, the investment managers should seek "best execution" services.

IX. INVESTMENT POLICY CHANGES

The Agency will review this IPS on a regular basis to ensure that it continues to align with the interests of the Fund's Beneficiaries. This IPS may be modified or terminated, in whole or in part, by the Agency at any time as the Agency deems appropriate.

The foregoing IPS was adopted by the Agency to be effective as of __________, 202_

By:____________________________________
(Title)

Appendix A

Role and Purpose of Asset Classes

This section defines and outlines the primary role each asset class plays within the Portfolio and serves as a framework for evaluating asset allocation choices across asset classes and investment strategies to achieve the Portfolio's objectives. While certain strategies and investment securities may demonstrate risk and return characteristics at different time periods that could fulfill more than one role, it is the strategic nature of those investments that shall dictate the primary purpose they serve in the Portfolio.

Global Public Equity

The primary objective of investing in long-only equities is to capture the long-term growth opportunities offered by this asset class. However, this opportunity does not come without significant short- and intermediate-term downside risk. To dampen this risk, the Portfolio's long-only equity strategy in aggregate will be well diversified by market capitalization, investment style, and geography. Investments may be either actively or passively managed.

Passive strategies should track the appropriate benchmarks within an acceptable range based on the ease/difficulty of tracking the specific benchmark and on the level of fees. Active equity strategies are expected to add value, net-of-fees, over a full market cycle which is typically measured over intermediate (3-5 years) and longer (5+ year) periods. The long-only equity portfolio shall be benchmarked to a blend of investable, market-oriented benchmarks with the weighting split of US equities and non-US equities determined by the Trustee and specified in performance reporting.

Fixed Income

Fixed income assets serve as the capital preservation component of the Portfolio through preserving the principal value of assets and generating return at significantly lower absolute volatility relative to other Portfolio asset classes such as long-only equities. US Treasuries, other US Government-related bonds, and high-quality credit-oriented investment grade bonds are the most common fixed income securities. This portfolio of bonds can be invested either passively or actively.

Fixed income derivative contracts may be used by active fixed income portfolio managers to achieve general portfolio objectives, according to risk management and internal control procedures agreed between the investment manager and the Trustee.

Appendix B

Suggested Portfolio Benchmarks

Asset Class	Benchmark	Weight (%)
Global Public Equity	MSCI All Country World Index	60%
Fixed Income	Bloomberg U.S. Aggregate Bond Index	40%

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, and 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. 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 concurrence with the 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

____
Signature

____
Type Name and Title

Corporate Seal

CORPORATE SURETY(IES)
For each co-surety provide the following

____
Name and Address

____
State of Incorporation

Liability Limit $________________________________

____
Signature

____
Type Name and Title

Corporate Seal

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

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

______________________________ (Agency)

______________________________ (Permit #)

____

____

Address of Agency

______________________________ (Agency)

______________________________ (Mitigation Banking Instrument #)

____

____

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.___________

____
Issuing Bank's Name and Address
____
____

Date: __________, 20___

____
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:

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

MITIGATION BANK STANDBY TRUST FUND AGREEMENT TO
DEMONSTRATE CONSTRUCTION AND OPERATION
FINANCIAL ASSURANCE

TRUST AGREEMENT, the "Agreement," entered into as of ___________________ by and
Date
between ____
Name of Mitigation Bank Sponsor/Permittee
a __________________ ____ (the Grantor)
Name of State Insert "corporation, partnership, association, or proprietorship"
and ____
Name and Address of Corporate Trustee
____ (the Trustee).
Insert "incorporated in the State of _____" or "a national bank"

WHEREAS, Grantor is the owner of certain real property in __________ County, Florida, and 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 _________________, as modified from time to time ("Mitigation Banking Instrument"), which authorizes the establishment, operation, and use (generally referred to as construction and implementation) of the _______________ (name) 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, requiring that a Mitigation Bank permittee shall provide assurance that funds will be available when needed for corrective action if Grantor fails to construct and operate that Mitigation Bank;

WHEREAS, the Corps has established certain regulations at 33 C.F.R. Part 332, applicable to the Grantor, that requires the Mitigation Banking Sponsor to provide a financial assurance mechanism for the construction and implementation (monitoring and maintenance) of the Mitigation Bank;

WHEREAS, the Grantor has elected to establish a ___________________ ("surety bond" or "letter of credit" or "Insurance Policy") to provide all or part of such financial assurance for the _________________ (name) Mitigation Bank identified herein and is required to establish a standby trust fund able to accept payments from that instrument;

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 the _________________ (Mitigation Bank Sponsor's name) who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means ___________________ (Trustee's name) the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Agency" means the _________________________, 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; and

(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 estimate for construction and operation of the ________________________ (name) 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)(2).

Section 3. Standby Trust. This trust shall remain dormant until funded with the proceeds from the ________________________ (Name of the Surety Bond, Letter of Credit, or Insurance Policy) financial mechanism listed on Attachment A, or subsequent Agency and Corps-approved sureties established for this purpose. The Trustee shall have no duties or responsibilities beyond safekeeping this Document. Upon funding this trust shall become active and be administered pursuant to the terms of this instrument.

Section 4. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund ("Fund"), for the benefit of the Agency and the Mitigation Bank (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 initially as a standby to receive payments and shall not consist of any property. Payments made by the Grantor pursuant to the instructions of the Agency, with acknowledgement from the Corps, are transferred to the Trustee and 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 Beneficiaries 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 5. Initial Payments Comprising the Fund. Initial Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee and shall consist initially of proceeds from the __________________ ("Letter of Credit," "Surety Bond," or "Insurance Policy") identified in Attachment A hereto.

Section 6. 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 applicable 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 7. Payment for Completing construction and operation. The Agency shall provide 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 held solely for one agency pursuant to sections 8 or 19, 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, with acknowledgement from the Corps, pursuant to this Section. Funds disbursed pursuant to this Section 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, as determined by the Agency and the Corps. 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 8. Distribution of released funds. Upon the successful completion of works required in the Mitigation Bank Permit or achievement of ecological performance standards required by 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, specifies and approves in writing in accordance with its approval of the cost adjustment. However, the Grantor may, within the notice period in Section 20(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 9. 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 the Mitigation Bank 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 10. 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 11. 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 12. 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 13. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor, the Agency (to the attention of the Environmental Resource Permitting Program for the ________________ (name) Mitigation Bank, Permit No. _____), and to the Corps (701 San Marco Blvd., Jacksonville, FL 32207, to the attention of Regulatory Division for the ______________ (name) Mitigation Bank, Mitigation Banking Instrument # _____________), 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 14. 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 15. 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 from trust income, unless the Agency authorizes in writing payment from the trust principal.

Section 16. 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, 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 15.

Section 17. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by _____________ 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, 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 the Agency and the Corps, except as provided for herein.

Section 18. 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 19. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 18 and the Notice requirements of Section 20, 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 dies, is legally incapacitated, 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, where 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 20(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 to 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 20. 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 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 Standby 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 8, above;
(c) The Grantor and Trustee shall provide notice to the Agency and the Corps at least 120 days in advance of any change in the amount of the Fund made in accordance with Section 6, above.

Section 21. 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 22. 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 23. 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.

______________________________	______________________________
Signature of Grantor	Signature of Trustee
______________________________	______________________________
Title	Title
Attest:_______________________	Attest:_______________________
______________________________	______________________________
Title	Title
Seal	Seal

[Optional language: notary acknowledgment]

STATE OF FLORIDA
COUNTY OF __________

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ______ day of _____________, 202__, by________________, on behalf of _____________________a Florida 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) ____________

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) ____________

ATTACHMENT A

[SURETY BOND, LETTER OF CREDIT, OR INSURANCE POLICY]

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

Mitigation Bank Endowment Fund Agreement to Demonstrate
Perpetual Management Financial Assurance

This _____________(Bank Name) Perpetual Funding Agreement ("Agreement") is entered by and among the ___________ ("Endowment Holder"), and the _____________ ("Bank Permittee" or "Bank Sponsor") and the ________________(Perpetual Management Steward, if separate from the Bank Permittee or Bank Sponsor, "Recipient"), (together, the "Parties," and individually, a "Party"), as of the date of the signature of the last Party to sign (such date, the "Effective Date").

WHEREAS, the Mitigation Bank Permit as approved by the ______ ("Agency") requires the Bank Permittee to establish a perpetual financing or funding mechanism, and the Mitigation Banking Instrument ("MBI") approved by the U.S. Army Corps of Engineers ("Corps") requires the Bank Sponsor to establish long-term management financing, for the ________ ("Bank") to provide ongoing payment for specified land management, maintenance, and monitoring of the real property comprising the Bank ("Bank Property"), located in ___________ County, Florida, in accordance with the Mitigation Bank Permit Number ________, the MBI Project Number ________, and associated Perpetual Management Plan (referred to as the "Long-term Management Plan" in the MBI) that identifies the specific land management activities that are required to be performed on the Bank Property to assure the perpetual maintenance, protection, and long-term viability of the aquatic resources, habitat, and other ecological values of the Bank Property ("Perpetual Management Plan"). The Bank Property, comprised of approximately _______ acres, will be managed in accordance with the Mitigation Bank Permit, the MBI, and associated Perpetual Management Plan.

WHEREAS, if the Bank Permittee chooses to transfer its responsibility to manage the Mitigation Bank Perpetual Phase, the Perpetual Management Steward is the Recipient under this Agreement and is responsible for the perpetual maintenance, protection, and long-term viability of the protected resource, the Bank Property, in accordance with the Mitigation Bank Permit, the MBI, and the Perpetual Management Plan. If the Bank Permittee retains the responsibility to manage the Perpetual Phase, the Bank Permittee is the Recipient.

WHEREAS, the Endowment Holder is a [description of Endowment Holder/legal status], and is authorized under [applicable law/statute], to hold and administer funds for the perpetual management and maintenance of mitigation lands and mitigation and conservation bank properties.

WHEREAS, the Mitigation Bank Permit, the MBI, and/or associated Perpetual Management Plan provides for the establishment of a fund to pay the costs of the Perpetual

Management of the Bank Property ("PM Fund") to be held and managed by the Endowment Holder in trust as a neutral fiduciary.

WHEREAS, the Mitigation Bank Permit, the MBI, and/or associated Perpetual Management Plan incorporates by reference and attaches this Agreement, or it has otherwise been approved by the Agency and the Corps as the document governing the intent, uses, benefits, purposes, and duration of the PM Fund, and the terms and conditions under which it will be established, held, and administered by the Endowment Holder.

NOW, THEREFORE, in consideration of the mutual promises made herein and for other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. PURPOSES

A. The purposes of this Agreement are to establish a PM Fund for the Bank to be held by the Endowment Holder in trust for the benefit of the Bank Property in satisfaction of the applicable requirements of the Mitigation Bank Permit and MBI, and to set forth the Parties' respective responsibilities to the funds held in and administered from the PM Fund.

B. To the extent the funds are subject to the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), this Agreement is the record under which the funds are transferred to, and held by, the Endowment Holder, and as such shall be considered the "gift instrument" for purposes of UPMIFA. As reflected by its incorporation into the Mitigation Bank Permit and MBI, this Agreement shall be deemed in all respects to set forth the Agency's and the Corps' approval as to the intent, uses, benefits, purposes, and duration of the PM Fund.

II. ACCOUNT ESTABLISHMENT, INVESTMENT, AND ADMINISTRATION

A. This Agreement, through its approval in the Mitigation Bank Permit and MBI, authorizes the Endowment Holder to hold the PM Fund, as requested by and received from the Bank Permittee/Bank Sponsor, in the amount of _______ ($XX), as expressed in (insert year) dollars, to be deposited either as a lump sum or in installments, as described in the Mitigation Bank Permit and the MBI, until fully funded. The PM is to be held in trust for the perpetual management, maintenance, and monitoring of the Bank Property in accordance with the Mitigation Bank Permit and MBI, including this Agreement, the Perpetual Management Plan, and the currently approved costs of perpetual management, maintenance, and monitoring of the Bank Property ("Endowment Assessment"), dated [insert date], as approved by the Agency as part of the Mitigation Bank Permit and by the Corps as part of the MBI.

B. Bank Permittee/Bank Sponsor shall pay (or cause to be paid) to the Endowment Holder a single, one-time payment of _____ ($XX) ("Account Establishment Fee") for the Endowment Holder's establishment of a uniquely identifiable financial account constituting the PM Fund. The Endowment Holder's receipt of the Account Establishment Fee is an express condition precedent to the effectiveness of the Endowment Holder's obligations under this

Agreement. The Account Establishment Fee is in addition to the PM Fund amount as set forth in Section II.A. above and the "Annual Fee" as set forth in Section II.C. below. The Parties agree, as soon as practicable after the Endowment Holder's receipt of both the Account Establishment Fee and funds for deposit into the PM Fund, that the Endowment Holder shall invest the funds comprising the PM Fund in accordance with the Endowment Holder's prevailing Investment Policy Statement for mitigation endowment funds, which is attached to this Agreement as Attachment A and incorporated herein by reference, as the same may be modified from time to time in accordance with its terms. The Recipient shall have no right or responsibility with respect to the investment or financial management of the PM Fund under this Agreement or otherwise.

C. The PM Fund shall be subject to an annual fee of ____ (__%) ("Annual Fee") of the PM Fund's balance for the Endowment Holder's annual administration, operation, reporting, and accounting of the PM Fund.

D. The Endowment Holder shall submit to the Recipient and to the Agency (and the Corps if requested), an activity report for the PM Fund by (insert month and day) of each calendar year the PM Fund is in existence. In each activity report, the Endowment Holder shall report on the balance of the PM Fund at the beginning of the calendar year, deposits, disbursements, fees, earnings, gains, losses, and other investment activity accruing to the PM Fund during the previous calendar year; the balance of the PM Fund at the end of the calendar year; and the specific asset allocation percentages of the portfolio in which the PM Fund is invested. If requested, the Endowment Holder shall also provide to the Agency and the Corps, a copy of its most recent financial statement as prepared by an independent auditor.

E. Disbursements from the PM Fund shall be made in accordance with Section IV of this Agreement, titled Recipient Land Management.

III. ENDOWMENT HOLDER'S FIDUCIARY OBLIGATIONS AND LIMITATIONS ON LIABILITY

A. The Endowment Holder shall have a duty of loyalty to the Bank Property with respect to the PM Fund and shall not use or borrow against funds in the PM Fund for its own benefit, except for assessment and collection of the fees specified in Section II of this Agreement, or as otherwise directed by the Agency and the Corps pursuant to this Agreement.

B. The Endowment Holder shall not be liable to the Agency, the Corps, the Bank Permittee/Bank Sponsor, the Recipient, or any other entities or persons for losses arising from investment of funds in the PM Fund consistent with this Agreement.

IV. RECIPIENT LAND MANAGEMENT

A. Performance of Land Management Activities. The Recipient has agreed to perform the specific land management activities set forth in the Perpetual Management Plan ("Land Management Activities") on the Bank Property as part of its obligations under the Mitigation

Bank Permit and MBI. Funding to pay the costs of the Land Management Activities shall be provided in accordance with the terms and conditions set forth below. If at any time the Perpetual Management Plan, the Land Management Activities, the Endowment Assessment, or Endowment Payment Schedule (as such term is defined below) is amended or otherwise modified as permitted by the Mitigation Bank Permit, the MBI, and applicable law, then:

1. The Recipient shall immediately notify the Endowment Holder in writing of such amendment or modification;

2. The Recipient shall transmit to the Endowment Holder as soon as practicable the amended Perpetual Management Plan, Land Management Activities, Endowment Assessment, or Endowment Payment Schedule, as applicable, along with any corresponding written approval by the Agency or the Corps of each such amended document; and

3. Any amended Perpetual Management Plan, Land Management Activities (and associated costs), Endowment Assessment, and Endowment Payment Schedule shall, upon receipt by the Endowment Holder, supersede and replace their original counterparts and shall thereafter govern as the "Perpetual Management Plan," "Land Management Activities," "Endowment Assessment," and "Endowment Payment Schedule" under this Agreement.

B. Funding for Land Management Activities. The Endowment Holder hereby agrees to disburse funds from the PM Fund to the Recipient to pay the costs of Recipient's performance of the Land Management Activities on the Bank Property upon the terms and conditions set forth below.

C. Scope of Services to be Performed. The Recipient will perform the Land Management Activities as set forth in the Perpetual Management Plan and the Endowment Assessment. The Recipient will pay for the costs of such Land Management Activities using the funds disbursed to it under this Agreement. The Parties agree and acknowledge that the Perpetual Management Plan and the Endowment Assessment were created by or on behalf of the Bank Permittee/Bank Sponsor and jointly approved by the Agency and the Corps. The Endowment Holder is expressly entitled to rely on the validity of the Agency's and the Corps' approval and the accuracy and validity of the Perpetual Management Plan and the Endowment Assessment without independent verification. The Endowment Holder shall not be liable in any respect to the Agency, the Corps, the Recipient, or to any other entities or persons for errors, omissions, inaccuracies, or other elements of the Perpetual Management Plan or the Endowment Assessment, whether contained therein or omitted therefrom, including but not limited to the sufficiency or adequacy of the PM Fund calculated pursuant to the Endowment Assessment. The Parties agree and acknowledge that the Recipient is required to perform Land Management Activities on the Bank Property only to the extent funds are made available to the Recipient under this Agreement to pay for performance of such Land Management Activities. In addition, in the event an amendment is made to the Perpetual Management Plan that changes the Land Management Activities identified in the Endowment Assessment or Endowment Payment Schedule thereby requiring an amendment to the Endowment Assessment, the Endowment Holder shall not be liable to Agency, the Corps, the Recipient, or to any other entities or persons for any decision by Agency and the Corps to approve the amendment to the Endowment Assessment or the Endowment Payment Schedule in any way that impairs the viability of the PM Fund as a source of perpetual funding for the Land Management Activities on the Bank Property.

D. Payment.

1. *Payment in the Ordinary Course.*

a. Unless approved otherwise by the Agency and the Corps in writing, the Endowment Holder shall not make any disbursement of funds from the PM Fund unless and until it receives from the Bank Permittee a copy of the Agency's written confirmation that performance standards have been attained or that the Mitigation Bank Perpetual Phase has commenced, and receives from the Corps written confirmation that Bank Closure has occurred and the Bank has entered the Perpetual Management Phase. The Endowment Holder's receipt of the Agency's and the Corps' written confirmation (or other written approval) in this respect is an express condition precedent to the Endowment Holder's initial disbursement of funds from the PM Fund.

b. In consideration of the Land Management Activities to be performed by the Recipient, the Endowment Holder shall disburse annual advanced payments (individually, "Endowment Payment") to the Recipient from the PM Fund to pay the costs of Land Management Activities to be performed by the Recipient throughout the forthcoming calendar year. Unless the Agency and the Corps approve otherwise in a written instrument delivered to the Endowment Holder, each Endowment Payment will be made in the amount requested by the Recipient through a written payment request (hereinafter, a "Payment Request") submitted to the Endowment Holder pursuant to this Section D (as adjusted by a measure of inflation as described below in this subsection). Each Payment Request is subject to a maximum annual dollar limit calculated as the total dollar value of Land Management Activities, exclusive of any contingency amount or any incremental amount for non-annual work items (the funds for such non-annual work items to be paid in full in the calendar year immediately preceding the calendar year in which the applicable work item is to be performed), for the applicable calendar year as set forth in the Endowment Assessment. An Endowment Payment Schedule (as hereinafter defined), created or proposed by the Recipient and approved by the Agency and the Corps, set forth in the Endowment Assessment approved by the Agency and the Corps ("Endowment Payment Schedule") is attached to this Agreement as Attachment B, and incorporated herein by reference. Payment Requests shall be made in accordance with the Endowment Payment Schedule except as otherwise provided in this Agreement. Each Endowment Payment shall be adjusted by a measure of inflation over the period of time since the year the Endowment Assessment was approved by the Agency and the Corps (i.e. insert year). The measure of inflation shall be calculated using an appropriate index as determined by Endowment Holder.

c. The Recipient must submit to the Endowment Holder the written confirmation specified in Section IV.D.1.a. (or the Endowment Holder must have received another applicable written approval from the Agency) on or before the date of its first Payment Request. The Recipient must submit to the Endowment Holder a Payment Request by November 15 of the preceding calendar year, and must comply with the reporting requirement in Section E below in order to receive an Endowment Payment to fund Land Management Activities in the immediately following calendar year. Absent the express written approval of the Agency, the Recipient will not be eligible to receive an Endowment Payment for the immediately forthcoming calendar year if the Recipient has failed to submit to the Endowment Holder a Payment Request between July 1 and November 15 of the current calendar year. The Endowment Holder will disburse Endowment Payments by December 31 for Payment Requests properly submitted to the Endowment Holder.

d. The Recipient shall submit all Payment Requests via email or certified mail to the Endowment Holder. In the event an alternate method of requesting payment becomes available in the future, such as an online payment request system, the Endowment Holder will notify the Recipient and provide appropriate instructions. All Payment Requests must include a written statement by the Recipient that (1) the Endowment Payment will be used exclusively for payment of expenses of Recipient for Land Management Activities and (2) the Recipient reasonably expects the Land Management Activities specified in the Endowment Assessment to be necessary for the applicable calendar year.

2. *Agency Suspension or Reduction of Payments for Performance Reasons*. In accordance with the terms of the Mitigation Bank Permit and MBI, the Agency and the Corps may conduct periodic site visits and/or other evaluations of the Bank Property in order to monitor the progress and effectiveness of Land Management Activities performed by the Recipient. If at any time the Agency or the Corps determines that the Land Management Activities are not being performed in a satisfactory manner (including, without limitation, that the Land Management Activities are not being performed in accordance with the Perpetual Management Plan or applicable laws or regulations), the Agency or the Corps may issue a written stop-payment notice (hereinafter a "Stop Payment Notice") to the Endowment Holder. A Stop Payment Notice will instruct the Endowment Holder either to suspend or reduce Endowment Payments to the Recipient until the Endowment Holder is otherwise notified in writing by the Agency or the Corps (i.e., by whichever agency or agencies initiated the Stop Payment Notice). The Endowment Holder shall be entitled to rely on any Stop Payment Notice received from the Agency or the Corps and shall be obligated to follow the instructions contained therein. The Endowment Holder shall not be liable in any manner to the Recipient or to any other entities or persons by virtue of following the instruction of the Agency or the Corps contained in any Stop Payment Notice. Upon issuing a Stop Payment Notice,

the Agency or the Corps may approve a replacement Recipient ("Replacement Recipient") in accordance with Section IV.D.6. below.

3. *Suspension or Reduction of Payments for Financial Reasons.* If the Endowment Holder's financial advisors advise that the PM Fund has decreased to levels that may threaten its continued existence as a source of perpetual funding for Land Management Activities, the Endowment Holder shall notify the Agency, the Corps, and Recipient of any such appraisal. Upon receipt of such notice, the Recipient shall propose appropriate modifications to continued Endowment Payments and associated Land Management Activities, if any, in order to protect the perpetual viability of the PM Fund. The Agency and the Corps will approve or disapprove such proposal and shall so notify the Recipient and Endowment Holder in writing. The Endowment Holder will be obligated to follow the written response of the Agency and the Corps with respect to any such modifications. Neither the Endowment Holder nor the Recipient shall be liable in any manner to the Agency and the Corps or any other entities or persons by virtue of following the approval of the Agency and the Corps contained in any notice issued under this Subsection 3.

4. *One-time Payments.* Whether upon request by the Recipient or otherwise, the Agency and the Corps may give written approval to the Endowment Holder to disburse a specific amount of funding from the PM Fund (which may or may not be contemplated by the Perpetual Management Plan or Endowment Assessment to the Recipient) so that the Recipient may perform an activity or activities which the Agency and the Corps determine to be consistent with the management of the Bank Property. The Endowment Holder will disburse any such one-time payment within thirty (30) business days of receipt of the Agency's and the Corps' approval. A one-time payment may fund, but is not necessarily restricted to fund, activities in response to a catastrophic event and/or a contingency. Upon receipt of such one-time payment, the Recipient shall, as soon as practicable, perform whatever activity or activities the one-time payment is intended to fund as directed or approved by the Agency or the Corps. The Recipient and the Endowment Holder hereby acknowledge that any approval by the Agency or the Corps under this Subsection 4 for the Endowment Holder to disburse a one-time payment not contemplated by the Perpetual Management Plan or Endowment Assessment may impair or preclude the viability of the PM Fund as a source of perpetual funding for the Land Management Activities on the Bank Property. The Endowment Holder shall not be liable to the Agency, the Corps, Bank Permittee/Bank Sponsor, Recipient, or to any other entities or persons for any decision by the Agency or the Corps to approve a one-time payment under this Subsection 4 that impairs the viability of the PM Fund as a source of perpetual funding for the Land Management Activities on the Bank Property.

5. *Overages in Payments.* Any portion of an Endowment Payment that remains unspent and unobligated by the Recipient as of the end of the calendar year for which such amount was paid shall be deemed an "overage" for purposes of this subsection. Any overage shall be (a) retained and accounted for by the Recipient; (b) used by the Recipient exclusively for payment of costs of Land Management Activities for the immediately following year; (c) reflected as a deduction from the amount of the

Payment Request submitted by the Recipient for the immediately following year; and (d) deducted from the amount of the Endowment Payment made by the Endowment Holder for such following year.

6. *Agency Assignment of Replacement Recipient.* The Agency and the Corps may (a) pursuant to Section IV.D.2. above, issue a Stop Payment Notice that requires the appointment of a Replacement Recipient, which Replacement Recipient shall be identified by the Agency in consultation with Bank Permittee/Bank Sponsor or Perpetual Steward, if applicable, and approved by the Corps; or (b) at the request of Bank Permittee/Bank Sponsor or Perpetual Steward, as applicable, approve the appointment of a Replacement Recipient proposed by Bank Permittee and approved by the Agency and the Corps in the absence of the issuance of a Stop Payment Notice. Any Replacement Recipient duly appointed through action of the Agency, the Corps, and Bank Permittee/Bank Sponsor or Perpetual Steward, as applicable, shall assume the rights and responsibilities of the "Recipient" hereunder including, but not limited to, the right to receive Endowment Payments and other payments under this Agreement and the obligation to perform the Land Management Activities. In the event the Agency and the Corps appoint or approve the appointment of a Replacement Recipient, written notification of the Replacement Recipient will be provided by the Agency and the Corps to the Endowment Holder, the Bank Permittee/Bank Sponsor, Perpetual Steward, Recipient, the Replacement Recipient, and the Conservation Easement Grantee, if any. The Endowment Holder shall have no obligation to make disbursements from the PM Fund to the Replacement Recipient unless and until: (a) the Replacement Recipient agrees to accept such Assignment and assumes all rights, obligations, title, and interest of the Replacement Recipient; or (b) this Recipient Agreement is terminated and the Replacement Recipient enters into a substitute Recipient Agreement with the Endowment Holder. Under no circumstances will any funds be released to the Corps.

E. Review and Reporting Requirements. The Recipient shall submit to the Endowment Holder, the Corps, and the Agency, an annual funding report ("Annual Funding Report") for each calendar year this Agreement is in effect. Each Annual Funding Report shall be submitted by the Recipient before (insert month and day) or at least thirty (30) days prior to the effective date of termination of this Agreement. The Annual Funding Report shall (1) describe in reasonable detail the Land Management Activities performed by the Recipient during the immediately preceding calendar year or, in the event of termination, the then-current calendar year (in either case, the "Reporting Period"); (2) detail all expenses incurred by or on behalf of the Recipient for Land Management Activities performed during the Reporting Period; (3) describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Perpetual Management Plan and the Endowment Assessment and the Land Management Activities actually performed during the Reporting Period; and (4) describe any discrepancy between the costs of Land Management Activities as assumed in the Endowment Assessment and the costs of Land Management Activities actually performed during the Reporting Period.

The Parties expressly agree and acknowledge that the Endowment Holder is entitled to rely on the accuracy and validity of the Annual Funding Reports submitted by the Recipient and shall have no duty to independently verify the information set forth therein. The Parties further agree and acknowledge that, except as otherwise expressly permitted or required by this Agreement, the Endowment Holder shall have neither the right nor the obligation to reduce, suspend, or otherwise modify Endowment Payments based on the contents of any Annual Funding Report, and that any remedial action under this Agreement or otherwise with respect to Endowment Payments based on the contents of any Annual Funding Report shall be the exclusive right and/or obligation of the Agency and the Corps.

F. Compliance with Laws; Indemnification.

1. In conducting the Land Management Activities and performing its obligations under this Agreement, the Recipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances; and to secure all appropriate and necessary public or private permits, approvals, and consents, including any consents required by the Conservation Easement.

2. The Endowment Holder and Recipient shall indemnify and hold harmless each other and their respective officers, directors, agents, representatives, and employees with respect to any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including, without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with any breach by the indemnifying Party of its obligations under this Agreement (including, in the case of the Recipient, its obligation to perform the Land Management Activities).

3. The terms of this Section IV.F. will survive termination of this Agreement.

V. TERM, TERMINATION, AND TRANSFER

A. This Agreement shall continue in full force and effect unless and until terminated by any Party, which termination shall be effective on the date specified by any party in a written notice delivered to (1) the other party not less than one hundred eighty (180) days prior to the intended date of termination; and (2) the Agency and the Corps not less than one hundred twenty (120) days prior to the intended date of termination. Notwithstanding the immediately preceding sentence, regardless of the date that notice of termination is provided and the passage of the intervening minimum one hundred eighty (180) day notice period, termination is not effective unless and until the Endowment Holder has transferred in an orderly fashion the custody, control, or other power necessary for the investment, management, and administration of all the funds in the PM Fund (other than funds in an amount equal to any fees due and owing to the Endowment Holder or its financial institutions) to an entity identified or approved in writing by the Agency and the Corps.

B. Prior to the effective date of termination of this Agreement, the Endowment Holder shall transfer all funds remaining in the PM Fund, other than fees due and owing to the Endowment Holder or its financial institutions, to an entity approved in writing by the Agency and the Corps, as applicable, to serve as a successor.

C. Within ninety (90) days following final disbursement of the funds in the PM Fund to any successor, the Endowment Holder shall provide to the Recipient, the Corps, and the Agency a final financial activity report on the Account.

VI. CONTACT INFORMATION AND COMMUNICATIONS

A. All approvals, notices, reports, and other communications required or permitted under this agreement shall be in writing and delivered by first-class mail, overnight mail, electronic mail, or electronic PDF format. Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.

B. The individuals named below shall be the representatives of the Endowment Holder, Bank Permitee/Bank Sponsor, Recipient, Agency, and Corps for purposes of this Agreement:

Endowment Holder Primary: Name
Title, Organization
Address
City, State, Zip Code
Phone:
Email:

Bank Permittee/ Bank Sponsor: Name
Title, Organization
Address
City, State, Zip Code
Phone:
Email:

Recipient: Name
Title, Organization
Address
City, State, Zip Code
Phone:
Email:

Agency Lead: Name
Title, Organization
Address
City, State, Zip Code
Phone:

Email:

Corps Lead: Name
Title, Organization
Address:
City, State, Zip Code
Phone:
Email:

D. The Parties agree and acknowledge that any change to their respective Representatives as set forth in Section VI.B. above shall not constitute an amendment to this Agreement and may be effected through written notice to the other Party.

VII. MISCELLANEOUS PROVISIONS

A. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).

B. Except as otherwise provided in this Agreement, this Agreement may be amended only by a written amendment signed by the Parties and approved by the Agency and the Corps. After Bank Permittee or Bank Sponsor fulfills its obligations in accordance with Section VII. A of this Agreement, this Agreement may be amended only by a written amendment signed by Recipient and Endowment Holder and approved by the Agency and the Corps. Counterpart originals, facsimile copies, and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Agreement may not be amended via electronic mail.

C. Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee, or representative of any other Party.

D. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.

E. Nothing contained in this Agreement is intended to unlawfully delegate the Agency's or the Corps' duties or to limit the authority of the Agency or the Corps to fulfill its statutory or regulatory responsibilities.

F. This Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a Party to this Agreement, except that the Parties acknowledge that the Agency and the Corps shall have the rights expressly assigned to them hereunder and, for such purposes, shall be intended third party beneficiaries of this Agreement.

G. The Endowment Holder may provide information about this Agreement and the subject matter hereof to the United States federal government in compliance with the Establishment Act.

H. This Agreement shall be governed by and interpreted in accordance with the laws of the United States and the State of Florida, disregarding principles of conflicts of law. Venue for any action arising out of this Agreement shall be in the _________ County of _______, Florida.

I. Any waiver by either Party of any term or provision of this Agreement shall be given in writing. No waiver shall be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision with respect to any other event or circumstance.

J. The headings used in this Agreement are for convenience only and shall not determine or limit the interpretation, construction, or meaning of this Agreement.

K. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

L. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and may not be amended, except in writing signed by each Party hereto.

M. Each Party to this Agreement warrants to the other that its respective signatory has full right and authority to enter into and consummate this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

ENDOWMENT HOLDER NAME

Signature: ________________________________

Name: __________________________________

Title: _________________________

Date: __________________________

Mailing Address: ________________________

BANK PERMITTEE/BANK SPONSOR NAME

Signature: ________________________________

Name: ________________________________

Title: _______________________

Date: ________________________

Mailing Address: ______________________

RECIPIENT NAME

Signature: ________________________________

Name: __________________________________

Title: _________________________

Date: __________________________

Mailing Address: _______________________

ACKNOWLEDGED AND APPROVED AS TO FORM:

AGENCY

Signature: ________________________________

Name: __________________________________

Title: _________________________

Date: __________________________

Mailing Address: _______________________

U.S. CORPS OF ENGINEERS

Signature: ________________________________

Name: __________________________________

Title: _________________________

Date: __________________________

Mailing Address: _______________________

ATTACHMENT A

The Fund shall adhere to the Asset Allocation Guidelines in Appendix 1.

APPENDIX 1

ASSET ALLOCATION GUIDELINES

	Min (%)	Target (%)	Max (%)
Global Public Equity	**45%**	**60%**	**65%**
U.S. Equity	30%	39%	50%
Non-U.S. Developed Equity	10%	15%	20%
Emerging Markets Equity	0%	6%	15%
Fixed Income & Cash	**35%**	**40%**	**55%**
U.S. Investment Grade Bonds	30%	40%	45%
Non-U.S. Investment Grade Bonds	0%	0%	10%
Total Portfolio		**100%**	

The Endowment Holder will ensure that the Portfolio maintains a prudent level of diversification by asset class, investment strategy, geography, sector, and market capitalization. No individual security shall comprise greater than 5% of the Fund's total assets at the time of purchase. Use of derivatives for hedging or speculative purposes is not permitted.

ATTACHMENT B

Endowment Payment Schedule

CHAPTER 62-342
MITIGATION BANKS

62-342.100 Intent.

(1) The Department recognizes that, in certain instances, adverse impacts of activities regulated under part IV of C~~c~~hapter 373, F.S., can be offset through the utilization of M~~m~~itigation C~~c~~redits from a permitted Mitigation Bank. This rule provides criteria for this mitigation alternative to complement existing mitigation criteria and requirements. This C~~c~~hapter is supplemental to and does not supersede any other criteria and requirements in rules promulgated under part IV of C~~c~~hapter 373, F.S.

(2) The responsibilities for implementing this C~~c~~hapter are described in Operating and Delegation Agreements between the Department of Environmental Protection ("Department") and the water management districts ("Districts"). The Agreements are incorporated by reference in subsection 62-113.100(3), F.A.C. The term "Agency" applies to the Department or a District, as applicable, throughout this C~~c~~hapter.

(3) The Agency intends that Mitigation Banks be used to minimize mitigation uncertainty associated with traditional mitigation practices and provide greater assurance of mitigation success. It is anticipated that the consolidation of multiple mitigation projects into larger contiguous areas will provide greater assurance that the mitigation will yield long-term, sustainable, regional ecological benefits. Mitigation Banks shall be consistent with Agency endorsed watershed management objectives and emphasize R~~r~~estoration and E~~e~~nhancement of degraded ecosystems and the P~~p~~reservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through R~~r~~estoration of ecological communities that were historically present, rather than alteration of landscapes to create wetlands. The establishment and use of Mitigation Banks in or adjacent to areas of national, state, or regional ecological significance is encouraged, provided the area in which the Mitigation Bank is proposed to be located is determined appropriate for a Mitigation Bank and the Mitigation Bank meets all applicable permitting criteria.

(4) ~~Nothing in this chapter shall affect~~ ~~t~~The mitigation requirements set forth in any Mitigation Bank agreement or any permit issued under the laws and rules in effect at the time of permit issuance shall continue to govern the permit ~~chapter 84-79, Laws of Florida, or part IV of Cchapter 373, F.S., prior to February 2, 1994~~. However, ~~I~~if a permittee wishes to substantially modify a Mitigation Bank permit ~~previously established by agreement or permit~~, the permittee must comply with the laws and rules governing mitigation banks in effect at the time of modification. ~~this chapter.~~ A permittee with a permit issued under prior mitigation banking rules may elect to be governed by rules adopted after issuance of the permit by submitting a request for modification for this purpose. Additionally, some Mitigation Banks may be subject to the version of this section existing prior to July 1, 1996, under S~~s~~ections 373.4136(9) and (10), F.S., and will not be affected by amendments adopted after that date. This C~~c~~hapter does not prohibit an applicant from proposing project-specific, pre-construction on-site or off-site mitigation, without establishing a Mitigation Bank.

Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136 FS. History–New 2-2-94, Formerly 17-342.100, Amended 5-21-01, 2-19-15,________.

62-342.200 Definitions.

Terms used in this chapter shall have the meanings specified below.

(1) "Administrative Costs" means the estimated annual advisory fees and any other costs related to managing the financial responsibility mechanism.

(2)~~(1)~~ "Banker" means an entity that financially funds, creates, operates, manages, or maintains a Mitigation Bank pursuant to a Mitigation Bank Permit.

(3) "Bank Construction Phase" means the period necessary to implement the permitted work including, but not limited to,

implementing site security measures, restoring or enhancing hydrology, restoring or enhancing land surface or drainage, installing plants, and conducting initial earth moving and land management activities (such as well or ditch plugging, restoration burning, chopping, thinning, or initial treatment or removal of invasive exotic or nuisance species). This phase begins with implementation of any permit required activities and ends with the Agency's acceptance of the As-Built Certification, if required, or a statement of completion submitted by the Qualified Mitigation Supervisor.

(4) "Bank Operation Phase" or "Bank Operational Phase" means the phase following the Bank Construction Phase when permitted activities are conducted to achieve the ecological conditions described by the Mitigation Bank Permit success criteria and monitoring is performed and reported. This phase ends with an Agency determination that the defined success criteria and targets set forth in the Mitigation Bank Permit have been met and all Mitigation Credits have been released.

(5) "Bank Perpetual Phase" means the phase following full implementation of construction and operation activities prescribed in the Mitigation Bank Permit when the Mitigation Bank has achieved Success and all Mitigation Credits have been released. Perpetual land management activities, as outlined in the permitted mitigation plan, shall be implemented in accordance with the Mitigation Bank Permit. The entity responsible for this phase may be the Banker or the permit may be transferred to a Perpetual Management Steward.

(6) "Creation" means, for purposes of this Chapter, the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Creation results in a gain in aquatic resource area and functions.

(7)~~(2)~~ "Department" means the Department of Environmental Protection.

(8)~~(3)~~ "District" means a water management district as established in C~~c~~hapter 373, F.S.

(9)~~(4)~~ "Ecological Value" means the value of functions performed by uplands, wetlands and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. These functions include, but are not limited to: providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhance fish, wildlife and listed species utilization.

(10) "Endowment Holder" means a charitable nonprofit corporation that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, under the Florida Not For Profit Corporation Act, Chapter 617, Florida Statutes, and under the Florida Uniform Prudent Management of Institutional Funds Act, Chapter 617, Florida Statutes, and that has accepted funds from the Banker to be held in trust for the benefit of the bank property and its perpetual management, maintenance, and monitoring. The Endowment Holder must demonstrate to the Agency that the organization has the necessary fiduciary experience and qualifications to manage the endowment funds for perpetual management activities. The Endowment Holder must have a diversified investment portfolio governed by an investment policy statement for such purposes in excess of $125 million.

(11) "Enhancement" means, for purposes of this Chapter, a type of mitigation that involves the manipulation of the physical, chemical, or biological characteristics of a site with the goal of improving natural or historic functions of a degraded resource. Enhancement results in a gain in aquatic resource functions, but does not result in a gain in aquatic resource area.

(12) "Funded Ratio" means the portfolio market value (total account value) divided by the total funding requirement as determined in paragraph 62-342.700(14)(c), F.A.C.

(13) "Investment Manager" means an entity or individual that is a Registered Investment Adviser (RIA) with the U.S. Securities and Exchange Commission (SEC) or state securities regulatory agency and whose operations are regulated and examined by a federal agency or an agency of the State of Florida. The Banker shall provide documentation evidencing proof of such regulation and examination to the Agency.

(14) "Long-Term Expected Annual Return" means long-term estimates using reasonable capital market assumptions for a 60% global equity/40% aggregate bond index, with geometric compounded returns.

(15)~~(8)~~ "Mitigation Bank" or "Bank" means a project permitted under S~~s~~ection 373.4136, F.S., undertaken to provide for the withdrawal of M~~m~~itigation C~~c~~redits to offset adverse impacts authorized by a permit under part IV of C~~c~~hapter 373, F.S.

(16)~~(7)~~ "Mitigation Bank Permit" means a permit issued to a B~~b~~anker to construct, operate, manage, and maintain a Mitigation Bank.

(17)~~(5)~~ "Mitigation Credit" means a standard unit of measure which represents the increase in E~~e~~cological V~~v~~alue resulting from R~~r~~estoration, E~~e~~nhancement, P~~p~~reservation, or C~~c~~reation activities authorized by a Mitigation Bank Permit.

(18)~~(6)~~ "Mitigation Service Area" means the geographic area within which Mitigation Credits from a Mitigation Bank may be used to offset adverse impacts of activities regulated under part IV of C~~c~~hapter 373, F.S.

(19) "Perpetual Management Steward" means a charitable non-profit corporation that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, or is a state agency, a political subdivision of the state, or local governmental entity. The entity must have accepted responsibility from the Banker to manage the Mitigation Bank property to ensure the continued ecological success throughout the Bank Perpetual Phase, but is not responsible for the investment performance of the financial assurance mechanism. This entity must demonstrate to the Agency that it has the experience and qualifications necessary to successfully manage the type of mitigation project(s) completed within the Mitigation Bank Permit.

(20) "Preservation" means, for purposes of this Chapter, a type of mitigation that does not involve the manipulation of the physical, chemical, or biological characteristics of the site, but which retains the current functions and continued maturation of a site in a protected condition. Preservation does not result in the gain of aquatic resource area or functions.

(21) "Qualified Mitigation Supervisor" or "QMS" means the person or persons with the obligation and authority to implement the Mitigation Bank Permit conditions and serve as the principal contact. This person(s) must demonstrate to the Agency that they have the experience and qualifications necessary to successfully complete the type of mitigation project(s) proposed within the Mitigation Bank Permit. This person(s) represents the Mitigation Bank and oversees all aspects of the ecological Restoration, Enhancement, Preservation, or Creation activities including, but not limited to, project construction and operation, adaptive management, and monitoring of all permit conditions and requirements; until such time as the bank is transferred to the Perpetual Management Steward, if applicable. The QMS shall not be responsible for compliance with the permit conditions unless the QMS is also the permittee.

(22)~~(9)~~ "Regional Watershed" means a watershed as delineated in the following maps. (Figures 1, 2, 3, 4, and 5.)

Figure 1: Northwest Florida Water Management District – "Regional Watersheds of the NWFWMD for Mitigation Banks, 7 Watersheds" (February 19, 2015), which is incorporated by reference herein.

Figure 2: Suwannee River Water Management District – "Watersheds of the SRWMD Mitigation Banks, 7 Watersheds" (February 19, 2015), which is incorporated by reference herein.

Figure 3: St. Johns River Water Management District – "Regional Watersheds for Mitigation Banking" (October 1, 2013), Appendix A, Figure 10.2.8-2, Applicants Handbook Volume II, which is incorporated by reference in subparagraph 62-330.010(4)(b)3., F.A.C., (June 28, 2024) (insert link) ~~[October 1, 2013] (http://www.flrules.org/Gateway/reference.asp?No=Ref-03181)~~, and in subsections 40C-4.091(1) (June 28, 2024) ~~[October 1, 2013] (https://www.flrules.org/Gateway/reference.asp?No=Ref-02524), 40C-42.091(1) [October 1, 2013] (https://www.flrules.org/Gateway/reference.asp?No=Ref-02525),~~ and 40C-44.091(1), F.A.C., (June 1, 2018) ~~[October 1, 2013] (https://www.flrules.org/Gateway/reference.asp?No=Ref-02526)~~.

Figure 4: Southwest Florida Water Management District – "Drainage Basins and Watersheds within the Southwest Florida Water Management District" (October 1, 2013), Figure 2.5 ~~2.6~~, Applicants Handbook Volume II, is incorporated by reference in subparagraph 62-330.010(4)(b)4., F.A.C., (October 31, 2025) (insert link) ~~[October 1, 2013] (http://www.flrules.org/Gateway/reference.asp?No=Ref-03176)~~, and in rule 40D-1.660 ~~40D-4.091~~, F.A.C., (October 31, 2025) ~~[October 1, 2013] (https://www.flrules.org/Gateway/reference.asp?No=Ref-02527)~~.

Figure 5: South Florida Water Management District – "Drainage Basins within the South Florida Water Management District" (October 1, 2013), Figure 10.2.8-5 of the Applicant's Handbook Volume I, which is incorporated by reference in paragraph 62-330.010(4)(a), F.A.C. ~~Appendix D: "SFWMD Basins for Cumulative Impact Assessments & Mitigation Bank Service Areas" (October 1, 2013), Applicants Handbook Volume II, including Appendices A through D, is incorporated by reference in subparagraph 62-330.010(4)(b)5., F.A.C., [October 1, 2013] (https://www.flrules.org/Gateway/reference.asp?No=Ref-02528), and in paragraph 40E-4.091(1)(a), F.A.C., [October 1, 2013] (https://www.flrules.org/Gateway/reference.asp?No=Ref-02529).~~

A copy of the incorporated material identified above also may be obtained from the Agency Internet site or by contacting staff in an Agency office identified in the "References and Design Aids, Volume I," available at https://floridadep.gov/water/water/content/water-resource-management-rules#ERP ~~http://www.dep.state.fl.us/water/rulesprog.htm#erp~~.

Figure 1: Northwest Florida Water Management District – "Regional Watersheds of the NWFWMD for Mitigation Banks, 7 Watersheds" (February 19, 2015)

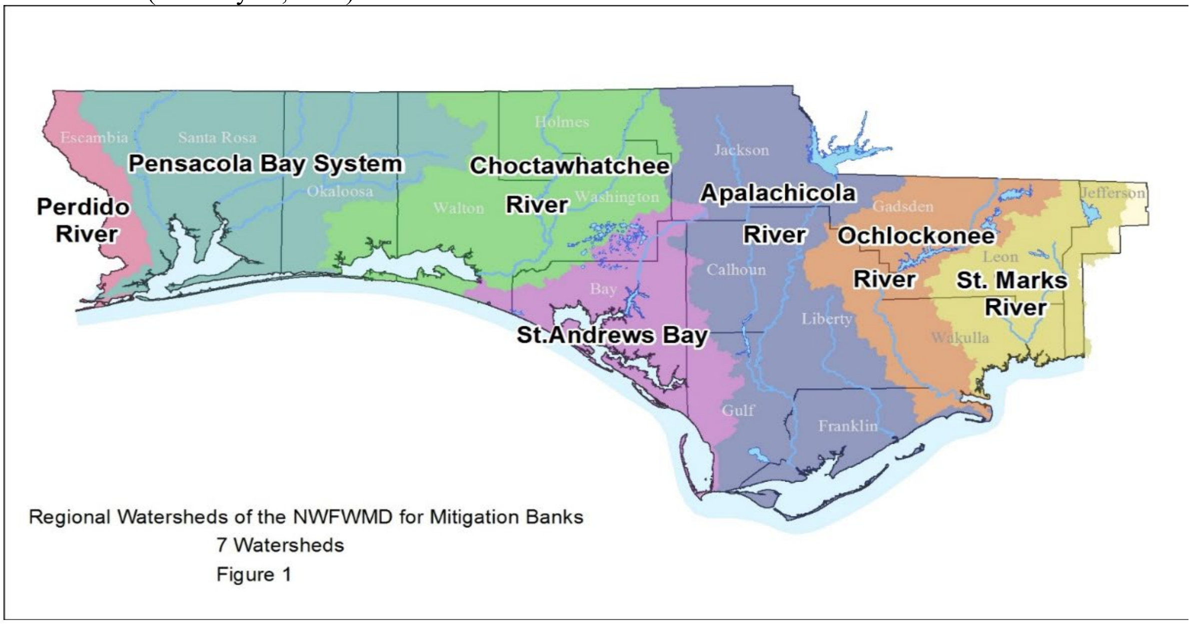


Figure 2: Suwannee River Water Management District – "Watersheds of the SRWMD Mitigation Banks, 7 Watersheds" (February 19, 2015)

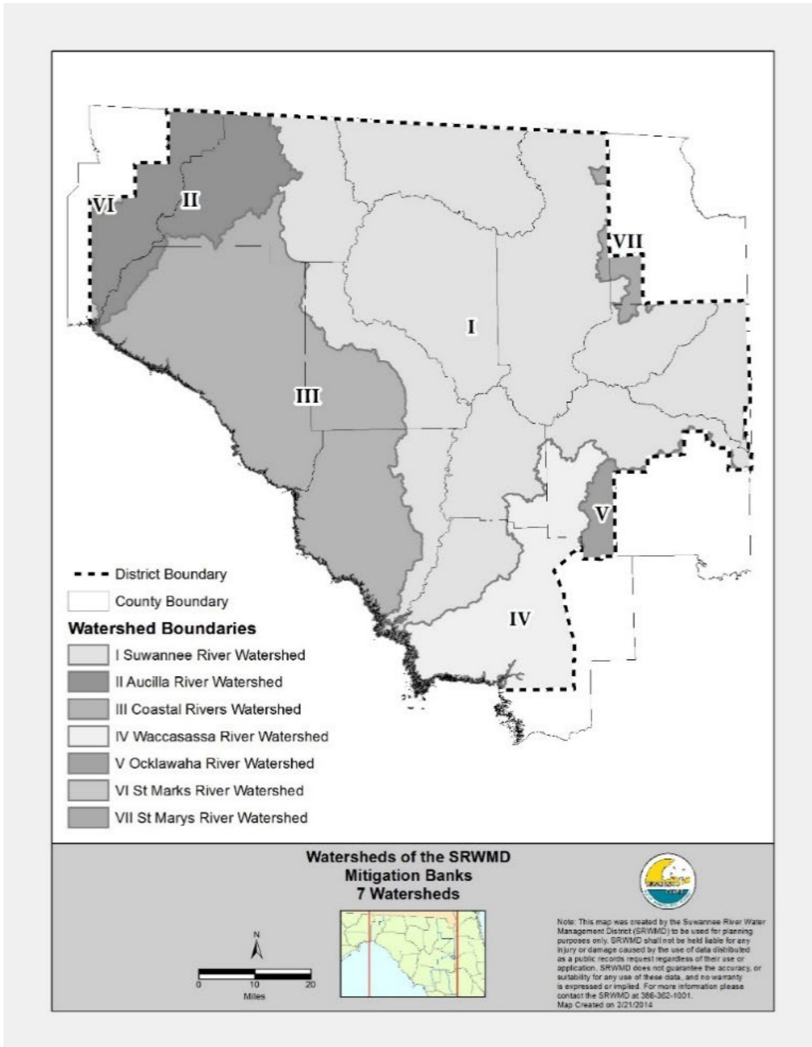


Figure 3: St. Johns River Water Management District – “Regional Watersheds for Mitigation Banking” (October 1, 2013)

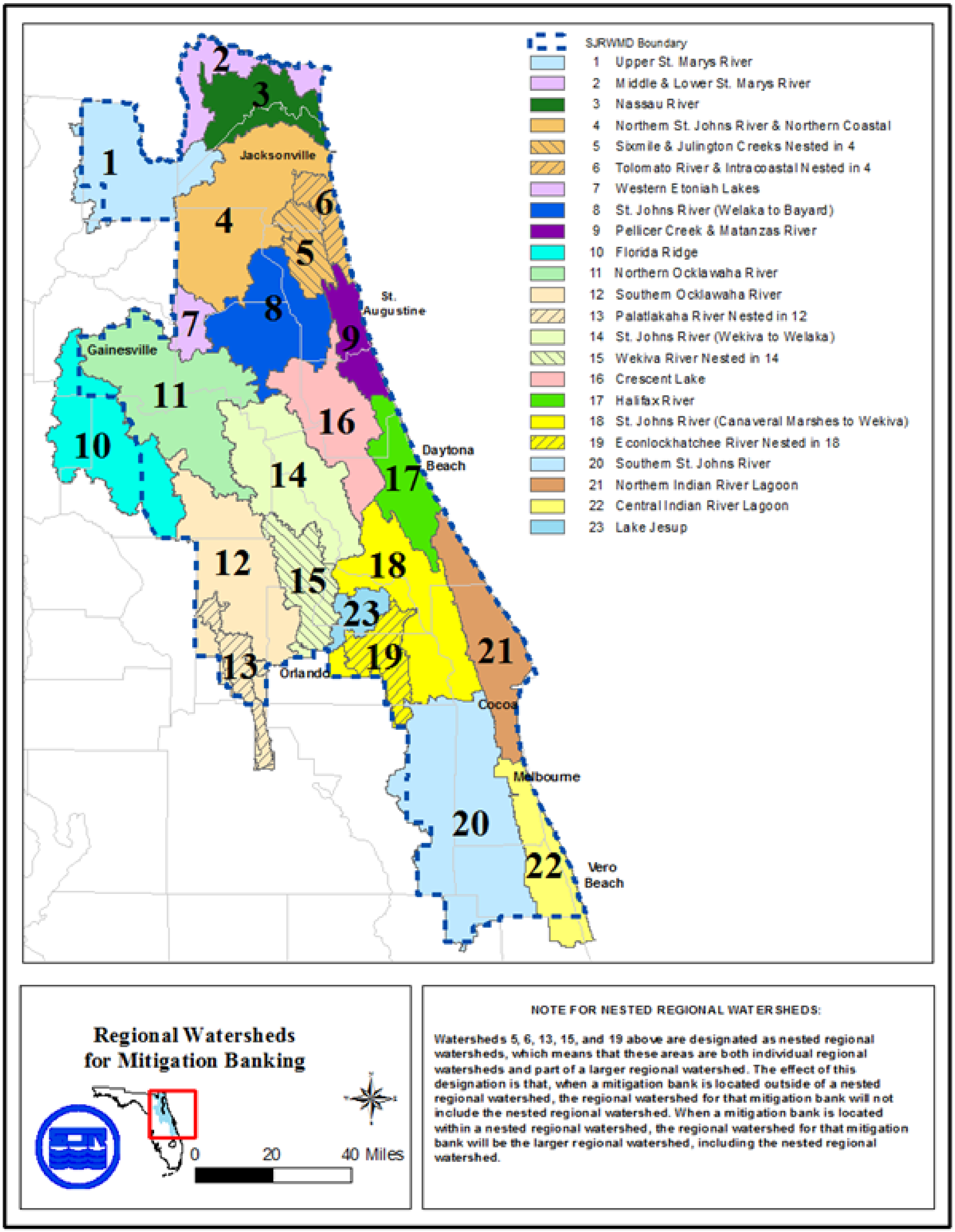


Figure 4: Southwest Florida Water Management District – "Drainage Basins and Watersheds within the Southwest Florida Water Management District" (October 1, 2013)

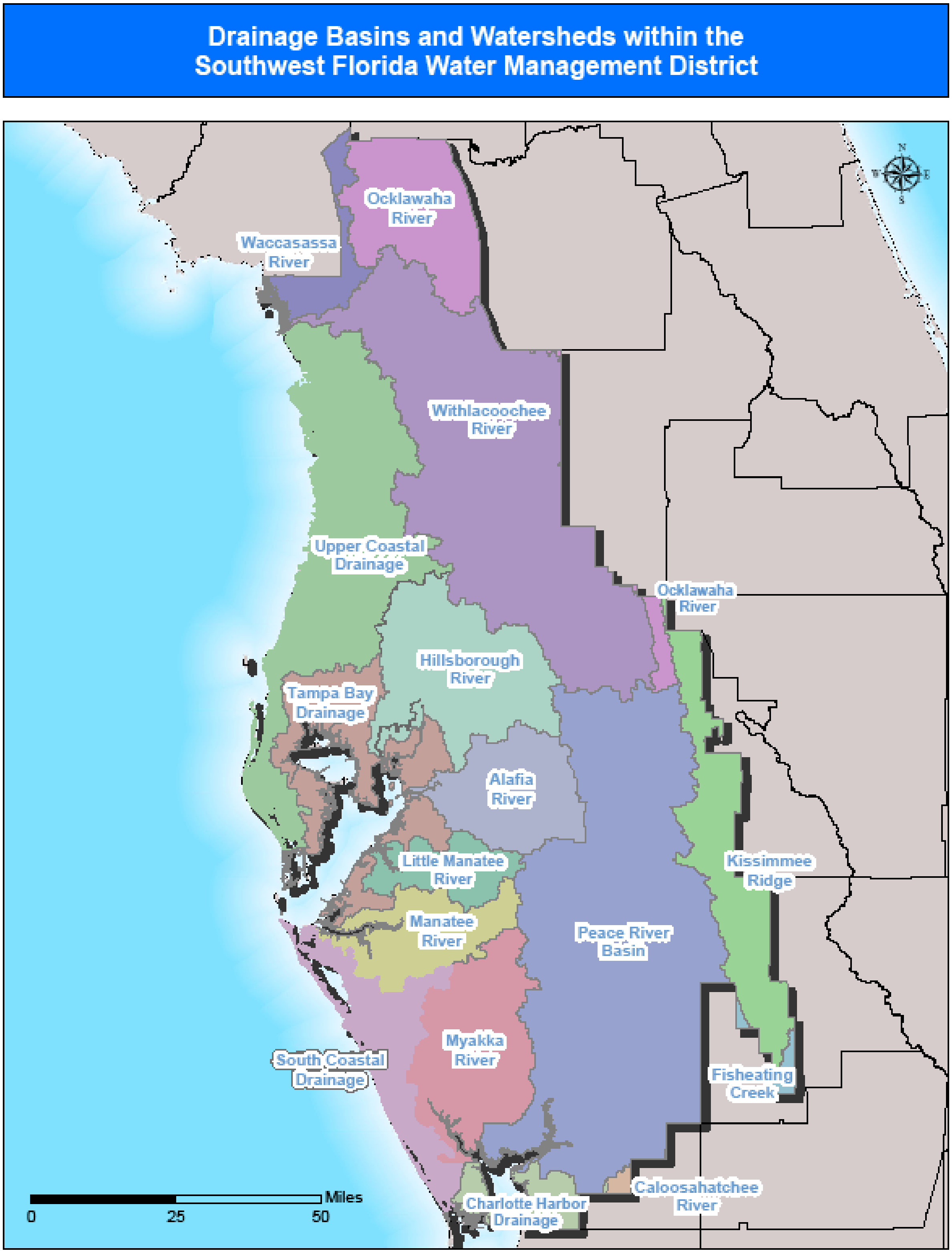
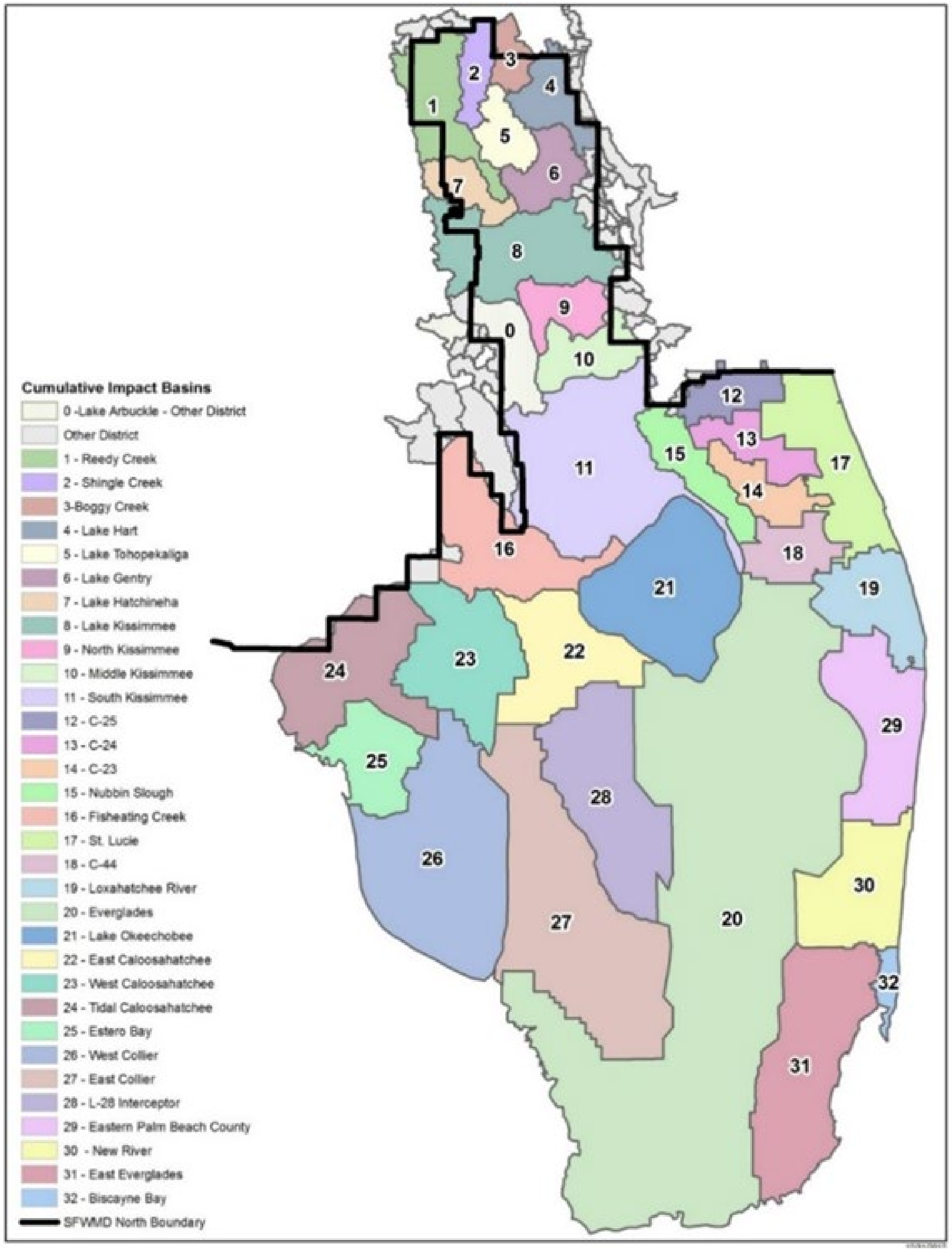


Figure 5: South Florida Water Management District – “Drainage Basins within the South Florida Water Management District” ~~Appendix D: “SFWMD Basins for Cumulative Impact Assessments & Mitigation Bank Service Areas”~~ (October 1, 2013)



(23) “Release” means a permit modification by the Agency wherein Mitigation Credits are awarded to the Mitigation Bank ledger and are made available for withdrawal.

(24) “Reservation Letter” means a letter from a Banker to the applicant of a pending environmental resource permit, consent order, or similar, wherein the Banker commits to reserve a specified amount and type of Mitigation Credits for a specified time. A Reservation Letter may only be issued for Mitigation Credits which have been released to the Mitigation Bank ledger and are available for withdrawal. A proof of purchase or e-Permit submittal may be an acceptable form of a Reservation Letter provided that the above information is included.

(25) “Restoration” means, for purposes of this Chapter, a type of mitigation that involves the manipulation of the physical,

chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded aquatic resource. Restoration results in a gain in aquatic resource functions but does not result in a gain in aquatic resource area.

(26)~~(10)~~ "Success" means when a Mitigation Bank achieves the parameters of ~~meets~~ the success criteria provided in the Mitigation Bank Permit and in S~~s~~ection 10.3.6 of Applicant's Handbook, Volume I, incorporated by reference in R~~r~~ule 62-330.010, F.A.C.

(27) "Withdrawal" means a permit modification approved by the Agency wherein released Mitigation Credits are deducted from the Agency ledger to offset adverse impacts.

Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136 FS. History–New 2-2-94, Formerly 17-342.200, Amended 12-12-94, 8-21-00, 5-21-01, 2-19-15,_________.

62-342.470 Establishment of Mitigation Credits.

(1) Based upon the information submitted by the applicant, and an assessment of the proposed Mitigation Bank under the criteria of S~~s~~ection 373.4136, F.S., the Agency will assign a number of potential Mitigation Credits to the proposed Mitigation Bank, or phases thereof.

(2) Mitigation Credits assigned for E~~e~~nhancement, R~~r~~estoration, P~~p~~reservation, or Creation of wetlands or uplands will be based on the extent of change ~~improvement~~ in E~~e~~cological V~~v~~alue resulting from these activities as determined by Chapter 62-345, F.A.C. ~~using a functional assessment method relative to that obtained by successfully creating one acre of wetland.~~ In determining the degree of improvement in E~~e~~cological V~~v~~alue, the following factors will be considered. However, no credits shall be released until the requirements of R~~r~~ules 62-342.650 and 62-342.700, F.A.C., are met.

(a) The extent to which target hydrologic regimes can be achieved and maintained.

(b) The extent to which management activities promote natural ecological conditions, such as natural fire patterns.

(c) The proximity of the Mitigation Bank to areas with regionally significant ecological resources or habitats, such as national or state parks, Outstanding National Resource Waters and associated watersheds, Outstanding Florida Waters and associated watersheds, and lands acquired or to be acquired through governmental or non-profit land acquisition programs for environmental conservation; and the extent to which the Mitigation Bank establishes corridors for fish, wildlife, or listed species to those resources or habitats.

(d) The quality and quantity of wetland or upland R~~r~~estoration, E~~e~~nhancement, P~~p~~reservation, or C~~c~~reation.

(e) The ecological and hydrological relationship between wetlands and uplands in the Mitigation Bank.

(f) The extent to which the Mitigation Bank provides habitat for fish and wildlife, especially habitat for species listed as threatened, endangered, or of special concern, or provides habitats which are unique for that M~~m~~itigation S~~s~~ervice A~~a~~rea.

(g) The extent to which the lands that are to be preserved are already protected by existing state, local, or federal regulations or land use restrictions.

(h) The extent that lands to be preserved would be adversely affected if they were not preserved.

(i) Any special designation or classification of the affected waters and lands.

(3) Some Mitigation Credits may be released for use prior to meeting all of the ~~performance~~ success criteria specified in the Mitigation Bank Permit. The complete release of all M~~m~~itigation C~~c~~redits awarded will only occur after the B~~b~~ank meets all of the success criteria specified in the permit. The number of credits ~~and schedule for release~~ shall be determined based upon the performance criteria for the Mitigation Bank~~,~~ and the success criteria for each mitigation activity~~,~~. The schedule for release shall adhere to ~~and a consideration of the factors~~ as ~~listed in~~ S~~s~~ection 373.4136(5), F.S. However, no credits shall be released until the requirements of R~~r~~ules 62-342.650 and 62.342.700, F.A.C., are met. Additionally, no credits awarded for freshwater C~~c~~reation shall be released until the success criteria established for initial construction activities included in the Mitigation Bank Permit are met.

(4) If at any time the B~~b~~anker is not in material compliance with the terms of the Mitigation Bank Permit, no Mitigation Credits shall be released to the ledger, and no previously released Mitigation Credits may be withdrawn from the ledger. Mitigation Credits shall again be available for withdrawal if the B~~b~~anker comes back into compliance.

(5) The Mitigation Bank Permit shall contain a ledger listing the number and type of Mitigation Credits in the Mitigation Bank. The ledger will provide the potential maximum number and type of Mitigation Credits which would be available for withdrawal when the Mitigation Bank meets all of the performance and success criteria in the permit.

(6) Mitigation Credits that have been released may be used to offset adverse impacts from an activity regulated under part IV, C~~c~~hapter 373, F.S. Mitigation C~~c~~redits may be used in whole or in part. However, Mitigation Credits in increments of less than a

hundredth of one credit shall not be used.

~~(7)~~ The Agency shall maintain a ledger of the Mitigation Credits available in each Mitigation Bank. Mitigation Credits shall be withdrawn as a minor modification of the Mitigation Bank Permit. To use Mitigation Credits, the impact permit applicant must submit to the agency permitting the impact, a Reservation Letter ~~documentation~~ from the B~~b~~anker demonstrating that Mitigation Credits have been reserved, sold, or transferred to the impact permit applicant~~, and that the banker has requested that the Mitigation Credits be withdrawn from the Mitigation Bank~~. If the agency permitting the impact determines that use of the Mitigation Credits proposed by the impact permit applicant is appropriate to offset the adverse impacts, the agency permitting the impact ~~it~~ shall require the ~~notify the Agency. Upon receipt of this notice, the Agency shall determine if a~~ sufficient number and type of Mitigation Credits ~~are available, withdraw the Mitigation Credits as a minor modification of the Mitigation Bank Permit, and notify the agency permitting the impact and the banker by letter of the withdrawal of the Mitigation Credits and the remaining balance of Mitigation Credits.~~ be withdrawn as a condition of the impact permit. Within 60 days of receiving a copy of the impact permit, or a request from the impact permittee, the Banker shall submit a minor modification request to have the Mitigation Credits withdrawn from the official Agency Bank ledger, provided the credits have been fully purchased.

(8) When the Department or a District is the B~~b~~anker, each Agency shall maintain its own ledger. The District or Department shall annually submit a report of the Mitigation Credits sold, transferred, or used from its Mitigation Bank to the permitting Agency.

Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136, 373.414, FS. History–New 2-2-94, Formerly 17-342.470, Amended 5-21-01, 2-19-15,___________.

62-342.600 Mitigation Service Area.

(1) A Mitigation Service Area will be established for each Mitigation Bank in the Mitigation Bank Permit under the criteria of S~~s~~ection 373.4136(6), F.S. Except as provided herein, Mitigation Credits may only be withdrawn to offset adverse impacts in the Mitigation Service Area. The boundaries of the Mitigation Service Area shall depend upon the geographic area where the Mitigation Bank could reasonably be expected to offset adverse impacts.

(2) A Mitigation Service Area may be larger than the R~~r~~egional W~~w~~atershed if the Mitigation Bank provides exceptional ecological value such that adverse impacts to wetlands outside the R~~r~~egional W~~w~~atershed could reasonably be expected to be adequately offset by the Mitigation Bank because of local ecological or hydrological conditions. A Mitigation Service Area may be smaller than a R~~r~~egional W~~w~~atershed, if adverse impacts throughout the R~~r~~egional W~~w~~atershed cannot reasonably be expected to be offset by the Mitigation Bank because of local ecological or hydrological conditions.

(3) Mitigation Service Areas may overlap and Mitigation Service Areas for two or more Mitigation Banks may be approved for a R~~r~~egional W~~w~~atershed.

~~(4) If the requirements in rule 62-342.300, F.A.C., are met, the following projects or activities shall be eligible to use a Mitigation Bank, notwithstanding the fact that they are not completely located within the Mitigation Service Area:~~

~~(a) Projects with adverse impacts partially located within the Mitigation Service Area.~~

~~(b) Linear projects, such as roadways, transmission lines, distribution lines, pipelines, or railways.~~

~~(c) Projects with total adverse impacts of less than one half acre in size.~~

(4)~~(5)~~ When Mitigation Credits are applied to offset adverse impacts within the same R~~r~~egional W~~w~~atershed as the Mitigation Bank, the Mitigation Credit requirement shall be the same as that specified for mitigation on the project site.

(5)~~(6)~~ When Mitigation Credits are applied to offset adverse impacts outside the R~~r~~egional W~~w~~atershed, the Mitigation Credit requirement shall be assessed in accordance with Section 373.4136(6) F.S. ~~higher than that specified for mitigation on the project site if necessary to adequately offset the adverse impacts of the project, except for linear projects, as referenced in paragraph (4)(b), above, when the impact being offset is within the Mitigation Service Area of the Mitigation Bank to be used.~~

Rulemaking Authority 373.4136(11) FS. Law Implemented 373.4135, 373.4136 FS. History–New 2-2-94, Formerly 17-342.600, Amended 12-12-94, 5-21-01,__________.

62-342.650 Perpetual Protection of ~~Land Use Restrictions on~~ Mitigation Banks.

(1) Before Mitigation Credits may be released to ~~used from~~ a Mitigation Bank Ledger ~~or any phase of a Mitigation Bank~~, the B~~b~~anker shall ~~either:~~

~~(a) Cause a fee interest to be conveyed to the Board of Trustees of the Internal Improvement Trust Fund (“Board of Trustees”);~~

~~or~~

~~(b)~~ c~~C~~ause a conservation easement to be conveyed to both the Department and the District. The grantor of a conservation easement may convey a conservation easement to additional grantees, but such conveyance shall be subordinate to the conservation easement granted to the Department and the District. Mitigation Banks on federal, state, or water management district owned land shall be encumbered in perpetuity by conservation easements, or other mechanisms shall be employed to ensure protection ~~preservation~~ according to the Mitigation Bank Permit.

~~(2) If the Mitigation Bank is located within an area identified in an Agency acquisition plan, and the Agency determines that the ecological value of the bank can be increased by incorporating the bank into the Agency's land management programs, the Agency may award additional Mitigation Credits if the fee interest in the bank is conveyed to the Agency as opposed to a conservation easement.~~

(2)~~(3)~~ All conservation easements shall be granted in perpetuity without encumbrances, unless such encumbrances do not adversely affect the ecological viability of the Mitigation Bank. All conservation easements shall be of a form and content sufficient to ensure protection ~~preservation~~ of the Mitigation Bank according to the permit, and shall, at a minimum, meet requirements and restrictions of S~~s~~ection 704.06, F.S., except as provided in subsection 62-342.650(7) ~~62-342.650(9)~~, F.A.C. The conservation easement shall also provide that the B~~b~~anker shall have access to the property and the authority to perform all acts necessary to ensure compliance with the Mitigation Bank Permit (unless the B~~b~~anker is the fee owner of the property), and that the Agency shall have access and the authority to perform these acts if the B~~b~~anker fails to do so.

~~(4) All real property conveyances of the fee interest shall be in fee simple and by statutory warranty deed, without encumbrances that adversely affect the integrity of the Bbank, and are acceptable to the Board of Trustees. The Board of Trustees will accept a quit claim deed to aid in clearing minor title defects or otherwise resolve a boundary question in the Mitigation Bank.~~

(3)~~(5)~~ As part of providing reasonable assurance that the Mitigation Bank site will be protected ~~preserved~~ in perpetuity, the grantor of the ~~property or~~ conservation easement shall provide the following unless the Agency determines during the permit review process such items are not necessary to ensure protection ~~preservation~~ of the Mitigation Bank according to the permit:

(a) A boundary survey of the real property interest being conveyed. The survey must be certified, by a land surveyor and mapper, registered in the State of Florida, to meet the requirements of the Agency and the minimum technical standards set forth by the Florida Board of Professional Surveyors and Mappers in R~~r~~ules 5J-17.050 through 5J-17.052, F.A.C., under S~~s~~ection 472.027, F.S.

(b) A certified appraisal or other equivalent documentation demonstrating the market value of the property or interest to be conveyed to determine the appropriate amount of title insurance.

(c) A marketable title commitment issued to the Agency as beneficiary in an amount at least equal to the fair market value, as established in paragraph 62-342.650(3)(b) ~~62-342.650(5)(b)~~, F.A.C., of the interest being conveyed. An owner's title insurance policy (ALTA Form B) naming the Agency as beneficiary shall be issued to the Agency within the time frames specified by the permit. The coverage, form, and exceptions of the title insurance policy shall ensure that the Mitigation Bank will be protected ~~preserved~~ according to the Mitigation Bank Permit.

(d) A current Phase I environmental site assessment ~~audit~~ identifying any environmental problems which may affect the liability of the Agency ~~or Board of Trustees~~ and any additional site assessments ~~audits~~ as are necessary to ensure that the Agency ~~or the Board of Trustees~~ is not subject to liability under federal or state laws relating to the treatment or disposal of hazardous substances or ownership of land upon which hazardous substances are located, or to ensure that there are no ~~not~~ hazardous substances present on the property which would adversely affect construction, operation ~~implementation~~, and perpetual management of the Mitigation Bank.

(4)~~(6)~~ The Agency shall require additional documentation or actions from the grantor of the conservation easement ~~or fee interest~~ if ~~such additional documentation or actions are~~ necessary to ensure that the Mitigation Bank will be protected in accordance with ~~preserved according to~~ the Mitigation Bank Permit.

(5)~~(7)~~ The B~~b~~anker shall pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance, including the cost of recording the ~~deed or~~ conservation easement and any other recordable instruments required by the Agency ~~or Board of Trustees~~, unless prohibited or exempt by law, as a condition of the receipt of the conveyance.

(6)~~(8)~~ All real estate taxes and assessments which are or which may become a lien against the property shall be satisfied of record by the B~~b~~anker before recording the conservation easement. If necessary, the B~~b~~anker shall, in accordance with S~~s~~ection 196.295, F.S., place funds in escrow with the county tax collector. The ~~mitigation~~ B~~b~~anker shall also provide the Agency with annual documentation demonstrating that such taxes and assessments have been paid.

(7)~~(9)~~ As a condition of receipt of the conveyance, the B~~b~~anker shall remove all abandoned personal property, solid waste, or hazardous substances from the property that: reduces the proposed E~~e~~cological V~~v~~alue of the property; will adversely affect the construction, operation ~~implementation,~~ or management of the B~~b~~ank; or will adversely affect the construction, alteration, operation, maintenance, abandonment, or removal of any surface water management system to be constructed in the B~~b~~ank~~; or poses a risk of liability to the Board of Trustees or the Agency~~.

(8)~~(10)~~ The B~~b~~anker shall record the conservation easement ~~or property deed~~ required in the Mitigation Bank Permit. The B~~b~~anker shall submit to the Agency the original recorded conservation easement ~~or property deed~~ as soon as such document is returned from the public records office.

Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136, 373.41365, 373.414, 403.0877, FS. History–New 2-2-94, Formerly 17-342.650, Amended 12-12-94, 5-21-01, 2-19-15,_________.

62-342.700 Financial Responsibility.

(1) To provide reasonable assurances that the proposed Mitigation Bank will meet the requirements of S~~s~~ection 373.4136, F.S., this R~~r~~ule, and the associated permit conditions, non-governmental B~~b~~ankers shall provide proof of financial responsibility for: (a) the Bank C~~c~~onstruction Phase and Bank Operational Phase ~~implementation of the bank~~, and (b) the Bank P~~p~~erpetual ~~management~~ Phase ~~of the bank~~, as required in this S~~s~~ection. Governmental entities shall provide proof of financial responsibility under subsection 62-342.700(16) ~~62-342.700(15)~~, F.A.C. The amount of financial responsibility provided in the mechanisms required in this R~~r~~ule shall be based on the cost estimates determined under subsection 62-342.700(14) ~~62-342.700(13)~~, F.A.C.

(2) Submitting Financial Responsibility Documentation. The applicant shall provide draft documentation of the cost estimate and required financial responsibility mechanisms described in subsections 62-342.700(5) through (13) ~~(11) and 62-342.700(13)~~, F.A.C., with the permit application, and shall submit to the Agency the executed or finalized documentation within the time frames specified in the permit. The provisions of this subsection ~~section~~ shall also apply to any modifications to the Mitigation Bank Permit.

(3) General Terms for Financial Responsibility Mechanisms. In addition to the specific provisions regarding financial responsibility mechanisms for construction and operation ~~implementation~~ in subsection 62-342.700(4), F.A.C., and perpetual management in subsection 62-342.700(13) ~~62-342.700(12)~~, F.A.C., the Banker shall comply with the following terms ~~shall be complied with~~:

(a) The financial responsibility mechanisms shall be payable at the direction of the Agency to its designee or to a standby trust or standby escrow. The financial responsibility mechanism shall be retained by the Agency if it is of a type which is retained by the beneficiary according to industry best practices ~~standards~~.

(b) Demonstration of financial responsibility shall be continuous until complete satisfaction of the applicable permit conditions and approved release of financial responsibility by the Agency.

(c) Collectively, the financial responsibility mechanisms must guarantee that the B~~b~~anker will perform all of its obligations under the permit. Within 90 days after receipt by both the B~~b~~anker and the Agency of a notice of cancellation or termination of a financial responsibility mechanism, the B~~b~~anker shall establish a financial responsibility mechanism that meets the criteria of this R~~r~~ule, subject to the Agency's written approval. Failure to establish a replacement financial responsibility mechanism within the 90-day period will itself be grounds for the Agency to draw on the existing financial responsibility mechanism prior to its cancellation or termination.

(d) A B~~b~~anker may satisfy the requirements of this subsection ~~section~~ by establishing more than one acceptable financial responsibility mechanism per Mitigation Bank. Whenever more than one mechanism is used, the B~~b~~anker shall identify the specific financial responsibility mechanism for each individual activity on the cost estimate as required under subsection 62-342.700(14) ~~62-342.700(13)~~, F.A.C.

(e) A B~~b~~anker shall not ~~may~~ use a financial responsibility mechanism ~~allowed under this section~~ for more than one Mitigation Bank. ~~The amount of funds available through the mechanism must be no less than the sum of funds that would be required for separate mechanisms for each Mitigation Bank.~~

(f) A B~~b~~anker or Perpetual Management Steward must notify the Agency by certified mail within 10 days after the commencement of a voluntary or involuntary proceeding:

1. To dissolve the B~~b~~anker or Perpetual Management Steward;
2. To place the B~~b~~anker or Perpetual Management Steward in receivership;

3. For entry of an order for relief against the B~~b~~anker or Perpetual Management Steward under Title 11 of the United States Code; or

4. A general assignment of its assets for the benefit of creditors under C~~c~~hapter 727, F.S.

(g) A B~~b~~anker will be without the required financial assurance in the event of the suspension or revocation of the authority of any trustee to act as trustee, or in the event of a bankruptcy or receivership of the issuing institution of a financial responsibility mechanism, or the revocation of the authority of such institution to issue such instruments. The B~~b~~anker must notify the Agency within 10 days~~,~~ and establish other financial assurance within 60 days after such an event.

(4) Financial Responsibility for Bank Construction Phase and Operation Phase ~~Implementation~~.

(a) No financial responsibility shall be required where the construction and operation ~~implementation~~ of the Mitigation Bank, or a phase thereof, is completed and successful, as determined by the Agency pursuant to the final success criteria in the Permit, prior to the release ~~withdrawal~~ of any Mitigation C~~c~~redits.

(b) Financial responsibility for the construction and operation ~~implementation~~ activities of the Mitigation Bank, or each phase thereof, may be established by surety bonds, ~~performance bonds,~~ irrevocable letters of credit, insurance policies, escrow accounts, or trust funds, as described below.

(c) The amount of financial responsibility established shall equal ~~110 percent of~~ the cost of construction and operation ~~implementation~~ of the Mitigation Bank, or each phase thereof, in accordance with subsection 62-342.700(14) ~~62-342.700(13)~~, F.A.C., and as adjusted in accordance with subsection 62-342.700(15) ~~62-342.700(14)~~, F.A.C., during the course of the project. When the B~~b~~ank has been completely constructed, ~~implemented,~~ and is trending toward success in compliance with the permit, the respective amount of financial responsibility shall be released.

(d) The financial responsibility mechanism shall be ~~become~~ effective, executed, and funded based on the full cost estimate amount in accordance with paragraph 62-342.700(4)(c), F.A.C., prior to the release of any M~~m~~itigation C~~c~~redits.

(5) Surety ~~or Performance~~ Bond.

(a) A B~~b~~anker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation activities by obtaining a surety ~~or performance~~ bond that conforms to the requirements of this subsection. The company issuing the bond must be authorized to do business in Florida. The company must also be among those listed as acceptable sureties in the latest Circular 570 of the U.S. Department of the Treasury (August 1, 2025) ~~(July 1, 2017)~~, which is incorporated by reference herein and available at (insert link) ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-09504~~, or a Florida-domiciled surety or insurance company with at least an A- rating from the A.M. Best and authorized to write individual bonds up to 10 percent of the policyholder's surplus. The B~~b~~anker shall provide documentation evidencing that the bond company meets these requirements.

(b) The surety ~~or performance~~ bond shall be worded in substantial conformance with ~~Form 62-342.700(5)~~ Form 62-342.700(5)(a) or Form 62-342.700(5)(b), "Mitigation Bank Surety ~~Performance~~ Bond to Demonstrate Construction and Operation ~~(Construction and Implementation or Perpetual Management)~~ Financial Assurance" (effective date) ~~(June 12, 2018)~~, which are ~~is~~ incorporated by reference herein and available at (a) (insert link) and (b) (insert link), respectively ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-09498~~. These forms ~~This form~~ and all the forms incorporated in R~~r~~ule 62-342.700, F.A.C., also are available from the Department of Environmental Protection's Internet site, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource; or by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850)245-8336. Deviations from the form shall be identified to, ~~and~~ submitted to, and approved by ~~to~~ the Agency.

(c) Under the terms of the bond, the surety shall become liable on the bond obligation when the ~~mitigation~~ B~~b~~anker fails to perform under the terms of the Mitigation Bank Permit. In all cases, the surety's liability shall be limited to the sum stated in the bond.

(d) The ~~mitigation~~ B~~b~~anker who uses a surety ~~or performance~~ bond to satisfy the requirements of subsection 62-342.700(4), F.A.C., must establish a standby escrow or standby trust fund when the surety ~~or performance~~ bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby escrow or standby trust fund for distribution by the agent or trustee in accordance with the Agency's instructions. The standby escrow agreement and standby trust fund agreement must meet the requirements specified in subsections 62-342.700(9) and 62-342.700(10), F.A.C., respectively.

(e) The bonding company shall provide notice of cancellation of a bond by certified mail to the B~~b~~anker and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the

B~~b~~anker and the Agency, as evidenced by the return receipt.

(f) A bond may be canceled by the B~~b~~anker if the Agency has given prior written consent. The Agency shall provide such consent when either the B~~b~~anker substitutes alternative financial assurance allowed under this R~~r~~ule and such alternate financial assurance is approved by the Agency and is effective, or the Agency approves release of financial assurance in accordance with paragraph 62-342.700(4)(c), F.A.C.

(6) Irrevocable Letter of Credit.

(a) A ~~mitigation~~ B~~b~~anker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation activities by obtaining an irrevocable letter of credit that conforms to the requirements of this subsection. The irrevocable letter of credit shall be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" as defined in Section 38 of the Federal Deposit Insurance Act [12 USC 1831o(b)], incorporated by reference herein and available at http://www.flrules.org/Gateway/reference.asp?No=Ref-09505. The B~~b~~anker shall submit documentation evidencing that the federally insured depository is appropriately capitalized.

(b) The irrevocable letter of credit shall be worded in substantial conformance with ~~Form 62-342.700(6)~~ Form 62-342.700(6)(a) or Form 62-342.700(6)(b), "Mitigation Bank Irrevocable Letter of Credit to Demonstrate Construction and Operation ~~(Construction and Implementation or Perpetual Management)~~ Financial Assurance" (effective date) ~~(June 12, 2018)~~ [available at (a) (insert link) and (b) (insert link), respectively ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-09499~~, and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the ~~form~~ forms shall be identified to, ~~and~~ submitted to, and approved by ~~to~~ the Agency.

(c) A ~~mitigation~~ B~~b~~anker who uses an irrevocable letter of credit to satisfy the requirements of subsection 62-342.700(4), F.A.C., must also establish, with the Agency as the sole beneficiary, either a standby escrow agreement or standby trust fund agreement when the irrevocable letter of credit is acquired. Under the terms of the irrevocable letter of credit, all amounts paid pursuant to a sight draft by the Agency will be deposited by the issuing institution directly into the standby escrow or standby trust fund to be distributed by the agent or trustee in accordance with instructions from the Agency. This standby escrow agreement or standby trust fund agreement must meet the requirements specified in subsections 62-342.700(9) and 62-342.700(10), F.A.C., respectively.

(d) Letters of credit must be irrevocable and issued for a period of at least one year, and the expiration date must be automatically extended for a period of at least one year unless, at least 120 days prior to the expiration date, the issuing institution notifies both the B~~b~~anker and the Agency by certified mail of a decision not to extend the expiration date. The terms of the irrevocable letter of credit must provide that the 120 days begins on the date when both the B~~b~~anker and the Agency have received the notice, as evidenced by the return receipts.

(7) Insurance Policy.

(a) A ~~mitigation~~ B~~b~~anker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation ~~implementation~~ activities by obtaining an insurance policy that conforms to the requirements of this subsection. The insurance policy shall be provided by an insurance company that is authorized to transact insurance in the State of Florida and has at least an A- rating from the A.M. Best. The B~~b~~anker shall provide documentation to the Agency evidencing that the insurance company meets these requirements.

(b) The insurance policy must be worded in substantial conformance to ~~Form 62-342.700(7)~~ Form 62-342.700(7)(a) or Form 62-342.700(7)(b), "Mitigation Bank Insurance Coverage Form" (effective date) ~~(June 12, 2018)~~, incorporated by reference herein [available at (a) (insert link) and (b) (insert link), respectively, ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-09500~~ and as described in paragraph (5)(b), above]. Deviations from the ~~form~~ forms to meet insurance company documentary requirements must satisfy all criteria listed on the "Mitigation Bank Insurance Coverage Form" and be identified to, ~~and~~ submitted to, and approved by ~~to~~ the Agency.

(c) The insurance policy must be issued for a period of no less than one year beyond the anticipated completion and success of the M~~m~~itigation B~~b~~ank, or the last success criterion insured, which ever occurs first based on the construction and operation ~~implementation~~ schedule in the M~~m~~itigation B~~b~~ank P~~p~~ermit.

(d) The insurance policy must be non-cancellable for the term of the policy. The insurance policy shall include a provision to notify the Agency and B~~b~~anker by certified mail at least 120 days prior to the termination of the policy, nonrenewal of the policy, or a change to the terms and conditions of the policy. The insurance policy must automatically renew for the same terms and conditions of the policy unless the insurance company provides notice of nonrenewal to the B~~b~~anker and the Agency as required in this subsection.

(e) Under the terms of the insurance policy, the Agency must have the authority to file claims when the B~~b~~anker either fails to perform under the terms of the M~~m~~itigation B~~b~~ank P~~p~~ermit~~,~~ as determined solely by the Agency, or fails to replace the insurance policy with an alternative financial responsibilty mechanism prior to the termination of the insurance policy. The insurance policy must afford the "Regulatory Agency" as defined in the forms incorporated in paragraph 62-342.700(7)(b), F.A.C., with the sole authority to determine whether the action taken or proposed to be taken by the insurance company is sufficient to satisfy a claim made by the Agency. A claim is satisfied when the amount received by the Agency is greater than or equal to the most recent approved cost estimate or adjustment in accordance with subsections 62-342.700(14) and 62-342.700(15) ~~62-342.700(13) and 62-342.700(14)~~, F.A.C., respectively, and the B~~b~~ank is in compliance with the terms of the permit.

(f) The ~~mitigation~~ B~~b~~anker who uses an insurance policy to satisfy the requirements of subsection 62-342.700(4), F.A.C., must establish a standby escrow or standby trust fund when the insurance policy is acquired. The standby escrow agreement or standby trust fund agreement must meet the requirements specified in subsections 62-342.700(9) and 62-342.700(10), F.A.C., respectively. Under the terms of the insurance policy, all amounts paid by the insurance company in satisfaction of a claim will be deposited directly into the standby escrow or standby trust fund for distribution by the agent or trustee in accordance with the Agency's instructions.

(g) The declarations ~~declaration's~~ page of the insurance policy shall include all of the following items:

1. Insured location – the B~~b~~ank address;
2. Mitigation B~~b~~ank P~~p~~ermit number;
3. Insurer's claim's notice address;
4. Regulatory entities and addresses, to include the U.S. Army Corps of Engineers;
5. Surplus line agent – name, address, license number;
6. Producing agent's name, address, and other contact information;
7. Insured's name, address, and other contact information;
8. Policy premium;
9. Limit of liability;
10. Policy inception and expiration dates;
11. Service fee;
12. Premium receipts tax; and
13. Deductible amount.

(8) Escrow.

(a) A ~~mitigation~~ B~~b~~anker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation or perpetual management activities by a deposit of cash into an interest-bearing escrow account with the Florida Department of Financial Services.

(b) The escrow agreement must be worded in substantial conformance with ~~to~~ Form 62-342.700(8), "Escrow (Standby Escrow) Agreement" (June 12, 2018), incorporated by reference herein [available at http://www.flrules.org/Gateway/reference.asp?No=Ref-09503 and as described in paragraph (5)(b), above]. Deviations from the form must be identified to, ~~and~~ submitted to, and approved by ~~to~~ the Agency.

(c) The escrow agreement must be irrevocable until the Agency approves release of financial security in accordance with paragraph 62-342.700(4)(c), F.A.C., and authorizes a final payout.

(9) Standby Escrow.

(a) A ~~mitigation~~ B~~b~~anker using a surety ~~or performance~~ bond, irrevocable letter of credit, or insurance policy shall contemporaneously establish either a standby escrow with the Florida Department of Financial Services meeting the requirements of this subsection or a standby trust fund under subsection 62-342.700(10), F.A.C.

(b) The standby escrow agreement shall be worded in substantial conformance with Form 62-342.700(8), F.A.C., incorporated by reference in paragraph 62-342.700(8)(b), F.A.C., except that the agreement will identify that it is establishing a standby escrow account. Deviations from the form must be identified to, ~~and~~ submitted to, and approved by ~~to~~ the Agency.

(c) The standby escrow agreement must be irrevocable until the Agency determines that it is no longer required.

(10) Standby Trust Fund.

(a) A ~~mitigation~~ B~~b~~anker using a surety ~~or performance~~ bond, irrevocable letter of credit, or insurance policy shall contemporaneously establish either a standby trust fund meeting the requirements of this subsection or a standby escrow under subsection 62-342.700(9), F.A.C. The trustee of the standby trust shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State of Florida. The B~~b~~anker shall provide documentation evidencing such regulation and examination to the Agency.

(b) The standby trust agreement shall be worded in substantial conformance with ~~Form 62-342.700(10)~~ Form 62-342.700(10)(a) or Form 62-342.700(10)(b), "Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction and Operation ~~(Construction and Implementation or Perpetual Management)~~ Financial Assurance" (effective date) (~~June 12, 2018~~) [available at (a) (insert link) and (b) (insert link), respectively, ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-09502~~ and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the ~~form~~ forms shall be identified to, ~~and~~ submitted to, and approved by ~~to~~ the Agency. These forms ~~This form~~ and Forms 62-342.700(11)(a) and 62-342.700(11)(b) ~~Form 62-342.700(11)~~, incorporated in subsection 62-342.700(11), F.A.C., reference ~~references~~ the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. (July 18, 2025) ~~(February 19, 2015)~~, which is incorporated by reference herein and available at (insert link) ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-05064~~ and as described in paragraph (5)(b), above. A copy of the Act may also be obtained by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850)245-8336.

(11) Trust Fund.

(a) A ~~mitigation~~ B~~b~~anker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation or perpetual management activities by establishing a trust fund that conforms to the requirements of this subsection ~~section~~. The trustee of the trust fund shall be an entity that has the authority to act as a trustee and whose trust operations meet the definition of the Investment Manager as defined in subsection 62-342.200(13), F.A.C. ~~are regulated and examined by a federal agency or an agency of the State of Florida. The banker shall provide documentation evidencing proof of such regulation and examination to the Agency.~~

(b) The trust fund agreement must be worded in substantial conformance with ~~to~~ Form 62-342.700(11)(a), 62-342.700(11)(b), 62-342.700(11)(c), or 62-342.700(11)(d) ~~62-342.700(11)~~, "Mitigation Bank Trust Fund Agreement to Demonstrate Construction and Operation or Perpetual Management ~~(Construction and Implementation or Perpetual Management)~~ Financial Assurance" (effective date) ~~(June 12, 2018)~~ [available at (a) (insert link), (b) (insert link), (c) (insert link), and (d) (insert link), respectively, ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-09501~~ and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the ~~form~~ forms shall be identified to, ~~and~~ submitted to, and approved by ~~to~~ the Agency.

(12) Endowment

(a) A Banker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for perpetual management activities by establishing an endowment account that conforms to the requirements of this subsection. The Endowment Holder, or the Investment Manager retained by the Endowment Holder to manage the endowment, shall be an entity that meets the definitions of subsections 62-342.200(10) or 62-342.200(13), F.A.C., respectively.

(b) The endowment agreement must be worded in substantial conformance with Form 62-342.700(12)(a) or 62-342.700(12)(b), "Mitigation Bank Endowment Agreement to Demonstrate Perpetual Management Financial Assurance" (effective date) [available at (a) (insert link) and (b) (insert link) respectively, and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the forms shall be identified to, submitted to, and approved by the Agency.

(13)~~(12)~~ Financial Responsibility for Perpetual Management.

(a) A B~~b~~anker shall establish financial assurance for the perpetual management of the Mitigation Bank, or phase thereof, using the financial responsibility mechanisms described in subsections 62-342.700(8), 62-342.700(11), or 62-342.700(12) ~~62-342.700(5), through 62-342.700(11)~~, F.A.C.~~, except that an insurance policy under subsection 62-342.700(7), F.A.C., may not be used.~~ When an escrow agreement, ~~or~~ trust fund, or endowment is used, the requirements of subsections 62-342.700(8), ~~and~~ 62-342.700(11), and 62-342.700(12), F.A.C., respectively, must be met ~~and all references to perpetual management in Forms 62-342.700(8) and 62-342.700(11) shall be selected~~. ~~When a surety bond, performance bond, guarantee bond, or irrevocable letter of credit is used, a standby trust und agreement must be established by the banker, and the requirements of subsections 62-342.700(5), 62-342.700(6), 62-342.700(9) and 62-342.700(10), F.A.C., respectively, must be met, and all references to perpetual management in Forms 62-342.700(8) and 62-342.700(11) shall be selected~~.

(b) The amount of financial responsibility provided shall be calculated, and adjusted in accordance with subsection 62-342.700(15), F.A.C. ~~sufficient to be reasonably expected to generate annual revenue~~ The fund shall be established in an amount equal to 110 percent of the annual cost of perpetual management, established under subsection 62-342.700(14) ~~62-342.700(13)~~, F.A.C., divided by a discount percentage rate calculated as (long-term expected annual return) less (expected annual inflation) less (administrative costs) ~~at an assumed average rate of return of six percent per annum, for the bank, or for banks constructed in phases, for all phases for which credits have been released~~.

Fund Establishment Amount = 110% Annual Cost of Perpetual Management / Discount Percentage Rate

Discount Percentage Rate = (Long-term Expected Annual Return) – (Expected Annual Inflation) – (Administrative costs)

A Discount Percentage Rate calculation tool is included in the "References and Design Aids" for the Applicant's Handbook Volume I, available at: https://floridadep.gov/water/water/content/water-resource-management-rules#erp.

(c) The financial responsibility mechanism must be in effect and executed prior to the ~~withdrawal~~ first release of credits ~~from~~ to the Mitigation Bank, or applicable phase thereof. The funding amount is determined in paragraph 62-342.700(13)(b), F.A.C. The financial responsibility mechanism for perpetual management may be funded over time as credits are withdrawn. When funding over time, investment contributions shall be thirty percent at initiation, thirty percent at year three, fifteen percent at year five, fifteen percent at year seven, and ten percent at final success, year 10, or as specified by the Mitigation Banking Permit.

(d) Prior to the transfer to Bank Perpetual Phase, the funded ratio shall be 135% of the amount determined in paragraph 62-342.700(13)(b) F.A.C. If the funded ratio is below 135%, a reconciliation payment shall be made to the fund in a final payment.

(e) Five years after transfer to the Bank Perpetual Phase, and every five years thereafter, the Banker may request an assessment of the financial responsibility mechanism for perpetual management portfolio market value to determine if the value has exceeded a funded ratio of 160%. If the value exceeds this amount, funds will be returned to the Banker to restore the funded ratio to 135%.

(14)~~(13)~~ Cost estimates.

(a) For the purposes of determining the amount of financial responsibility that is required in this subsection ~~section~~, the B~~b~~anker shall submit a detailed written estimate, in current dollars, of the total cost of construction and operation ~~implementation~~ and of the cost of perpetual management of the Mitigation Bank. When the Agency determines it is appropriate, t~~T~~he written cost estimate shall be certified by a licensed professional whose license authority in the State of Florida includes the ability to provide such estimates.

(b) The cost estimate for construction and operation ~~implementation~~ shall include all costs associated with completing construction and operation ~~implementation~~ of the Mitigation Bank~~,~~ or phase thereof~~,~~ including, as applicable, earthmoving, planting, exotic/nuisance vegetation removal, prescribed fire, land surveying, structure installation, site security, administrative fees, consultant fees, taxes, monitoring activities and reports, and any other costs associated with construction and operation.

(c) The cost estimate for the perpetual management of the Mitigation Bank shall be based on the costs of maintenance, ~~maintaining,~~ ~~and~~ management ~~operating~~, replacement of any structures as necessary, exotic/nuisance vegetation control ~~controlling nuisance or exotic species~~, prescribed fire ~~management~~, site security, administrative fees if applicable, consultant fees, monitoring activities and reports, taxes, and any other costs associated with perpetual management. The cost estimate shall also include estimated annual advisory fees and other costs related to managing the financial responsibility mechanism, if such fees and costs are not otherwise included in the Discount Percentage Rate calculation. ~~The amount of financial responsibility shall equal the cost of perpetual management for the bank, or, for banks constructed in phases for all phases for which credits have been released.~~

(d) The B~~b~~anker shall submit written cost estimates with verifiable documentation ~~basis~~ for the estimates to the Agency along with the financial responsibility mechanism. If more than one financial responsibility mechanism is proposed for the construction and operation ~~implementation~~ or for perpetual management, the cost estimate shall specify the appropriate mechanism for each itemized cost.

(e) The costs shall be estimated based on a third party performing the work at the fair market value of services. The source of any cost estimates shall be indicated and dated.

(15)~~(14)~~ Cost adjustments.

(a) Every two years, or as specified in the permit, the B~~b~~anker shall undertake an estimate of the costs of the remaining construction and operation ~~implementation,~~ and perpetual management. In accordance with subsection 62-342.700(14), F.A.C., t~~T~~he B~~b~~anker shall submit the estimate to the Agency in writing ~~certified by a person licensed in the State of Florida to provide such estimates~~, accompanied by supporting documentation. Construction~~,~~ and operation ~~implementation~~ activity costs~~,~~ and perpetual management costs shall be listed separately. The Agency shall review the cost adjustment statement and supporting documentation to determine if sufficient documentation has been provided to ~~they~~ reflect all construction costs, operational ~~implementation~~ costs, and perpetual management costs. If the cost adjustment statement and supporting documentation accurately reflect a good faith estimate of all construction costs, operation ~~implementation~~ costs, and perpetual management costs, the Agency shall approve the cost adjustment statement.

(b) At each cost adjustment, the B~~b~~anker shall revise the construction~~,~~ and operation ~~implementation,~~ and perpetual management cost ~~estimate~~ estimates for inflation and changes in the costs to complete or undertake the current phase of the Mitigation Bank or appropriate phase thereof in accordance with subsection 62-342.700(14) ~~62-342.700(13)~~, F.A.C.

(c) Revised cost estimates shall be used as the basis for modifying the financial responsibility mechanisms. If the value of any financial responsibility mechanism is less than the total amount of the current construction and ~~implementation~~ operation and perpetual management cost estimates, the B~~b~~anker shall, upon Agency approval of the cost adjustment statement, increase the value of the financial mechanism to reflect the new estimate within 60 days. If the value of the construction and operation ~~any~~ funding mechanism is greater than the total amount of the current cost estimate, the B~~b~~anker may reduce the value of the funding mechanism to reflect the new estimate upon receiving written Agency approval of the cost adjustment statement.

(d) The Agency shall require adjustment of the amount of financial responsibility provided for construction, operation, ~~implementation~~ and perpetual management at times other than the cost adjustment period when the estimated costs associated with compliance with the permit conditions exceed the current amount of financial responsibility and such financial assurances are deemed necessary to ensure compliance with the permit conditions.

(e) The B~~b~~anker may provide revised cost estimates more frequently than every two years. If at any time the ~~banker learns that~~ actual costs exceed estimated costs by more than ~~25~~ 15 percent, the B~~b~~anker shall provide a revised cost estimate and adjust the corresponding amount of financial responsibility under this R~~r~~ule.

(16)~~(15)~~ Financial Responsibility for Governmental, Non-Department and Non-Water Management District, Mitigation Banks.

(a) A governmental entity other than the Department or Districts shall demonstrate reasonable assurances that it can meet the construction and operational ~~implementation~~ requirements in the Mitigation Bank Permit by any of the mechanisms in subsection 62-342.700(4), F.A.C., above, or by other financial mechanisms which are sufficient to meet the requirements of this subsection ~~section~~.

(b) Governmental entities other than the Department or Districts shall ~~establish a trust fund~~ meet the requirements of subsection 62-342.700(13), F.A.C., to fund ~~for~~ the perpetual management of the Mitigation Bank ~~which meets the requirements of subsection 62-342.700(11), F.A.C., above~~. ~~The trust fund for perpetual management may be funded as Mitigation Credits are withdrawn, provided that the trust fund is fully funded when all Mitigation Credits are withdrawn.~~ Governmental entities shall comply with the cost adjustment provisions in subsection 62-342.700(15) ~~62-342.700(14)~~, F.A.C.

Rulemaking Authority 373.4131, 373.4135(1), 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136, 373.41365, 373.414, 403.0877 FS. History–New 2-2-94, Formerly 17-342.700, Amended 12-12-94, 9-12-95, 5-21-01, 2-19-15, 6-12-18,__________.