[Issuing Financial Institution’s Letterhead] [See R18-9-A203(C)(5)(d)]

# **IRREVOCABLE LETTER OF CREDIT**

# **AQUIFER PROTECTION PROGRAM PERMIT**

# **Irrevocable Letter of Credit No**: \_\_\_\_\_\_\_\_\_\_

# **Date of Issuance:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20XX

**Date of Expiration:** \_\_\_\_\_\_\_\_\_\_\_, 20XX

[Minimum of one year with automatic extension unless canceled in accordance with Special Terms and Conditions #2]

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| **Beneficiary:** | **Financial institution:** |
| Arizona Department of Environmental Quality  1110 W. Washington Street  Phoenix, Arizona 85007 | [Name]  [Address]  [Telephone Number] |
|  |  |
| **PERMITTEE**: | **facility:** |
| [Company Name]  [Contact Name]  [Address]  [Telephone Number] | ADEQ APP Permit No:  [Facility Name]  [Facility Address]  ADEQ Location No.: |

Attn: Water Quality Division Director

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| **Permittee**:  Legal name and business address of the person required to obtain an aquifer protection permit under Arizona Revised Statutes (A.R.S.) § 49-241 and to demonstrate financial assurance under A.R.S. § 49-243:  Legal Name    Business Address          State of Business Entity Filing      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorized to do business in Arizona on date of execution of this Letter of Credit as one of the following **(MUST CHECK ONE)**:  □ Domestic or Foreign Corporation that possesses an A.R.S. § 10-128 Certificate of Good Standing and a designated Statutory agent in Arizona for service of process[[1]](#footnote-1)  □ Limited Liability Company that possesses an A.R.S. § 29-614 Certificate of Good Standing (Member Managed or Manager Managed) and a designated Statutory agent in Arizona for service of process[[2]](#footnote-2)  □ Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership that possesses a certificate or certificate of registration on file at Arizona Secretary of State and a designated Statutory agent in Arizona for service of process[[3]](#footnote-3)  □ Individual or Sole Proprietorship doing business under a Certificate of Trade Name registered at Secretary of State[[4]](#footnote-4) |

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| **Financial Institution**:  Legal name and business address:        Authorized to do business in Arizona on date of execution of Letter of Credit as one of the following **(MUST CHECK ONE):**  □ Domestic or Foreign Corporation that possesses an A.R.S. § 10-128 Certificate of Good Standing and a designated Statutory agent in Arizona for service of process[[5]](#footnote-5)  □ Limited Liability Company that possesses an A.R.S. § 29-614 Certificate of Good Standing (Member Managed or Manager Managed) and a designated Statutory agent in Arizona for service of process[[6]](#footnote-6)  □ Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership that possesses a certificate or certificate of registration on file at Arizona Secretary of State and a designated Statutory agent in Arizona for service of process[[7]](#footnote-7)  ***AND*** mustmeet one of the following criteria ***(MUST CHECK ONE):***  □ Possesses a current A.R.S. § 6-853 certificate to engage in trust business from the Superintendent of the Arizona Department of Financial Institutions: **[Month/Date/Year]**  □ Is a national banking association authorized by the Office of the Comptroller of the Currency pursuant to 12 U.S.C. § 1 *et seq*.  □ Is an international bank with U.S. operations regularly examined by the Federal Reserve pursuant to the Federal Reserve Act, 12 U.S.C. §§ 221 to 522. |

WHEREAS, No later than the Licensing Time-frame (LTF) deadline applicable pursuant to Title 18, Chapter 1, Article 5 of the Arizona Administrative Code, the Arizona Department of Environmental Quality (“ADEQ”) intends to issue to **[PERMITTEE** **NAME]** (hereinafter referred to as the "Permittee"), Aquifer Protection Program Permit (APP) **[NUMBER]** (“Permit”). As a prerequisite for permit issuance, ADEQ requires Permittee to demonstrate financial assurance to meet its facility closure and post-closure obligations in Arizona Revised Statutes (“A.R.S.”) § 49-243(N) and Arizona Administrative Code (“A.A.C.”) R18-9-A201(B)(5) and R18-9-A203. Permittee has designated that this Irrevocable Letter of Credit shall be used to fund [or partially fund if multiple financial assurance mechanisms are demonstrated] its facility and post closure financial assurance obligations. Approval of the financial assurance demonstration does not constitute issuance of Aquifer Protection Program Permit **[NUMBER]**.

In the name of **[PERMITTEE’S NAME** (or “Permittee”)], [**NAME OF ISSUING FINANCIAL INSTITUTION]** hereby establishes this Irrevocable Letter of Credit for the above referenced facility in favor of Arizona Department of Environmental Quality (“Beneficiary”). Beneficiary shall be entitled to one or more drawings up to the aggregate amount of **[INSERT DOLLAR AMOUNT]** as a form of a financial assurance for closure and post-closure of the Facility (as identified above). This Irrevocable Letter of Credit is for the benefit of Beneficiary pursuant to Arizona Revised Statutes (A.R.S.) § 49-243(N) and Arizona Administrative Code (A.A.C.) R18-9-A201(B)(5) and R18-9-A203. This Irrevocable Letter of Credit is payable at **[ADDRESS OF ISSUING FINANCIAL INSTITUTION]**, and the expiration date is automatically extended without amendment for another year except after notice of cancellation as required below in paragraph #2 of Special Terms and Conditions.[[8]](#footnote-8)

**[NAME OF ISSUING FINANCIAL INSTITUTION]** is rated investment grade by a commercial rating service registered with the U.S. Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization (NRSRO). *[NOTE: 48 CFR 52.228-14 Irrevocable Letter of Credit requires this]*

The Permittee shall provide to the Beneficiary this Irrevocable Letter of Credit throughout the duration of the permit in an amount sufficient to cover the following costs pursuant to A.R.S. § 49-243(N), A.A.C. R18-9-A201(B)(5) and R18-9-A203:

1. The estimated costs to close the facility
2. The estimated costs to conduct post-closure monitoring and maintenance.

We hereby undertake to honor the Beneficiary’s sight draft(s) drawn on **[NAME OF ISSUING FINANCIAL INSTITUTION]** for all or any part of this credit if presented with this Irrevocable Letter of Credit and written confirmation by the Director of ADEQ, certifying one or more of the following, as applicable, on or before the expiration date or any automatically extended expiration date:

1. “The amount drawn herein is to satisfy obligations of **[NAME OF ISSUING FINANCIAL INSTITUTION]** between Beneficiary and Permittee. Wherefore, the undersigned Beneficiary does hereby demand payment of **[INSERT DOLLAR AMOUNT]**. Beneficiary further certifies that supporting documents when required were presented to **[NAME OF ISSUING FINANCIAL INSTITUTION]** on **[DATE]** and that Permittee has not satisfied its obligations.” And / or

2. “**[NAME OF ISSUING FINANCIAL INSTITUTION**] no longer has one of the following: [a long-term senior unsecured debt rating of at least “A” by Standard & Poor’s Rating Group], [*or* a long-term senior unsecured debt rating of at least “A3” by Moody’s Investor Services, Inc.,] and Permittee has not provided to Issuing Bank or to Beneficiary, a replacement Letter of Credit from an alternate financial institution acceptable to Beneficiary to be issued to Beneficiary. Wherefore, the undersigned Beneficiary does hereby demand payment of **[INSERT DOLLAR AMOUNT]**.”

[***OR*** *replace bracketed language to be consistent with Federal Acquisition Regulations at 48 CFR 52.228-14 Irrevocable Letter of Credit and second paragraph above: “…*is no longerrated investment grade by a commercial rating service registered with the U.S. Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization (NRSRO)…”]

**SPECIAL TERMS AND CONDITIONS**

1. Pursuant to this agreement, partial and multiple drawings are allowed hereunder. The amount that may be drawn by Beneficiary under this Letter of Credit shall be automatically reduced by the amount of any payments to Beneficiary made through **[NAME OF ISSUING FINANCIAL INSTITUTION]** referencing this Letter of Credit.
2. This Letter of Credit shall automatically extend without amendment for periods of one year each from the present or any future expiration date unless **[NAME OF ISSUING FINANCIAL INSTITUTION]** notifies Beneficiary and Permittee in writing at least ninety (90) days prior to such present or future expiration or cancellation date, as applicable, that **[NAME OF ISSUING FINANCIAL INSTITUTION]** elects not to further extend this Letter of Credit.

Within 60 days after receiving the notice of expiration or cancellation, the Permittee shall demonstrate to the ADEQ Director an alternative financial assurance mechanism that complies with A.R.S. § 49-243(N) and A.A.C. R18-9-A203 and shall apply to ADEQ for a Permit Amendment.[[9]](#footnote-9)

1. Presentations of sight draft(s) for drawing may be delivered to **[NAME OF ISSUING FINANCIAL INSTITUTION]** in person, by mail, by express delivery, or by facsimile.
2. **[NAME OF ISSUING FINANCIAL INSTITUTION]** hereby agrees with Beneficiary that documents presented for drawing in compliance with the terms of this Letter of Credit will be duly honored upon presentation at **[NAME OF ISSUING FINANCIAL INSTITUTION]**’s counters if presented on or before the expiration date.
3. This Irrevocable Letter of Credit is transferable only at the written direction of the Beneficiary in a form satisfactory to the **[NAME OF ISSUING FINANCIAL INSTITUTION]**.[[10]](#footnote-10)
4. Bankruptcy Notices

The Permittee shall notify the Director within five (5) days after the filing of a bankruptcy by Permittee or after receiving notice from the Financial Institution of its filing of a bankruptcy, at the following address:[[11]](#footnote-11)

Arizona Department of Environmental Quality

Attention: Director

1110 West Washington Street

6th Floor

Phoenix, Arizona 85007

If the ADEQ Director believes Permittee will lose financial capability, within 30 (thirty) days after the date of receipt of the Director’s request, the Permittee shall either submit evidence that the financial demonstration is still being met or provide an alternative financial assurance mechanism and apply for a permit amendment.[[12]](#footnote-12)

1. Bankruptcy Notices - Financial Institution Obligations

The Financial Institution shall notify the Permittee and the ADEQ Director in writing within 10 (ten) days after its filing for bankruptcy, and Permittee shall demonstrate to the ADEQ Director within 30 days after the filing for bankruptcy of the Financial Institution an alternative financial assurance mechanism that complies with A.R.S. § 49-243(N) and A.A.C. R18-9-A203 and shall apply to ADEQ for a permit amendment.[[13]](#footnote-13)

If the Permittee notifies the Financial Institution that the Permittee has filed for bankruptcy, the Financial Institution shall notify the ADEQ Director in writing of the Permittee’s bankruptcy within 30 days of receiving notification from the Permittee.

1. Choice of Law and Venue

This Agreement shall be governed, interpreted, and enforced according to the laws of the State of Arizona.  If a dispute arising out of this Irrevocable Letter of Credit is based upon an Administrative Order issued by the Director of ADEQ, any and all appeals from such an Administrative Order shall be subject to a hearing at the Arizona Office of Administrative Hearing as prescribed by A.R.S. § 41-1092, *et seq*. Any and all other disputes arising under this Irrevocable Letter of Credit shall be brought in the Arizona Superior Court in Maricopa County pursuant to A.R.S. § 12-401(17) and shall be subject to Superior Court arbitration and Arizona Rules of Civil Procedure 72 through 76 if arbitration is required by A.R.S. § 12-133(A)(1).

**ISSUING FINANCIAL INSTITUTION:**

By:

Its:

State of )

)ss.

County of )

This Irrevocable Letter of Credit as a financial assurance for Aquifer Protection Program Permit No. was acknowledged before me this day of 20 , by , authorized agent of .

Notary Public

My commission expires:

**PERMITTEE:**

By:

Its:

State of )

)ss.

County of )

This Irrevocable Letter of Credit as a financial assurance for Aquifer Protection Program Permit No. was acknowledged before me this day of 20 , by , authorized agent of .

Notary Public

My commission expires:

**BENEFICIARY:**

This Irrevocable Letter of Credit as a financial assurance for Aquifer Protection Program Permit No. is approved this day of , 20 , by the Arizona Department of Environmental Quality.

ACCEPTED BY:

AS BENEFICIARY

STATE OF ARIZONA

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Printed Name here; signature on line]

TITLE: Director or Director’s Designee

Water Quality Division

1. *See* A.R.S. § 10-501 [↑](#footnote-ref-1)
2. *See* A.R.S. § 29-604 [↑](#footnote-ref-2)
3. *See* A.R.S. §§ 29-308 and 29-349 [↑](#footnote-ref-3)
4. *See* A.R.S. § 44-1460.01 [↑](#footnote-ref-4)
5. *See* A.R.S. § 10-501 [↑](#footnote-ref-5)
6. *See* A.R.S. § 29-604 [↑](#footnote-ref-6)
7. *See* A.R.S. §§ 29-308 and 29-349 [↑](#footnote-ref-7)
8. *See* A.A.C. R18-9-A203(C)(5)(b) [↑](#footnote-ref-8)
9. *See* A.A.C. R18-9-A203(C)(5)(b) [↑](#footnote-ref-9)
10. *See* 48 CFR 52.228-14(E) for Solicitation Provisions and Contract Clauses best federal practices. [↑](#footnote-ref-10)
11. *See* A.A.C. R18-9-A207(C) [↑](#footnote-ref-11)
12. *See* A.A.C. R18-9-A203(D) and (F) [↑](#footnote-ref-12)
13. *See* A.R.S. § 49-243(N) and A.A.C. R18-9-A203(D) and (F) [↑](#footnote-ref-13)