***[MITIGATION BANKING INSTRUMENT TEMPLATE for a PHASED BANK PROJECT]***

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

**MITIGATION BANKING INSTRUMENT**

***[Insert Mitigation Bank Name]***

This Mitigation Banking Instrument (hereinafter, the “Instrument”) regarding the establishment, use, operation, and maintenance of       (hereinafter, the “Bank”) is made and entered into by and among       (hereinafter, the “Sponsor”), the U.S. Army Corps of Engineers (hereinafter, the “Corps”), and the Washington State Department of Ecology (hereinafter, “Ecology”) (hereinafter, collectively, the “Parties”), with reference to the following:

***[Only actual Parties to the agreement should be listed above. An entity may sign the Instrument without being a Party to the agreement. See Section I.E. and signature page for further explanation.]***

**I. PREAMBLE**

**A. Purpose:** The purpose of this Instrument is to specify responsibilities for the establishment, use, operation, and maintenance of the Bank. It consists of this “Basic Agreement” establishing the central obligations assumed and consideration provided by each Party, as well as Appendices (hereinafter, the “Appendices”) that establish the detailed Bank implementation plan, including site-specific conditions, standards and procedural requirements applicable to the Bank. The terms and provisions of the Appendices are incorporated into the Instrument. The Bank will provide compensatory mitigation for unavoidable impacts to waters of the United States and waters of the State, including wetlands, aquatic habitat, and to other natural resources that result from activities authorized by Federal, State, and local authorities, when use of the Bank has been specifically approved by the appropriate regulatory agencies.

**B. Location and Ownership of Parcel:** Whereas, the Sponsor owns, or has been granted use by the owner of, approximately       acres of land located near       in the City of      ,       County, Washington. See Appendix A for description and map.

***[Edit this paragraph to include cross streets and indicate if the Bank is near a river or other landmark, is in or near a city, and what county it is in. If the sponsor does not own the Bank property, identify the property owner’s name.]***

**C. Project Description:** Whereas, the Sponsor has expressed intent to       ***[specify the type of activity: establish, re-establish, rehabilitate, enhance and/or preserve]*** approximately       acres of aquatic and associated upland habitat in accordance with the provisions of this Instrument, and to then maintain each established phase of the Bank in accordance with the provisions of this Instrument. The Bank is projected to, among other purposes, provide       as detailed in Appendices A and B of this Instrument.

***[Insert projected habitat types in space above. Break out by phase and include a brief description of the wetland and aquatic functions that will be provided by these different areas. If other resource credits are being established include a description here. Show phase, mitigation activity, habitat type, and acreages in a table format. Show each phase on a separate table. See example table below.]***

**Table 1 – Proposed Bank Activities for Phase I**

|  |  |  |
| --- | --- | --- |
| **Mitigation Activity** | **Habitat Type** | **Area (acres)** |
|  |  |  |
|  |  |  |
|  |  |  |
| **TOTAL** |  |  |

**D. Bank Overview:** Whereas, the general goal of Bank establishment is to      . ***[Insert the Bank overview including a brief summary of the existing aquatic habitats and related uplands on the site, goals for the Bank, and major types of construction activities planned. The Bank details should be provided in Appendices A and B]***.

**E. Interagency Review Team:** Whereas, in consideration of the establishment and maintenance of the Bank, the Interagency Review Team (IRT) is willing to award compensatory mitigation credits in accordance with the procedures outlined in this Instrument. These Bank credits will be made available to serve as compensatory mitigation pursuant to applicable Federal and Washington State laws and regulations. The Corps and Ecology serve as Co-Chairs of the IRT. The IRT is the group of Federal, State, tribal, and local agencies that has reviewed, and will advise the Co-Chairs regarding, the establishment and management of the Bank pursuant to the provisions of the Instrument.

NOW, THEREFORE, the Parties agree to the following:

**II. LEGAL AUTHORITIES**

**A. Authorities:** The establishment, use, operation, and maintenance of the Bank shall be carried out in accordance with the following principal authorities.

1. Federal:

a. Clean Water Act (33 USC §§ 1251 et seq.)

b. Rivers and Harbors Act of 1899 (33 USC § 403)

c. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-332)

d. U.S. Army Corps of Engineers Regulatory Guidance Letter 05-1, *Guidance on Use of Financial Assurances, and Suggested Language for Special Conditions for Department of the Army Permits Requiring Performance Bonds*, U.S. Army Corps of Engineers, February 14, 2005

e. Guidelines for the Specification of Disposal Sites for Dredged and Fill Material (“404(b)(1) Guidelines,” 40 CFR Part 230)

f. National Environmental Policy Act (42 USC §§ 4321 et seq.)

g. Council on Environmental Quality Procedures for Implementing the National Environmental Policy Act (40 CFR Parts 1500-1508)

h. Executive Order 11990 (Protection of Wetlands)

i. Executive Order 11988 (Protection of Floodplains)

j. Executive Order 13112 (Invasive Species)

k. Fish and Wildlife Coordination Act (16 USC §§ 661 et seq.)

l. Fish and Wildlife Service Mitigation Policy (46 FR 7644-7663, 1981)

m. Endangered Species Act (16 USC §§ 1531 et seq.)

n. Magnuson-Stevens Fishery Conservation and Management Act (16 USC §§ 1801 et seq.)

o. National Historic Preservation Act, as amended (16 USC § 470)

2. State of Washington:

a. Washington Water Pollution Control Act, RCW 90.48 et seq.

b. State of Washington Wetlands Mitigation Banking Statute (RCW 90.84)

c. Washington State Rule on Wetland Mitigation Banking (WAC 173-700, Wetland Mitigation Banks)

d. Washington State Environmental Policy Act (“SEPA” RCW 43.21C and WAC 197-11)

e. Growth Management Act (RCW 36.70A)

f. Washington State Hydraulic Code (RCW 77.55, WAC 220-110, and Hydraulic Permit Approval)

g. Washington State Shoreline Management Act (RCW 90.58, WAC 173-27 as amended)

h. Washington State Salmon Recovery Act (RCW 77.85)

i. Washington State Aquatic Resources Act (RCW 90.74)

j. Executive orders 89-10 and 90-04, Protection of Wetlands,

**III. ESTABLISHMENT OF THE BANK**

1. **Permits:** The Sponsor shall obtain all appropriate environmental documentation, permits and other authorizations needed to establish and maintain the applicable phase of the Bank, prior to the award of any Bank credits. Compliance with this Instrument does not fulfill the requirement, or substitute, for such authorizations. Local authorizations and permits include, but are not limited to,       County approvals, permits, and authorizations issued under the statutory and regulatory provisions listed in the Appendices of this Instrument***.***
2. **Bank Establishment:** The Sponsor agrees to establish the Bank as described in Appendix B and to satisfactorily accomplish all performance standards reflected in Appendix C. In recognition thereof, compensatory mitigation credits will be awarded to the Sponsor in accordance with the procedures and schedules prescribed in the Appendices, particularly in Appendices C and D. In establishing the Bank, deviations from the prescribed Bank development plan and design, including deviations from any performance standards, may only be made with the prior approval of the Corps and Ecology, in consultation with the IRT.

To propose modifications to the Bank development plan, the Sponsor shall submit a written request to the Corps and Ecology. Documentation of implemented modifications shall be made consistent with Article VI.B.2. of this Instrument. The Establishment Period of the Bank is defined in Article IV.K.

**C. Financial Assurance Requirements:** The Sponsor agrees to provide the following financial assurances for the work described in this Instrument:

***[Financial assurances for the Establishment Period of the Bank should be individually developed by the Sponsor to meet the specific needs of the Bank proposal. The following is a non-exclusive list of possible forms of acceptable financial assurance that can be used for wetland mitigation banks. The order in which they are listed is not intended to express an IRT preference:***

***1. Irrevocable Letter of Credit***

***2. Surety Bond (U.S. Treasury-approved corporate surety)***

***3. Escrow Account holding cash assets***

***Example language has been provided below in Articles III.C.1.a. through d. addressing either an Irrevocable Letter of Credit or a Surety Bond. The Sponsor may use different forms of financial assurance for different phases of the Bank or switch financial assurances as needed during the establishment period. These two forms of financial assurance were chosen because they are the most common forms in which Sponsors in Washington State have expressed interest. The Sponsor will need to complete these sections prior to submitting the Instrument for approval. If the Sponsor chooses to propose a different form of financial assurance, the Sponsor will need to propose alternative language.]***

1. **Financial Assurance Mechanisms for Mitigation Bank Establishment:** The Sponsor shall furnish either a Letter of Credit or a Surety Bond to provide financial assurance underlying the establishment and initial functionality of each phase of the Bank. This Letter of Credit or Surety Bond must be initiated by the Sponsor, in a form and content approved by the Corps and Ecology, and shall conform to the requirements of Appendix H, before any construction or implementation activities may be conducted on-site as part of the establishment period of the Bank, as defined in Article IV.K., and prior to the award of any Bank credits. Any construction or implementation activities conducted on-site for Phase 1 prior to the inception of the establishment period must cease as of the effective date of this Instrument pursuant to Article VI.B.1, until an approved Letter of Credit or Surety Bond is initiated for that phase. Construction on subsequent phases cannot commence until an approved Letter of Credit or Surety Bond is initiated for each phase. The Corps and Ecology will notify the Sponsor that construction and implementation activities are authorized to commence for Phase 1, by granting the initial award of Bank credits in recognition of meeting all the performance standards under Objective 1, pursuant to Appendix D.   
   1. The Corps and Ecology must specifically approve all terms and conditions of the Letter of Credit or Surety Bond, as well as the identity of the financial institution issuing and underwriting the Letter of Credit or Surety Bond.
      1. For Letters of Credit, only federally-insured institutions rated investment grade or higher may issue the Letter of Credit. The Sponsor shall provide the Corps and Ecology with a credit rating that indicates the financial institution has the required rating as of the date of first issuance of the Letter of Credit. This credit rating shall be from a recognized commercial rating service as specified in the Office of Federal Procurement Policy Pamphlet No. 7, available through the website of the Office of Management and Budget, Executive Office of the President. Provided the required credit rating is held, approval of the financial institution selected by the Sponsor shall not be unreasonably withheld. If the Corps or Ecology determines that the credit rating of the financial institution issuing the Letter of Credit has subsequently failed to adhere to these requirements, the Corps or Ecology may direct the Sponsor to provide an acceptable substitute Letter of Credit within 30 days. If an acceptable substitute is not provided within the prescribed period, the Corps or Ecology may immediately draw on the Letter of Credit up to its full value without any further notice to the Sponsor. If notice of non-renewal as delineated in section H.1.B. of Appendix H has been provided, and the Sponsor does not furnish an acceptable replacement Letter of Credit or other approved financial assurance at least 30 days before the Letter of Credit’s expiration, the Corps or Ecology may immediately draw on the existing Letter of Credit up to its full value without any notice to the Sponsor.
      2. For Surety Bonds, the surety must be currently certified on the Department of the Treasury, Financial Management Service’s Circular 570, Listing of Approved Corporate Sureties. The penalty amount of the Surety Bond must fall within the per-bond underwriting limitation prescribed in Circular 570, unless the amount which exceeds the specified underwriting limit is coinsured or reinsured by a corporate surety currently certified in the applicable list in Circular 570, and unless the amount of excess risk covered by coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer. The terms and conditions of any coinsurance or reinsurance agreement must conform to the requirements of 31 Code of Federal Regulations sections 223.10 and 223.11, and the coinsurance or reinsurance agreement must itself be specifically approved by the Corps and Ecology. Provided the required certification is held and the applicable underwriting limitations are not exceeded, approval of the surety selected by the Sponsor shall not be unreasonably withheld. If the Corps or Ecology determines that the surety’s certification under Circular 570 has been terminated, or that the per-bond underwriting limitation prescribed in Circular 570 has been exceeded, the Corps or Ecology may direct the Sponsor to provide an acceptable substitute Surety Bond within 30 days. If an acceptable substitute financial assurance is not provided within the prescribed period, the Corps or Ecology may immediately demand payment upon the Surety Bond up to its full value without any further notice to the Sponsor. If notice of non-renewal as delineated in section H.1.2.B of Appendix H has been provided, and the Sponsor does not furnish an acceptable replacement Surety Bond or other approved financial assurance at least 30 days before the Surety Bond’s expiration, the Corps or Ecology may immediately demand payment upon the penal sum of the existing Surety Bond up to its full value without any notice to the Sponsor.
      3. If a replacement financial assurance is required, no further credits will be awarded to the Bank without an effective Letter of Credit, Surety Bond, or other approved financial assurance.
      4. If the financial assurance applicable to the Bank shall expire by its own terms prior to rescission or cancelation pursuant to the terms of Article III.C.1.f., the Sponsor must reinitiate an acceptable financial assurance so that there is no interval in which there is no approved financial assurance in effect. No further credits will be awarded to the Bank while the Bank lacks an effective financial assurance instrument.

b. The Corps or Ecology, acting independently or in concert, may direct disbursement from the credit funds account on a Letter of Credit, or payment of the penal sum on a Surety Bond, as applicable, under the following circumstances: upon abandonment of Bank establishment efforts; upon a failure stemming from any cause to achieve any of the Bank Objectives or Performance Standards as reflected in Appendix C, including, but not limited to, deficient design, ineffective establishment, deterioration of functionality or performance, or financial limitations of the Sponsor; or upon the Sponsor’s failure to maintain in force, or to promptly reinstate, renew, or extend, the Letter of Credit or Surety Bond, as applicable, as required by this Article III.C.1 and Appendix H. The Corps and/or Ecology shall provide specific and express written direction for corrective action to the Sponsor in accordance with Article IV.H. of this Instrument and Appendix F, Section 1.1.4 ninety (90) calendar days prior to accessing funds pursuant to a Letter of Credit, or ninety (90) calendar days prior to requiring payment of the penal sum on a Surety Bond. If, within ninety (90) days of delivery of notice of the demand for corrective action, the Sponsor has initiated compliance efforts and the Corps and Ecology have determined, in their sole discretion, that substantial progress has been made toward completion of corrective action, the Corps and Ecology will defer accessing the Letter of Credit or requiring payment on the Surety Bond, as applicable. The Corps and/or Ecology need not provide the prior notice to the Sponsor prescribed in this Article III.C.1: (a) when requiring payment on a Letter of Credit due to failure to maintain the necessary credit rating or certification under Office of Federal Procurement Policy Pamphlet No. 7; (b) when requiring payment on a Surety Bond due to failure to maintain the necessary credit rating or certification under Financial Management Service Circular 570; or (c) in the event that notice of non-renewal has been provided under Article III.C.1.a.i. or Article III.C.1.a.ii..

c. Following consultation with the IRT, the Corps and/or Ecology may access the funds guaranteed by the Letter of Credit, or require payment on the Surety Bond, as applicable, to ensure accomplishment of any of the following objectives or features of the Bank: construction, establishment, monitoring, maintenance, or remedial action activities reflected in, or directly supporting accomplishment of, the Objectives and Performance Standards reflected in Appendix C. The Sponsor expressly waives any and all opportunity to challenge, delay, or require substantiation for any direction by the Corps or Ecology accessing and disbursing the funds guaranteed by the Letter of Credit, or requiring payment on the Surety Bond, as applicable. The Corps and/or Ecology may elect, in consultation with the IRT, to accomplish all of the Objectives and Performance Standards prescribed in Appendix C, Section 2.1 and for which the Sponsor has assumed responsibility under Article III.B. of this Instrument. In lieu of accomplishing all Objectives and Performance Standards in Appendix C, the Corps and/or Ecology, in their sole discretion, in consultation with the IRT, may accomplish only that component or those components of the Objectives and Performance Standards that are deemed reasonably necessary to achieve a project that is stable, self-sustaining, and provides a level of general benefit to the aquatic resources of the watershed that the Corps and/or Ecology deem appropriate under the circumstances. Accomplishment of corrective or remedial actions determined to be necessary in order to achieve the Sponsor’s obligations under the objectives and performance standards will be achieved by a Third Party Designee designated by the Corps and/or Ecology. Eligible Third Party Designees may include, but are not limited to, non-profit entities, state or local agencies, tribal components, or private mitigation providers. Such corrective or remedial action to accomplish specified Sponsor responsibilities under the objectives and performance standards shall be achieved in accordance with a plan developed by the Third Party Designee and approved by the Corps and Ecology as conforming to the provisions of this Instrument.

d. Any Letter of Credit shall take the general form of an agreement on the part of the issuing financial institution to honor the engagement reflected therein as directed by one or both of the beneficiaries in the event that the Corps and/or Ecology determine, in their sole and exclusive discretion, that the principal has failed to fulfill any of the obligations established in this Instrument. Any Surety Bond shall take the general form of an indemnity contract in a sum certain obliging the surety to pay the full face value of the bond as directed by one or both of the beneficiaries in the event that the Corps and/or Ecology determine, in their sole and exclusive discretion, that the principal has failed to fulfill any of the obligations established in this Instrument. A Letter of Credit or Surety Bond, as applicable, shall be furnished to guarantee the establishment activities of the phases of the Bank, in the following amounts:

(i): Phase      : $

(ii): Phase      : $

(iii): Phase      : $

***[Consult with the Co-Chairs on directions for determining the appropriate amount of financial assurance. The Sponsor must obtain from a qualified contractor, and submit to the IRT, a detailed written estimate of the cost for a third party to construct the Bank and to complete the monitoring and maintenance responsibilities of the Establishment Period of the Bank. The amount of the financial assurance will vary depending on likelihood of success, timing of release of Bank credits, and other factors. A dollar amount for the first phase must be specified. A dollar range can be entered for future phases that include the high and low end of possible estimates of financial assurance.***

***If the Sponsor does not have sufficient information at the time the Instrument is signed to determine the financial assurance amounts contained in Article III.C. applicable to any Bank phase subsequent to Phase 1, it is acceptable to enter “To be determined” in the blanks provided. Once the amounts of future financial assurances are determined, or altered, modifications to the instrument will need to be made. Any modifications to the body of the Instrument will require re-signing.]***

e. Upon certification by the Corps and Ecology that the following performance standards, as prescribed in Appendix C and Table D-3 of Appendix D, have been achieved, the Corps and Ecology will authorize in writing that the required amount of the Letter of Credit, or the required penal sum of the Surety Bond, as applicable for each phase, be reduced as follows: ***[If the reduction in financial assurance value will be to a pre-determined range, versus a specified figure, use the following language in lieu of “as follows”: “to a specified value within the following range, with that specified value designated at the exclusive discretion of the Corps and Ecology, following consultation with the IRT and with the Sponsor”]***

i. Following completion of all Year 0 performance standards for each phase: a revised required amount of $      for Phase      , $      for Phase      , and $      for Phase      ; ***[If the reduction in financial assurance value will be to a pre-determined range, vice a specified figure, use the following language in lieu of “revised required amount of*** $     ***”: “revised required amount not less than $\_\_\_\_ and not greater than $\_\_\_\_”]***

ii. Following completion of all Year       performance standards for a phase, a revised required amount of $     ; ***[If the reduction in financial assurance value will be to a pre-determined range, vice a specified figure, use the following language in lieu of “revised required amount of*** $     ***”: “revised required amount not less than $\_\_\_\_ and not greater than $\_\_\_\_”]***

iii. Following completion of all Year       performance standards for a phase, a revised required amount of $     ; ***[If the reduction in financial assurance value will be to a pre-determined range, vice a specified figure, use the following language in lieu of “revised required amount of*** $     ***”: “revised required amount not less than $\_\_\_\_ and not greater than $\_\_\_\_”]***

iv. Following completion of all Year       performance standards for a phase, a revised required amount of $     . ***[If the reduction in financial assurance value will be to a pre-determined range, vice a specified figure, use the following language in lieu of “revised required amount of*** $     ***”: “revised required amount not less than $\_\_\_\_ and not greater than $\_\_\_\_”]***

***[Consult with the Co-Chairs on directions for determining the appropriate reduction amounts and reduction schedule for the financial assurance. The amount of reduction and reduction schedule will vary depending on likelihood of success and other factors.]***

f. Upon satisfaction of all objectives and performance standards required in Appendix C, and upon a determination by the Corps and Ecology that the Sponsor has satisfied the additional requirements reflected in Article IV.K. of this Instrument for termination of the establishment period of the Bank, the Corps and Ecology will waive their right to payment under, and authorize rescission or cancellation of, the financial assurance instrument.

g. Notwithstanding the fact that the financial assurance may have been accessed, or that payment upon that financial assurance may have been required, and full or partial remedial or corrective action may have been taken by the Third Party Designee, unless this Instrument is terminated pursuant to Article IV.J. or VI.B. the Sponsor shall remain responsible for the timely and effective achievement of all the Objectives and Performance Standards mandated in Appendix C.

h. Alternatively, the Sponsor may request, and the Corps and Ecology may approve, a substitute financial assurance instrument for the financial assurance required under this Instrument.  The form and content of any financial assurance instrument must be specifically approved before a substitution is utilized in satisfaction of the financial assurance obligations during the establishment period of the Bank.  The Corps and Ecology must specifically approve the identity of the financial institution issuing and underwriting the financial assurance instrument.  The provisions of the substitute financial assurance instrument must conform to each of the material requirements of this Article III.C.1., as well as Appendix H, within this Instrument.  Additionally, the substitute financial assurance must extend for the full period of time that the financial assurance it replaces must extend, and may be terminated pursuant to this Article III.C.1. and Appendix H. The replacement financial assurance instrument must be instituted so that there is no portion of the establishment period, following initiation of construction or other implementation activities on-site, during which there is no financial assurance in effect. No further Bank credits will be awarded from any phase of the Bank while any phase lacks an effective financial assurance instrument. The replacement financial assurance instrument must be described in an amendment to the Instrument.

**2. Long-Term Management and Maintenance Endowment Fund:** The Sponsor shall institute an endowment fund, established and maintained through an escrow account, to fund management and maintenance actions as defined in Article IV.M.1. of this Instrument and Appendix G, Section 1.2., following the termination of the establishment period of the Bank. This Long-Term Management and Maintenance (LTMM) Endowment Fund shall be incrementally funded throughout the establishment period of the Bank, with the funds disbursed to a Long-Term Steward upon the Sponsor’s relinquishment of responsibility for long-term management and maintenance of the Bank. The Sponsor agrees to continue to deposit funds in the LTMM Endowment Fund escrow account, pursuant to Article III.C.2.a. of this Instrument, until the LTMM Endowment Fund is fully funded in accordance with Article III.C.2.b. of this Instrument.

a. The LTMM Endowment Fund escrow account shall be funded throughout the establishment period of the Bank by depositing a designated sum corresponding to each sale or transfer of Bank credits, or use of Bank credits by the Sponsor as compensatory mitigation for its own activities causing adverse impacts to the aquatic environment. This designated sum shall be $      per credit sold, used, or transferred*.* Deposits to the LTMM Endowment Fund must be completed within 30 days of the sale, use, or transfer transaction. The Corps and Ecology must specifically approve the identity of the institution in which the escrow account is established, as well as the form of that account. Approval of the identity of the financial institution at which the escrow account is established, and the form of the investment account, shall not be unreasonably withheld.

***[The LTMM Endowment Fund escrow account may be funded through an alternate method provided that it is approved by the Co-Chairs. If this is the case, new text addressing the different funding method should be proposed above].***

b. The LTMM Endowment Fund shall be considered to be fully funded when the total value of the escrow account, including the principal amounts deposited and earnings, has accumulated to a total of $     .

c. The Sponsor shall enter into an escrow agreement with both the Corps and Ecology conforming to the requirements of Appendix H, Section 1.2. The escrow agreement for the LTMM Endowment Fund shall be signed prior to the release of any Bank credits, for any phase of the Bank, and before any construction or implementation activities may be conducted on-site during the establishment period of the Bank, as defined in Article IV.K.

d. Upon receipt of written instructions signed by the Sponsor, Corps, and Ecology, the LTMM Endowment Fund escrow account shall be terminated and all funds disbursed pursuant to the instructions of the Corps and Ecology.

**D. Real Estate Provisions:** All real property to be included within any phase of the Bank is presently owned in fee simple by the Sponsor. The Sponsor shall burden the title to the Bank real property through the grant of a conservation easement, pursuant to the provisions of Appendix G, Section 1.1. The conservation easement must be approved, initiated, and recorded pursuant to Appendix G, Section 1.1., prior to the award of any Bank credits and before any construction or implementation activities may be conducted on-site during the establishment period of the Bank, as defined in Article IV.K. Any construction or implementation activities conducted on-site prior to the inception of the establishment period must cease as of the effective date of this Instrument pursuant to Article VI.B.1., until an approved conservation easement is recorded. The Corps and Ecology will notify the Sponsor that construction and implementation activities are authorized to commence, by granting the initial award of bank credits in recognition of meeting all performance standards under Objective 1, pursuant to Appendix D.

***[For Article III.D. if the Bank property is not owned by the Sponsor, the language of the first two sentences must be replaced with the following: “All real property to be included within the Bank is presently owned in fee simple by***      ***. The Sponsor is responsible for ensuring the landowner burdens the title to its real property upon which the Bank is located through grant of a conservation easement, pursuant to the provisions of Appendix G, Section 1.1.”]***

**E. Implementation of Additional Phases:** The Sponsor shall request approval to implement subsequent phases of the Bank from the Corps and Ecology. The Corps and Ecology will consult with the IRT prior to approval of implementation. The Corps and Ecology will only approve the implementation of subsequent Bank phases that have been specifically identified in Appendices A – H.

# IV. OPERATION OF THE BANK

**A. Service Area:** The Bank is approved to provide compensatory mitigation for impacts to the Waters of the United States and waters of the State, including wetlands, within the Service Area. A detailed description and map of the Service Area are included in Appendix      .

1. The Service Area for the Bank extends to       ***[provide a general description of the Service Area boundaries e.g., “a portion of Water Resources Inventory Area*      ”*].*** The Bank may be used to compensate for an impact that occurs within the Service Area if specifically approved by the regulatory agency(ies) that have jurisdiction over that impact, pursuant to the procedures and criteria prescribed in Appendix E.

2. In exceptional situations, the Bank may be used to compensate for an impact that occurs outside of the Service Area if specifically approved by the regulatory agency(ies) having jurisdiction over that impact and by the Corps and Ecology, in consultation with the IRT, pursuant to the procedures and criteria prescribed in Appendix E, Section 1.1. If the Corps and/or Ecology determine that the Sponsor has sold, used, or transferred Bank credits at any time to provide compensatory mitigation outside of the Service Area without prior approval, the Corps and/or Ecology, in consultation with the IRT, may direct that the sale, use or other transfer of Bank credits immediately cease, and will determine, in consultation with the IRT, the Sponsor and the appropriate regulatory authority, what remedial actions are necessary to correct the situation and will direct their performance prior to the award of any additional Bank credits. Notwithstanding the fact that ceasing sale, use or other transfer of Bank credits may have been required, unless this Instrument is terminated pursuant to Article IV.J. or VI.B., the Sponsor shall remain responsible for the timely and effective achievement of all the Objectives and Performance Standards mandated in Appendix C.

**B. Access to the Bank Site:** The Sponsor will allow, or otherwise provide for, access to the Bank site by members of the IRT or their agents or designees, as reasonably necessary for the purpose of inspection, compliance monitoring, and remediation consistent with the terms and conditions of this Instrument and the Appendices, throughout the periods of Bank establishment, operational life, and long-term management and maintenance. Inspecting parties shall provide the Sponsor reasonable prior notice of a scheduled inspection, and shall not unreasonably disrupt or disturb activities on the property.

**C. Availability of Bank Credits:**

1. **Availability and Sale, Transfer, or Use of Bank Credits**: Subject to the documentation and scheduling provisions of Appendix D, Section 1, the Sponsor may submit to the IRT written evidence that particular performance standards have been achieved. If the Corps and Ecology, after consulting with the IRT and the Sponsor, concur that certain performance standards have been achieved in full, the Corps and Ecology will respond in writing to the Sponsor that the Bank credits associated with those performance standards are available for sale, transfer, or use by the Sponsor as compensatory mitigation for its own activities causing adverse impacts to the aquatic environment. Each instance of sale or any other transfer of Bank credits to a third party shall be reflected in a credit transaction agreement, retained by the Sponsor and made available for Corps and/or Ecology review, if requested. Each such credit transaction agreement must include the name, address, and telephone number of the purchaser or transferee. Each transaction agreement that is associated with a permit must also indicate the permit number of the impacting project, the number of Bank credits involved in the transaction, and must expressly specify that the Sponsor, and its successors and assigns, assume legal responsibility for accomplishment and maintenance of the transferee’s compensatory mitigation requirements associated with the impacting project, upon completion of the credit transaction. Each credit transaction agreement that is associated with a permit shall be recorded with the county auditor. A copy of the recorded transaction agreement shall be provided to the Corps and Ecology.

2. **Availability of Bank Credits in the Event Financial Assurances are Accessed**: In the event the Corps and/or Ecology, acting pursuant to Articles III.C.1.a. or III.C.1.b. of this Instrument, accesses the financial assurances established pursuant to Article III.C.1. of this Instrument and accomplishes any objectives, performance standards, or features of the Bank, the Corps and Ecology, in consultation with the IRT, may award Bank credits for sale, use, or transfer by the Sponsor, in a quantity reflecting the objectives and performance standards achieved as a result of such remedial action.

**D. Credit Deficit or Fraudulent Transactions:** If the Corps and/or Ecology determine at any point that the Bank is operating at a deficit, or has engaged in fraudulent transactions in the sale, use, or other transfer of Bank credits, the Corps and/or Ecology will cease the award of, and will direct the Sponsor to immediately cease sale, use or other transfer of, Bank credits. The Corps and/or Ecology will determine, in consultation with the IRT and the Sponsor, what remedial actions are necessary to correct the situation and will direct their performance prior to the award of any additional Bank credits.

**E. Provisions For Use of the Mitigation Bank Area:** The Corps and/or Ecology may consider the Sponsor as being in material default of a provision of this Instrument and proceed accordingly under Article IV.J. should the Corps and/or Ecology, in consultation with the IRT, determine that either of the following has occurred:

1. The grant of additional easements, rights of way, or any other property interest in the Bank site without written consent of the Corps and Ecology in accordance with Article IV.N.

2. The use, or authorization of the use, of any areas within the Bank for any purpose that is contrary to the provisions of this Instrument or the conservation easement, or which interferes with the conservation purposes of the Bank.

**F. Maintenance Provisions:** Following achievement of the performance standards, the Sponsor agrees to perform all necessary work to maintain those standards as prescribed in Appendix F, Section 1.1.5.

**G. Monitoring Provisions:** The Sponsor agrees to perform all necessary work, pursuant to Appendix F, to monitor the Bank during the establishment period to demonstrate compliance with the performance standards established in Appendix C.

**H. Contingency Plans/Remedial Actions:** In the event the Bank fails to achieve one or more of the performance standards within the specific time schedule delineated in Appendix D, the Sponsor shall develop necessary contingency plans and implement appropriate remedial and monitoring actions for the Bank as specified in Appendix F, Section 1.1.4, to attain those project objectives and performance standards. Prior to implementing any remediation, supplemental monitoring, or other corrective measures, the Sponsor shall obtain approval of the contingency plans from the Corps and Ecology. The Corps and Ecology shall consult with the IRT prior to approval of the plans. All appropriate environmental documentation, permits, and other authorizations needed to implement the contingency plan or take remedial action shall be obtained by the Sponsor. In the event the Sponsor fails to implement necessary contingency actions within the period prescribed by the Corps and Ecology in the notification of approval of the contingency plan, the Corps and/or Ecology, in consultation with the Sponsor and the IRT, will direct remedial, corrective, and/or sanctioning action in accordance with the procedures specified in Appendix F, Section 1.1.4. Alternatively, the Corps and/or Ecology may accomplish such remedial action directly, acting through a Third Party Designee, by accessing the financial assurance instrument pursuant to Articles III.C.1.a. and III.C.1.b. of this Instrument.

**I. Force Majeure:** The Sponsor may request pursuant to Article III.B., and the Corps and Ecology may approve, changes to the construction, operation, objectives, performance standards, timelines, or credit generation and award schedule of the Bank, pursuant to the standards and procedures specified in Appendix F, if all of the following occur: an act or event causes substantial damage such that it is determined to be a result of force majeure; such act or event has a significant adverse impact on the quality of the aquatic functions, native vegetation, or soils of the Bank site; and such act or event was beyond the reasonable control of the Sponsor, its agents, contractors, or consultants to prevent or mitigate.

1. The evaluation of the damage caused by force majeure and the resulting changes to mitigation requirements involve a communicative process. If the Sponsor asserts a mitigation site has sustained significant adverse impacts due to an event or act which may be determined to be force majeure, the Sponsor shall give written notice to the Corps, Ecology and the IRT as soon as is reasonably practicable. After receiving written notice, the Corps and Ecology, in consultation with the Sponsor and the IRT, shall evaluate whether the event qualifies as force majeure. The Corps and Ecology, in consultation with the Sponsor and the IRT, will then evaluate whether significant adverse impacts have occurred to the site. If a force majeure event is determined to have occurred and significant adverse impacts are found to have occurred to the site, the Corps and Ecology, in consultation with the IRT and the Sponsor, will evaluate whether and to what extent changes to the Bank site will be in the best interest of the site and the aquatic environment, and may approve such changes as detailed above. The Corps and Ecology retain sole discretion over the final determination of whether an act or event constitutes force majeure, whether significant adverse impacts to the Bank site have occurred, and to what extent changes to the Bank site or its management will be permitted.

2. Force majeure events include natural or human-caused catastrophic events or deliberate and unlawful acts by third parties.

* 1. Examples of a natural catastrophic event include, but are not limited to: a flood equal to or greater in magnitude than the 100-year flood event; an earthquake of a force projected from an earthquake with a return period of 475 years; drought that is significantly longer than the periodic multi-year drought cycles that are typical of weather patterns in the Pacific Northwest; as well as events of the following type when they reach a substantially damaging nature: disease, wildfire, depredation, regional pest infestation, or significant fluviogeomorphic change.
  2. Examples of a human-caused catastrophic event include, but are not limited to, substantial damage resulting from the following: war, insurrection, riot or other civil disorders, spill of a hazardous or toxic substance, or fire.
  3. Examples of a deliberate and unlawful act include, but are not limited to, substantial damage resulting from the following: the dumping of a hazardous or toxic substance, as well as significant acts of vandalism or arson.

3. The consequences of any events of force majeure recognized as such by the Corps and Ecology shall not affect the status of previously released Bank credits, whether or not they have yet been sold, used, or transferred.

**J. Default:** Should the Corps and/or Ecology, in consultation with the IRT, determine that the Sponsor is in material default of any provision of this Instrument, the Corps and/or Ecology may cease award of Bank credits, and may notify the Sponsor that the award, sale, and/or transfer of Bank credits, or use by the Sponsor of Bank credits as compensatory mitigation for its own activities causing adverse impacts to the aquatic environment, are suspended until the delineated deficiencies are rectified. Upon written notification of suspension, the Sponsor agrees to immediately cease any sale or transfer transactions not yet finally completed, and/or to cease any use by the Sponsor of Bank credits as compensatory mitigation for its own activities causing adverse impacts to the aquatic environment where a Corps or Ecology permit or authorization, as required, has not yet been issued, until informed by the notifying agency that award, sale, use, or transfer of Bank credits may be resumed. Should the Sponsor remain in default for a period of 90 days, the Corps and Ecology, in consultation with the IRT, may terminate this Instrument and any subsequent banking operations. In the event such termination action is commenced, the Sponsor agrees to fulfill its pre-existing obligations to perform all establishment, monitoring, maintenance, management, and remediation responsibilities that arise directly from Bank credits that have already been awarded, sold, used, or transferred at the time of termination. In the event of termination, no further sale or transfer of Bank credits may occur, nor any use by the Sponsor of Bank credits as compensatory mitigation for its own activities causing adverse impacts to the aquatic environment within the Service Area where a Corps or Ecology permit or authorization, as required, has not yet been issued.

**K. Establishment Period of the Bank:** The establishment period of a particular phase of the Bank will commence on the date the Instrument takes effect pursuant to Article VI.B.1. Prior to termination of the establishment period of a particular phase of the Bank, the Corps and Ecology, in consultation with the IRT, will perform a final compliance inspection to evaluate whether all performance standards have been achieved. The establishment period for the Bank or a particular phase of the Bank will terminate, and the period of long-term management and maintenance will commence, when the Corps and Ecology determine, in consultation with the IRT and the Sponsor, that the following conditions have been met:

(1) all applicable performance standards prescribed in Appendix C for that phase have been achieved;

(2) all available Bank credits for that phase have been awarded, or the Corps and Ecology, in consultation with the IRT, have approved the Sponsor’s written request to permanently cease banking activities;

(3) the Sponsor has prepared a Long-Term Management and Maintenance Plan that has been approved by the Corps and Ecology, pursuant to Article IV.M.1 and Appendix G, Section 1.2.;

(4) the Sponsor has either: (i) assumed responsibilities for accomplishing the Long-Term Management and Maintenance Plan, in which case the Sponsor will fulfill the role of Long-Term Steward, or (ii) assigned those responsibilities to another Long-Term Steward pursuant to Article IV.M.2. of this Instrument;

(5) the LTMM Endowment Fund has been fully funded;

(6) the contents of the LTMM Endowment Fund have been transferred to the Long-Term Steward; and

(7) the Bank has complied with the terms of this Instrument.

**L. Operational Life of the Bank:** The operational life of the Bank will commence on the date the Instrument takes effect pursuant to Article VI.B.1. Following the termination of the establishment period of a particular phase of the Bank, and (1) upon sale, transfer, or use by the Sponsor as compensatory mitigation for its own activities causing adverse impacts to the aquatic environment, of all Bank credits, or (2) upon approval by the Corps and Ecology, in consultation with the IRT, of the Sponsors written request to permanently cease banking activities, the operational life of the Bank will terminate.

**M. Long-Term Management and Maintenance:**

1. The Sponsor shall develop a Long-Term Management and Maintenance Plan consistent with the guidelines and objectives specified in Appendix G, Section 1.2, and submit the Long-Term Management and Maintenance Plan for approval by the Corps and Ecology, in consultation with the IRT. The Sponsor is responsible, as Long-Term Steward, for execution of the approved Long-Term Management and Maintenance Plan. The Sponsor may only deviate from the approved Long-Term Management and Maintenance Plan upon written approval by the Corps and Ecology, following consultation with the Sponsor and the IRT.

2. The Sponsor may assign its long-term management and maintenance responsibilities to a third party assignee, which 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 assignment agreement between the Sponsor and the assignee must be approved by the Corps and Ecology, in consultation with the IRT, in advance of long-term management and maintenance assignment.

3. Upon execution of a long-term management and maintenance assignment agreement and the transfer of the contents of the LTMM Endowment Fund, and upon satisfaction of the remaining requirements for termination of the establishment period of the Bank under Article IV.K. of this Instrument, the Sponsor shall be relieved of all further long-term management and maintenance responsibilities under this Instrument.

**N. Accomplishment of Sponsor Responsibilities; Transfer of Ownership of the Bank Site:** The Sponsor shall remain responsible for complying with the provisions of this Instrument throughout the operational life of the Bank, regardless of the ownership status of the underlying real property, unless those responsibilities have been assigned pursuant to the provisions of Article VI.C. of this Instrument. The Sponsor shall provide written notice at least 60 days in advance of any transfer of ownership of all or a portion of the Bank real property or rights to another party, by any owners of real property comprising the Bank site, or their successors or assigns.

**V. RESPONSIBILITIES OF THE CORPS AND ECOLOGY**

**A.** The Corps and Ecology agree to provide appropriate oversight in carrying out provisions of this Instrument.

**B.** The Corps and Ecology agree to review and provide comments on project plans, monitoring reports, contingency and remediation proposals, and similar submittals from the Sponsor in a timely manner. The Corps and Ecology will coordinate their review with the IRT.

**C.** The Corps and Ecology agree to review requests to modify the terms of this Instrument, determine achievement of performance standards in order to evaluate the award of Bank credits for each phase of the Bank, or approve the Long-Term Management and Maintenance Plan. The Corps and Ecology will coordinate the review with the IRT so that a decision is rendered, or comments detailing deficiencies are provided, in a timely manner. The Corps and Ecology agree to not unreasonably withhold or delay decisions on such requests.

**D.** The Corps and Ecology agree to act in good faith when rendering decisions about acceptability of financial assurances, requiring corrective or remedial actions, requiring long-term management and maintenance actions, and awarding Bank credits. The Corps and Ecology will exercise good judgment in accessing financial assurances and will utilize those monies only to the extent they reasonably and in good faith conclude that such remedial or corrective actions are an effective and efficient expenditure of resources. In implementing the process delineated in Article III.C.1 of this Instrument, the Corps and Ecology will act in good faith in determining the scope and nature of corrective actions to be undertaken; shall act in good faith in conducting monitoring, developing reports, and assessing compliance with performance standards; and will not unreasonably limit corrective action activities or otherwise apply their discretion so as to unduly prejudice the Sponsor as to the timing or number of Bank credits awarded. Corps and Ecology approval of the identity of any assignee responsible for executing the LTMM Plan, and approval of the terms of any long-term management and maintenance assignment agreement, will not be unreasonably withheld.

**E.** The Corps and Ecology will periodically inspect the Bank site as necessary, in consultation with the IRT, to evaluate the achievement of performance standards, to assess the results of any corrective measures taken, to monitor implementation of the LTMM Plan, and, in general, to verify the Sponsor’s compliance with the provisions of this Instrument.

**F.** Upon satisfaction of the requirements of Article IV.K. for any phase of the Bank under this Instrument, the Corps and Ecology will jointly issue a letter certifying that the establishment period of that phase of the Bank has terminated, and that the period of long-term management and maintenance has begun, in consultation with the IRT. Upon satisfaction of the requirements of Article IV.L. of this Instrument, the Corps and Ecology will jointly issue a letter certifying that the operational life of that phase of the Bank has terminated.

**VI. GENERAL PROVISIONS**

**A.** **Decision Making by Consensus:**  The Corps and Ecology will strive to achieve consensus among the IRT regarding issues that arise pertaining to the establishment, operation, maintenance, and management of the Bank. The Corps and Ecology will coordinate the review and oversight activities of the IRT to best facilitate opportunity to reach the desired consensus. Review and oversight decisions will take into account the views of the Sponsor to the maximum extent practicable. Where consensus cannot otherwise be reached within a reasonable timeframe, following full consideration of the comments of the IRT and following consultation with the Sponsor, the Corps holds the responsibility and authority under Section 404 of the Clean Water Act, and Ecology holds independent responsibility and authority under Section 401 of the Clean Water Act and ch. 90.48 RCW, to make final decisions regarding the application of the terms of this Instrument.

**B. Entry into Effect, Modification or Amendment, and Termination of the Instrument:**

1. This Instrument, consisting of both this Basic Agreement and the Appendices, will enter into effect upon the signature by authorized representatives of each of Corps, Ecology, ***, [If applicable, insert the name of the local jurisdiction and the following text: “fulfilling its role as the “local jurisdiction” pursuant to RCW 90.84.040”]*** and the Sponsor, as of the date of the last of these signatures.

2. This Basic Agreement portion of the Instrument may be amended or modified only with the written approval of the Sponsor, the Program Manager for Shorelands and Environmental Assistance on behalf of Ecology, and the Seattle District Engineer on behalf of the Corps, or their designees. Any such modifications or amendments will take effect in consultation with the IRT. Amendment or modification of the provisions of the Appendices may be effectuated through an exchange of letters signed by the Sponsor, the Mitigation Program Manager serving as Co-Chair on behalf of the Corps, and the Wetland Section Manager serving as Co-Chair on behalf of Ecology, following consultation with the IRT, provided the exchange of letters expresses mutual agreement as to the exact language to be deleted or modified, and the exact language to be inserted.

3. This Instrument may be terminated by the mutual agreement of the Sponsor, Corps, and Ecology, following consultation with the IRT, or may be terminated under the terms of Article IV.J. of this Instrument in the case of default by the Sponsor. In the event any termination action is commenced, the Sponsor agrees to fulfill its pre-existing obligations to perform all establishment, monitoring, maintenance, management, and remediation responsibilities that arise directly from Bank credits that have already been sold, used, or transferred at the time of termination.

4. Upon termination of the operational life of the Bank pursuant to Article IV.L., and certification to that effect pursuant to Article V.F., this Instrument shall terminate without further action by any Party. Thereafter, the Long-Term Management and Maintenance Plan developed, approved, and instituted in accordance with Article IV.M. shall govern the continuing obligations of the Sponsor, or its assignee as applicable.

**C. Assignment of Obligations under this Instrument:** The Sponsor may be permitted to assign its obligations, responsibilities, and entitlements under this Instrument to a third party. The Corps and Ecology, following consultation with the IRT, must approve the identity of the assignee in order for any assignment to effectively relieve the Sponsor of those obligations. In evaluating a prospective assignee, the Corps and Ecology may consider characteristics such as environmental mitigation expertise, wetlands mitigation project or analogous experience, and financial strength and stability. Approval of the identity of the assignee will not be unreasonably withheld. The assignee must execute a mitigation banking instrument with the Corps and Ecology under terms identical, to the extent practicable, to the present Instrument. The applicable financial assurances established pursuant to Articles III.C.1. and III.C.2. of this Instrument must be initiated. The obligations, responsibilities, and entitlements under this Instrument may reside in only a single entity at any one time, and may not be severed or transferred piecemeal. However, the physical ownership of the Bank site real property and the obligations, responsibilities, and entitlements under this Instrument are separate and distinct; thus, ownership may be transferred pursuant to the provisions of Article IV.N., independently of assignment of this Instrument. Once assignment of this Instrument has been properly accomplished, the Sponsor will be relieved of all its obligations and responsibilities under this Instrument. Specific additional provisions pertaining to the assignment of long-term management and maintenance obligations are described at Article IV.M.

**D. Specific Language of this Basic Agreement Shall Be Controlling:** To the extent that specific provisions of this Basic Agreement portion of the Instrument are inconsistent with any terms and conditions contained in the Appendices, or inconsistent with other documents that are incorporated into this Instrument by reference and that are not legally binding, the specific language within this Basic Agreement shall be controlling.

**E. Notice:** Any notice required or permitted hereunder shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) when sent by Federal Express or similar next-day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

***[Insert Sponsor name, address, and phone number below.]***

     -     -

U.S. Army Corps of Engineers, Seattle District

Mitigation Banking Specialist/Co-Chair of the IRT

Regulatory Branch

Seattle District, Corps of Engineers

4735 E. Marginal Way South

P.O. Box 3755

Seattle, WA 98124-3755

206-764-3495

Washington State Department of Ecology

Mitigation Banking Specialist/Co-Chair of the IRT

Shorelands and Environmental Assistance Program

P.O. Box 47600

300 Desmond Drive

Olympia, WA 98504-7600

360-407-6000

**F. Entire Agreement:** This Instrument, consisting of both this Basic Agreement and the Appendices, constitutes the entire agreement between the Parties concerning the subject matter hereof.

**G. Invalid Provisions:** In the event any one or more of the provisions contained in this Instrument are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this Instrument shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

**H. Effect of Agreement:** This Instrument does not in any manner affect statutory authorities and responsibilities of the signatory Parties. This Instrument is not intended, nor may it be relied upon, to create any rights in third parties enforceable in litigation with the United States or the State of Washington. This Instrument does not authorize, nor shall it be construed to permit, the establishment of any lien, encumbrance, or other claim with respect to the Bank site, with the sole exception of the right on the part of the Corps and Ecology to require the Sponsor to implement the provisions of this Instrument, including recording the conservation easement, required as a condition of approval of the crediting plan reflected in this Instrument and the issuance of any permits for discharges of dredged and fill material into waters of the United States associated with construction, operation and maintenance of the Bank.

**I. Attorneys’ Fees:** If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Instrument, each party to the litigation shall bear its own attorneys’ fees and costs of litigation.

**J. Availability of Funds:** Implementation of this Instrument is subject to the requirements of the Anti-Deficiency Act, 32 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the United States Treasury, in advance of an appropriation for that purpose.

**K. Headings and Captions:** Any paragraph heading or caption contained in this Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provision of this Instrument.

**L. Counterparts:** This Instrument may be executed by the Parties in any combination, in one or more counterparts, all of which together shall constitute one and the same instrument.

**M. Binding:** This Instrument, consisting of both this Basic Agreement and the Appendices, shall be immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon execution by the Sponsor, Ecology, Corps, and       ***[If applicable, insert the name of the local jurisdiction and the following text: “fulfilling its role as the “local jurisdiction” pursuant to RCW 90.84.040”]*** fulfilling its role as the ‘local jurisdiction’ acting pursuant to RCW 90.84.040.

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

**PARTIES:**

By the Sponsor:

***[Name]*** Date

***[Title]***

By the Corps:

***[Name]*** Date

Colonel, Corps of EngineersSeattle District Engineer

By Ecology:

***[Name]*** Date

Program Manager, Shorelands and Environmental Assistance ProgramWashington State Department of Ecology

***[Add the following text if the city or county will be signing as a Party:***

***By*** ***County or City:]***

***[Name] [Date]***

***[Title]***

**OTHER IRT MEMBERS:**

Signature by other IRT members indicates assent on the part of the represented organization to the provisions of this Instrument, but does not give rise to any affirmative obligations, express or implied. This Instrument is not binding on the other IRT members.

***[If the local jurisdiction where the Bank is located does not sign above they should sign below.]***

***[Name]*** ***[Date]***

***[Title]***

***[Agency]***

***[Name]******[Date]***

***[Title]***

***[Agency]***

***[Name]******[Date]***

***[Title]***

***[Agency]***

***[Name]******[Date]***

***[Title]***

***[Agency]***

***[Name]******[Date]***

***[Title]***

***[Agency]***