***[SPENDING AGREEMENT TEMPLATE]***

***[Text in brackets is provided for explanatory purposes. Please delete before submitting Spending Agreement.]***

**In-Lieu Fee Program**

**Spending Agreement**

**Service Area      , Mitigation Site(s)**

**AN AGREEMENT REGARDING THE AUTHORIZATION TO SPEND MONIES FROM THE** **IN-LIEU FEE PROGRAM ACCOUNT PURSUANT TO THE FINAL       IN-LIEU FEE PROGRAM INSTRUMENT.**

**I. PURPOSE**

Under this Spending Agreement, the US Army Corps of Engineers, Seattle District (hereinafter the “Corps”) authorize  In-Lieu Fee Program (hereinafter the “ILF Program”)to spend a portion of mitigation fees collected through their federally and state approved ILF Program. This Spending Agreement pertains solely to activities conducted by the ILF Program pursuant to the Final ILF Program Instrument signed into effect on .

This Spending Agreement shall supplement the spending authority provisions contained in the Final ILF Program Instrument (see Basic Agreement Article IV.B., Spending Authority and Disbursement, and Appendix F, Program Account).

The ILF Program has accepted mitigation fees for the unavoidable impacts to aquatic resources as described in Article III below. Upon acceptance of these funds, the ILF Program agreed to implement mitigation and assumed all associated obligations and liabilities according to the terms specified in the Final ILF Program Instrument. The ILF Program has identified a mitigation site at which these mitigation fees will be used to implement mitigation as identified in Article II below.

**II. DETAILS OF EXPENDITURES TO BE AUTHORIZED BY THIS REQUEST**

1. Mitigation Project Details**:**

* Name of Mitigation Site(s):
* Parcel Number(s):
* Spending Authority Requested: $

***[Provide a brief description of the mitigation site including activities to be performed, and the rationale for this Spending Agreement request. Activities could include, but are not limited to: acquisition, project implementation, maintenance, monitoring, contingency, long-term management, etc. If there is a mitigation plan for this site, provide the title, date, and location of the plan.]*** A proposed budget for this mitigation project is provided below**.**

1. Non-Mitigation Project Details: There are no non-mitigation project expenditures related to this Spending Agreement request. ***[Revise this information as appropriate. i.e., Staff time spent scoping potential ILF Mitigation Receiving Sites.]***

**III. IMPACT PROJECT(S)**

1. Impact Project: ***[Provide a brief description of the unavoidable impact(s) to aquatic resources.]***The impacts and mitigation requirements satisfied through purchase of mitigation credits from the ILF program are described in ILF Use Plan dated , which is on file with the ILF Program.
2. Mitigation Fee: To obtain the necessary mitigation credits from the ILF Program, ***[insert purchaser’s name]*** paid the ILF Program $     . This mitigation fee was allocated into the ILF program accounts as follows in Table 1.

**Table 1.       Service Area Mitigation Fee Allocations**

|  |  |  |  |
| --- | --- | --- | --- |
| **Account** | **Allocation** | **% of Total Fee\*** | **New Spending Authorization Requested** |
| Land | **$** | % | **$** |
| Program Admin | **$** | % | **$** |
| Contingency | **$** | % | **$** |
| Long-term Mgmt | **$** | % | **$** |
| Project | **$** | % | **$** |
| **Total Fee** | **$** |  |  |

\*These percentages should correspond to the amounts specified in the Final ILF Program Instrument. ***[Provide any additional information necessary to ensure the above table is understandable.]***

# III. BALANCE OF SPENDING AUTHORIZATIONS IN THE       SERVICE AREA AS OF       *[Date]*

Table 2 shows the Life-to-date spending authorizations in this Service Area. The total ‘Service Area Life-to-date Revenue’ shown in Column B resulted from ***[Insert number]*** mitigation credit sale transactions in the Service Area since the ILF Program was authorized. The ‘Total of All Prior Spending Authorizations’ shown in Column D was authorized by previous Spending Agreements.

**IV. AUTHORIZATION FOR EXPENDITURE OF FUNDS**

Upon execution of this Spending Agreement the ILF Program is authorized to spend the monies allocated as shown in Table 2, Column E for the activities described in Article II.

Table 2. Life-to-Date Service Area Revenue, Spending Authorization Requests and Balance of Spending Authority

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **A**  **Service Area Account** | **B**  **Service Area Life-to-date Revenue** | **C**  **% of Total Fee\*** | **D**  **Total of All Prior Spending Authorizations** | **E**  **New Spending Authorization Requested** | **F**  **Life-to-date Revenue not yet authorized for expenditure** | **G**  **Comments / Purpose for New Spending Request** |
| Land Fee | **$** | % | **$** | **$** | **$** |  |
| Administrative1 | **$** | % | **$** | **$** | **$** |  |
| Contingency | **$** | % | **$** | **$** | **$** |  |
| Long -Term Mgmt | **$** | % | **$** | **$** | **$** |  |
| Mitigation Project | **$** | % | **$** | **$** | **$** |  |
| **Totals** | **$** | **100** % | **$** | **$** | **$** |  |

\*These percentages should correspond to the amounts specified in the Final ILF Program Instrument.

**Note 1**:The ILF Program Instrument authorizes up to  percent of Administrative Account funds to be spent without a specific request for spending authority. The amount shown in the Administrative Account line in Column D reflects the  percent preauthorized amount plus any additional requests.

*[Example of Table 2 Completed.*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| ***A***  ***Service Area Account*** | ***B***  ***Service Area Life-to-date Revenue*** | ***C***  ***% of Total Fee\**** | ***D***  ***Total of All Prior Spending Authorizations*** | ***E***  ***New Spending Authorization Requested*** | ***F***  ***Life-to-date Revenue not yet authorized for expenditure*** | **G**  **Comments / Purpose for New Spending Request** |
| *Land Fee* | *$ 92,600* | *1%* | *$ 0* | *$ 80,500* | *$ 12,100* | *Buy Main St. Site* |
| *Administrative* | *$ 731,100* | *10 %* | *$ 550,125* | *$ 0* | *$ 180,975* | *Administrative* |
| *Contingency* | *$ 675,500* | *9 %* | *$ 0* | *$ 415,250* | *$ 260,250* | *Re-grade Outlet* |
| *Long -Term Mgmt* | *$ 325,700* | *5%* | *$ 0* | *$ 0* | *$ 325,700* |  |
| *Mitigation Project* | *$ 5,425,100* | *75 %* | *$ 0* | *$ 4,750,150* | *$ 674,950* | *Addt’l funds to buy site & prep site prior to restoration* |
| ***Totals*** | ***$ 7,250,000*** | ***100*** *%* | ***$ 550,125*** | ***$ 5,245,900*** | ***$ 1,453,975]*** |  |

**V. SPECIAL CONSIDERATIONS**

There are no special considerations pertaining to this Spending Agreement. ***[If special conditions do pertain to this request, revise as appropriate (i.e., The following special considerations are relevant to this Spending Agreement: A.      . B.      . etc.)]***

**VI. ADDITIONAL PROVISIONS**

1. Disbursements: This Spending Agreement shall satisfy the federal rule requirement that, “Disbursements from the program account may only be made upon receipt of written authorization from the district engineer, after the district engineer has consulted with the IRT.” [332.8(i)(2)].
2. Administrative Accounts: Nothing in this Spending Agreement shall prevent the ILF Program from spending up to  percent of funds allocated to the Administrative Account as authorized in the Final ILF Program Instrument, Appendix F, Program Account.
3. Expenditure of Funds: Expenditure of funds authorized by this Spending Agreement pertain only to those accounts under this service area.
4. Limits: The authorization provided under this Spending Agreement shall not extend to expenditures from any other ILF Program account for any other purpose.
5. Reporting requirements unaffected: This Spending Agreement shall not affect reporting requirements outlined in the Final ILF Program Instrument.
6. Duration: This Spending Agreement expires three (3) years from the last date in the signature block below, unless otherwise agreed to herein. If all funds authorized by this Spending Agreement have not been spent within the agreed to timeframe, the ILF Sponsor shall provide a written request to the Corps for approval to spend those remaining funds. Spending may be authorized by the Corps’ issuance of a letter authorizing spending the remaining funds, or by executing a subsequent Spending Agreement.
7. Additional Spending Authority Requests: Whether or not three (3) years have elapsed, the ILF Sponsor may request subsequent releases of funds. The ILF Sponsor must submit a new Spending Agreement to the Corps for any subsequent releases of funds.
8. Revocation: In the event of default as defined in the Final ILF Program Instrument (see “Default” in Basic Agreement Article V.S. and Appendix ), this Spending Agreement may be revoked by written notification from the Corps.
9. Effect of Spending Agreement: This Spending Agreement does not in any manner affect statutory authorities and responsibilities of the signatory Parties. This Spending Agreement is not intended, nor may it be relied upon, to create any rights in third parties enforceable in litigation with the United States or the State of Washington. This Spending Agreement does not authorize, nor shall it be construed to permit, the establishment of any lien, encumbrance, or other claim with respect to the ILF Program property, with the sole exception of the right on the part of the Corps to require the ILF Sponsor to implement the provisions of this Spending Agreement. Such provisions include, but are not limited to, recording conservation easements or similarly restrictive covenants, required as a condition of the issuance of permits for discharges of dredged and fill material into waters of the United States and waters of the State associated with construction and operation and maintenance of a Mitigation Site.
10. Attorneys’ Fees: If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Spending Agreement, each party to the litigation shall bear its own attorneys’ fees and costs of litigation.
11. Availability of Funds: Implementation of this Spending Agreement is subject to the requirements of the Anti-Deficiency Act, 32 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Spending Agreement may be construed to require the obligation, appropriation, or expenditure of any money from the United States Treasury, in advance of an appropriation for that purpose.
12. Headings and Captions: Any paragraph heading or caption contained in this Spending Agreement shall be for convenience of reference only and shall not affect the construction or interpretation of any provision of this Spending Agreement.
13. Counterparts: This Spending Agreement may be executed by the Parties in any combination, in one or more counterparts, all of which together shall constitute one and the same Spending Agreement.
14. Binding: This Spending Agreement, pursuant to the Final ILF Program Instrument, shall be immediately, automatically, and irrevocably binding upon the ILF Sponsor and its heirs, successors, assigns, and legal representatives upon execution by the ILF Sponsor and Corps.

IN WITNESS WHEREOF, the Parties hereto have executed this Spending Agreement on the date herein below last written.

UNITED STATES ARMY CORPS OF ENGINEERS:

Gail TerziDate

Mitigation Program Manager   
 Seattle District Regulatory Branch

ILF PROGRAM SPONSOR:

***[Name]*** Date

***[Title]***