WETLAND AND STREAM

MITIGATION BANKING INSTRUMENT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Mitigation Bank

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Parish/County, Louisiana/Mississippi/Arkansas

Prepared for:

United States Army Corps of Engineers, Vicksburg District (Chair)

United States Environmental Protection Agency

United States Fish and Wildlife Service

Louisiana Department of Wildlife and Fisheries

Mississippi Department of Wildlife Fisheries and Parks

Mississippi/Arkansas Department of Environmental Quality

Arkansas Heritage Commission

Arkansas Game and Fish Commission

Prepared by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[This mitigation template should be used as outlined and modified to fit the specific goals of the restoration effort. Green text indicates sample text to be edited by the agent. Red text indicates instructions. No colored text should remain upon submittal]

This Mitigation Banking Instrument (hereinafter, MBI) regarding the establishment, use, operation, and maintenance of the \_\_\_\_\_\_\_ Mitigation Bank (hereinafter, \_\_\_MB or Mitigation Bank) is made and entered into by \_\_\_\_\_\_\_\_\_ (hereinafter, the Sponsor), the United States Army Corps of Engineers, Vicksburg District (USACE), the United States Environmental Protection Agency, Region 6 or 4 (EPA), the United States Fish and Wildlife Service (FWS), National Marine Fisheries, Mississippi Department of Marine Resources, Louisiana Department of Wildlife and Fisheries, Mississippi Department of Wildlife Fisheries and Parks, Mississippi/Arkansas Department of Environmental Quality, Arkansas Natural Heritage Commission, and Arkansas Game and Fish Commission, with reference to the following: [add or remove participating IRT agencies as appropriate for your project area]

USACE approval of this Instrument constitutes the regulatory approval required for the Mitigation Bank to be used to provide compensatory mitigation for Department of the Army Permits pursuant to 33 C.F.R. § 332.8(a)(1). This Instrument is not a contract between the Sponsor or Property Owner and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

# PREAMBLE

## Purpose:

The purpose of this Mitigation Banking Instrument is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Mitigation Bank. The Mitigation Bank will be used for compensatory mitigation for unavoidable impacts to Waters of the United States, including wetlands, which result from activities authorized under Section 404 of the Clean Water Act, provided such use has met all applicable requirements and is authorized by the appropriate authority or authorities.

## Location and Ownership:

The \_\_\_MB is located in Section \_\_, Township \_\_\_\_\_, Range \_\_\_\_\_ (Appendix A) in \_\_\_\_\_\_\_ Parish/County in Louisiana/Mississippi/Arkansas. The \_\_\_\_MB totals \_\_\_\_\_ acres of land and is owned fee-simple by \_\_\_\_\_\_\_\_\_\_, the bank Sponsor. The Sponsor will establish and maintain \_\_\_\_\_ acres of bottomland hardwood wetlands/ wet pine savannah and/or \_\_\_\_\_\_ linear feet of stream channel within the \_\_\_\_\_ acre total project area as a Mitigation Bank.

\*Additional specific information should be added to further show where the potential bank is located (including latitude/ longitude). This should include GPS coordinates.

Legal description of site: [Insert metes and bounds here from most recent survey plat]

## Project Description:

Under this Mitigation Banking Instrument, the Sponsor will restore and/or enhance and preserve approximately \_\_\_\_\_ acres of bottomland hardwood wetland/ wet pine savannah, \_\_\_\_\_\_\_\_ linear feet of stream channel, and associated habitat in accordance with the provisions of this Mitigation Banking Instrument and the Mitigation Bank Restoration Plan (Appendix C). The Sponsor shall then maintain the Mitigation Bank in accordance with the provisions set forth in Long Term Management of Mitigation Bank (Section VIII) and, if and when applicable, close the Mitigation Bank and provide for long-term management of the property in accordance with the Mitigation Bank Closure Plan (Section XV) and the Long-Term Management Plan (Section XVI). The Mitigation Bank shall consist of a total of \_\_\_\_ acres and include approximately \_\_\_\_\_ acres of bottomland hardwood wetlands/ pine savannah wetlands and \_\_\_\_\_ linear feet ( \_\_\_\_ acres) of stream channel.

Preservation will not account for greater than half of the mitigation effort. Any preservation must meet the following criteria: a) The resources to be preserved provide important physical, chemical, or biological functions for the watershed; b) The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the District Engineer must use appropriate quantitative assessment tools, where available; ) Preservation is determined by the District Engineer to be appropriate and practicable; d) The resources are under threat of destruction or adverse modifications; e) The preserved site will be permanently protected through an appropriate real estate or other legal instrument. You must specify how any preservation proposed meets this criteria.

## Existing Conditions

**[Note this section is for EXISTING CONDITIONS and NOT a discussion of restoration plans]**

* + 1. **Baseline Condition and Current Land Uses:**

\*\*\*Give a descriptive current, onsite condition narrative, including the current use of the land\*\*\*

* + 1. **Existing Hydrology and Water Management System**

\*\*\*Give a descriptive narrative regarding the current hydrologic conditions. Provide information on Hydrogeomorphic Approach (HGM) classification of the site. \*\*\*

* + 1. **Site Soils**

\*\*\* Give a description of the types of soils on site (Attachment 6). \*\*\*

* + 1. **Vegetation (Current Condition)**

\*\*\* Give a description of the types of vegetation currently on site\*\*\*

* + 1. **Wetland Status**

A delineation was conducted by \_\_\_\_\_\_\_\_, and subsequently approved by USACE, on (month/day/year). The Jurisdictional Determination confirmed the presence of \_\_\_\_\_\_ jurisdictional waters with \_\_\_\_\_ acres of wetlands and/or (\_\_\_\_\_\_linear feet) of other waters present within the bank site (Appendix F).

* + 1. **Existing Ecological Value**

\*\*\*Give a descriptive narrative regarding the current ecological value of the site.\*\*\*

* + 1. **Watershed Context**

\*\*\*Describe where the project is located within the watershed and its connection to major waterways within the area. \*\*\*

* + 1. **Site Selection Criteria**

\*\*\*Describe why this is a suitable site for compensatory mitigation considering all other factors and how this project fits into watershed scale context and adjacent land uses. Other relevant factors should be considered including development trends, anticipated land use changes, habitat status and trends, the relative locations of the impact and mitigation sites in the stream network, local or regional goals for the restoration or protection of particular habitat types or functions, water quality goals, floodplain management goals and the relative potential for chemical contamination of the aquatic resources.\*\*\*

## Credits:

In accordance with the provisions of this Mitigation Banking Instrument and upon the satisfaction of the success criteria contained herein, credits will be available to be used as mitigation in accordance with the schedule detailed herein in Section V, of this Mitigation Banking Instrument. Credits will be used by the Mitigation Bank Sponsor and sold to entities to fulfill their mitigation obligations. There will be no brokering of credits for resale. If the credit assessment methodology for the U.S. Army Corps of Engineers Vicksburg District changes; the District Engineer has the right to adjust credit potential according to the new methodologies.

## Interagency Review Team:

The Interagency Review Team (IRT) will consist of [remove any not applicable]:

United States Army Corps of Engineers, Vicksburg District (Chair)

United States Environmental Protection Agency, Region 6 or 4

United States Fish and Wildlife Service

National Marine Fisheries

Louisiana/Mississippi Department of Wildlife and Fisheries and Parks

Mississippi/Arkansas Department of Environmental Quality

Arkansas Natural Heritage Commission

Arkansas Game and Fish Commission

## Disclaimer:

This Mitigation Banking Instrument does not, in any manner, affect statutory authorities and responsibilities of the signatory parties.

# II. AUTHORITIES

The establishment, use, operation and maintenance of the Mitigation Bank are carried out in accordance with the following authorities:

A. Clean Water Act (33 U.S.C. §§ 1251, *et seq.)*

B. Rivers and Harbors Act (33 U.S.C. § 403)

C. Fish and Wildlife Coordination Act (46 U.S.C. §§ 661, *et seq.)*

D. Regulatory Program of USACE of Engineers (33 C.F.R., Parts 320-330)

E. Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332)

F. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R., Part 230)

G. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990); and

H. Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (73 FR 19594-01) (incorporated into Army Regulations under 33 C.F.R Parts 325 and 332)

NOW, THEREFORE, the parties agree to the following:

# III. ESTABLISHMENT OF THE MITIGATION BANK

## Sponsor Agreement:

The Sponsor agrees to perform all necessary work, in accordance with the provisions of this Mitigation Banking Instrument, to establish and/or maintain approximately \_\_\_\_ acres of bottomland hardwood wetland/ wet pine savannah and \_\_\_\_ linear feet ( \_\_\_ acres) of stream channel as described in the Mitigation Bank Restoration Plan (Appendix C), until it is demonstrated to the satisfaction of the agencies represented in the IRT (acting through the Chair) that the project complies with all conditions contained herein, or until all credits are sold, whichever is later.

## Environmental Documentation:

The Sponsor will obtain all appropriate environmental documentation, permits or other authorizations needed to establish and maintain the Mitigation Bank. This Mitigation Banking Instrument does not fulfill or substitute for such authorization.

## Sequence of Establishment:

[Give a description of how the bank will be established - if work will be one phase or multiple phases, when will work begin, etc.]\*

## Financial Assurance/ Long Term Fund Requirements:

The purposes of financial assurances are to ensure a high level of confidence that the compensatory mitigation project will be successfully completed in accordance with applicable performance standards. To accomplish this goal, sufficient funds to perform the restoration work and insure its success must be guaranteed in the form of a surety bond, escrow account, letter of credit, casualty insurance or other mechanism [*Document which form of financial assurances will be used for this project*] and deemed appropriate by USACE. Depending on the level of risk involved with the restoration plan, funding levels may be required for on-site replacement or off-site replacement. The amount of financial assurances needed for initial construction and long-term bank maintenance is based on a breakdown submitted by the Sponsor (Appendix E), and approved by the IRT. The Sponsor shall establish a financial assurance mechanism or mechanisms to ensure that sufficient funds are available to an “independent party” in the case of non-compliance or bank failure. USACE, in coordination with the IRT, will determine if the Sponsor’s designated third party is appropriate to fulfill the obligations specified in this MBI. The designated independent party entity cannot have any legal, managerial, or financial connections to the Sponsor (other than that necessary for implementing the required financial assurances for executing this MBI).

Such financial assurances will be in the form of two or four accounts, established at a federally insured depository that is well, or adequately, capitalized as defined in Section 38 of the Federal Deposit Insurance Act (12 U.S.C. § 1831o). The long term management fund will be held in a fund in accordance with modern endowment law, codified in the Uniform Prudent Management of Institutional Funds Act.. The escrow account funds shall be placed into the proper account upon receipt of payment from permit recipients and divided as follows between the four funds:

1. The Sponsor shall provide copies of depository account statements to USACE upon request and in monitoring reports.
2. Sponsor shall guarantee payment to the designated third party beneficiary from funds in the “construction and establishment account” as determined appropriate by USACE, in consultation with the IRT, in the event that the Sponsor does not fulfill its obligations to perform activities, as specified in this MBI.
3. Payment to the designated third party of a specified amount of the construction funds shall be made upon written notification by USACE to the Sponsor that Sponsor is in non-compliance.
4. Wetland Bank Account Financing [Omit if wetland credits are not proposed]
   1. One account shall be a **“construction and establishment account”** that will be funded prior to initial credit release equivalent to $\_\_\_\_\_\_ per acre for every acre contracted for use as mitigation. [This value will be based upon predicted construction costs outlined in Appendix E.]
   2. One account shall be a **“long-term maintenance and protection account”** equivalent to $\_\_\_\_\_\_\_\_\_ per acre / $\_\_\_\_ for every credit contracted for use as mitigation. The “long-term maintenance and protection” funding shall be placed in a dedicated endowment to establish sufficient financial assurance for long term maintenance of the bank. [This value will be based upon predicted long term management costs and/or level of risk for success. See Appendix E for cost predictions.]
5. Stream Bank Account Financing [Include only if stream credits are proposed]
   1. One account shall be a **“construction and establishment account”** that will be funded prior to initial credit release equivalent to $\_\_\_\_\_\_ per foot for every linear foot contracted for use as mitigation. [This value will be based upon predicted construction costs outlined in Appendix E.]\*
   2. One account shall be a **“long-term maintenance and protection account”** equivalent to $\_\_\_\_\_\_\_\_\_ per foot for every foot contracted for use as mitigation. The “long-term maintenance and protection” funding shall be placed in a dedicated endowment to establish sufficient financial assurance for long term maintenance of the bank. [This value will be based upon predicted long term management costs and/or level of risk for success. See Appendix E for cost predictions.]

If the IRT determines that the Sponsor is not complying with the terms and intent of this MBI, USACE, as chair of the IRT, will provide written notice to Sponsor, including a detailed description of the basis of the non-compliance determination. The Sponsor shall submit a written adaptive management plan to USACE and other members of the IRT for review and approval within forty-five (45) days of receiving written notice of non-compliance. The adaptive management plan shall, at a minimum, identify the cause of the non-compliance, the remedial measures necessary, and a time line for implementing said measures to bring the Bank into compliance. To the extent practicable, USACE and the IRT shall approve or disapprove the adaptive management plan within forty-five (45) days of receipt, provided that sufficient information and acceptable measures are contained within the plan.

In the event that the IRT determines that the Sponsor is not complying with the terms of this MBI and the Sponsor either does not provide the adaptive management plan within the time frame specified above or does not implement the features of the adaptive management plan within the time frames specified therein, all or a portion of the funds in the construction and / or endowment account shall be released to a Third Party, either non-profit or government entity, approved by the IRT to effect necessary corrections or acquire equivalent ecological value elsewhere. Unless funds are released to a Third Party, the Financial Assurance accounts shall not be utilized for corrective actions.

USACE shall, within a reasonable time frame, provide authorization to the Sponsor and financial institution to release to the Sponsor appropriate funds as performance standards are met and as specified below, or at the time of the sale of any property. A reasonable time frame for receiving a response shall be determined by the IRT, acting through the chair, and communicated to the Sponsor.

If USACE believes that the bank is in out of compliance, written notice to the Sponsor must be provided, including a detailed description of the basis for the notice of non-compliance and a description of the actions necessary to come into compliance with the terms of this Mitigation Banking Instrument. In the event that the Sponsor is placed in non-compliance and refuses to come into compliance within a reasonable time of receiving written notice of being placed in non-compliance, the Financial Assurance accounts pertaining to the tract (or tracts) for which the Sponsor has been placed in non-compliance shall be transferred to Name of the Third Party by the financial institution administering the account within thirty (30) days of written notification by USACE that the Sponsor has been placed in non-compliance and has failed to come into compliance.

If the Sponsor is not placed in non-compliance, the funds from each set of Construction and Establishment Account shall be reduced incrementally as performance standards are achieved in accordance with Section VI.

## Real Estate Provisions:

The Sponsor shall record a conservation servitude/easement on the entire Mitigation Bank acreage prior to certification of any credits. The conservation servitude/easement shall preserve the Mitigation Bank as wetland and wildlife habitat and will run with and be a burden on the land for landowners, their heirs or assigns, and all subsequent purchasers. The conservation servitude/easement shall stipulate that the Sponsor has entered into a plan with the signatory agencies (IRT) for the establishment of the Mitigation Bank and that the Sponsor has agreed to the provisions specified in this Mitigation Banking Instrument. The real estate protection instrument is not required to be executed and recorded in order to receive MBI approval; however, it is required to be executed and recorded in order to receive a credit release. [MBI must indicate that a conservation servitude/ easement will be used.]

* + - 1. The proposed conservation servitude/easement, including the full legal description of the Mitigation Bank property, is set forth in Appendix “D”.
      2. The following documents shall be provided to USACE for review and approval prior to filing:
         1. A draft copy of the final conservation servitude/easement, with all changes from the version set forth in Appendix “D” clearly identified, and
         2. Title evidence summarizing each recorded or unrecorded lien or encumbrance on, or interest in, the property that may affect the ability of the property owner to protect the mitigation site, such as a preliminary title opinion signed by a licensed attorney. Any lien, encumbrance, interest in, or exception to title shall be subordinated to the conservation servitude/easement.
      3. After filing, a copy of the recorded / conservation servitude/easement, clearly showing the book, page, and date of filing, will be provided to USACE prior to the first credit release.
      4. The landowner/grantor may reserve all rights to the hunting, fishing, trapping, non-consumptive recreational pursuits, limited forest management, maintenance of existing roads and trails, mineral ownership and sub-surface exploration.
      5. The conservation servitude/easement shall run with the land and shall be binding on the Sponsor, the landowners and all future owners or users of the property. A copy of the recorded protection document shall be provided to the USACE within 30 days of recording. Notwithstanding anything in this MBI or any related documents, in no event can any credits be released or sold or debited or credited until the IRT through USACE receives proof of recording of approved protection document on the portions of the bank over which credits are sought. Such documents may not be altered, amended, terminated or vacated without written approval of the USACE. Appropriate easement/servitude holders are considered nongovernmental agency or non-profit with the specified purpose of retaining or protecting the natural, scenic or open space values of immovable property, assuring the availability of immovable property for agricultural, forest, recreation of open-space use, protecting natural resources, maintaining or enhancing air or water quality or preserving the historical, archeological or cultural aspects of immovable property.

# IV. OPERATION OF THE MITIGATION BANK

## Service Area:

This Mitigation Bank is established to provide mitigation to compensate for impacts to waters of the United States, including wetlands, within the Vicksburg District. This area is demarcated by the United States Geologic Survey as the \_\_\_\_\_\_\_ Hydrologic Unit Code (HUC) \_\_\_\_\_\_\_and includes portions of \_\_\_\_\_\_\_\_\_\_\_ Parishes/Counties within that part of the cataloging unit occurring in Louisiana/Mississippi/Arkansas (Attachment 1, Exhibit 3).

The service area for this mitigation bank will be: Insert up to two 8-digit HUC’s within the same 6-digit HUC. Additional HUC’s must be adjacent to HUC containing mitigation bank.

Decisions authorizing use of credits from the Mitigation Bank will be made by the appropriate authority on a case-by-case basis in accordance with all applicable requirements.

## Access to Mitigation Bank:

The Sponsor will allow, or otherwise provide for, access to the site to all signatory parties as necessary for the purpose of inspection and compliance monitoring consistent with the terms and conditions of this Mitigation Banking Instrument. Inspecting parties shall provide reasonable notice of not less than forty eight (48) hours to the Sponsor prior to inspection of the Mitigation Bank.

## Eligibility Requirements:

For projects requiring authorization under Section 404 of the Clean Water Act, USACE, in consultation with the other regulatory and resource agencies, will determine the eligibility of projects to use the Mitigation Bank on a case­ by-case basis. In general, it is agreed that the Mitigation Bank will be used to provide compensation for unavoidable wetland and stream impacts authorized by the issuance of the Department of Army (DA) permits under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act of 1899 for impacts to bottomland hardwood wetlands, streams, and riverine systems.

## Assessment Methodology:

Credits and debits will be assessed based on stream linear feet, riparian buffer width, and wetland acreage. All stream credits shall be determined by the Charleston Credit Determination Methodology (2010) and wetland credits shall be determined by the Charleston Credit Determination Methodology (2010), as recognized by USACE for determining compensatory wetland and stream mitigation. If the credit assessment methodology for the U.S. Army Corps of Engineers Vicksburg District changes, the District Engineer has the right to adjust credit potential according to the new methodologies.

## Accounting Procedures:

Proof of credit sales: The Sponsor shall submit to the USACE a Proof of Credit Sale Letter (Appendix K) for each credit sale transaction.

Credit Ledger: The Sponsor shall be responsible for keeping an up-to-date ledger of all transactions within the Mitigation Bank. The Sponsor shall submit a copy of this ledger to the USACE -Vicksburg, as Chair of the IRT, once per year following the first credit sale/transaction of the bank or USACE reserves the right to suspend credit sales until the credit ledger is submitted and deemed current. If the Sponsor does not submit the credit ledger, a written request may be issued (via email or letter). The Sponsor will submit the ledger within 10 days of request or USACE reserves the right to suspend credit sales until the credit ledger is submitted and deemed current. USACE will distribute the ledger to other IRT members for review. The ledger shall document the following:

1. Name and permit number for each permit recipient who has contracted with the Sponsor for mitigation.
2. Date the contract was executed.
3. Total available credits at the beginning of the reporting period.
4. Total credits debited on behalf of each permit recipient.
5. Total remaining credits available for purchase.

RIBITS Credit Ledger: The Sponsor will be responsible for maintaining the bank’s credit ledger in the Regional Internet Banking Information System (RIBITS). The USACE will provide a username and password for the Sponsor to maintain this ledger. All credit transactions shall be entered into the database no later than 7 days after the transaction has occurred or USACE reserves the right to suspend credit sales until sales transactions are deemed current and compliant. RIBITS mandatory information fields include the following:

1. Jurisdiction
2. Transaction Date
3. Client Name
4. Credits Debited
5. Corps Permit Number- Format: MVK/Year/Permit Number \*must be 5-digits long (example: MVK-2000-00150)
6. Type
7. Credit Classification

## Crediting and Debiting Procedures:

Credits within the Mitigation Bank will be debited based on the 2010 Charleston Method for determining compensatory mitigation for wetland impacts associated with approved projects. Any project impacting jurisdictional areas within the Service Area for which mitigation at the\_\_\_\_ Mitigation Bank has been approved can be mitigated within the \_\_\_\_\_\_\_ acres of the mitigation bank. At the discretion of the USACE Regulatory Branch, Vicksburg District, wetland and / or stream mitigation for projects outside the Service Area may also be approved on a case-by-case basis using the 2010 Charleston Method.

# V. MAINTENANCE, MONITORING AND REPORTING

## Maintenance Provisions:

The Sponsor agrees to perform all necessary work to maintain the Mitigation Bank consistent with the maintenance criteria established in the Mitigation Bank Restoration Plan (Appendix C). The Sponsor shall continue with such maintenance activities until closure of the Mitigation Bank. Upon closure of the Mitigation Bank, the Sponsor shall implement the management requirements established in the Long-Term Management Plan (Section VIII). Deviation from the approved Mitigation Bank Restoration Plan is subject to review and written approval by the IRT, acting through the Chair.

## Monitoring Provisions:

The Sponsor agrees to perform all necessary work to monitor the Mitigation Bank to demonstrate compliance with the performance criteria developed by the UNITED STATES Army Corps of Engineers, Vicksburg District, for jurisdictional areas and associated upland buffers as established in this Mitigation Banking Instrument. If the Sponsor does not provide a complete monitoring report, the District Engineer has the right to suspend further credit sales and / or terminate the mitigation bank. The following should be described in monitoring reports.

**Wetland:**

* **Wetland Hydrology.** The hydrology monitoring should display wetland hydrology which is defined as whether the site is inundated (flooded or ponded) or the water table is ≤12 inches below the soil surface for ≥14 consecutive days during the growing season at a minimum frequency of 5 years in 10 (≥50% probability) (ERDC TN-WRAP-05-2). Any combination of inundation or shallow water table is acceptable in meeting the 14-day minimum requirement. Short-term monitoring data may be used to address the frequency requirement if the normality of rainfall occurring prior to and during the monitoring period each year is considered. A site must be inundated or saturated typical of a reference condition for the same HGM hydrology classification. A site must meet wetland hydrology criteria as described in the USACEWetland Delineation Method, 1987 Manual and/or appropriate Regional Supplement
* **Wetland vegetation.** The bank should display a dominance of wetland vegetation, defined as a vegetation community of species where more than 50% of all dominant species are facultative (FAC), facultative-wetland (FACW) or wetland (WET), excluding FAC- plants, using routine delineation methods as described in the USACEWetland Delineation Method, 1987 Manual and/or appropriate Regional Supplement.
* **Hydric soils.** The mitigation bank should display hydric soils, which are soils that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part (United States NRCS Version 7.0, 2010).

Streams:

* Must exhibit a dimension/ pattern/ profile within 15% of designed channel and meet stream stability metrics.

## Post-Construction/ Post-Planting Report.

An as-built report shall be submitted to the IRT within 90 days of completion of each Phase of mitigation activities depicted in the bank Restoration Plan (Attachment C). The as-built report is submitted to meet the requirements of the Post Construction credit release. The report shall include [Include relevant information to project specific restoration/ enhancement activities]:

* + - 1. The GPS referenced locations for all required monitoring plots, soil reduction tubes and water level monitoring devices or stations.
  1. A plan view map of the constructed/restored wetlands, streams, and adjacent buffers with location of all permanent sampling stations, monitoring wells, in-stream and stream bank structures, and all permanent cross-sections and profiles;
  2. A description and map of vegetation monitoring plots established at the time of planting. Vegetation monitoring plots will be:
     1. Distributed throughout the mitigation bank.
     2. Cover at least 10% of the mitigation bank, and represent each of the vegetative community types (e.g. cypress sloughs, bottomland hardwoods, wet pine savannah, etc.).
     3. Be at least 1/10-acre randomized circular plots established using a randomly selected, evenly distributed grid approach.
  3. The establishment of a photo point at the center of each monitoring plot, with four photos taken facing outward toward each of the four cardinal directions (north, south, east and west).
  4. [When needed, as determined by the IRT through this Instrument] The installation of soil reduction tubes to provide evidence of soil saturation at selected fixed vegetative monitoring plots.
     1. be displayed on a map (including GPS coordinates) and presented to the IRT for approval prior to field establishment
     2. be evenly distributed throughout the mitigation bank, to the maximum extent practicable,
     3. be installed at a rate of one tube per for every XXXX acres of restored bank area, at selected fixed vegetative monitoring plots,
     4. be painted with one coat of ferrihydrate paint and installed to a minimum depth of 20 inches below the surface leaving a minimum of ½ inch of coating above the surface,
     5. be considered as providing a positive indicator of sufficient anaerobic and saturation conditions if most of the ferrihydrate paint coating is dissolved,
  5. [When needed, as determined by the IRT through this Instrument] The installation of appropriate hydrologic monitoring devices, groundwater wells or piezometers. Hydrology monitoring wells will: [Include reference conditions if appropriate.]
     1. be displayed on a map (including GPS coordinates) and presented to the IRT for approval prior to field establishment
     2. be evenly distributed throughout the mitigation bank, to the maximum extent practicable,
     3. be installed at a rate of one monitoring well for every XXXX acres of restored bank area,
     4. be evaluated to collect pertinent data at least daily throughout the growing season, including the collection of information to substantiate whether the site exhibits the appropriate hydrology for the wetland community types being restored [include reference conditions if appropriate],
  6. A baseline HGM Functional analysis of the site prior to planting and restoration utilizing the appropriate HGM form in Attachment G of this instrument.
  7. [For Stream Banks] Profile of in-stream structures, stream cross-sections, longitudinal stream profiles from permanent monitoring locations, and other relevant baseline information for stream success metrics. Please see required data in restoration plan.
  8. Description regarding invasive species prevalence and composition.
  9. Professional stamped survey of mitigation area.
  10. A survey of cross-sections and profile to establish a baseline will be conducted for stream restoration projects.

## Monitoring Reports:

Monitoring reports shall be provided to USACE no later than December 15th following the growing seasons in Years 1, 3, 5 ,8, and 10 so that any corrective measures by the Sponsor may be undertaken. USACE will distribute the report to the members of the IRT. In the event monitoring reveals that initial standards have not been met, the Sponsor shall take measures to achieve the performance standards the following year. Monitoring, reporting and remedial action shall be conducted in accordance with the following:

1. The Sponsor shall provide a written report to USACE by December 15th to allow for the Sponsor to complete vegetative chemical control, if needed. Reports shall be submitted following the growing seasons in years 1, 3, 5, 8, and 10 documenting the results of the monitoring conducted above. The report shall include, at minimum, the following:
   1. A UNITED STATES Geological Survey topographic quadrangle with the Mitigation Bank indicated.
   2. A detailed narrative that summarizes the condition of the Mitigation Bank and all maintenance activities.
   3. Appropriate site maps that show the locations of all sampling plots, permanent photographic stations, soil reduction tubes, and hydrologic monitoring devices or stations.
   4. Data and analysis regarding the hydrology of the Mitigation Bank (e.g., hydroperiod, extent and depth of inundation, groundwater monitoring results, precipitation records, etc.). Additionally, during each monitoring event, all primary and secondary hydrology indicators will be observed and documented for each monitoring plot, as currently defined in the USACE Delineation Manual, Environmental Laboratory, 1987, Corps of Engineers’ Wetlands Delineation Manual (and Supplemental Guidance), Technical Report Y-87-1, USACE of Engineers Waterways Experiment Station, Vicksburg, Mississippi.
   5. Results and analysis of vegetation surveys, including the following: The Sponsor shall conduct surveys of living seedlings on the tract at each monitoring location. Sampling shall be done between April 15th and September 15th. Seedling survival shall be documented by performing monitoring at the vegetative plots indicated in the Restoration Plan indicated in Appendix C. A table will be provided which documents the following for each monitoring plot: monitoring plot identification, latitude, longitude, count of planted trees per plot, height of trees, volunteer tree species per plot, hard mast and soft mast percent, and tree per acre value for each plot. Provide averages over entire site for tree per acre, hard mast/ soft mast ratio. A table should be provided which shows invasive species information for each plot and an estimate of invasive or exotic species over the entire site. Visual estimates of overall percent cover and of percent cover within each stratum of vegetation over the entire bank; species composition; hard mast to soft mast ratio; indices of species diversity; estimates of percent cover of exotic species within each stratum of vegetation present; composition of plant community (wetland indicator status); calculations of survival, density of all trees within the monitoring plots (including natural recruitment),diameter or DBH, and height of all planted trees; and estimates of natural recruitment.
   6. Results of surveys of wildlife usage of the site (e.g., observations of amphibians, reptiles, mammals, birds and macro invertebrates on or near the Mitigation Bank).
   7. Descriptions of the condition of applicable drainage ditch plugs and water control structures.
   8. A discussion of likely causes of observed tree mortality within those plots or areas that did not achieve specified performance standards at Years 3, 5 and10, or note plots in monitoring reports for Years 1 and 8 which are candidates for corrective measures.
   9. A completed HGM functional assessment of each planting zone utilizing the appropriate HGM Methodology. The HGM assessment will be utilized to assess the ecological functional lift of the restoration effort. The HGM score for each monitoring event will be compared to the original baseline pre-restoration score as given in Appendix G, and to the score of the previous monitoring event to determine both overall ecological functional lift and ecological functional lift between monitoring events. The HGM Assessment shall determine a score for the Functional Classification Indices required in the appropriate HGM regional guidebook.
   10. A drawing based upon the grading plans of the site that depicts topography, sampling plots, cross-sections, and permanent photo stations. Survey data and comparison to as-built data.
   11. For stream mitigation banks, metrics relating to dimension, pattern and profile performance standards will be submitted and compared to as-built reports.
   12. Data regarding the hydrology of the bank (e.g. hydroperiod, extent and depth of inundation, precipitation records, etc.). [Include well and other hydrology monitoring as necessary to demonstrate success of hydrology restoration goals, if appropriate.]
   13. Monitoring reports shall present yearly data in tabular and graphical format comparing as-built, target, current and previous years monitoring data, and shall include a discussion of any deviation from as-built, target, or previous year’s data. For stream banks with in-stream work, metrics measured should reflect metrics in restoration plan.
2. The Sponsor shall provide funding information on financial assurance mechanisms.
3. If survival (as determined by sampling or observing high mortality rates within any planting zone) is less than indicated performance standards, the Sponsor shall take appropriate actions, as recommended by the IRT, to address the causes of mortality and shall replace all dead trees with new seedlings of the appropriate species during the following non-growing season. Replanting, in accordance with this paragraph, and monitoring and reporting, as described in paragraphs 1 and 2 of this section, shall occur thereafter as needed to achieve and document the minimum required survival density for five consecutive years.
4. If tree survival or any other corrective measure is required for the site to meet restoration goals (as documented in monitoring reports), the Sponsor shall develop and implement an adaptive management plan. This adaptive management plan will be submitted to USACE for approval. Upon approval, any replanting will require the site to be monitored according to monitoring and reporting guidance above until success criteria are met.
5. The Sponsor shall continue monitoring and reporting of each planting effort, in accordance with the Restoration Plan for a minimum of ten (10) years for wetlands/ vegetative work and five (5) years for streams...Annual reports will be provided to USACE for distribution to the IRT members.

# VI. Performance Standards / Release of Credits and Financial Assurances

Performance standards, as used in this Instrument, refer to measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if the compensatory mitigation is meeting the restoration objectives for the bank. Compliance with the following performance standards shall demonstrate that the bank is meeting the restoration objectives, and is achieving the community types outlined in the attached restoration plan (Appendix C). Measures to achieve the performance standards, as outlined below, shall be implemented during the initial restoration of the site (year 1), and shall be documented in the as-built baseline submittal for the bank required in Section VI.B of this instrument. Following year 1, documentation that the bank is meeting performance standards, as outlined below, shall be provided in monitoring reports, with monitoring conducted as described below.

The USACE in consultation with the IRT will use monitoring reports, visual observations, and data collected on site to determine if the Bank is on track to meet Performance Standards, either in whole or in part or whether adaptive management is needed.

The Bank Sponsor shall monitor the Bank to demonstrate compliance with the Performance Standards established in this MBI. Monitoring shall be conducted during Years 1, 3, 5, 8, and 10 following construction of any phase of the Bank. Monitoring may be terminated or the extent of monitoring may be reduced over part or the entire site at the discretion of the Chairs, in consultation with the IRT.

Monitoring of a given phase, shall occur for ten (10) years following construction of that phase or until the Bank is closed in accordance with the Bank Closure Procedures or until all Credits are sold, whichever is later.

Deviation from the monitoring provisions in the MBI and the monitoring plan requires review and written approval by USACE in consultation with the IRT.

The Following are standards which must be met to achieve credit releases at the specified year.

## Bottomland Hardwood Performance Standards

***Year 0 – BLH – Initial Release:***

**Credit Release:** **25%** of total number of anticipated/calculated credits

**Financial Release:** no financial release from any account funds

**Contingent upon the following:**

1. Approval of this Mitigation Banking Instrument and approval of included restoration plan (Appendix C),
2. A copy of the approved and recorded conservation servitude/easement that protects the site in perpetuity,
3. Submittal of a professional land survey,
4. Receipt of necessary permits,
5. Establishment of financial assurances (Section III.D) for the construction account and the long-term maintenance and protection account.

***Year 1 – BLH – Post Construction Release:***

**Credit Release:** **25%** of total number of anticipated/calculated credits

**Financial Release:** no financial release from any account funds

**Contingent upon the following:**

1. Submittal of a monitoring/as-built report, Section VI.C.
2. Completion of initial planting (verified by the IRT),
3. Establishment and marking of monitoring plots,
4. Implementation of hydrologic features (if necessary),
5. Placement of ground water monitoring wells and redox tubes (if necessary),
6. Demonstration that a wetland functional capacity increase has occurred as a result of implementation of the restoration plan (via completion of an HGM Functional Assessment by a qualified professional individual, and verified by the IRT, through the Chair),
7. Maintenance of financial assurances (Section III.D).

***Year 3 – BLH – Success/Performance Release:*** [to occur after the 3rd full growing season]

**Credit Release:** **15%** of total number of anticipated/calculated credits

**Financial Release:** **50%** of total funds in the construction and establishment account

**Contingent upon the following:**

1. Submittal of a monitoring report (in accordance with Section VI.D),
2. Verification of an 80% or greater survival rate (or 240 trees/acre) of planted species at the minimum required initial planting density of 302 trees/acre,
3. Documentation verifying that hydrology restoration features (if required as part of the bank) are successful,
4. Maintenance of financial assurances (Section III.D).
5. Demonstration of positive growth in planted tree: lateral canopy diameter, stem diameter, and/or height. Must have at least two additional feet in height from planted species, and at least 50% growth in lateral canopy from previous monitoring event.
6. Exotic and nuisance (Chinese tallow, privet, or as defined by the US Department of Agriculture National Invasive Species Information Center) species shall not comprise more than 5% cover and noxious species (e.g., honey locust, black willow, baccharis, cotton wood) shall not comprise more than 20% of the total stem density.

***Year 5 – BLH – Success/Performance Release:*** [to occur after the 5th full growing season]

**Credit Release:** **10%** of total number of anticipated/calculated credits

**Financial Release: 50%** of total funds in the construction and establishment account

**Contingent upon the following:**

1. That the bank qualifies as a jurisdictional wetland. (A delineation must be submitted at Year 5 to document site conditions and extent of jurisdictional areas.)
2. Submittal of a monitoring report (in accordance with Section VI.C),
3. Vegetative success, verified by the following:
   1. a survival rate of 150 trees/acre or greater. This number may include desirable natural recruitment,
   2. seven (7) to ten (10) target species or greater per acre from the species listed in Appendix C, with no single species comprising more than 25% of the overall stocking,
   3. hard mast species comprising between 50 to 60% of the total species planted,
   4. demonstration of positive growth in planted tree: lateral canopy diameter, stem diameter, and/or height. Must have at least two additional feet in height from planted species, and at least 50% growth in lateral canopy from previous monitoring event.
   5. exotic and nuisance (Chinese tallow, privet, or as defined by the US Department of Agriculture National Invasive Species Information Center.) species shall not comprise more than 5% cover and noxious species (e.g., honey locust, black willow, cotton wood, baccharis) shall not comprise more than 20% of the total stem density.
4. Wetland hydrology, verified by the following:
   1. primary and secondary indicators of wetland hydrology are present,
   2. data from shallow groundwater monitoring wells (GPS-referenced) with automatic data loggers indicate that hydrology is within 20% of reference conditions,
   3. data from shallow groundwater monitoring wells (GPS-referenced) demonstrate that there is free water within 12 inches of the soil surface for at least 14 consecutive days during the growing season.
5. Hydric soils, verified by the following:
   1. field data that document the existence of hydric soil criteria as described in the USACEWetland Delineation Method, 1987 Manual or appropriate Regional Supplement,
   2. data from soil reduction tubes (GPS-referenced) that indicate that soils are significantly anaerobic and saturated.
6. Demonstration of a wetland functional capacity increase from baseline conditions by using the HGM Functional Assessment (to be completed by a qualified professional individual), and verified by the IRT, through the Chair,
7. Maintenance of financial assurances (Section III.D).

***Year 8 – BLH – Success/Performance Release:*** [to occur after the 8th full growing season]

**Credit Release:** **0%** of total number of anticipated/calculated credits

**Financial Release:** **0%** of total funds in the construction and establishment account

**Contingent upon the following:**

1. Submittal of a monitoring report (in accordance with Section VI.D),
2. Verification of an 80% or greater survival rate (or 240 trees/acre) of planted species at the minimum required initial planting density of 302 trees/acre,
3. Documentation verifying that hydrology restoration features (if required as part of the bank) are successful,
4. Maintenance of financial assurances (Section III.D).
5. Demonstration of positive growth in planted tree: lateral canopy diameter, stem diameter, and/or height. Must have at least two additional feet in height from planted species, and at least 50% growth in lateral canopy from previous monitoring event.
6. Exotic and nuisance (Chinese tallow, privet, or as defined by the US Department of Agriculture National Invasive Species Information Center) species shall not comprise more than 5% cover and noxious species (e.g., honey locust, black willow, cotton wood, baccharis) shall not comprise more than 20% of the total stem density.

***Year 10 – BLH – Success/Performance Release:*** [to occur after the 10th full growing season]

**Credit Release:** **remaining** credits (**25%** of total) anticipated/calculated credits

**Financial Release:** **100%** of total funds in the Long-Term Maintenance and Protection Account are released to the Sponsor or transferred to an IRT-approved third-party entity (if the property is protected by a conservation servitude/easement).

**Contingent upon the following:**

1. Submittal of a monitoring report (in accordance with Section VI.C),
2. Vegetative success, verified by the following:
   1. a survival rate of 120 trees/acre or greater. This number may include desirable natural recruitment,
   2. seven (7) to ten (10) target species or greater per acre from the species listed in Appendix C,
   3. a range of hard to soft mast ratio between 50/50 and 60/40,
   4. a minimum of three years of positive growth of planted tree species through demonstration of positive growth in planted tree: lateral canopy diameter, stem diameter, and/or height. Must have at least two additional feet in height from planted species, and at least 50% growth in lateral canopy from previous monitoring event.
   5. average height of the planted canopy is a minimum of five (5) feet or greater, excluding fast growing genera such as *Platanus* and *Populus*,
   6. the plant community must be comprised primarily of hydrophytic vegetation typical of bottomland hardwood community types where more than 50% of all dominant species are facultative (FAC), facultative-wetland (FACW) or wetland (WET), *excluding FAC- plants*, using routine delineation methods as described in the USACEWetland Delineation Method, 1987 Manual or appropriate Regional Supplement,
   7. exotic and nuisance species (Chinese tallow tree, Chinese privet, or as defined by the US Department of Agriculture National Invasive Species Information Center) shall not comprise more than 5% cover, and noxious species (e.g., honey locust, black willow, cottonwood, and baccharis) shall not comprise more than 20% of the total stem density.
3. Demonstration of a minimum of three years of positive functional benefit using the HGM Functional Assessment (to be completed by a qualified professional individual), and verified by the IRT, through the Chair,
4. Maintenance of financial assurances (Section III.D). Long term management account is fully funded one year prior to bank close-out.

## Stream Mitigation

***ALL YEARS – Stream – Any/All Credit and Financial Assurance Releases are Contingent Upon the Restored Stream Exhibiting the Following Characteristics:***

[It may be appropriate to modify the list of measurements to only indicate successful execution of restoration plan to meet goals of project.]

1. **Dimension:** The analysis of representative riffle cross-section shall indicate that it has neither aggraded, degraded, widened, nor narrowed to the point where it has become unstable or will cause instability. The following measurements will be used to aid in making this determination each monitoring year:
   1. The Width/Depth Ratio Stability Rating (measured Width/Depth Ratio divided by the baseline Width/Depth Ratio) shall not be greater than 1.3 as appropriate to the associated stream type.
   2. The Bank Height Ratio shall be 1.0 to 1.2. Any deviation from this standard should be justified here.
   3. Entrenchment ratio will be greater than 2.2 for C and E stream types and greater than 1.4 for B stream types.
   4. Other measurements to consider include cross-sectional (bankfull) area of the channel, flood prone elevation, bankfull elevation, flood prone width, entrenchment ratio, mean depth, bankfull width, and hydraulic radius to demonstrate the project meets stated restoration goals.
2. **Pattern:** The analysis of the plan-view survey or field measurements shall indicate that the stream is not migrating significantly to the point where it will cause significant bank erosion and cause instability. The following standards will be used to aid in making this determination each monitoring year:
   1. Within any given year, the sinuosity of the stream shall not increase or decrease by an amount greater than 0.2 of the approved channel design and associated stream-type or evolutionary phase.
   2. The centerline of each channel cross-section will not move by more than 20% of the width of the approved as-built channel width in any given year.
   3. The Radius of Curvature/Width Ratio shall remain within the range of variability present in the design criteria.
   4. Pool to pool spacing shall be 5 to 7 for watersheds greater than 5 square miles and 4 to 5 for watersheds less than 5 square miles.
3. **Profile:** The analysis of the longitudinal profile shall indicate that the bed elevation has neither aggraded nor degraded to the point where it will cause instability. The following performance standards will be used to aid in making this determination each monitoring year:
   1. The analysis of the Longitudinal Profile shall not indicate significant alterations in the target locations, depths, and slopes of stream features (riffle, run, pool, and glide).
   2. Bankfull Shear Stress, and Mean Depth and Slope (calculated using Critical Dimensionless Shear Stress) shall be appropriate for transporting the D50 of either the bar sample or the sub-pavement sample.
   3. The slope of the longitudinal profile shall not increase or decrease by an amount greater than 0.2% of the appropriate stream type.
4. Rosgen Stream Type: Channel meets definition of designed type.
5. **Stream Reach Stability:** The analysis of the streambank from the top of the bank to the ordinary high water mark shall indicate a significant amount of natural protection to prevent streambank erosion that could jeopardize the stability of the streambank or the stream reach. Sponsor should propose appropriate BEHI/NBS performance standards.

***Year 0 – Stream – Initial Release:***

**Credit Release:** **25%** of total number of anticipated/calculated stream credits per reach

**Financial Release:** **no financial release** from any account funds

**Contingent upon the following:**

1. Approval of this Mitigation Banking Instrument and approval of a restoration plan which will include but is not limited to planform, profile, and typical dimensions as well as expected credits generated,
2. A copy of the approved and recorded conservation servitude/easement that protects the site in perpetuity,
3. Establishment of permanent monitoring cross-sections.,
4. Establishment of financial assurances (Section III.D) for the construction account and the long-term maintenance and protection account.

***Year 1 – Stream – Construction Release:***

**Credit Release:** **10%** of total number of anticipated/calculated stream credits per reach

**Financial Release:** **10%** of total funds in the construction and establishment account

**Contingent upon the following:**

1. Submittal of:
   1. Stream Construction Report – with as-built drawings that show the completion of all initial physical improvements of a Reach made pursuant to the Stream Bank Restoration Plan
   2. Buffer Construction Report – with buffer woody species planting list, submittal of planting report, and proof of planting,
   3. Wetland Construction Report – with wetland woody species planting list, submittal of planting report, and proof of planting
2. Submittal of a monitoring report with the following information:
   1. Stream morphology/stability exhibits the required conditions described above under “**B. Stream Mitigation**, *ALL YEARS – Stream*. . . ”,
   2. where streambank plantings were undertaken, the numbers of live stakes, planted, or volunteer woody species providing bank stabilization from the top of bank to edge of riparian buffer shall be at least 15 living stems per 1/20th acre sample plot,
   3. exotic and nuisance species (Chinese tallow tree) shall not comprise more than 5% cover, and noxious species (e.g., honey locust, black willow, cottonwood, thistle, and *Baccharus*) shall not comprise more than 20% of the total stem density.
3. Maintenance of financial assurances (Section III.D).

***Year 2 – Stream – Success/Performance Release:***

**Credit Release:** **15%** of total number of anticipated/calculated stream credits per reach

**Financial Release:** **15%** of total funds in the construction and establishment account

**Contingent upon the following:**

1. Submittal of a monitoring report with the following information:
   1. Stream morphology/stability exhibits the required conditions described above under “**B. Stream Mitigation**, *ALL YEARS – Stream*. . . ”,
   2. the U.S. Forest Service Stream Reach Inventory and Channel Stability Evaluation (Pfankuch, 1975) rating shall be “Good”,
   3. exotic and nuisance species (Chinese tallow tree) shall not comprise more than 5% cover, and noxious species (e.g., honey locust, black willow, cottonwood, thistle, and *Baccharus*) shall not comprise more than 20% of the total stem density.
2. Maintenance of financial assurances (Section III.D).

***Year 3 – Stream – Success/Performance Release:***

**Credit Release:** **15%** of total number of anticipated/calculated stream credits per reach

**Financial Release:** **20%** of total funds in the construction and establishment account

**Contingent upon the following:**

* + 1. Submittal of a monitoring report with the following information:

1. Documentation of at least 2 overbank events.
2. Stream morphology/stability exhibits the required conditions described above under “**B. Stream Mitigation**, *ALL YEARS – Stream*. . . ”,
3. where streambank plantings were undertaken, the numbers of live stakes, planted, or volunteer woody species providing bank stabilization from the top of bank to edge of riparian buffer shall be at least 15 living stems per 1/20th acre sample plot,
4. where **riparian buffer zones** were established, there should be an 80% or greater survival rate (240 trees /acre survivability) of planted species at the minimum required planting density of 302 trees/acre,
5. the individual Index Values of the Bank Erodibility Hazard Index (BEHI) rating for any identified reach shall have a Total Score between the Adjective Ratings of “ Very Low to Moderate”,
6. the U.S. Forest Service Stream Reach Inventory and Channel Stability Evaluation (Pfankuch, 1975) rating shall be “Good”,
7. exotic and nuisance species (Chinese tallow tree, Chinese privet or as defined by the US Department of Agriculture National Invasive Species Information Center) shall not comprise more than 5% cover, and noxious species (e.g., honey locust, black willow, cottonwood, thistle, and *Baccharus*) shall not comprise more than 20% of the total stem density.
8. Maintenance of financial assurances (Section III.D).

***Year 4 – Stream – Success/Performance Release:***

**Credit Release:** **10%** of total number of anticipated/calculated stream credits per reach

**Financial Release:** **25%** of total funds in the construction and establishment account

**Contingent upon the following:**

* + - 1. Submittal of a monitoring report with the following information:

1. Stream morphology/stability exhibits the required conditions described above under “**B. Stream Mitigation**, *ALL YEARS – Stream*. . . ”,
2. the individual Index Values of the Bank Erodibility Hazard Index (BEHI) rating for any identified reach shall be equal to or less than the Year 3 Total Score.
3. the U.S. Forest Service Stream Reach Inventory and Channel Stability Evaluation (Pfankuch, 1975) rating shall be “Good”,
4. exotic and nuisance species (Chinese tallow tree, Chinese privet, or as defined by the US Department of Agriculture National Invasive Species Information Center) shall not comprise more than 5% cover, and noxious species (e.g., honey locust, black willow, cottonwood, thistle, and *Baccharus*) shall not comprise more than 20% of the total stem density.
5. Maintenance of financial assurances (Section III.D).

***Year 5 – Stream – Success/Performance Release:***

**Credit Release:** **25%** of total number of anticipated/calculated stream credits per reach

**Financial Release: remaining** funds (**30%** of total) in the construction and establishment account

**Contingent upon the following:**

**Credit Release:** **remaining** credits (**25%** of total) anticipated/calculated credits

**Financial Release:** **100%** of total funds in the Long-Term Maintenance and Protection Account are released to the Sponsor or transferred to an IRT-approved third-party entity (if the property is protected by a conservation servitude/easement).

**Contingent upon the following:**

* + - 1. Submittal of a monitoring report with the following information:

1. Stream morphology/stability exhibits the required conditions described above under “**B. Stream Mitigation**, *ALL YEARS – Stream*. . . ”,
2. the individual Index Values of the Bank Erodibility Hazard Index (BEHI) rating for any identified reach shall be equal to or less than the Year 4 Total Score.
3. the U.S. Forest Service Stream Reach Inventory and Channel Stability Evaluation (Pfankuch, 1975) rating shall be “Good”,
4. a hard to soft mast ratio of 50/50 to 60/40 should be exhibited on the site,
5. exotic and nuisance species (Chinese tallow tree, Chinese privet, or as defined by the US Department of Agriculture National Invasive Species Information Center) shall not comprise more than 5% cover, and noxious species (e.g., honey locust, black willow, cottonwood, thistle, and *Baccharis*) shall not comprise more than 20% of the total stem density.
6. Maintenance of financial assurances (Section III.D). Long-term management account is fully funded one year prior to bank closeout.

# VII. CORRECTIVE ACTIONS

## A*.* Contingency Plans / Remedial Actions:

In the event the Mitigation Bank fails to achieve any of the performance standards specified in Section V. of this Mitigation Banking Instrument, the Sponsor shall develop necessary contingency plans and implement appropriate remedial actions for the Mitigation Bank in coordination with the IRT. In the event the Sponsor fails to implement necessary remedial actions within 45 calendar days after notification by USACE of necessary remedial action to address any failure in meeting the performance standards, the IRT, acting through the Chair, will notify the Sponsor and the appropriate authorizing agencies and recommend appropriate remedial actions. The sponsor must notify the IRT if the project cannot be constructed in accordance with the Restoration Plan (Appendix C).

## Completion of Corrective Actions:

At the request of the Sponsor, the IRT will perform a final compliance visit to determine whether all performance standards have been satisfied. Upon satisfaction of the performance standards, any remaining contingency funds will be released to the Sponsor, if eligible.

## Deficits:

If the IRT determines that the Mitigation Bank is operating at a deficit of credits will immediately cease, and the authorizing agencies, in consultation with the IRT and the Sponsor, will determine what remedial actions are necessary to correct the situation. As determined by the Chair, in coordination with the IRT and the Sponsor, if conditions at the Mitigation Bank continue to deteriorate or do not improve within a reasonable time frame from the date that the need for remediation was first identified in writing to the Sponsor by the Chair of the IRT, the Construction Account Funds (as described in III.D.) and the Long-Term Management Account (as described in Appendix E) shall be transferred from the identified Financial Institution to the Third Party beneficiary and will be used to undertake corrective measures in accordance with IRT specifications and correct any deficits.

## Non-Compliance:

In the event the Sponsor does not comply with this Mitigation Banking Instrument or the Conservation Servitude/ Easement (Appendix D), the Sponsor will be required to immediately perform corrective actions (e.g., replanting and repair or replacement of hydrologic improvement efforts). USACE will then convene a meeting with the Sponsor and the IRT to determine if a reassessment of the management or mitigation potential is necessary. At that time, the IRT may choose to stop use of the bank until corrective action has occurred. If remedial action is not taken within one year, the IRT will cease recognition of the Mitigation Bank, and the Sponsor will be required to implement mitigation, as approved by USACE, to replace all mitigation which had been performed at the Mitigation Bank, but was not successful. Alternatively, if placed in non-compliance, failure by the Sponsor to replace mitigation will result in forfeiture of the portion of the letter of credit or funds pertaining to the tract(s) for which the Sponsor has been placed in non-compliance. If the bank is not brought into compliance, then remaining credits could be suspended, as determined by the IRT. In the event, that the Sponsor is unwilling or unable to bring the bank into compliance then the bank could be terminated in accordance with Section XIII.

## Adjustment of Mitigation Potential:

The management or mitigation potential may be adjusted by the IRT at any time should any activity adversely affect the value or functioning of the Mitigation Bank. Any adjustments to the management or mitigation potential will apply only to unsold credit acreage within the bank. If all credit has been sold, then other means of corrective action will be taken within the bank and will not affect those tracts that have already been debited.

## Force Majeure:

Force majeure damage, including natural disasters or any other “Act of God”, will remain the responsibility of the Sponsor until the Year 5 wetland performance standards, as outlined in Section V, have been met, and the stream performance standards, as outlined in Section V., have been met [Use wetland and stream performance standards as necessary]. If the IRT determines that a Force Majeureevent has occurred, and that event affects the long term viability of the Bank, the IRT can require appropriate measures be taken by the Sponsor or Third Party to implement corrections that may be funded by a release of funds from the construction account or interest earnings from the long-term endowment.

# VIII. LONG-TERM MANAGEMENT OF MITIGATION BANK

## A. Long-Term Ownership and Preservation:

* 1. The Sponsor shall develop a Long-Term Management and Maintenance Plan. The Long-Term Management and Maintenance Plan must be consistent with the guidelines and objectives specified in Section XVI of this MBI, and approved by the Chair, in consultation with the other members of the IRT. The Sponsor may only deviate from the approved Plan upon written approval of the Chair, following consultation with the IRT.
  2. The Sponsor may assign its long-term management and maintenance responsibilities to a third party assignee at the bank closure, who will then serve as Long-Term Steward in place of the Sponsor. The identity of the assignee and the terms of the long-term management and maintenance agreement between the Sponsor and the assignee must be approved by the Chair, following consultation with the IRT, in advance of assignment.
  3. Upon bank closure, the Long-Term Steward shall be responsible for managing the Bank in perpetuity in accordance with the terms of the Long-Term Management and Maintenance Plan, the Bank Development Plan, and real estate provisions, including the terms of the recorded conservation servitude/easement (Appendix D). If the Long-Term Steward, or its successor, declines to accept stewardship responsibility for the Bank and the associated Long-Term Management Fund, the Sponsor shall then transfer stewardship responsibility for the Bank and the associated Long-Term Management Fund to a public resource agency or non-profit agency engaged in conservation activities, subject to written approval of the receiving entity by the IRT. If no public resource agency or nonprofit agency engaged in conservation activities is willing to accept management responsibility for the Bank lands, then the Sponsor will be the Long-Term Steward until another party acceptable to the IRT agrees to accept management responsibility for the Bank lands.
  4. If the Sponsor elects to assign responsibility for the Long-Term Management and Maintenance Plan to a Long-Term Steward, the assignment agreement will reflect that the assignee has assumed the obligation, owed to the IRT, of accomplishing the Long-Term Management and Maintenance Plan. In exchange for the assignee’s commitment to implement the Long-Term Management and Maintenance Plan, contemporaneously with the assignment of long-term management and maintenance responsibilities the Sponsor will direct disbursement of the full amount of funds in the Long-Term Management Fund, pursuant to Section III.D. of this MBI to the Long-Term Steward. In the event the responsibility for executing the Long-Term Management and Maintenance Plan is not assigned to a third-party assignee, upon closure of the bank in accordance with Section XV of this MBI, the full amount of funds in the Long-Term Management Fund will be disbursed to the Sponsor.

## Long-Term Management:

The Sponsor, its heirs, assigns or successors, shall be responsible for maintaining and protecting lands contained within the restored portions of the Mitigation Bank, unless the bank lands are transferred to a state or federal resource agency or non-profit conservation organization or this responsibility is contractually conveyed to another person, subject to approval by the IRT. The IRT shall not unreasonably withhold authorization of transfer of long-term maintenance and protection to another person.

## Impacts to Mitigation Bank*:*

After restoration, wetlands within the Mitigation Bank will be jurisdictional and will therefore be subject to all applicable requirements established under the Clean Water Act (CWA). As such, permits from USACE will be required for the deposition of dredged or fill material, including mechanized land clearing, in these areas. All requests for permits within the mitigation bank will be coordinated with the IRT; however, decisions regarding the issuance of such permits will be made by USACE in accordance with applicable permit regulations and guidance.

## Mitigation for Impacts to Mitigation Bank:

If impacts to planted portions of the Mitigation Bank are permitted, the permittee will be required to compensate for the loss of wetland values associated with the project, past wetland impacts that are being mitigated by these wetlands, and all temporal losses associated with the re-establishment of new mitigation sites. The amount of compensation required will be based upon the acreage of wetlands actually impacted. Impacts to wetlands within the Mitigation Bank shall be mitigated by restoration or enhancing the appropriate acreage within the Mitigation Bank if insufficient acreage for restoration or enhancement is available. In cases where sufficient unplanted acreage is not available, the permittee will be responsible for fulfilling all or part of his compensatory mitigation requirement elsewhere, as approved by USACE.

## Timber Management:

All timber harvests and thinning operations conducted in the Mitigation Bank shall be authorized by the IRT and shall be performed in a manner that maintains and enhances the ecological integrity and wildlife habitat value of the stand.

# IX. SCOPE OF RESPONSIBILITIES

## Sponsor:

Through contractual agreement with individual permit recipients, the Sponsor will, for a fee to be paid by permittee, provide compensation for wetland impacts as required in Department of the Army (DA) Clean Water Act Section 404 and/or Rivers and Harbors Act Section 9 and 10 permits and commit to enhance and restore wetland functions and maintain wetland habitats in accordance with the provisions of this MBI. Additionally, the Sponsor agrees to:

1. Assume responsibility for compensatory mitigation requirements of DA permits for which it transfers credits once a permittee has secured the appropriate number and type of Credits from the Sponsor and to provide USACE with documentation that confirms that the mitigation bank’s Sponsor has accepted the responsibility for providing the compensatory mitigation required in the permittee’s DA permit.
2. Perform all necessary work to restore, enhance and/or preserve wetland functions and maintain wetland habitats in accordance with the provisions of this MBI.
3. Be responsible for maintaining accounting records, notifying the IRT of credit sales, monitoring the tract for success, conducting remedial action as necessary to insure success, and providing this information to USACE in reports documenting bank usage and the results of monitoring.

## B. Interagency Review Team (IRT):

Signing of this MBI does not constitute a binding agreement of action on the part of any resource agency beyond its customary regulatory purview. Subject to the availability of staff and funds, the agencies represented on the IRT do agree to:

1. Provide appropriate oversight of the Sponsor’s efforts in carrying out provisions of this MBI.
2. When requested by USACE, members of the IRT will provide timely comments on all project plans, proposed additions of land to the Bank, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the bank. Comments on the monitoring reports and credit review reports will be reviewed within thirty (30) calendar days from the date of complete submittal, except for good cause.
3. Review and confirm reports on evaluation of performance standards prior to approving credits or releasing escrow account funds.
4. Conduct compliance inspections as needed and recommend corrective measures (if any) to the Sponsor, until the terms and conditions of the MBI have been determined to be fully satisfied or until all credits have been sold, whichever is later.
5. Review, comment and approve/disallow any modifications to this document.
6. The agencies represented on the IRT, through the chair, shall conduct compliance inspections, as deemed necessary by USACE in consultation with the Sponsor, to verify credits available in the Mitigation Bank, and recommend corrective measures (if any), until the terms and conditions of the Mitigation Bank Restoration Plan have been determined to be fully satisfied or until all credits have been sold, whichever is later.
7. The agencies represented on the IRT shall authorize the Sponsor to market and sell mitigation credits to individuals, entities, and governmental agencies.

## C. Holder of Conservation Easement/Servitude (if applicable):

1. The Holder shall:
   1. Hold and enforce the conservation easement/servitude placed on those lands within the bank subject to recorded conservation easement/servitude in the County(ies)/Parish(es) where the site(s) is located so that mitigation bank lands are protected.
   2. Provide a 60-day advance notification to USACE and will only void or modify the conservation easement/servitude upon subsequent written approval by USACE.
   3. May, if asked by USACE and Holder is willing, be the recipient of the financial assurance fund accounts as described in Section III.D. and shall utilize such funds as directed by the IRT should the Sponsor be in non-compliance of this MBI.
   4. May serve as the Long-Term Steward should the Sponsor make arrangements for the Holder to act in this capacity and is subject to USACE approval, acting as the IRT chair.
2. Long-Term Steward (if applicable):

Should the Sponsor designate one, the Long-Term Steward[[1]](#footnote-1) shall assume the responsibilities of the Sponsor and agree to perform the long-term maintenance and management responsibilities in accordance with the provisions in this MBI. If the Sponsor elects to designate a Long-Term Steward, the Sponsor must obtain approval from USACE prior to designation.

# X. OTHER PROVISIONS

## Dispute Resolution:

Resolution of disputes about application of this Mitigation Banking Instrument shall be in accordance with those stated in the Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, 73 FR 19594-01 (33 C.F.R. Parts 325 and 332).

## Validity, Modification, and Termination of the Mitigation Banking Instrument:

This Mitigation Banking Instrument will become valid on the date of the last signature. This Mitigation Banking Instrument may be amended or modified with the written approval of all signatory parties. Any of the IRT members may terminate their participation upon written notification to all signatory parties. Participation of the IRT members will terminate 60 days after written notification.

## Specific Language of this Mitigation Banking Instrument Shall be Controlling:

To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Mitigation Banking Instrument by reference, and that are not legally binding, the specific language within the Mitigation Banking Instrument shall be controlling.

## Liability of Regulatory Agencies:

The responsibility for financial success and risk to the investment initiated by the Sponsor rests solely with the Sponsor. The regulatory agencies that are parties to this agreement administer their regulatory programs to best protect and serve the public’s interest in its water resources, and not to guarantee the financial success of banks, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual bank. The Sponsors should not construe this agreement as a guarantee in any way that the agencies will ensure sale of credits from this bank or that the agencies will forgo other mitigation options that may also serve the public interest. Since the agencies do not control the number of banks proposed or the resulting market impacts upon success or failure of individual banks, in depth market studies of the potential and future demand for bank credits are the sole responsibility of the bank proponent.

## Counterpart:

The parties may execute this agreement in two or more counterparts, which shall, in the aggregate, be signed by all parties. Each counterpart shall be deemed an original as against any party that has signed it.

## Activities:

1.Uses Prohibited Within the Mitigation Bank: [This information should be reflected in the draft real estate protection instrument]

1. There shall be no placing, filling, storing, or dumping on the Property of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such items.
2. There shall be no construction of any structure or structures on said Property, without written authorization from the USACE, unless consistent with the establishment, maintenance and protection of wetlands within the mitigation bank.
3. There shall be no commercial, industrial, agricultural or residential uses of the Property without written authorization from the USACE.
4. There shall be no mechanized land clearing or deposition of soil, shell, rock or other fill on the Property without written authorization from the USACE except to maintain existing roads. The construction of new roads or trails that break the forest canopy is prohibited without written authorization from the USACE.
5. There shall be no cutting, burning, removal or destruction of vegetation on the Property except as allowed in the Restoration Plan included in the Mitigation Banking Instrument to restore and maintain native vegetative communities. Invasive, non-native vegetation may be removed in such a manner that minimizes negative impact to native bottomland hardwood/ wet pine savannah/ or stream community restoration efforts as agreed upon and memorialized in the Mitigation Banking Instrument.
6. All other activities, which are inconsistent with the establishment, maintenance and protection of jurisdictional areas within the mitigation bank are prohibited.
7. Appropriate precautions shall be taken to prohibit the grazing of cattle or other domestic livestock on the property and to prohibit the establishment of invasive, non-indigenous animal species such as wild hogs.
8. To the extent of mineral rights owned by the Sponsor, exploration and/or extraction of minerals such as oil and gas within the Property shall not be conducted without written authorization from the USACE.
9. There shall be no construction of high fencing (fences erected greater than six feet in height for the purposes of keeping game within an area for recreational hunting) around the mitigation bank. There shall be no partitioning of the property with fencing or construction perimeter or boundary fencing designed to impede the movement of terrestrial wildlife to and from the property from adjacent forested to other undeveloped property or designed to contain terrestrial wildlife within the property.

2. Uses That May Be Allowed Within the Mitigation Bank:

1. Monitoring of vegetation, soils and water.
2. Hunting and fishing, and non-consumptive recreational uses such as hiking and bird watching.
3. Ecological education that does not involve destruction or injury to any vegetation, habitat, trees, ground areas, etc.
4. Timber harvesting as set forth herein, subject to the approval of USACE and the terms of this MBI.
5. Compliance with Federal regulations or appropriate court orders.
6. Maintenance of wetlands, pre-existing bridges trails, berms, dams, outlet and spillway structures and other appurtenant facilities as identified in the Mitigation Bank Restoration Plan.

**Note:** No human activities that might require a Section 404 permit shall occur within the restored portions of the Mitigation Bank without obtaining a Section 404 permit from USACE and providing mitigation for any actual wetland loss. If a decision is made to authorize activities in previously planted portions of the bank, and such activities adversely affect the quantity and quality of functional wetlands, the permit recipient will be responsible for compensation for the direct loss of wetlands, past wetland impacts that are being mitigated by these wetlands, and all temporal losses associated with the re-establishment of new mitigation sites.

# XI. ADDENDA TO THE MITIGATION BANK

This MBI may be amended to include additional sites in the Bank, subject to the provisions set forth in the site restoration plan developed for each addendum. Each addendum will immediately become part of this MBI upon approval by the IRT. Procedures for obtaining approval for additional tracts are as follows:

* + - 1. The Sponsor identifies a site adjacent to Bank. The site or sites proposed shall consist of the restoration/enhancement of the same wetland communities identified by this MBI and the following information shall be submitted:

1. Vicinity map identifying the location of the subject property;
2. Detailed description of existing conditions of the property including vicinity and soils maps;
3. Site restoration/enhancement plan clearly identifying all work necessary to implement the site restoration plan including a plan view drawing of the restoration/ enhancement plan;
4. A Department of the Army issued jurisdictional determination;
5. A title opinion and survey clearly identifying any existing encumbrances on the subject property;
6. A draft conservation easement/servitude;
7. A draft of the mechanism to be used to secure the necessary construction financial assurance; and
8. A draft of the mechanism to be used to establish the necessary long-term maintenance and protection account.
9. A certified and stamped property survey of the additional area by a professional land surveyor.
   * + 1. USACE will determine if the work identified in the site restoration/enhancement plan necessary to restore/enhance/preserve each site requires a DA permit. The Sponsor is not required to submit a DA permit application with the prospectus unless he chooses to do so, but the Sponsor should be aware that one of the prerequisites to the release of credits is that all necessary permits be obtained.
       2. A public interest review may be required for each addendum. In the event a public review is warranted, the prospectus, site restoration/enhancement plan and drawings will be advertised by public notice for a minimum of thirty days to obtain public comments.
       3. The IRT will evaluate each proposed addendum to the bank. Evaluation of each addendum will typically require an inspection of the site and review of the prospectus and site restoration plan. If warranted, the IRT will recommend modifications to the proposed site restoration/enhancement plan. The IRT is under no obligation to accept future addenda. Such future addenda will be evaluated on their own merits. USACE may evaluate addenda under the streamline process defined in §230.98(g)(2) for the modification of this MBI should it warrant that such a review is appropriate.
       4. A separate credit assessment will be conducted to determine available credits of each additional site.
       5. The mutually agreed upon site restoration/enhancement plan will be signed by designated authorities for each IRT member and included as an amendment to this MBI and subject to all its requirements, conditions and terms. A copy of the executed site restoration/enhancement plan for each addendum will be provided to the members of the IRT.

# XII. MODIFICATION OF THIS MBI

This MBI is subject to written modification as mutually agreed to by the IRT and the Sponsor for such reasons as policy or regulation changes. Should changes to this MBI be required by the IRT that are not acceptable to the Sponsor, the Sponsor may elect to end his participation and close the bank. At that time, the IRT shall (1) revise the bank’s available credits based on the linear feet of stream construction and planted wetland acreage at closure, (2) calculate the credits sold by the bank, and then (3) determine whether the previously sold acreage is sufficient to balance mitigation needs or whether additional bank acreage is required to satisfy the mitigation requirements assumed by the bank through its sale of credits. The conservation easement/servitude will remain in force on that portion of the property remaining in the bank and a sufficient buffer to protect the integrity of the bank. Nothing in this MBI shall be construed as altering responsibilities or empowering new authorities of the signatory agencies. Funds in stewardship accounts will be kept for long-term maintenance of the mitigation effort.

# XIII. TERMINATION OF THIS MBI

Should the IRT determine that the Sponsor is in material non-compliance of any provision of this MBI, the IRT, acting through USACE may notify the Sponsor that the sale or transfer of any credits will be suspended until the appropriate deficiencies have been remedied. Termination of a mitigation bank done is at the discretion of the District Engineers when the bank is in material non-compliance, coordinated through the IRT, following non-compliance actions outlined in Section VII. Upon notice of such suspension, the Sponsor agrees to immediately cease all sales or transfers of mitigation credits until the IRT informs the Sponsor that sales or transfers may be resumed. Should the Sponsor remain in non-compliance, the IRT, acting through Corps, may terminate the MBI and any subsequent bank operations. Upon termination, the Sponsor agrees to perform and fulfill all obligations under this MBI relating to credits that were sold or transferred prior to termination.

If circumstances warrant, such as misrepresentation, misapplication, misappropriation, improper management, non-disclosure of pertinent information or non-compliance with the terms of this MBI by the Sponsor, USACE and other members may void their recognition of the Bank as well as terminate their future participation in this MBI. Any executed and recorded conservation easement/servitude pertaining to wetlands restored pursuant to mitigation contracts and this MBI will remain in full force and effect, and as waters of the United States, any subsequent discharges would require Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 authorization. Upon termination of this MBI, the conservation easement/servitude shall remain on those lands for which credits were sold for the use as compensatory mitigation for adverse impacts associated with DA permits. In addition, a buffer sufficient to protect the integrity of the bank shall be established and protected by the conservation easement/servitude. Intentional misrepresentation, misappropriation, non-disclosure of pertinent information, non-compliance with the terms of this MBI, or any other intentional illegal act may be prosecuted to the fullest extent of the law.

Each signatory agency agrees that it will not unreasonably withdraw their authorization of or participation in this MBI. Any member of the IRT choosing to withdraw its authority or participation shall provide written notification stating reasons for its withdrawal to USACE and the Sponsor. The Sponsor, in its sole discretion, and after providing written notification to USACE, may terminate this agreement as to any acreage over which credits have not been sold. As waters of the United States, any subsequent discharges in the area would require Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 authorization.

# XIV. TRANSFER OF OPERATION AND/OR OWNERSHIP

The bank sponsorship may be transferred, by sale, donation, appointment, or otherwise, to an entity that is willing to own, manage and sell mitigation credits from the bank, to an established land trust, publicly recognized conservation organization, state resource agency, or federal resource agency. The charter for non-governmental entities must clearly identify the stewardship policy of the organization. The transfer is subject to approval by the IRT. Transfer to any entity must be accompanied by completion by all parties of a signed and notarized transfer form obtained from USACE (Appendix I). Any Financial assurances or long-term funds held in association with the bank must accompany the transfer. The bank remains subject to the conservation easement/servitude and the terms of this Agreement. The new Sponsor or Long-Term Steward must agree to and assume all responsibility for the long-term requirements of this Agreement and confirm by providing a signed and notarized transfer form.

# XV. MITIGATION BANK CLOSURE PLAN

For purposes of this Mitigation Banking Instrument, bank closure will refer to the point when all allocated credits have been sold, the performance standards (outlined under Section V of this Mitigation Banking Instrument) have been met and all of the financial assurances eligible for release have been released. If the bank has been implemented in phases, then the life for each phase will be considered separately.

# XVI. LONG TERM MANAGEMENT PLAN

## Purpose

The purpose of the long‐term management plan is to provide a framework for the management of the bank property in perpetuity. As it is impossible for the signatories of the MBI at the time of signing to fully be able to identify the particular conditions of the ecosystem surrounding and including this landscape in perpetuity, this management plan only establishes objectives, priorities and tasks to monitor, manage, and maintain the covered habitat on the Bank.

## Timing

The Long Term Management Plan shall be effective upon Bank Closure.

## Long Term Steward (if applicable)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will be the Long Term Steward and will undertake the bank management. The Sponsor/Long Term Steward shall implement this long‐term management plan, managing and monitoring the Bank property in perpetuity to preserve its habitat and conservation values in accordance with the Bank’s MBI and the conservation servitude/easement. The Sponsor/Long Term Steward and the IRT shall discuss task priorities and funding availability to determine which tasks will be implemented. In general, tasks are prioritized in this order:

* 1. Tasks required by a local, state, or federal agency
  2. Tasks to maintain habitat quality
  3. Tasks to improve habitat quality

Tasks may include:

* Fencing repair
* Gates
* Trash collection
* Vandalism
* Constructed features (roads and/or low water crossings)
* Erosion
* Prescribed burning
* Invasive plants and animal maintenance
* Response to events like disease, wildfire, wind, etc.

Equipment and materials necessary to implement priority tasks will also be considered priorities. Final determination of task priorities in any given year of insufficient funding will be determined in consultation with the IRT and as authorized by the IRT in writing.

## Assignment

The duties of the Sponsor/Long Term Steward and associated with the Long Term Management Fund/Stewardship Endowment and any rights with respect thereto may be assigned or otherwise transferred, in whole or in part, to any other person or entity only with the express written consent of the IRT or a court of law and shall be incorporated into this long term management plan by amendment.

## Management Objectives

The goal of long‐term management is to foster the long‐term viability of the bank site’s wetlands and/or streams. The Sponsor/Long Term Manager shall conduct annual inspections of the property during the growing season to determine the specific needs of the property to meet this goal. The Sponsor/Long Term Manager shall take whatever corrective actions needed to foster the banks site’s aquatic resources functions. To assist the Sponsor/Long Term Manager in achieving this goal, the following is a list of objectives that will define the long‐term viability:

* Objective 1) Maintain the native plant vegetation at the Bank site.

The Sponsor/Long Term Manager shall develop a plan to maintain the native plant vegetation on the bank site, using the current state of the Bank site, and the best available science concerning wetland and/or stream restoration and maintenance. The Sponsor/Long Term Manager shall then implement that plan. Timber thinning, burning, removal of undesirable animals (e.g. feral hogs), vegetation manipulation, and vegetation replanting may be necessary. All shall be done in accordance with current applicable laws and statutes. The long-term maintenance plan shall include:

List the items in the development plan to maintain the native plant vegetation on the bank site.

* Objective 2) Minimize the invasive species vegetation at the Bank site.

The Sponsor/Long Term Manager shall develop a plan to minimize the number and coverage of invasive plant species on the Bank site. The invasive species that shall be minimized are those listed by the Louisiana Invasive Species Counsel, or its successors, or those otherwise known to be problematic. The Sponsor/Long Term Manager shall implement that plan utilizing the best available technology and science current at the time to minimize the coverage of invasive species, including, but not limited to, herbiciding (in accordance with state law and best available practice), cutting, burning, and hand pulling. The long-term invasive species control plan shall include:

List the items in the development plan to control invasive species on the bank site.

* Objective 3) Maintain the integrity of the land.

The Sponsor/Long Term Manager shall repair any and all erosion and any blocked drainage at the Bank site utilizing appropriate natural materials within 30 days of discovery. The long-term land maintenance plan shall include:

List the items on the bank site that may need to be repaired/maintained (i.e., culverts, fences, and/or roads) in the future and what steps may be taken to ensure their integrity.

## Amendments

The Sponsor/Long Term Manager and the IRT may meet and confer from time to time, upon the request of any one of them, to revise the long term management plan to better meet management objectives and preserve the habitat and conservation values of the Bank property. Any proposed changes will be designed with input from all parties. Amendments to the long‐term management plan shall be approved by the IRT in writing shall be required management components and shall be implemented by the Sponsor/Long Term Manager.

If the USFWS determines, in writing, that continued implementation of the long‐term management plan would jeopardize the continued existence of a state or federally listed species found or associated with the property, any written amendment to this long‐term management plan, determined by either the USFWS as necessary to avoid jeopardy, shall be a required management component and shall be implemented by the Sponsor/Long Term Manager.

**Appendix A: Mitigation Bank Site Information**

**Insert appropriate exhibits**

Exhibit 1: Bank Location Map

Exhibit 2: USGS Topographic Map

Exhibit 3: Bank Service Area Map

Exhibit 4: HUC Code Map showing Bank Location

Exhibit 5: National Wetland Inventory (NWI) Map

Exhibit 6: Soil Survey Map

Exhibit 7: Aerial Maps (Fig 1- Historical Aerial; Fig 2- Recent/Current Aerial)

Exhibit 8: NRCS Cropland Determination

**Appendix B: Survey of the Bank Acreage**

**Appendix C: Bank Restoration Plan**

**Section including all applicable items listed in 33 C.F.R. 332.4 (c).**

**1. Restoration Goals**

1. **Site Preparation**
2. **Mitigation Types and Habitat Types.**

Example: Current Stream Rosgen Classification and Designed Rosgen Classification. Current wetland habitat type and restoration goal habitat type.

**4. Vegetative Restoration**

Vegetation shall be based on soil profiles, existing vegetation and targeted hydrology.

1. Trees to be Planted
2. Planting Specifications

**5. Hydrologic Restoration**

**6. In-Stream Restoration Parameters/ Identify Reference Reach**

- Minimum buffer widths will be in accordance with Charleston Methodology requirements for credit generation.

- Vegetation shall be selected based on soil profiles, existing vegetation and targeted hydrology.

1. **Maintenance Plan**
2. **Monitoring Plot locations.** Indicate the location of vegetation and hydrology monitoring plots on restoration plan. Permanent vegetative monitoring plots should be established using a randomly selected, evenly distributed grid approach. Vegetative monitoring plots should compromise no less than 10% sample of the entire project area. Plots should represent each wetland habitat type and work type. Stream monitoring cross-sections must be identified on plans. All monitoring locations must be reviewed and approved by IRT.

**Attachments:**

1. **Detailed work map showing restoration, enhancement and preservation areas.**
2. **Map showing proposed monitoring locations.**
3. **Detailed tables showing acreage of restoration, enhancement and preservation for wetlands for each Cowardain type. Proposed work for streams must be broken out by intermittent, perennial and ephemeral.**

**Example, if a large mitigation bank’s work must be broken into phases, work for each phase must be provided for each work type and each habitat type:**

Proposed Wetland Work Table

|  |  |  |
| --- | --- | --- |
|  | Phase I | Phase II |
| Restoration, Emergent (acres) |  |  |
| Enhancement, Emergent (acres) |  |  |
| Enhancement, Shrub-scrub (acres) |  |  |
| Preservation, Forested (acres) |  |  |
| Total (linear feet) |  |  |

Stream Work Table

|  |  |  |
| --- | --- | --- |
|  | Phase I | Phase II |
| Priority II Restoration, Perennial (linear feet) |  |  |
| Priority II Restoration, Intermittent (linear feet) |  |  |
| Preservation, Perennial (linear feet) |  |  |
| Preservation Intermittent (linear feet) |  |  |
| Total (linear feet) |  |  |

Attachment: In-stream work

**For in-stream work the following information must be included:**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| Location | Existing | Reference Reach | Proposed Conditions |
| Stream Type |  |  |  |
| Drainage area (ac- sq mi) |  |  |  |
| Bankfull width (Wbkf), ft |  |  |  |
| Bankfull mean depth (dbkf), ft |  |  |  |
| Width/ Depth Ratio (Wbkf/dbkf) |  |  |  |
| Bankfull X-Section Area (Abkf), ft2 |  |  |  |
| Bankfull mean velocity, fps |  |  |  |
| Bankfull Discharge, cfs |  |  |  |
| Bankfull Max depth (dmax), ft |  |  |  |
| Bank height ratio |  |  |  |
| Typical bank height above bankfull |  |  |  |
| Width flood-prone area (Wfpa), ft |  |  |  |
| Entrenchment ratio (ER) |  |  |  |
| Meander length (lm), ft |  |  |  |
| Ratio of Lm to Wbkf |  |  |  |
| Radius of curvature, ft |  |  |  |
| Ratio of Rc to Wbkf |  |  |  |
| Belt width, ft |  |  |  |
| Meander width ratio |  |  |  |
| Sinuosity (K) |  |  |  |
| 1. Valley Slope, ft/ft |  |  |  |
| \*\* Average slope (S), ft/ft |  |  |  |
| Riffle slope, ft/ft |  |  |  |
| Ratio of riffle slope to average slope |  |  |  |
| Pool slope, ft/ft |  |  |  |
| Ratio of pool slope to average slope |  |  |  |
| Max pool depth, ft |  |  |  |
| Ratio of pool depth to average bankfull depth |  |  |  |
| Pool width, ft |  |  |  |
| Ratio of pool width to bankfull width |  |  |  |
| Pool to pool spacing, ft |  |  |  |
| Ratio of pool to pool spacing to bankfull with |  |  |  |

**Appendix D: Real Estate Protection Document**

**CONSERVATION SERVITUDE/ CONSERVATION EASEMENT HANDOUT**

The following document is the accepted form for the conservation servitude to be filed with compensatory mitigation projects. Please insert the appropriate information in the applicable area.

**NOTE**: Any modifications of the language contained therein must be clearly identified in the submission of the draft for consideration by the USACE.

**Signature Authority:** For individuals, all parties identified on the PROPERTY title must sign.

For someone signing on behalf of a corporation or LLC, they need to show that they have authority to sign on behalf of that entity. For example, if the entity is a LLC, we need to have documentation attached to the conservation servitude showing that the person signing is authorized to execute the document on behalf of the LLC. The Articles of Organization for the LLC will indicate whether a manager of the LLC has authorization to sign for the LLC. If person signing is a manager and has authorization pursuant to the Articles, a Certificate of Authorization demonstrating his/her authority to sign the easement/servitude on behalf of LLC will be necessary. That Certificate would be attached to the servitude. If the LLC articles of organization do not contain an authorization for a manager to sign for the LLC, it may be necessary for all members of the LLC to sign a certificate of authority.

Most companies should have a draft authorization they use in transactions. Such a document would likely be sufficient. A copy of the Articles of Organization for the LLC should be provided.

For corporations, the person signing the servitude will need to attach a corporate resolution to the servitude agreement that shows he/she is authorized to sign on behalf of the corporation. Most corporations should already have a draft resolution they use for transactions.

For real estate protection mechanisms in Arkansas or Mississippi please replace the word servitude with easement and make other adjustments as appropriate.

Elements of a Conservation Servitude:

* Purpose
* Baseline
* Rights and duties of grantee
* Restrictions/ inconsistent uses of land
* Grantor’s reserved rights in land
* Enforcement (USACE, Grantee, third party)
* Provisions to assign, amend, or extinguish

Revised December 2015

**CONSERVATION SERVITUDE**

**UNITED STATES OF AMERICA**

**STATE OF LOUISIANA**

**PARISH OF (INSERT PARISH NAME)**

**BE IT KNOWN**, that on this \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public, duly commissioned and qualified in and for the State and Parish aforesaid, and in the presence of the undersigned competent witnesses, personally came and appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who, after being duly sworn by me, Notary Public, did depose and state that he (she) is the duly sworn representative of (Limited Liability Company, corporation, etc.), and that said (Limited Liability Company, corporation, etc.) is a business licensed and located in the State of Louisiana, whose mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “GRANTOR”), and who declares:

1. That GRANTOR, in consideration of the mutual benefits to be derived in the establishment of the \_\_\_\_\_\_\_\_\_\_\_\_\_ Mitigation Area and pursuant to L.R.S. 9.1271 et seq., does by these presents, grant, transfer, convey and deliver unto GRANTEE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter “HOLDER”) represented herein by its duly authorized representative, \_\_\_\_\_\_\_\_\_\_\_\_\_, whose mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with all legal warranties and with full subrogation and to all rights and actions in warranty which GRANTOR has or may have against all preceding owners and vendors, possession and delivery of a certain CONSERVATION SERVITUDE, in, on, over, upon and across the following described property:

PROPERTY DESCRIPTION

(a survey of the tract conservation lands must be referenced in the PROPERTY description)

(hereinafter the “PROPERTY”)

2. GRANTOR warrants that it owns the PROPERTY in fee simple and that said PROPERTY is free from any mortgage, lien, judgment or encumbrance that will or may conflict with the purposes of this CONSERVATION SERVITUDE.

3. HOLDER is qualified to hold this CONSERVATION SERVITUDE by virtue of being (Identify which of the below qualifies HOLDER; delete the rest):

a) A governmental body empowered to hold an interest in immovable property under the laws of the State of Louisiana or the United States of America; or

b) A non-profit corporation organized pursuant to Louisiana’s Non-Profit Corporation Law, Title 12, Sections 201-269 of the Louisiana Revised Statutes, the purposes or powers of which include:

1) retaining or protecting the natural, scenic, or open-space values of immovable property;

2) assuring the availability of immovable property for agricultural, forest, recreational of open-space use;

3) protecting natural resources;

4) maintaining or enhancing air or water quality; or

5) preserving the historical, archaeological or cultural aspects of unimproved immovable property.

1. 4. Except as provided in the Mitigation Banking Instrument establishing the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Mitigation Bank**,** a copy of which is attached hereto as Exhibit “B” and made a part hereof, the PROPERTY is henceforth set aside and reserved in its natural state, and GRANTOR will take no action or allow any action which diminishes the PROPERTY’S natural state or convert it to another use. Actions prohibited on the PROPERTY pursuant to this CONSERVATION SERVITUDE include, but are not limited to: [Items listed below MUST reflect uses in Section X of the Mitigation Banking Instrument]

* construction of any structure or structures on said PROPERTY;
* cutting, burning, removal or destruction of vegetation (including trees) on said PROPERTY except in accordance with the terms specified in the Mitigation Banking Instrument, and permits which may be required from the USACE, Vicksburg District at the time the cutting is proposed;
* placing of any material or objects on said PROPERTY;
* building of roads, trails or paths on said PROPERTY;
* changing the elevation of or contours of said PROPERTY;
* pumping, draining or causing said PROPERTY to be drained;
* placing, filling, storing, or dumping of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such items on the PROPERTY;
* mechanized land clearing;
* deposition of soil, shell, rock or other fill on the PROPERTY without written authorization from the USACE, Vicksburg District;
* grazing of animals on said PROPERTY;
* allowing commercial, industrial or agricultural activities on said PROPERTY. Any commercial exceptions shall be approved by the IRT acting through the chair; or,
* any other activity inconsistent with preserving said PROPERTY’S natural state, flora, fauna and/or wetland character.

5. No later than December 31st of each calendar year, the HOLDER shall provide to the U.S. ARMY CORPS OF ENGINEERS a statement regarding compliance with the requirements of Section 4 indicating the dates and extent of the inspection(s) conducted.

6. Neither the PROPERTY nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Servitude for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Servitude shall be transferred to any other lands pursuant to a transferable development rights, scheme cluster development arrangement or otherwise. The PROPERTY shall not be divided, partitioned, subdivided or conveyed except in its current configuration in its entirety.

7. The USACE, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and other interested federal or state agencies that are a party to the attached Mitigation Banking Instrument are granted third party rights of enforcement.

8. HOLDER and those with third party rights of enforcement shall have the right to enter and go upon the PROPERTY for purposes of inspection, verifying compliance with this CONSERVATION SERVITUDE, and to enforce the provisions of this CONSERVATION SERVITUDE. GRANTOR retains a right of entry to the PROPERTY to perform routine maintenance, restoration or reconstruction as authorized by the attached Mitigation Banking Instrument. No right of access or entry by the general public to any portion of the property is conveyed by this CONSERVATION SERVITUDE.

9. Should GRANTOR, its heirs and assigns, and all subsequent owners, purchasers, lessees, grantees, and licensees fail to comply with the requirements of this CONSERVATION SERVITUDE, HOLDER and those with third party rights of enforcement may undertake legal proceedings to insure compliance. Among other relief, HOLDER and those with third party rights of enforcement may seek the complete restoration of any breach of this CONSERVATION SERVITUDE. Breaches of this CONSERVATION SERVITUDE may be actionable without notice. The costs of correcting a breach or costs of restoration, including expenses, court costs and attorneys’ fees, shall be paid by the GRANTOR or its heirs and assigns, and all subsequent owners, purchases, lessees, grantees, and licensees. Enforcement shall be at the discretion of the HOLDER and those with third party rights of enforcement, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights are in addition to and shall not limit enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.

10. Modification of this document is permissible, subject to notice and final approval by the USACE, Vicksburg District. Any modification to this document, or to the rights and obligations created under this agreement, requires GRANTOR to provide to the USACE, Vicksburg District, whose address is 4155 Clay Street, Vicksburg, Mississippi, 39183-3435, at least 60-day notice of any proposed modification for the District Engineer’s approval. Transfer of property is also permissible, subject to the same approval and notification terms as specified above.

11. Upon incapacity, death, disqualification or expiration of the HOLDER, GRANTOR agrees to affirmatively modify this instrument by appointing a replacement HOLDER, subject to the terms stated in Paragraph 3. Appointment of a replacement HOLDER requires a 60-day advance notice to be provided to the USACE, Vicksburg District and subsequent approval by the same of the proposed new HOLDER as directed in Paragraph 10, above.

12. This CONSERVATION SERVITUDE is transferable, but only to a qualified HOLDER as identified in Paragraph 3, above. Transfer of this CONSERVATION SERVITUDE is only permissible following 60-day advance notice to the USACE, Vicksburg District and approval by the same of the proposed transfer, as directed in Paragraph 10, above.

13. This CONSERVATION SERVITUDE is binding in perpetuity on GRANTOR, its heirs and assigns, and all subsequent owners, purchasers, lessees, grantees, and licensees.

13. GRANTOR agrees to incorporate the terms of this CONSERVATION SERVITUDE in any deed or other legal instrument which transfers any interest in all or a portion of the PROPERTY. Grantor agrees to provide written notice of such transfer to HOLDER and USACE, Vicksburg District, at least 60 days prior to the date of transfer. The failure of GRANTOR to comply with this paragraph shall not impair the validity or enforceability of this CONSERVATION SERVITUDE.

14. This CONSERVATION SERVITUDE may be executed simultaneously in one or more counterparts each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

**IN TESTIMONY WHEREOF**, the parties hereto have signed, executed and acknowledged this instrument as their free and voluntary acts, in multiple originals, in the presence of the undersigned competent witness, and me, Notary Public, on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ , at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Louisiana.

WITNESSES: **GRANTOR:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**SPONSOR NAME)**

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Affiliation)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LA Bar Roll No:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_

**IN TESTIMONY WHEREOF**, the parties hereto have signed, executed and acknowledged this instrument as their free and voluntary acts, in multiple originals, in the presence of the undersigned competent witness, and me, Notary Public, on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ , at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Louisiana.

WITNESSES: **ACCEPTANCE:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**HOLDER NAME)**

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LA Bar Roll No:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_

**Appendix E: Financial Assurances**

Restoration Financial Breakdown

[This page will provide a breakdown of the costs associated with establishing the bank. This information will be used to establish a dollar amount per acre sold of the bank that will be put aside in the construction and long-term maintenance accounts. A percent of each credit sold or some break down of cost per acre or cost per linear foot must be provided.]

Financial Assurance/ Long-Term Management Fund Documentation

A cost breakdown for short-term and long-term financial assurances should be provided here. Short-term financial assurances should be based upon cost estimates for restoration work proposed with consideration for risk. Off-site replacement costs may also be considered if the restoration plan is considered risky.

Long-term management funding should be based upon a long-term management predictor such as The Nature Conservancy’s Long-Term Stewardship Calculator, Property Analysis Record (PAR) or some similar methodology. Monies should be held in an endowment or trust fund, under the Uniform Prudent Management of Institutional Funds Act (UPMIFA). The fund should cover all tasks outlined in the Long term management section:

Prior to credit release proof of financial assurance accounts must be provided and inserted in this section.

**Appendix F: USACE Jurisdictional Determination**

**Appendix G: Baseline Conditions of the Site (Rosgen Profile and/or HGM Functional Assessment)**

[Insert appropriate Rosgen Profile and/or HGM Functional Assessment Analysis for the site into this section]

**Appendix H: Nationwide Permit 27**

**Appendix I: Bank Transfer Document**

U.S. ARMY USACE OF ENGINEERS

**VICKSBURG DISTRICT**

**MITIGATION BANK TRANSFER**

**MITIGATION BANK: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

When the work and/or mitigation authorized and required by the Mitigation Banking Instrument (“MBI”) for the above-referenced Mitigation Bank are still in existence at the time this Mitigation Bank is transferred, all terms and conditions of that MBI will become binding on the Transferee to the fullest extent of the law, the Transferee becoming the new Sponsor of the Mitigation Bank. To validate the transfer of this Mitigation Bank and the liabilities associated with compliance to the terms and conditions of the MBI, the Transferee and Transferor sign and date below.

By signing and dating this Mitigation Bank Transfer, Transferee agrees to assume all legal liabilities associated with the Mitigation Bank and to abide by all conditions and requirements of the MBI. The MBI for the above-referenced Mitigation Bank is attached hereto and made a part hereof. By signing this Mitigation Bank Transfer, the Transferee also acknowledges the existence of the conservation servitude/easement over the property composing the Mitigation Bank, a copy of which is attached hereto and made a part hereof.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Transferee (Print or Type) (Date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Transferee’s Signature

Transferee’s Complete Mailing Address (Print or Type)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Transferee’s Telephone Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By signing and dating this Mitigation Bank Transfer, Transferor agrees to transfer all lands, accounting ledgers and other assets including any remaining funds in the construction fund or long-term maintenance and protection fund that make up the Mitigation Bank to Transferee.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Transferor (Print or Type) (Date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Transferor’s Signature

Transferor’s Complete Mailing Address (Print or Type)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Transferor’s Telephone Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Parish/County of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subscribed and sworn to before me, on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(signature of Notary)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(printed name of Notary)

NOTARY PUBLIC

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_.

Once completed, it is the responsibility of the Transferor to mail the original of this signed Mitigation Bank Transfer to:

USACE

Vicksburg, District

ATTN: CEMVK-OD-F

4155 Clay Street

Vicksburg, MS 39183

The Transferor and Transferee shall be provided copies of an approved Mitigation Bank Transfer by U.S. Army Corps of Engineers.

**Approved this \_\_\_\_\_day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_.**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **CEMVK-OD-F**

**Appendix J: Credit Calculations**

**Appendix K: Proof of Credit Sale Letter**

Bank Name

Bank Address, City, State, Zip Code

Bank Contact Phone Number

Date

US Army USACE of Engineers, Vicksburg

Regulatory Branch Attention:

(USACE Project Manager)

4155 Clay Street

Vicksburg, Mississippi 39183

Dear Mr. /Ms. XXXXXXX,

In accordance with Vicksburg District’s instructions for reporting credit sales, we are providing the following to document a mitigation bank credit sale:

|  |  |
| --- | --- |
| Date of Sale |  |
| Dept. of the Army Permit Number |  |
| Permittee |  |
| County/ Parish | …of Impact |
| Watershed (8 digit HUC) | …of Impact |
| Latitude/Longitude of Impact (centroid) |  |
| Type(s) of impact(s) | Specify tidal or non-tidal wetland or Stream |
| Amount of impact(s) |  |
| Type of Credits | Specify Wetland or Stream |
| Number of Credits Sold |  |
| Project within Service area of bank | Specify Yes or No |

I verify that the required number and type of mitigation credits identified above are available at my bank. By signing below, I acknowledge that I have accepted full responsibility for the identified mitigation. Once the form is signed, I shall update the appropriate ledger and provide a copy of the signed form to the Permittee and to the USACE Bank. This form does not relieve me of the requirement to comply with all reporting requirements established in the bank program authorizing instrument.

I certify that the information provided in this form is true, accurate, and complete. I acknowledge that that USACE is entitled to rely on the information I have provided. I further acknowledge that, if the information I have provided proves to be false, incomplete, or inaccurate, the USACE may reevaluate its approval of this mitigation bank, and I may be subject to legal penalties. If USACE withdraws or terminates its approval, I acknowledge that I would remain responsible for any compensatory mitigation requirements associated with Credits I have previously debited.

Sincerely,

XXXXXXX Bank POC

**Appendix L: Title Report/ Title Insurance**

**A title report should be included in the Draft MBI. Title Insurance should be provided prior to filing the easement/ servitude.**

**Appendix M: Signature Pages**

1. 1The landowner or easement holder of the Bank lands charged with long-term maintenance and management responsibility. A Long-Term Steward may be designated once Performance Standard monitoring has been completed. In some cases, the Sponsor may also be the Long-Term Steward. The IRT will review the Long-Term Steward qualifications and approve his appointment prior to his/her assuming the position. [↑](#footnote-ref-1)