

ANNEX D-1 FORM OF ADVANCE PAYMENT FOR PLANT SECURITY

IRREVOCABLE LETTER OF CREDIT

Date: _____, 20__

Letter of Credit No. _____

Beneficiary: Autoridad del Canal de Panamá
Altos de Balboa
Balboa
República de Panamá,
as the Employer under the Contract referred to below

Applicant: [name of Contractor]
[ADDRESS]

Maximum Stated Amount: \$ 300,000,000.00 (Three Hundred Million U.S. Dollars)¹

Initial Stated Amount: \$100,000,000 (One Hundred Million U.S. Dollars)

Expiration Date: _____, 20__²

At the request and for the account of [APPLICANT], (the “Applicant”) the undersigned [insert name of issuing bank] (the “Bank”) hereby establishes this clean, Irrevocable Letter of Credit (this “Letter of Credit”) in your favor as Beneficiary (“Beneficiary”) for drawing up to the Maximum Stated Amount set forth above, effective _____, 20__.³ This Letter of Credit is available for drawing, (i) as of the aforesaid effective date, in the Initial Stated Amount set forth above; (ii) from time to time thereafter, in an amount equal to the Initial Stated Amount as it may be increased through Increase Certificates (as defined below); provided that in no event may this Letter of Credit be increased above the Maximum Stated Amount; and (iii) following the increase hereof to the Maximum Stated Amount, from time to time thereafter in an amount equal to the Maximum Stated Amount as it may be reduced through Reduction Certificates (as defined below).

As used in this Letter of Credit, (i) the “Stated Amount” means, at any time and from time to time hereunder, the amount available for drawing hereunder, as the same may be increased or decreased as provided above and (ii) “Dollars” and “\$” means the lawful currency of the United States of America.

This Letter of Credit is issued, presentable and payable at the Bank’s office at [address] Panama, Attention: _____ and expires with the Bank’s close of business on _____

¹ If Partial Contractor Security LOCs are provided, this amount may be varied subject to and in accordance with the terms of Sub-Clause 4.2E of the Contract.

² This Letter of Credit must be issued for the period(s) specified in Sub-Clause 14.2B of the Contract.

³ Insert same date as first date above

_____, 20__⁴. Except when the amount of this Letter of Credit is increased or decreased in accordance with its terms, this Letter of Credit cannot be modified or revoked without your written consent.

This Letter of Credit is issued in connection with the contract dated _____, 20__, between you, as Employer (the “Employer”) and [the Applicant] as Contractor (the “Contractor”), with respect to the Design and Construction of the Third Set of Locks (as amended, supplemented or otherwise modified, the “Contract”), entered into by the Employer and the Contractor pursuant to your Request For Proposal for Design and Construction of the Third Set of Locks, number 76161.

This Letter of Credit is valid and effective immediately and, on and after the date hereof, drawings hereunder may be made by you from time to time by presentation of your sight draft drawn on the Bank at our office specified above on or before the expiry date hereof in the form of Annex I hereto (each, a “Notice of Claim”), in each case appropriately completed and purported signed by one of your authorized officers. We shall not be obligated to check the authenticity of such signature. Our only obligation with regard to a drawing under this Letter of Credit shall be to examine the certificate presented and to pay in accordance therewith, and we shall not be obligated to make any inquiry in connection with the presentation of such certificate. Multiple and partial draws are allowed.

Drawings hereunder may be made by you from time to time prior to the expiration hereof at any time during our business hours at the aforementioned address in Panama, on any Business Day (as defined below). If a drawing hereunder is presented by you (a) at or prior to 11:00 AM Panama City time on any Business Day; we hereby agree to honor each such drawing on or before 3:00 PM, Panama City time on the same day and (b) after 11:00 AM Panama City time on any Business Day, we hereby agree to honor each such drawing on or before 10:00 AM Panama City time on the next Business Day; *provided* that, in the case of clauses (a) and (b) above, such drawing is made in accordance with the foregoing sentence and the documents presented in connection therewith conform to the terms and conditions of this Letter of Credit. “Business Day” means a day on which we are open at the aforesaid address for the purpose of conducting commercial banking business.

If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice promptly (but in any case no later than one (1) Business Day after such demand) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand prior to 11:00 AM Panama City time on the Expiration Date stated above.

All amounts paid by the Bank under this Letter of Credit shall be paid in immediately available funds, by wire transfer to the account specified by you in the sight certificate in the

⁴ Insert same date as under note 2

form of Annex I hereto, free and clear of, and without deduction for, any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection of any third party.

Upon receipt by the Bank at the aforementioned address in Panama of a duly completed certificate in the form of Annex II attached hereto (“Increase Certificate”) signed by a purported authorized officer of the Applicant, the then current Stated Amount available for drawing under this Letter of Credit shall be increased by an amount equal to the amount specified in such Increase Certificate.

Upon receipt by the Bank at the aforementioned address in Panama of a duly completed certificate in the form of Annex III attached hereto (“Reduction Certificate”) signed by your purported authorized officer, the then current Stated Amount available for drawing under this Letter of Credit shall be reduced by an amount equal to the amount specified in such Reduction Certificate.

This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to or to which this Letter of Credit relates, except for the Annexes attached hereto. The obligation of the Bank under this Letter of Credit is the individual obligation of the Bank and is not contingent or conditioned upon reimbursement by the Applicant or any other party with respect thereto, or upon the Bank’s ability to obtain, perfect or realize upon any lien or security interest in any collateral, or any other reimbursement.

This Letter of Credit is subject to and governed by the laws of the Republic of Panama and the International Standby Practices ISP98 of the International Chamber of Commerce (Publication No. 590) and in the event of any conflict the laws of the Republic of Panama will control.

Very truly yours,

[ISSUING BANK]

By: _____
Name:
Title:

NOTICE OF CLAIM

_____, 20__

[NAME OF ISSUING BANK]

[ADDRESS]

All terms used herein which are defined in the Letter of Credit No. _____, dated as of _____, 20__ issued by you have the same meanings when used herein. All capitalized terms used in this Notice of Claim which are defined in the Contract shall have the meanings given them therein.

The undersigned hereby certifies and states that: [choose applicable paragraph]

1. The Contractor has failed to repay the Advance Payment for Plant as stated in Sub-Clause 14.2B of the Conditions of Contract in the amount of \$_____(the “Demand Amount”).

[or]

2. The Contractor has failed to extend the validity of the Advance Payment for Plant Guarantee as stated in Sub-Clause 14.2B of the Conditions of Contract. Accordingly, the undersigned hereby makes demand for payment in the total outstanding amount of the Letter of Credit, which is \$_____(the “Demand Amount”).

[or]

3. The Employer is entitled to terminate the Contractor's right to complete the Contract in accordance with Sub-Clause 15.2 of the Conditions of Contract. Accordingly, the undersigned hereby makes demand for payment in the total outstanding amount of the Letter of Credit, which is \$_____ (the “Demand Amount”).

The Beneficiary is making a drawing under the Letter of Credit in the amount of the Demand Amount stated above. You are hereby directed to make payment of the requested drawing to Autoridad del Canal de Panamá; [account details].

AUTORIDAD DEL CANAL DE PANAMÁ

By:_____

Name:

Title:

INCREASE CERTIFICATE

_____, 20__

[NAME OF ISSUING BANK]
[ADDRESS OF ISSUING BANK]

All terms used herein which are defined in the Letter of Credit No. _____, dated as of _____, 20__ (the "Letter of Credit"), issued by you have the same meanings when used herein.

The undersigned irrevocably instructs [INSERT NAME OF ISSUING BANK], as issuer of the Letter of Credit, as follows:

In accordance with Sub-Clause 14.2B of the Conditions of Contract, the Stated Amount available for drawing under the Letter of Credit shall be increased by an amount equal to \$_____ [specify amount] and the Beneficiary shall hereafter be entitled to make demands under the Letter of Credit in an amount up to the Stated Amount as so increased.

Very truly yours,

[NAME OF APPLICANT]

By:
Name:
Title:

REDUCTION CERTIFICATE

_____, 20__

[NAME OF ISSUING BANK]

[ADDRESS OF ISSUING BANK]

All terms used herein which are defined in the Letter of Credit No. _____, dated as of _____, 20__ (the "Letter of Credit"), issued by you have the same meanings when used herein.

The undersigned irrevocably instructs [INSERT NAME OF ISSUING BANK], as issuer of the Letter of Credit, as follows:

In accordance with the terms of the Letter of Credit and Sub-Clause 14.2B of the Conditions of Contract, the Letter of Credit previously has been increased to the Maximum Stated Amount and, as of the date of this certificate, the Stated Amount available for drawing under the Letter of Credit shall be reduced by an amount equal to \$_____ [*specify amount*] and the Beneficiary shall only be entitled to make demands under the Letter of Credit in an amount up to the Stated Amount as so reduced.

Very truly yours,

AUTORIDAD DEL CANAL DE PANAMÁ

By:

Name:

Title: