



## Idaho Department of Lands Resource Protection and Assistance Bureau

### **FINANCIAL ASSURANCE INFORMATION AND INSTRUCTIONS**

The following types of financial assurance are accepted by the Idaho Department of Lands (IDL). All types of financial assurance must be submitted on an IDL form with accompanying documents attached.

#### **1. Bond Assurance Fund**

For reclamation plans that are under 40 disturbed acres, the plan holder may be required to participate in the Bond Assurance Fund (BAF) program. For more information on the BAF program, please see the BAF information packet on IDL's regulatory mining page on its website.

#### **2. Surety Bonds**

Surety bonds are purchased from a bond or insurance company licensed to do business in Idaho. The company issuing the bond must include their bond number and the lease/plan/permit number on the upper right hand corner of the form. The bond must be made payable to the State of Idaho and carry the notarized signature of the surety and signature of the principal. The surety company issuing the bond must be listed as an acceptable surety in Circular 570 of the U.S. Department of the Treasury. **A surety bond form is available below.**

#### **3. Collateral Bonds – All of these bonds must be submitted to the Department with a completed, notarized collateral bond form. This form is available below.**

##### **❖ Certificate of Deposit and Time Deposit Receipt**

Certificates of deposit and time deposit receipts must be issued by a federally insured institution. Certificates and receipts will not be released for re-issuance and should therefore be automatically renewable. Banks must agree to waive all rights of set-off or liens which it may have against such certificates, and will place holds on those funds that prevent the operator from withdrawing funds until the IDL sends a written release to the bank. The certificate or deposit receipt must be made out to the principal (first) or the Idaho Department of Lands (second), (i.e., "John Doe, et al or Idaho Department of Lands"), in that order. If the issuing bank is not located in the State of Idaho or does not have a branch in Idaho, then a jurisdiction agreement must be executed by the bank and returned to IDL.

##### **❖ Letters of Credit**

Letters of credit must be issued by an institution authorized to do business in the State of Idaho, or through a confirming bank authorized to do business in the State of Idaho, which engages that it will itself honor the credit in full. In addition, a foreign bank must consent to jurisdiction

of Idaho courts. Wording of the credit document must provide for presentation at a bank in the State of Idaho. The account party on all credits must be identical to the entity identified on the lease, permit or plan. The credit document must exactly follow the wording of the enclosed sample. A Certificate of Secretary (see sample) must always accompany a letter of credit. **An Irrevocable Standby Letter of Credit form is available below.**

❖ **Cash**

An operator or lessee may submit a cash bond to be held by IDL. Interest does not accrue on cash bonds.

❖ **Real Property**

Real property used as a collateral bond must be a perfected, first lien security interest in real property located within the state of Idaho, in favor of the state of Idaho. A deed of trust form acceptable to the Department is required for all lands 40 acres or less, or a mortgage form approved by the Department. See IDAPA 20.03.02.122.04 for additional requirements.

#### **4. Trusts**

Trusts uses for financial assurance must be initiated with a Memorandum of Agreement (MOA) between the Operator and IDL. The MOA must describe the proposed trustee, range of investments, initial funding, schedule of payments, trustee fees, and expected rate of return. The Operator must be the joint party on the trust with IDL. Trusts will be irrevocable. Payments may be made over time to keep the amount of the trust equal to the estimated reasonable cost of reclamation. Income accrued on trust funds will generally be retained in the trust. See IDAPA 20.03.02.122.05 for additional requirements.

#### **5. Corporate Guarantee**

Corporate guarantees can only be submitted for hardrock, phosphate, and other mines approved under Section 070 of IDAPA 20.03.02, and for permanent closure plans approved under Section 071 of IDAPA 20.03.02. The amount of a corporate guarantee is limited to a maximum of 50% of an operation's total financial assurance, and cannot cover post-closure costs. A parent company may provide the corporate guarantee if they meet the same financial criteria as the operator and submit an indemnity agreement to IDL. The financial criteria and other details are described in IDAPA 20.03.02.122.06.

**NOTE: ALL FINANCIAL ASSURANCE TYPES REQUIRE A FULLY EXECUTED ORIGINAL IDL ISSUED BOND FORM. THE FINANCIAL ASSURANCE REQUIREMENT IS NOT SATISFIED UNTIL THE PROPER FORM HAS BEEN SUBMITTED WITH THE APPROPRIATE DOCUMENTATION ATTACHED THERETO.**



State of Idaho
DEPARTMENT OF LANDS

Surety Bond Number \_\_\_\_\_

Lease/Plan No(s). \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_, as principal and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, and having its principal place of business in the State of \_\_\_\_\_, in the City of \_\_\_\_\_, as surety are held and firmly bound unto the State of Idaho, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) lawful money of the United States, conditioned on the payment of all damages to the surface and improvements thereon of lands described in the above lease/plan/permit specified and any outstanding balances as set forth in the lease/plan/permit. For such payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assignees, as the case may be, jointly and severally, firmly by these presents.

THE CONDITION of the foregoing obligation is such that:

WHEREAS, by lease/plan/permit bearing the above serial number, the lessee/plan holder/permittee was granted specific rights under and pursuant to Idaho Code title 47, chapters 7, 15 or 16, and the pertinent rules and regulations of the Idaho State Board of Land Commissioners; and

WHEREAS, said lessee/plan holder/permittee has, by virtue of the lease/plan/permit above referred to, entered into certain covenants and agreements set forth in such lease/plan/permit, under which operations are to be conducted; and

WHEREAS, the said principal, in consideration of being permitted, in lieu of the lessee/plan holder/permittee, to furnish this bond agrees and by these presents does hereby bond himself to fulfill on behalf of the lessee/plan holder/permittee all of the obligations of the said lease/plan/permit in the same manner and to the same extent as though he were the lessee/plan holder/permittee. It is understood and agreed by the surety and the principal that if there is outstanding restoration obligations on the premises, or if outstanding payments are due, this bond shall extend to cover all acts for which restoration is required or payment of such outstanding amounts due, both prior to and subsequent to the date of this bond, until notified in writing by the Idaho Department of Lands that such requirements have been met or the bond has been replaced. The Idaho Department of Lands may require payment of the entire sum of this bond, or portions thereof, upon written notice to the surety, by the department, of the lessee/plan holder/permittee's failure to perform any obligations and/or pay any amounts due under the above referenced statutes and pertinent rules.

The surety shall pay to the Department of Lands the sum of this bond, or portions thereof, as requested by the department within 30 days of receipt of such written notice. In the event of a partial distribution, the remaining funds and liabilities shall not be released until the department notifies the surety, in writing, of release of remaining liability or requires payment of the remaining bond liabilities. Payment of the full sum of the bond to the department shall release the surety of all liabilities and obligations.

NOW THEREFORE, if the above principal shall in good faith observe, carry out and comply with all the laws now existing or hereafter enacted, designed or intended for the protection of the surface owner of said lands against damage and resulting loss caused by any operations carried on under said lease/plan/permit, or if any such damage and resulting loss shall so occur nevertheless, for which damage and loss reimbursement is required and made, then this obligation shall become void, otherwise to remain in full force and effect; and the liability of the surety under this bond for any one or more defaults of the principal under said lease/plan/permit shall not exceed in the aggregate the sum stated herein above; It is further provided, however, that the bond may be cancelled by the surety by the service of written notice of cancellation upon the Director of the Department of Lands of the State of Idaho, such cancellation to be effective at the expiration of ninety (90) days after the service of such cancellation notice by the surety on the Director by registered mail. Such cancellation notice, however, shall not affect any liability that shall have accrued under this bond prior to the effective date of cancellation.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Signature of Principal)

(Signature of Surety)

(Business Address)

(Business Address)

ACKNOWLEDGEMENT OF SURETY

State of \_\_\_\_\_ )
:ss
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_ of the corporation that executed the instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same, or the individual who executed the instrument on their own behalf.

In Witness Whereof, I have hereunto set my hand and affixed my official seal of day and year first above written.

Notary Public For \_\_\_\_\_
Residing at: \_\_\_\_\_
My Commission expires \_\_\_\_\_, 20\_\_\_\_\_



State of Idaho
DEPARTMENT OF LANDS
COLLATERAL BOND

LEASE/PLAN/PERMIT NO(s). \_\_\_\_\_

BOND TYPE

Bank: \_\_\_\_\_
Address: \_\_\_\_\_
City/State: \_\_\_\_\_

\_\_\_\_\_ Cash
# \_\_\_\_\_ Certificate of Deposit
# \_\_\_\_\_ Letter of Credit
\_\_\_\_\_ Other (Specify)

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_, as principal are held and firmly bound unto the State of Idaho, in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_)

THE CONDITIONS of the foregoing obligation are such that:

WHEREAS, by lease/plan/permit bearing the above number, the lessee/plan holder/permittee was granted specific rights under and pursuant to the provisions and requirements of Idaho Code title 47, chapter 7, 8, 13, 15 or 16 or Idaho Code title 58, chapters 1, 3 and 6 and the pertinent rules and regulations of the Idaho State Board of Land Commissioners, or policy; and

WHEREAS, said lessee/plan holder/permittee has, by virtue of the lease/plan/permit above referred to, entered into certain covenants and agreements set forth in such lease/plan/permit, under which operations are to be conducted; and

WHEREAS, the said principal, in consideration of being permitted in lieu of the lessee/plan holder/permittee, agrees to furnish this collateral bond, and by these presents does hereby bond himself to fulfill on behalf of the lessee/plan holder/permittee, all of the obligations of the said lease/plan/permit and in the same manner and to the same extent as though he were the lessee/plan holder/permittee. It is understood and agreed by the lessee/plan holder/permittee and the principal that if there are outstanding obligations on the premises, and if outstanding payments are due, this bond shall extend to cover all acts for which restoration or payment of outstanding amounts due, if required, both prior and subsequent to the date of this bond until notified in writing by the Idaho Department of Lands that all obligations have been completed and all amounts due have been paid or the bond has been replaced and all liability under this bond has been released. The Idaho Department of Lands may require payment of the entire sum of this bond, or portions thereof, upon written notice to the appropriate agent, by the department, of the lessee/plan holder/permittee's failure to perform outstanding obligations and/or

pay amounts due under the above referenced statutes, rules and policies.

The appropriate agent shall pay to the Department of Lands the sum of this bond, or portions thereof, as requested by the department within 30 days of receipt of such written notice. In the event of a partial distribution, the remaining funds and liabilities shall not be released until the department notifies the appropriate agent, in writing, of release of remaining liability or requires payment of the remaining bond liabilities. Payment of the full sum of the bond to the department shall constitute release of this bonding liability and obligation.

NOW THEREFORE, if the above principal shall in good faith observe, carry out and comply with all the laws now existing or hereafter enacted, designed or intended for the protection of the surface owner of said lands against damage and resulting loss caused by any operations carried on under said lease/plan/permit, or if any such damage and resulting loss shall so occur nevertheless, for which damage and loss reimbursement is required and made, then this obligation shall become void, otherwise to remain in full force and effect; and the liability of the principal under this bond for any one or more defaults of the principal under said lease/plan/permit shall not exceed in the aggregate the sum stated herein above. It is further provided, however, that a letter of credit may be cancelled by the issuing bank by the service of written notice of cancellation upon the Director of the Department of Lands of the State of Idaho, such cancellation to be effective at the expiration of ninety (90) days after the service of such cancellation notice by the principal on the Director by certified mail.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

(Signature of Principal)

(Business Address)

ACKNOWLEDGMENT OF PRINCIPAL

State of \_\_\_\_\_ )
County of \_\_\_\_\_ )ss

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the corporation that executed the instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same, or the individual who executed the instrument on their own behalf.

In Witness Whereof, I have hereunto set my hand and affixed my official seal of day and year first above written.

Notary Public for: \_\_\_\_\_
Residing at: \_\_\_\_\_
My Commission expires: \_\_\_\_\_, 20\_\_\_\_\_

(Bank Letterhead)

IRREVOCABLE STANDBY LETTER OF CREDIT

(Date) \_\_\_\_\_

ISLC No. \_\_\_\_\_

Expiry Date: \_\_\_\_\_

State of Idaho  
Department of Lands  
300 North 6<sup>th</sup> St, Suite 103  
Boise, ID 83720

We hereby establish our Irrevocable Standby Letter of Credit in your favor for the account of (Name of Plan, Permit, or Lease Holder) to the extent of \_\_\_\_\_ (Written Amount) U.S. Dollars (\$ Numerical Amount). Drafts are payable at sight when presented at any branch of the (Name of Bank or Other Institution) and accompanied by a signed statement from an authorized representative of the Idaho Department of Lands that (Name of Plan, Permit, or Lease Holder) has not complied with the terms and conditions of (Plan, Permit, or Lease Number).

It is a condition of this letter of credit that it shall be automatically extended without amendment for additional periods of one year from the present or future expiration date hereof unless one hundred and twenty (120) days prior to such expiration date we shall notify you, in writing, via certified mail, return receipt requested, that we elect not to renew this letter of credit for such additional period. Upon receipt of such notice, the balance of the letter of credit may be drawn upon prior to its expiration date by your clean draft drawn at sight on us presented at any branch office of the (Name of Bank or Other Institution).

Drafts drawn under this credit must bear the following clause: "Drawn under (name of bank or other institution), Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_," and the amount of each draft must be endorsed thereon.

This instrument cannot be amended without written consent of an authorized representative of the Idaho Department of Lands.

Unless otherwise expressly stated, this credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600" or by subsequent Uniform Customs and Practice fixed by subsequent Congresses of the International Chamber of Commerce.

We hereby engage with the drawers, endorsers, and holders in due course of drafts drawn under and in compliance with the terms of this credit that such draft(s) will be duly honored on presentation to the drawee bank.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature (Cosigner if required)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

IRREVOCABLE STANDBY LETTER OF CREDIT

(Name of Plan, Permit, or Lease holder)

(Date) \_\_\_\_\_

ISLC No. \_\_\_\_\_

CERTIFICATE OF SECRETARY

I, \_\_\_\_\_ (Name) \_\_\_\_\_, as Secretary of (Name of Institution), hereby certify as follows:

(1) That \_\_\_\_\_ (Name) \_\_\_\_\_ who signed this Letter of Credit on behalf of (Name of Institution) was then \_\_\_\_\_ (Title) \_\_\_\_\_ of said institution;

(2) That this Letter of Credit was issued in compliance with all applicable State and Federal Laws, Rules, and Regulations; and

(3) That this letter of credit was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

In witness whereof, I, \_\_\_\_\_ (Name) \_\_\_\_\_, as the Secretary of (Name of Institution), have executed this certificate and affixed the seal of (Name of Institution) on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Name

Title

(affix corporate seal)

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, a Notary Public, in and for said county and state, personally appeared \_\_\_\_\_ (Name) \_\_\_\_\_, known or identified to me to be the Secretary of (Name of Institution), the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)

\_\_\_\_\_  
Notary Public for the State of:  
Residing at:  
Commission expires: