

SWG IRT – Mitigation Banking Instrument Template

Rev: 20241212

INSTRUCTIONS: All mitigation banks require a banking instrument as documentation of agency concurrence on the objectives and administration of the bank. The purpose of the Mitigation Banking Instrument (MBI) is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the proposed mitigation bank. The proposed mitigation bank will be used for compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, provided such activities have met all applicable requirements and are authorized by the USACE. All mitigation banks must comply with 33CFR332.8 to be used to provide compensatory mitigation for a Department of the Army (DA) permits.

This template is provided to assist in the timely development and submittal of a draft MBI (DMBI) for a proposed mitigation bank. It represents a standard of the required content necessary for DMBI completeness pursuant to 33 CFR 332.8; and provides the document format, structure, information, and preferences expected by the Galveston District Corps of Engineers Regulatory Program (SWG) and the Interagency Review Team (IRT). As notated throughout the template, multiple sections require project-specific information to be incorporated in the text of the DMBI (and further supplemented in the Appendices), that will require further evaluation by the Corps and IRT. Submittals in accordance with this template will result in more timely review, and potential approval of the MBI.

- This template may be periodically revised by the Corps based on new information, scientific research or advances in the application of compensatory mitigation, and/or changes in the Regulatory Program. The most current version of this template will be posted on the SWG website, as well as the Regulatory In-lieu Fee and Bank Information Tracking System Website (RIBITS). All blue text is instruction/explanatory and should be removed from the submitted document.
- (Underlined) text and text within parentheses in this template may indicate information that should be replaced by bank-specific information in the draft MBI. For example, “(Permit Number)” in the template would be replaced with “SWG-2024-000##” in the DMBI document submitted. Project specific information should be included where indicated and in the corresponding Appendices.
- **All blue text are instructions/explanatory/example and should be removed from the submitted document.**
- **DO NOT MAKE CHANGES TO LANGUAGE OR FONT IN [DARK RED] TEXT.** These passages contain procedural information regarding the operation and management required for all Mitigation Banks within the Galveston District and should not be modified.

- *Do not change or remove any parts of the template other than allowable language indicated. This may include version date, footers (except to add the Bank Name), table of contents or Appendix (list of required exhibits).*
- *All text insertions, deletions, or other revisions, including any alterations of standard language from the template, made by the Sponsor must be clearly indicated (e.g., Microsoft Word track changes) within the document and submitted to the USACE/IRT in electronic and hard copy (if requested) format (via RIBITS posting, with direct Corps email notification in subject line) in both Microsoft Word and editable reduced file size PDF document with bookmarks for the appendices. Word Compare Document will be utilized to streamline new proposals and resubmittals. If alterations are made to mandatory language that corrupts that review functionality, the document will be returned to the Sponsor without review as the discrepancy is identified by the Corps. The request may be administratively withdrawn (without prejudice) accordingly, as appropriate.*

DRAFT MITIGATION BANKING INSTRUMENT

(Name) Mitigation Bank
(Name) County, Texas
(Permit number)

Submitted for Approval to:
U.S. Army Corps of Engineers
Galveston District
and
Interagency Review Team

Bank Sponsor:
(Name of Sponsor)
(Sponsor Address)
(Sponsor Address)

Prepared By:
(Name of Agent/Consultant)
(Sponsor Address)
(Sponsor Address)

Date Submitted: (DDMMYYYY)

Date must be revised to reflect date of current submittal.

Bank Authorization Date: (Date approved/signed by USACE)

This Date will be entered by SWG after USACE Approval & Signature.

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SECTION I: INTRODUCTION

A. PURPOSE

This Mitigation Banking Instrument (MBI), authorized as a condition of the Department of the Army (DA) Permit (Permit Number), is the legal document for the establishment, use, operation, and maintenance of the (Bank Name) Mitigation Bank. The (Bank Name) will be used for compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, provided such activities have met all applicable requirements and are authorized by the U.S. Army Corps of Engineers (USACE). All mitigation banks must comply with 33CFR Part 332 if they are to be used to provide compensatory mitigation for DA permits. The Sponsor is responsible for developing, operating, and maintaining the bank subject to the requirements of this MBI; and the Sponsor agrees to satisfy and assume the legal responsibility for the mitigation requirements assigned to a respective permit by USACE.

USACE approval of this Instrument constitutes the regulatory approval required for the (Bank Name) to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 CFR 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.

The (Bank Name) Mitigation Bank is sited on (public or private) lands. Credits for compensatory mitigation projects on public land must be based solely on aquatic resource functions provided by the compensatory mitigation project, over and above those provided by public programs already planned or in place. Bank credits for DA permits may also be used to satisfy the requirements of other programs (e.g. tribal, state, or local wetlands regulatory programs, USACE civil works projects, and Department of Defense military construction projects, Endangered Species Act), consistent with the requirements of the programs, if the appropriate credits required by a DA permit is supplemental to such programs. Under no circumstances may the same credits be used to provide mitigation for more than one permitted activity.

This MBI serves to ensure compliance with Section 404 of the Clean Water Act 33 USC 1344 et seq, Section 10 of the Rivers and Harbors Act 33 USC 401 et seq and the implementing regulations found at 33 CFR 320-332, which are controlling in any conflict between the MBI and those laws and regulations. The USACE role is regulatory only; the MBI should not be construed as a contract with the Government that is enforceable by law by the applicant or any third party. The sponsor agrees to the extent allowed by the laws of the State of Texas to defend, indemnify, and hold the United States harmless in any action where any party, including the sponsor, the beneficiary or any third party brings a claim, monetary or otherwise, against the United States that relates in any way to USACE execution of mitigation banking documents for the establishment of this mitigation bank.

B. LOCATION AND OWNERSHIP OF BANK PROPERTY

“The (Bank Name) MB project, encompassing *** acres, is located [Provide general information here to give geographic boundaries-EXAMPLE: north of U.S. Highway 90, west of Highway-146, south of Trinity River Wildlife Refuge, and contiguous with the southeastern shore Trinity River.] More specifically, the proposed project is located in [Section/s *, Township * south/north, Range * east/west, (repeat as appropriate)]; in **** County, near [city, town, municipality], Texas (LAT: ****, LONG: -****).”

C. GENERAL PROVISIONS

1. The Bank Sponsor is responsible for establishing, operating, and maintaining the Bank according to this MBI.
2. The goal of the Bank is to [delete as applicable] preserve, restore, re-establish, establish and/or enhance the functions of [identify credit type(s)] (e.g. forested wetland system). In circumstances deemed appropriate by USACE, credits from the Bank may be used as “In-kind” compensation for unavoidable wetland impacts authorized by DA permits.
3. Use of credits from the Bank to offset wetland impacts authorized by DA permits will be in compliance with the Clean Water Act and implementing regulations, including but not limited to the Clean Water Act Section 404(b)(1) Guidelines and all other applicable Federal and State laws, rules and regulations.
4. The Property Owner is the owner of real property containing approximately _____ acres (the “Property”), located at _____ [insert address and county], state of Texas, designated Assessor’s Parcel No(s)._____. The Property is generally shown on the Bank Location Maps (Appendix B) and legally described in the Real Estate Records and Site Protection Instrument (Appendix F), attached to and made a part of this MBI.
5. Bank Sponsor and Property Owner desire(s) to create the Bank over [add if applicable: a ____-acre portion of] the Property (the “Bank Property”). The Bank Property is generally shown on the Bank Location Maps (Appendix C) and legally described in the Site Protection Instrument (Appendix F) attached to and made a part of this MBI. The Bank Property is to be conserved and managed in perpetuity.
6. The Interagency Review Team (IRT), established by the District Engineer (DE) pursuant to 33CFR332.8, is comprised of representatives from federal, tribal, state, and local regulatory and resource agencies, where such agencies have authorities and/or mandates directly affecting, or affected by, the establishment, operation, or use of the mitigation bank or in-lieu fee program. The IRT is the interagency group which provides input

on the establishment, use, operation, and maintenance of the Bank. The non-signatory IRT agencies advise the USACE in assessing monitoring reports, Mitigation Bank Work Plan implementation, recommending remedial actions or adaptive management measures, approving credit releases, approving modifications to the MBI, and other items including but not limited to the use of Credits. The DE's designated representative serves as Chair of the IRT. The primary role of the IRT is to facilitate the establishment of mitigation banks or in-lieu fee programs through the development of mitigation banking or in-lieu fee program instruments. The IRT will review the prospectus, instruments, and other appropriate documents, provide comments, advise the DE in assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases, and approving modifications to an MBI. Agencies on the IRT may sign the MBI, if they so choose. By signing the instrument, the IRT members indicate their concurrence with the approval of the terms of the MBI. As an alternative, a member of the IRT may submit a letter expressing support of the MBI. The DE alone retains final authority for approval of the MBI in cases where the mitigation bank or in-lieu fee program is used to satisfy compensatory mitigation requirements of DA permits. In cases where a mitigation bank or in-lieu fee program is proposed to satisfy the requirements of another federal, tribal, state, or local program, in addition to requirements of DA permits, it may be appropriate for the administering agency to serve as co-Chair of the IRT.

7. The Sponsor will be responsible for timely entry into and upkeep of their Bank Entry in the Regulatory In-lieu Fee and Bank Information Tracking System Website (RIBITS) system. All elements of RIBITS entry that can be performed with the Sponsor permissions will be performed within 30 days of the applicable event. The RIBITS system is updated periodically. If additional entry is required, the Sponsor will affect those entries within 60 days of notice from USACE.

D. AUTHORTIES

The establishment, use, and operation of the Bank will be carried out in accordance with the following authorities:

1. Clean Water Act (33 USC 1251 et seq.)
2. Rivers and Harbors Act (33 USC 403)
3. Fish and Wildlife Coordination Act (16 USC 661 et seq.)
4. Regulatory Programs of the U.S. Army Corps of Engineers, Final Rule (33 CFR 320-332)
5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR 230)
6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning Determination of Mitigation Under the Clean Water Act, Section 404(b)1 Guidelines (February 6, 1990)

7. Final Rule for the Compensatory Mitigation for Losses of Aquatic Resources issued by the U.S. Army Corps of Engineers and the Environmental Protection Agency (April 10, 2008)
8. Water Resources Development Act of 2007-Section 2036: Mitigation for Fish and Wildlife and Wetlands Losses
9. Section 7 of the Endangered Species Act
10. Section 106 of the National Historic Preservation Act
11. Food Security Act of 1985, as amended
12. Magnuson Stevens Fishery Conservation and Management Act (16 USC 1801 et. seq.)

Option A: For banks within the State of Texas: delete if other

13. Texas State Water Quality Certification [30 Tex. Admin. Code §279.12 (2001)]
14. Texas State Water Quality Standards [30 Tex. Admin. Code § 307 (2000)]
15. Texas Parks and Wildlife Code Chapter 14 Powers and Duties Concerning Wetlands

Option B: For banks within the State of Louisiana: delete if other

16. Louisiana State Water Quality Certification (LAC 33:IX Chapter 15 (2007))
17. Louisiana State Water Quality Standards (LAC 33:IX Chapter 11 (2007))
18. (Others)

E. DEFINITIONS

Definitions of terms of this MBI are set forth in Appendix DD – Definitions attached to and made a part of this MBI.

F. IDENTIFICATION OF PARTIES

The Sponsor, (and in some cases) Property Owner's are considered to be the Parties to this Instrument and are identified in Appendix A. Upon USACE approval, the identified Long-Term Steward may become the responsible Party to the Instrument. Any changes to the name or organizational structure of the Sponsor's or Owner's business entity will be considered a modification to this Instrument and will be evaluated and processed accordingly by USACE. Any changes to the name and/or address of the Sponsor's or Owner's signature officer or manager shall be provided to USACE no later than ten business days from the date of the change. Any changes made to the identified parties after final approval of this document shall be noted in an updated Appendix A which will replace the existing Appendix A. Any changes to the Sponsor/Long-Term Steward, Property Owner or any officer/registered agent that are made without notification to and formal acknowledgement by USACE may result in a suspension of credit sales or additional response as deemed appropriate by USACE.

Appendix A further includes the current organizational documents filed in the applicable Secretary of State's Office. Substantive revisions to those documents

will be submitted to USACE within 10 days of the filing with the state (if not already provided).

G. RESPONSIBILITIES OF PARTIES

If the DE determines that the responsible party has failed to adhere to the responsibilities noted below, appropriate action will be taken. Such actions may include, but are not limited to, suspending credit sales, adaptive management, decreasing available credits, utilizing financial assurances or long-term management funding, and terminating the instrument.

1. Sponsor (identified in Appendix A)

- a) The Sponsor assumes all legal responsibility for satisfying all mitigation requirements of Department of the Army (DA) permits for which the bank has been utilized, or fees have been accepted (i.e. the implementation, performance, and long-term management of the compensatory mitigation project approved under this agreement).
- b) The transfer of liability from permittee to the Sponsor is established by the following: 1) the approval of this MBI by the Sponsor and DE, 2) receipt of a credit transaction report by the DE that is signed and dated by the Sponsor and the Permittee, and 3) the transfer of fees required from the Permittee to the Sponsor.
- c) The responsibility for financial success and risk to the investment initiated by the Bank Sponsor rests solely with the Bank Sponsor. The IRT agencies administer their regulatory programs to best protect and serve the public's interest, and not to guarantee the financial success of banks, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual mitigation bank.
- d) Bank sponsors should not construe the MBI as a guarantee in any way that the IRT agencies will ensure sale of credits or that the IRT agencies will forgo other mitigation options that may also serve the public interest. Since the IRT 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 Sponsor.
- e) The Sponsor shall obtain all appropriate environmental documentation, permits and other authorizations necessary to allow for the establishment, operation and maintenance of the Bank. Compliance with this Instrument does not fulfill any such other applicable requirements and cannot be relied on to substitute for any such required authorizations.

- f) The Sponsor shall be responsible for all activities and costs associated with the establishment, operation, and maintenance of the Bank, including but not limited to construction, planting, contingencies and remedial actions, documentation, maintenance, management, monitoring, and reporting. This responsibility is maintained until such time as it is formally transferred, with prior approval of USACE, to a new sponsorship or Long-Term Steward in accordance with the provisions provided in Appendix N.

- g) The Sponsor assumes responsibility for compensatory mitigation requirements of permits once a permittee has secured the appropriate number and type of credit/s from the Sponsor. USACE shall be provided documentation confirming that the Sponsor has accepted the responsibility for providing the required compensatory mitigation.

- h) The Sponsor is responsible for ensuring all required documentation is accurate, up to date and submitted within timeframes established by the Instrument. Documentation includes ledger accounting, monitoring reports, financial assurance reports and other documents required by the Instrument. The Sponsor shall provide additional documentation to USACE when requested.

2. Property Owner (identified in Appendix A)

- a) The Property Owner will grant a perpetual site protection instrument. Proof of recordation or establishment shall be provided to USACE and a copy shall be included in this instrument at Appendix F.

- b) The Property Owner is not allowed to make any modification to the site protection instrument without written approval from USACE. In accordance with the requirements of 33 CFR 332.7(a)(3), any proposed modification to the site protection instrument, or to the rights and obligations created under it, requires the Property Owner to provide a 60-day notice to USACE. The Property Owner must provide this notice as a written request describing the existing language and the requested modification to USACE. The request will be processed in accordance with the requirements of 33 CFR 332.8(g), as noted in Section II.J of this Instrument.

- c) The Property Owner will not allow any prohibited uses of the Bank property as set forth in this Instrument and the Bank site protection instrument.

- d) The Property Owner will not identify the Bank property as collateral for any purpose. Any encumbrance of the Bank property must be approved by USACE and shall be subordinated to the perpetual site protection instrument provided for the protection of the Bank property.

- e) The Property Owner shall allow access to the Bank property by USACE and members of the IRT or their agents or designees, for the purpose of inspection, compliance monitoring, and remediation consistent with the terms and conditions of this Instrument and Appendices. Inspecting parties will provide the Property Owner reasonable notice prior to accessing the site.
- f) In the event the Property Owner discovers a prohibited use or any damage to the Bank property, it shall notify USACE and Sponsor in accordance with the Notice of Deficiency procedures as outlined in Section II.N.2.
- g) The Property Owner shall grant to the Sponsor all rights and authority necessary to carry out its responsibilities and obligations on and affecting the Bank property in accordance with this Instrument and shall not limit or impair in any manner the Sponsor's ability to take any actions to satisfy such responsibilities and obligations.
- h) The Property Owner shall notify the Sponsor and USACE of any proposed transfer of the Bank property in accordance with the provisions of this Instrument as defined in Section III.G of this Instrument.

3. Long-Term Steward (identified in Appendix A)

- a) The Long-Term Steward, shall obtain all appropriate environmental documentation, permits and other authorizations necessary to allow for the continued operation and maintenance of the Bank. Compliance with this Instrument does not fulfill any such other applicable requirements and cannot be relied on to substitute for any such required authorizations.
- b) The USACE approved Long-Term Steward shall be responsible for all activities and costs associated with the continued operation and maintenance of the Bank, including but not limited to planting, contingencies and remedial actions, documentation, maintenance, management, monitoring, and reporting. This responsibility is maintained until such time as it is formally transferred, with prior approval of USACE, to another Long-Term Steward in accordance with the provisions provided in This MBI
- c) The USACE approved Long-Term Steward assumes responsibility for the compensatory mitigation provided by the Bank for the credits secured by a permittee from the Bank to meet compensatory mitigation requirements of permits. USACE shall be provided documentation confirming that the Long-Term Steward has accepted the responsibility for the required compensatory mitigation.
- d) The Long-Term Steward is responsible for ensuring all required documentation is accurate, up to date and submitted within timeframes established by the

Instrument. Documentation includes ledger accounting, monitoring reports, financial assurance reports and other documents required by the Instrument. The Long-Term Steward shall provide additional documentation to USACE when requested.

4. U.S. Army Corps of Engineers

- a) USACE's role is regulatory only and shall maintain oversight of the Bank in accordance with the statutes, rules, regulations, authorities, policies and guidance as identified in this MBI.
- b) USACE approval of this Instrument constitutes the regulatory approval required for the Bank to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1) within the Galveston District. 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.

H. APPROVALS

The Bank Sponsor will obtain all permits, authorizations, and other approvals necessary or appropriate to construct, operate, and maintain the Bank, including those of any IRT agency. This MBI does not constitute or substitute for any such approval.

I. DISCLAIMER

This MBI does not in any manner limit the legal authorities or responsibilities of the IRT, or of any IRT agency.

SECTION II: BANK EVALUATION AND DEVELOPMENT

A. GOALS AND OBJECTIVES

Information specific to the goals and objectives of this Bank are set forth in Appendix D – Goals and Objectives attached to and made a part of this MBI.

B. SITE SELECTION

Information specific to the site selection of this Bank are set forth in Appendix E – Site Selection attached to and made part of this MBI.

C. BASELINE CONDITION

The “Baseline Assessment” of the bank may include a JD or delineation verification AND an HGM Verification reviewed and finalized by USACE. A Baseline Condition report is included in Appendix G of this document and reflects the current condition of the Bank Property and will be further described in the Mitigation Work Plan & Hydrology Modification Plan (Appendix I). The Baseline Assessments, Delineation & Functional Assessment (Appendix Y) are attached to and made a part of this MBI.

D. PHASE I ENVIRONMENTAL SITE ASSESSMENT

[WHEN REQUESTED BY USACE] Bank Sponsor has provided a current Phase I Environmental Site Assessment of the Property (Appendix R). If the Phase I Environmental Site Assessment identified any recognized environmental conditions, as defined in the American Society of Testing and Materials (ASTM) Standard E1527-13 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard, in place at the time of execution of instrument, the Property Owner represents and warrants to the USACE that all appropriate assessment, clean-up, remedial or removal action have been completed and the Property Owner has provided an updated Phase I Environmental Site Assessment to the USACE that concludes no recognized environmental conditions are present on the Property.

E. MITIGATION BANK WORK PLAN

The Bank Sponsor agrees to perform all necessary work, in accordance with and to the full extent of the provisions of this MBI, to [delete as applicable] establish, enhance, restore, monitor, preserve, and maintain the bank site as described in the detailed Mitigation Bank Work Plan and Hydrology Modification Plans (Appendix I).

F. PHASES [In general phasing is discouraged]

Any Subsequent Phase(s) will be considered as either an amendment of the MBI or a new bank, as determined by USACE, in coordination with the IRT. Approval of this MBI does not obligate USACE or any IRT member to approve any Subsequent Phase(s).

Regardless of construction or development phasing, each bank will adhere to one credit release schedule, financial assurances, and endowment funding schedule as described herein.

The Bank Sponsor shall have no expectations of phasing or expansions to this bank not otherwise disclosed & fully described in this MBI.

G. DETERMINATION OF CREDITS

[For wetland Banks use the following] USACE follows and implements the Hydrogeomorphic Approach (HGM) for assessing wetland functions, through the development of HGM regional Guidebooks. HGM, developed by scientists at the U.S. Army Engineer Research and Development Center (ERDC), is a procedure for measuring the potential of a wetland to perform critical functions. SWG implements the “Interim-HGM” (iHGM) models, based on the HGM Regional Guidebooks, in order to efficiently assess specific priority wetland functions. These iHGM models were developed by a team of regional experts using reference standards. Since the HGM approach classifies wetlands by regional wetland subclass based on their geomorphic position and hydrologic characteristics, the iHGM models were likewise developed for each wetland subclass, including riverine, tidal fringe, lacustrine, depressionnal, slopes, and flats. Through further coordination between USACE and National Resource Conservation Service, four primary SWG-iHGM models have been developed/refined for use in the SWG Regulatory program. The SWG-iHGM models provide a quantitative method to consistently measure wetlands' potential functionality. They are associated with the three primary hydrologic regimes, Lacustrine (Lakes), Riparian (Rivers) and Estuarine (Tidal) that are within our current jurisdiction. The four existing SWG-iHGM models are: 1) SWG Tidal Fringe iHGM-to be used for tidal wetlands; 2) SWG Riverine Forested iHGM- to be used for forested wetlands in a riverine system; 3) SWG Riverine Herbaceous/Shrub iHGM - to be used for non-forested wetlands in a riverine system; and 4) SWG Lacustrine iHGM - to be used for wetlands adjacent to lakes. The result of these models is a number called a functional index (FCI). This FCI is a quantitative number that estimates the capacity of the wetland to perform a function as it relates to the adjacent water body and is calibrated to other wetlands in the region and subclass. In determining the amount of baseline credits are available at a Bank the FCI is multiplied by acres of the Wetland Assessment Area to determine the Functional Credit Units (FCUs).

[For stream Banks use the following] USACE follows and implements the SWG Stream Method for assessing the functional condition of streams. The SWG Stream Method implements a Stream Assessment Tool, which is a tiered process for establishing the current condition of stream functions. For the purpose of the Stream Assessment Tool, stream types include Level 1: All Ephemeral & Intermittent Streams, all Intermittent Streams with Perennial Pools; and Level 2: Perennial Streams and/or Wadeable Rivers. The ecological uplift (stream credits) are calculated using the appropriate SWG Stream Assessment Tool.

The determination of credits based on the above [models and/or tools](#) is described in the Approved/Verified Functional/Conditional Assessment (Appendix H) attached to and made a part of this MBI. That information is further supplemented by the Verified baseline HGMI included in Appendix Y. iHGM Credits (Functional Credit Units) are traded as a “Suite of Functions”. Therefore, once credits from any

functional category; Temporary Storage & Detention of Storage Water (TSSW), Maintain Plant and Animal Community (MPAC), and Removal & Sequestration of Elements & Compounds (RSEC) are exhausted, remaining credits in the other functional categories are unavailable as compensatory mitigation until such time as additional credits for any exhausted categories are released by USACE and added to the account. The number of credits for each functional category shall be debited on a 1:1 basis for impacts within the primary service area or on a 1.5:1 basis for impacts within the secondary service area (See Appendix C).

A minimum of one-tenth (0.1) FCU for each functional category shall be debited from the ledger for each transaction. If the number of credits required for compensation is a non-integer, then it shall be rounded up to the nearest one-tenth. Permit applicants have the option to assume a 1.0 surrogate functional capacity index value for each functional category if they choose not to conduct an SWG-iHGM functional assessment.

To account for potential temporal losses that may be associated with the sale of “advanced credits” for permitted activities, an additional 20% of FCUs from each functional category will be debited from the ledger every 24 months following a credit transaction that an advanced debit is unrealized on the bank. The sponsor will submit to the USACE, for verification, the results of an SWG-iHGM demonstrating that no temporal losses have occurred. In addition, after 30 months, from the date of credit release, all unsold “advanced credits” will be revoked until such time that they are earned, as verified by the USACE in coordination with the IRT.

Additionally, see Appendix O for provisions of the proposed Credit Release (CR) Schedule.

H. MAINTENANCE PLAN

The detailed description and schedule of the general maintenance required to sustain and ensure continued viability of the aquatic resource function once construction is completed and credits are released is included as Appendix J – Maintenance Plan.

I. PERFORMANCE STANDARDS

Authorization to sell credits to satisfy compensatory mitigation requirements in DA Permits is contingent on compliance with all of the terms of this instrument, including construction and operating the Bank in accordance with the Mitigation Work Plan and maintaining sufficient short and long term financial assurances (including the endowment).

If, at any time, USACE determines that the bank is not in compliance with the terms of this instrument, credit sales may be suspended. If after consultation with Sponsor and the IRT (as appropriate), USACE determines that a corrective action may remedy the deficiency, the Sponsor may be given the opportunity to bring the

Bank into compliance with the terms of this instrument. If after further review and potential consultation, USACE determines either that corrective action will not be effective to cure the deficiencies or that the Sponsor's efforts at further corrective action have or will not be sufficient to correct the deficiencies within a reasonable time, USACE in its sole discretion may terminate all credit sales or otherwise take appropriate action under its authority.

Potential "corrective actions" include but are not limited to: modification or termination of the MBI, suspending credit sales, adaptive management, revisions to the credit release schedule, decreasing available credits, increasing the amounts of financial assurances, utilizing existing financial assurances, and/or providing alternative compensatory mitigation to satisfy any credits that have already been sold through the purchase of mitigation credits at another SWG approved mitigation bank. Determination of the appropriate corrective action for any particular deficiency lies solely within the discretion of the SWG, who will consult with the IRT and/or Sponsor (as determined appropriate) before making the determination.

In order for the Bank to be considered acceptable for mitigating wetland impacts associated with DA permits, the Property will (at minimum) be restored in accordance with the Mitigation Work & Hydrology Modification Plans such that it meets wetland criteria as described in the 1987 Corps of Engineers Wetland Delineation Manual (the 1987 Manual) as well as the [November 2010 Regional Supplement for the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region Version 2.0](#) OR [March 2010 Regional Supplement for the Corps of Engineers Wetland Delineation Manual: Great Plains Region Version 2.0](#) and in conjunction with data collected from the monitoring wells and water level recorder described in the Mitigation Work Plan and Performance Standards according to the appropriate habitat type.

The Performance Standards (success criteria) used to measure the success of the Bank are provided in Appendix K: Performance Standards and are made a part of this MBI.

J. MODIFICATION OF MITIGATION BANK WORK PLAN

In the event that the Bank Sponsor and/or USACE determine that significant modifications must be made to the Mitigation Bank Work Plan (Appendix I), the Sponsor must propose a meeting to discuss the modification proposal specifics prior to submitting a request to modify. USACE will coordinate with IRT members pursuant to modification procedures in 33CFR332.8 as appropriate. The request for modification must include detailed information to support and describe the need for modification for USACE to consider. Only upon approval from USACE, the Bank Sponsor shall implement all approved modifications. The Mitigation Bank Work Plan may specifically constitute an amendment to the original MBI (at the USACE discretion). If USACE, in coordination with the IRT, elects to authorize modifications to the Mitigation Bank Work Plan, such authorization may be conditioned upon, among other things, a change in the number of Credits available for release or other Sections of the MBI.

K. SITE PROTECTION INSTRUMENT

The Sponsor shall record a Conservation Easement with the (NAME) County Clerk that has been approved by USACE, in coordination with the IRT, and provide a copy of the recorded conservation easement to the USACE Galveston District.

(*For Louisiana banks):

Sponsor shall record a covenant servitude with the (NAME) Parish Clerk of Court that has been approved by USACE in coordination with the IRT and provide a copy of the recorded covenant to the USACE Galveston District.

*(Choose appropriate option and remove the unused choice from the final document)

The Site Protection instrument is legally described in Appendix F attached to and made a part of this MBI.

SWG has provided a pre-reviewed CE draft in Appendix F for Sponsor Utilization

L. BANK AUTHORIZATION DATE

The Bank Authorization Date is the date when the MBI was signed and authorized by USACE.

M. MONITORING PLAN AND REPORTING PROTOCOLS

The Sponsor agrees to perform all work necessary to monitor the Bank to demonstrate compliance with the success criteria established in this MBI. The Monitoring Plan and Reporting Protocols are established in Appendix L: Monitoring Requirements. The Sponsor agrees to provide all monitoring reports as described in Appendix L.

N. ADAPTIVE MANAGEMENT, CONTINGENCIES AND REMEDIAL ACTIONS

1. Adaptive Management

Adaptive management necessitates stated management objectives to guide decisions about what to try and explicit assumptions about expected outcomes to compare against actual outcomes. The linkages among management objectives, learning about the system, and adjusting direction based on what is learned distinguish adaptive management from a simple trial and error process. Therefore, success in adaptive management ultimately depends on effectively linking monitoring and assessment to objective-driven decision making. During the operational phase of the bank. Prior to and during long-term management, adaptive management is not a short-term fix, an assumed resolution to non-compliance or failure to meet a performance standard(s) or responding to single events or short-term problems caused by weather, normal cyclical fluctuations in

plant and animal populations, or human interruptions. Accordingly, the conditions and components of adaptive management will be a product of analyzing whether the Bank is currently progressing toward desired outcomes; whether new or improved methods are available to prescribe; and predicting the expected effects of the plan.

In the event USACE, in consultation with the IRT, determines that the Bank is not achieving or maintaining the performance standards identified in Appendix K or that the Bank is not performing in accordance with the standards and criteria set forth in this Instrument, USACE may determine adaptive management is needed or required in accordance with 33CFR 332.4(c)(12) and 33 CFR332.7(c).

- A. If at any time, the Sponsor or agents identify conditions at the bank site that may be inconsistent with the terms or projections of the MBI or that otherwise may indicate potential need for corrective actions, the Sponsor will compile information & present it to USACE with a specific formal, written notification within 30 days of the concern identification.
- B. Within USACE notification, the Sponsor will submit a specific & detailed adaptive management plan for the Bank that identifies specific measures to be taken and a timetable to complete the work to correct the deficiencies.
- C. If the plan is not considered acceptable or sufficient by USACE, the Sponsor will continue to work with USACE to develop an acceptable adaptive management plan.
 - 1) Credit sales may be suspended until the Sponsor has developed an adaptive management plan acceptable to USACE.
 - 2) If suspended, sale of credits will not resume until appropriate actions have been taken and USACE has determined that all requirements have been met.
- D. Once approved, the Sponsor is responsible for implementing the adaptive management plan approved by USACE.
- E. Depending upon the subsequent progression of the Bank project, additional adaptive management measures may be required USACE.
- F. The Sponsor will continue to provide monitoring reports as specified in the plan or until determined to be unnecessary by USACE.

2. Notice of Deficiency

If a monitoring event or report discloses that the Bank does not meet success criteria, the Sponsor shall provide a Notice of Deficiency to USACE that such success criteria have not been met. This notice shall be submitted as described in the Adaptive Management Section above and again be disclosed in subsequent monitoring reports with appropriate updates as it may continue or upon resolution for the bank's historical record. Along with the notice the Sponsor shall provide a detailed explanation of the deficiency and propose specific measures and a timetable to correct the deficiencies or when & how the deficiency was resolved. USACE, in consultation with the IRT, will determine the course of action required to correct any deficiencies and will notify the Sponsor to engage in corrective actions

pursuant to the Adaptive Management Plan or such other actions as USACE may deem necessary from time to time as a result of annual monitoring reports or otherwise.

When a disaster (natural or man-induced) adversely affects the Bank, the Sponsor shall inspect the site and if necessary, shall provide a Notice of Deficiency USACE of such circumstance within two weeks of the event. The notice will identify the disaster and impacts to the Bank, specify measures to be taken to correct the impacts and a timetable to complete the work necessary to restore the Bank. USACE, in consultation with the IRT, shall review said information and determine if the disaster was beyond the control of the sponsor and if the damage is substantial. In circumstances where the disaster is determined to be beyond the control of the Sponsor and it is deemed to have caused substantial damage, the procedure outlined in Section II N.d. herein shall govern. In all other instances USACE will notify the Sponsor to engage in corrective actions pursuant to the Adaptive Management Plan or other action as USACE, in consultation with the IRT, may warrant (See Section II N.d. "Catastrophic Events", below).

3. Conditions for Suspending Credit Sales

All credit sales are contingent on meeting the standards and requirements of this instrument, adhering to the conservation servitude, and maintaining sufficient financial assurances. Unexpected situations necessitating credit sales suspension may also occur and will be addressed by USACE on a case-by-case basis.

A. Should USACE determine that the Sponsor is in default of its obligations hereunder or the Bank is not performing in accordance with the standards and criteria set forth in this MBI, credit sales will be immediately suspended. Sale of credits may not resume until such time as remedial action has been taken and the deficiencies have been resolved to the satisfaction of USACE, in consultation with the IRT (as appropriate).

B. Sponsor's failure to complete implementation of any corrective action or remedial measure deemed necessary by USACE including any adaptive management to meet performance standards within one growing season (November 1 of the following year) following notification of deficiency will result in the revocation of any remaining mitigation credits. If at any time USACE, in consultation with the IRT (as appropriate), determines that the Bank is operating at a deficit, the Sponsor at its full cost and expense shall make-up for the credit deficit by purchasing in kind credits at another SWG approved mitigation bank, if available. The perpetual conservation easement and endowment will remain in place on the Property to protect the habitat/acreage represented by credits already sold.

4. Catastrophic Events including Natural Disasters and Unlawful Acts

In the event of substantial damage to the Bank caused by a natural or human-caused disaster or a deliberate and unlawful act, USACE, in consultation with the

Sponsor and the IRT, determines that prevention or mitigation of the disaster was beyond the control of the Sponsor, its agents, contractors, or consultants; the Sponsor may request, and USACE, in consultation with the IRT, may approve changes to the construction, operation, project milestones, performance standards or crediting formula of the Bank..

A natural catastrophic event includes, but is not limited to, a flood equal to or greater in magnitude than the 100-year flood event, earthquake, drought, debilitating disease, wildfire, depredation, or regional pest infestation. A human-caused catastrophic event includes, but is not limited to, war, insurrection, riot, or other civil disorders, spill of hazardous or toxic substance, or fire. A deliberate and unlawful act includes, but is not limited to, the dumping of a hazardous or toxic substance as well as significant acts of vandalism or arson. If any such act occurs USACE, in consultation with the IRT and the Sponsor, will determine what changes to the Bank and/or this MBI will be in the best interest of the Bank and the aquatic environment.

In the event that such a disaster causes substantial damage to the Bank, sale of credits shall be immediately suspended pending determination by USACE, in consultation with the IRT, of:

A. The nature and extent of damage caused to the Bank and the measures necessary to remediate such impacts will determine:

B. Whether sufficient surviving mitigation exists to accommodate credits already sold from the Bank; and,

C. Whether conditions at the Property despite damage caused by the disaster are such that the sale of credits may resume.

D. The Sponsor shall implement adaptive management measures deemed necessary by USACE, in consultation with the IRT, to remediate identified impacts within one year of the event and shall implement any subsequent adaptive management measures deemed necessary by USACE from time to time before the next growing season. Failure to comply with these provisions may result in the suspension of credit sales or revocation of credits as set forth in Section II N.c.3. Suspension of credit sales or revocation of credits does not relieve the Sponsor of its obligation to continue to operate, manage, and maintain the habitat/acreage represented by credits previously sold and to continue to monitor and report with respect to those areas.

5. Financial Responsibilities

In all instances the Sponsor shall bear the full cost and financial responsibility associated with the construction, operation, and management of the Bank and any and all corrective actions and remedial measures deemed necessary under the provision of this MBI. Although in appropriate instances financial assurances may provide a source of funds to remedy deficiencies and/or to provide for long-term

management needs, the absence of sufficient financial assurances to correct deficiencies and/or to fund long-term management will not relieve Sponsor (or Long-term Steward) of its responsibilities pursuant to this MBI.

O. IMPLEMENTATION FINANCIAL ASSURANCES & LONG-TERM MANAGEMENT ENDOWMENT

The Bank Sponsor is responsible for providing financial assurances for the performance and completion of Bank construction, management, monitoring, and Remedial Action in accordance with this MBI, as set forth in this Section, and in the Appendices. The financial assurances shall be held included in their entirety in the DMBI submittal. They shall further be in accordance with Section III – Bank Operations and be held by a (USACE-approved) qualified third-party.

USACE will retain authority to require the initiation (draw from) the surety entities and USACE will be assigned the role of an “Obligee” to those funds & within those documents. All sureties must continue unless specific written approval is given by USACE to allow those surety documents to terminate (evergreen requirement).

The Bank Sponsor shall provide specific written confirmation from the holder of each financial assurance (as applicable) that the requirement to provide financial assurances will be expiring 60 days prior to the expiration. If the Surety is not willing to provide that notice, the Sponsor may provide the expiration notice to USACE on behalf of the Surety. Dept of the Treasury Circular 570 listing for any Surety Bond Provider is provided in Appendix BB

1. Implementation Financial Assurance

Prior to the first Credit Release, the Bank Sponsor shall furnish an Implementation Financial Assurance in the amount of a reasonable third-party estimate or contract to ~~[delete as appropriate]~~ establish, restore, or enhance the bank property as specified in this MBI. The Implementation Financial Assurance shall be in the form of ~~[Choose one: an irrevocable standby letter of credit, etc.]~~. The Bank Sponsor shall ensure the implementation of financial assurance shall remain available in the full amount, until cancelled, in accordance with Section III – Bank Operations. If all construction and planting activities are completed in accordance with the Mitigation Bank Work Plan prior to the Bank Authorization Date (as verified by USACE), then a construction security may not be required. [Appendix M includes the SWG Performance Bond template for use by Sponsors.](#)

2. Long-Term Management (LTM) Endowment

The Bank Sponsor shall provide to the USACE written notification from the Endowment Holder confirming the Endowment Fund has been established prior to the initial credit release.

The Endowment Fund shall be held by the Endowment Holder, in an amount sufficient to fully provide for the financial requirements of the long-term management of the Bank in accordance with the Long-term Management Plan

(Appendix N) and the Long-Term Management (LTM) Financial Assurance (Appendix N). The Bank Sponsor shall fully fund the Endowment Amount through Endowment Deposits according to the schedule below. The Endowment Amount shall be 100% funded per the table below. [Delete the following sentence if a singular credit type or preservation only] The bank has more than one credit type (X and X), therefore the default funding schedule will be based on the predominant credit type to be generated by the bank (as coordinated with the IRT).

- a. Funding schedule for Waters of the U.S. Releases will be as follows:
Select the appropriate schedule.

Preservation (Only):

- i. 100% of the Endowment Amount shall be funded prior to the initial credit release.

OR

Herbaceous, Stream & Tidal

- i. 20% of the Endowment Amount shall be funded before initial credit release;
- ii. 15% of the Endowment Amount shall be funded at one-year from Bank Authorization Date;
- iii. 15% of the Endowment Amount shall be funded at two-years from Bank Authorization Date;
- iv. 15% of the Endowment Amount shall be funded at three-years from Bank Authorization Date;
- v. 15% of the Endowment Amount shall be funded at four-years from Bank Authorization Date
- vi. 20% of the Endowment Amount shall be funded at five-years from bank signature for a total 100% fully funded within five years from Bank Authorization Date.
- vii. Funds from the Endowment shall not be withdrawn any earlier than 7 years from Bank Authorization Date.

OR

Forested

- i. 25% of the Endowment Amount shall be funded before initial credit release;
- ii. 25% of the Endowment Amount shall be funded at three-years from Bank Authorization Date;
- iii. 25% of the Endowment Amount shall be funded at five-years from Bank Authorization Date;
- iv. 25% of the Endowment Amount shall be funded at seven-year from bank signature for a total 100% fully funded within seven years from Bank Authorization Date;
- v. Funds from the Endowment shall not be withdrawn any earlier than 10 years from Bank Authorization Date.

P. WATER RIGHTS

Sufficiency of bank water rights as required by the 2008 Mitigation Rule is determined by USACE. Assessment of sufficiency takes into consideration current and estimated future bank hydrology needs relative to the specific bank development & hydrology plans for Riverine contribution sources. (See documentation and include additional discussion in [Appendix P](#)).

Note: This determination should be made as part of bank siting criteria considerations in the Prospectus stage of bank review. If this sufficiency determination was not previously explicitly confirmed in the Prospectus stage comments response, additional discussion as noted below is required in the DMBI submittal to ensure USACE has sufficient information to finalize its due diligence for the of water rights risk assessment as appropriate to the bank site state.

Select one of the two options below & provide additional supporting information in Appendix P

1. Water rights were secured and will be maintained for the bank operations to ensure needed Riverine water availability during times of drought in perpetuity (see water rights application information, issuance confirmation and maintenance plan documentation in [Appendix P](#)).

OR;

2. Water rights could not be secured for this banking project at this banking location. See Appendix P for:

- a) A detailed discussion of water rights acquisition impediments for this specific bank and contributing Riverine resource. Discussion addresses bank construction & hydrology plan w/ demand details, structural considerations, locations of and diversion methodology relative to "OHWM" and "Bankfull" (or lack thereof), hydrology source classifications and status, as well as relevant notations made by the banker and by the agency administering the water rights assignment program per the bank location state. Relevant documentation from the state allocation agency is included.
- b) Documentation showing current water rights holders & use types upstream and downstream of the bank Riverine source with their allocation amounts. This Section also includes discussion of current water rights availability at the bank location and reasonably foreseeable allocation demands in the future for this site and the surrounding area.
- c) A detailed contingency plan to overcome foreseeable bank impacts that may occur in a drought circumstance where competing and/or conflicting current or future water rights holders were to fully exercise their secured rights.

SECTION III: BANK OPERATIONS

A. SERVICE AREA

The Service Area is the watershed, ecoregion, physiographic province, and/or other geographic areas within which the mitigation bank is authorized to provide

compensatory mitigation required by DA permits. Service areas must be appropriately sized for each credit type to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area respectively consistent with the “watershed approach” (ref 33CFR332).

The geographic primary, and secondary service areas for the Bank were determined utilizing watersheds based on the 8-digit Hydrologic Unit Code (HUC) and the EPA Level III Ecoregions of Texas (Omernik 2004). The Service Area for the Bank has been determined to be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire Service Area.

The primary service area for the (name of bank) is identified as the (name of HUC) USGS 8-digit HUC (insert 8digit number). The primary service area includes portions of (list County(s)) Counties. Impacts occurring within the primary service area shall be debited on a 1:1 basis.

The secondary service area for the (name of bank) is identified as the (name of HUC) USGS 8-digit HUC (insert 8digit number). The secondary service area includes portions of (list County(s)) Counties. Impacts occurring within the secondary service area shall be debited on a 1.5:1 basis (see map attached as Fig (X)Appendix C).

[Tidal Credits: See 2022 SWG pre-approved Tidal Service Area Map (Appendix C) as applies to this bank location.]

The detailed service area determination for the Bank and Service Area Figure is in Appendix C.

B. ACCOUNTING PROCEDURES

Sponsor will establish and maintain a system for tracking the production of credits, credit transactions, and financial transactions between Sponsor and permittee. Credit production, credit transactions, and financial transactions must be tracked on a bank basis and separately for each individual permit. Credits will be debited from the ledger once a financial transaction has occurred. The Sponsor will notify the USACE of each transaction and provide the USACE a copy of the ledger entry within 15 days of each transaction. Sponsor will inform the USACE of the status of credits reserved on an independent submittal.

The draft ledger for this bank is included in Appendix W – Credit Ledger.

Each ledger entry will include the following information:

1. Date of submittal.
2. USACE-permit applicant’s name, address, and telephone number,
3. USACE-permit and/or other identification number,

4. Brief description of the location and type of the authorized work (8-HUC),
5. Brief description of the nature and extent of adverse project impacts,
6. Sponsor assumes legal responsibility for the mitigation requirements,
7. Account balance before transaction,
8. Date of transaction,
9. Number of credits currently available,
10. Number of credits debited from the credit availability account, and
11. Account balance after transaction.

The Sponsor shall also provide an annual statement of the account to USACE by (date) of each year until all credits have been withdrawn and the bank closed.

The Sponsor shall be responsible for maintaining the bank's credit ledger in the RIBITS. All credit transactions shall be entered into the database no later than seven calendar days after the transaction has occurred or the USACE reserves the right to suspend credit sales until sales transactions are deemed current and compliant.

RIBITS mandatory information fields are based on Sponsor Allowed Permissions. Sponsor entry fields at the time of this instrument include the following Credit Transfer information but may be updated in the future:

1. Jurisdiction Type
2. Transaction Date
3. Credits Debited
4. USACE Permit Number (Format: SWG/Yr/Permit # (e.g. SWG-2000-00150))
5. Name of Permittee
6. Credit Classification (if applicable, with functional assessment subcategories identified; (e.g., iHGM identify amounts within each functional category (Chemical, Physical, or Biological))

Compliance with RIBITS reporting does not supersede the requirement of the sponsor to submit individual transaction reports or other documents as required by this MBI.

C. SALE AND/OR TRANSFER OF CREDITS

1. The Sale and/or Transfer of released Credits may begin only upon USACE issuance of credits after the Bank Authorization Date. Bank Sponsor shall have the exclusive right to determine the price for any and all Credits it offers for Sale.
2. Credits must be sold and/or traded as a "Suite of Functions".
3. In no case shall the number of Credits offered for Sale and/or Transfer exceed the total number and type of released Credits, as evidenced by written approval by USACE, in coordination with the IRT.

4. The Sale of Credits without a formal, written Transfer does not guarantee that the Credits purchased will be acceptable compensatory mitigation for any particular project. Legal responsibility for providing the compensatory mitigation is not transferred from the Permittee to the Bank Sponsor until there is a formal, written Transfer associated with a specific permit, approval, or authorization made pursuant to a written Credit Transfer then submitted to USACE.
5. Transfer to compensate for unavoidable impacts to Waters of the U.S can only occur **after** approval by the agency or agencies executing such a permit, approval(s), or authorization(s) or issuing such an opinion. Approval is determined on a case-by-case basis to ensure the use is appropriate to compensate for the impacts of the specific project to which the Credits are proposed to be applied. Mitigation or compensation requirements for individual project impacts may or may not be compatible with the use of mitigation banks, generally, or any particular mitigation bank, specifically.
6. A Transfer may occur only if the Bank Sponsor has received all of the following: (A) a copy of the permit(s) by USACE approving the use of the specified purchased Credits; (B) written notice from the Permittee that it is electing to use the specified purchased Credits toward the permit(s) obligation; and (C) confirmation that the Bank Sponsor has accepted the legal responsibility for providing the required compensatory mitigation of such permit(s).
7. Bank Sponsor shall notify USACE via e-mail to the Regulatory Hotline E-mail upon any Credit Sale and/or Transfer in accordance with this MBI. That transfer must also be entered & uploaded into RIBITS accordingly.

D. INTERIM AND LONG-TERM MANAGEMENT AND MONITORING

Bank Sponsor shall be responsible for conducting management, monitoring, and maintenance activities according to the Mitigation Bank Work Plan (Appendix I) See Appendix I for detailed, project specific information on this topic.

E. FINANCIAL OPERATIONS

1. Implementation Financial Assurance

- i. The USACE, as an Obligee of the security, after coordination with the IRT, shall be entitled to require the Implementation Financial Assurance to be drawn upon for default, if:

- i. after the Bank Authorization Date, but no later than one year, the USACE determines that the Bank Sponsor has not initiated construction and planting in accordance with the Mitigation Bank Work Plan, or

ii. The sponsor has not completed construction & planting within 3 years of Bank Authorization Date.

iii. USACE may encounter other situations where USACE must require Implementation Financial Assurance to be drawn on. These situations would be expected to be very rare but will be considered on a case-by-case basis.

ii. If the Implementation Financial Assurance is drawn upon pursuant to this Section (without USACE intervention), then the Bank Sponsor shall immediately notify USACE and replenish the Implementation Financial Assurance to make it whole consistent with Appendix M within 90 calendar days.

iii. The Implementation Financial Assurance shall be cancelled, or the monies provided as Implementation Financial Assurance returned to the Bank Sponsor after approval by USACE with IRT coordination (as appropriate), only after the Bank Sponsor completes the construction and planting activities in accordance with the Mitigation Bank Work Plan, as demonstrated by:

a) Bank Sponsor's submission of as-built drawings in accordance with Appendix K – Performance Standards.

b) A site inspection by the IRT and confirmation by the IRT of satisfactory completion of construction and planting activities in accordance with the Mitigation Bank Work Plan.

2. Long-Term Management Endowment

a. Long-Term Management Endowment Deposits

a. The Endowment Deposits that the Endowment Holder receives are to be held in the Endowment Fund.

b. Long-Term Management Endowment Fund Management

i. The Endowment Fund will be governed by an investment policy statement that is designed, over long periods of time, to generate investment returns sufficient to keep pace with inflation and pay the costs of long-term management, net of any financial investment and administrative fees. After the Endowment Amount is initially 100% funded, additional Endowment Amount monies may be required from the Bank Sponsor if the fund is found to be underperforming approved projections at MBI

identified Endowment account assessment intervals in annual monitoring financial audits. (See Appendix L).

- ii. The Sponsor shall ensure that the Endowment Agreement (Appendix M) includes a provision that disbursements will not be made from the Endowment Fund any earlier than 7 years from Bank Authorization Date [For Herbaceous, Stream & Tidal credits] OR any earlier than 10 years from Bank Authorization Date [For Forested credits] and the Endowment Amount has been 100% funded.
- iii. Funds from the Endowment Fund are limited to the exclusive use of long-term management activities of this bank.
- iv. The Parties anticipate that disbursements from the Endowment Fund will be made available by the Endowment Holder to the Long-Term Steward to fund annual long-term management of the Bank Property as anticipated in the Long-term Management Plan and estimate of costs in accordance with the Endowment Agreement.
- v. In the event either (a) the value of the Endowment Fund has decreased (or can be reasonably foreseen to decrease) to levels that may threaten its continued existence as a source of perpetual funding for long-term management, whether due to unexpected investment performance or otherwise; or (b) if long-term management expenses exceed those estimated in the Financial Assurances (Appendix M), the Sponsor/Property Owner shall consult with USACE, the IRT and the Grantee to identify the most effective means to implement the management measures and tasks with the resources available or supplement the fund as necessary. The Sponsor or Long-Term Manager shall submit a proposed temporary revised Long-term Management Plan and Endowment Fund Analysis in writing to USACE, IRT and Grantee within 60 calendar days after completion of the consultation with the USACE and Grantee. Upon written approval of the temporary revised Long-term Management Plan by USACE and any required notification to the Endowment Holder, in accordance with the Endowment Agreement, the Sponsor shall implement the approved revised management measures and tasks. The original Long-term Management Plan shall be restored in full force and effect upon expiration of the temporary revised Long-term Management Plan or sooner if the circumstances cease to exist unless the Long-Term Management plan must be permanently adjusted for consistency.

c. Annual Inflation Adjustments to Endowment Fund

- i. By timeframes listed in the Annual Monitoring report (Appendix L), the Bank Sponsor shall report to the USACE, with a courtesy copy to the Endowment Holder, in editable electronic format, the following:
 - a) The adjusted Endowment Amount determined in accordance with Appendix M.
 - b) The resulting adjusted Endowment Deposit amounts.
- ii. Each year in which the Endowment Amount is not 100% funded, the Bank Sponsor shall adjust (increase, not decrease) the total Endowment Amount to keep pace with inflation. The Bank Sponsor shall calculate inflation based upon the changes in the Annual Consumer Price Index (CPI) for Texas, published by the Texas of Comptroller of Public Accounts (<https://comptroller.texas.gov/economy/key-indicators/>) and shall adjust the Endowment Amount proportionally with the inflation rate. The Bank Sponsor shall measure inflation by calculating the percent change between the CPI value published in the BEI execution year and the CPI value published for the adjustment year. The Bank Sponsor shall multiply the inflation rate by the Endowment Amount in Appendix M. The product will be the increase in the Endowment Amount. If deflation occurs (CPI is less than the previous year), then the Bank Sponsor shall not adjust the Endowment Amount until the Annual CPI exceeds the value from the most recent inflation year.

3. Financial Records and Auditing

- a. Bank Sponsor and Property Owner are required to maintain complete and accurate financial records relating to the operation of the Bank for which it is responsible, using generally accepted accounting principles (GAAP), developed by the Federal Accounting Standards Advisory Board. At the request of the IRT, no more frequently than annually, the Bank Sponsor and Property Owner shall each have its financial records relating to the operation of the Bank audited by an independent licensed Certified Public Accountant and shall submit the auditor's report to the USACE, upon completion. See more on auditing financial considerations of the bank in the monitoring section and Appendix L
- b. The IRT or their designated representatives shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this MBI. Bank Sponsor and Property Owner agree to maintain such records (with personal or specific account or

routing information redacted) for possible audit for a minimum of three years after Bank closure. Bank Sponsor and Property Owner agree to allow USACE, IRT, & auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably have information related to such records. Further, Bank Sponsor and Property Owner agree to include a similar right of State and federal auditors to audit records and interview employees and representatives in any contract related to the performance of this MBI.

F. REMEDIAL ACTION PLAN

1. Prior to Bank Closure and/or after Bank closure, if any Party discovers any injury or adverse impact to the Bank Property as Preserved, restored, or enhanced, and USACE, with a courtesy copy to the IRT, does not determine that such damage is a result of Extraordinary Circumstances, the Party making the discovery shall notify the other Parties. USACE and IRT may require the Property Owner to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under this MBI shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.
2. Unless otherwise specified in this MBI, within 60 calendar days of the date of written notice from USACE, the Bank Sponsor or Property Owner, as applicable, shall develop a Remedial Action plan and submit it to the USACE, with courtesy copy to the IRT, for written approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or remedy injury or adverse impact to the Bank Property and set forth a schedule within which the Bank Sponsor or Property Owner, as applicable, will implement those actions. The Bank Sponsor or Property Owner, as applicable, shall implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the USACE, in consultation with the IRT.
3. If (a) the Bank Sponsor or Property Owner, as applicable, fails to develop a Remedial Action plan and submit it to the USACE, or to implement Remedial Action identified by the IRT, in accordance with this Section (or other Sections of this MBI), or (b) a Remedial Action plan is agreed upon and implemented, but the conditions do not satisfy the plan's objective and measurable Performance Standards by the dates specified in the plan, then USACE may find the Bank Sponsor or Property Owner, as applicable, in default pursuant to the requirements of this MBI and take action accordingly per the terms of this MBI.

4. If USACE determines that the Bank is operating at a Credit deficit (i.e., Sales and/or Transfers exceed the Credits authorized for release, as adjusted in accordance with this MBI), USACE shall notify the Bank Sponsor of its default and take action accordingly. Upon receipt of notification, Bank Sponsor shall cease any and all Sales and Transfers immediately and is not authorized to resume Sales and/or Transfers until notified in writing by USACE.

G. TRANSFERS OF PROPERTY, SPONSORSHIP, LONG-TERM STEWARDSHIP

1. Changes to property ownership and Bank sponsorship/stewardship are subject to review as a modification to the Instrument under the provisions of 33 CFR 332.8(g) and this instrument. All transfers of any interest in the property are subject to the applicable provisions of the Site protection instrument (See Appendices A&F). Additionally, any transfer of property or Sponsorship/Stewardship will require notification to USACE and the transfer of any DA permits issued for the establishment of the Bank project.

a. Transfers of Property

- i. The Property Owner may sell, assign, convey or otherwise transfer its interest in the Bank property at any time provided that any such transfer must be made in accordance with and subject to this Instrument, the site protection instrument and the following conditions:
 - a. The Transferee is able to assume and agrees to assume the obligations of the Property Owner as set forth in this Instrument; and
 - b. the Transferee understands and agrees to the allowed/prohibited uses of the property as set forth in the site protection instrument.

b. Notice of Property Transfer:

- i. The Property Owner must provide notice to USACE and to the Sponsor (if different from the Property Owner) that he/she intends to transfer the property at least 90 days prior to the effective date of the transfer and provide information regarding the transferee. This notice must include the proposed Transferee's name (and the name of its authorized representative if the Transferee is not an individual), address and phone number, the anticipated date of the transfer, and a statement signed by the proposed Transferee that the Property Owner has:
 - a. Provided copies of this Instrument and the approved site protection instrument to the Transferee; and
 - b. explained the allowed/prohibited uses of the property to the Transferee; and

- c. explained to the Transferee that any transfer of the property is subject to the terms and conditions contained in the Instrument.
 - ii. If the transferee is a company, a modification to Appendix A will be required and additional information will be provided according to the Appendix.
 - iii. If the Sponsor is not the same as the Property Owner, the Property Owner and the Sponsor may submit a joint notice, in which case the notice shall be clearly identified as such. Otherwise, the Sponsor must also provide a signed notice, in addition to the property owner, to USACE at least 90 days prior to the transfer or within 5 days of learning of such transfer. This obligation continues until the Sponsor has provided the required notice. The notice must verify that the Transferee has acknowledged:
 - a. Being provided copies of this Instrument and the approved site protection instrument;
 - b. having the allowed/prohibited uses of the property fully explained; and
 - c. being advised that any transfer of the property is subject to the terms and conditions contained in the Instrument.
 - iv. After receipt of the notice of transfer, USACE, in consultation with the IRT, may seek additional information about the proposed Transferee's fitness to assume the obligations of the Property Owner. Additionally, the Sponsor may submit any information it deems relevant to the transfer to USACE and the IRT.
 - v. Any transfer of the ownership made without the required 90-day notice by the Sponsor may result in a suspension of credit sales until the appropriate information is provided for review and evaluation by USACE, in coordination with the IRT.
- c. Once the notice of transfer of the property has been received by USACE, the Transferee must sign the Property Owner Transfer Page as Property Owner and attest as follows:
 - i. It has read and understands and agrees to the terms and conditions of the Instrument and the approved site protection instrument; and
 - ii. it agrees to assume all obligations and responsibilities of the Property Owner contained in this Instrument.
- d. Upon signature of the Property Owner Transfer Page by the Transferee/new Property Owner, all obligations of the Transferor/old Property Owner pursuant to this Instrument become those of the Transferee/new Property Owner. The Property Owner Transfer Page will be included in Appendix A.

- e. From and after the date of any transfer of the property becomes effective (after written by USACE), the Transferor shall have no further obligations hereunder and all references to the Property Owner in this Instrument shall thereafter refer to the Transferee, except that the Transferor's liability for acts, omissions, breaches or other compliance issues occurring prior to the transfer shall survive the transfer.
- f. The sponsor may convey fee simple title to any property included within the bank, provided the necessary perpetual site protection instrument described in Section II.K of this MBI has been recorded and provided/disclosed to the new owner. Prior to the transfer of ownership, the sponsor must provide written notification to USACE, and make a reasonable effort to ensure that the property is conveyed to an environmentally responsible party.
- g. Transfer of Sponsorship
 - i. The sponsor may transfer sponsorship of the bank to another public or private party only with prior approval of USACE, in coordination with the IRT; and the new sponsor agrees to abide by the terms of this mitigation banking instrument. Any such request must be submitted in writing to the U.S. Army Corps of Engineers. Upon approval of the transfer, the obligations of the previous sponsor to comply with the requirements of this mitigation banking instrument shall be transferred to the new sponsor. The existing financial assurance will be transferred to the new sponsor unless a substitute financial assurance is developed and approved by the USACE, in coordination with the IRT. The physical ownership of the bank lands and the compensatory mitigation liability of the bank sponsor (sponsorship) are separable components of the bank and may be transferred independently.
 - ii. For this Section only, the term Transferor refers to the current Bank Sponsor and the term Transferee refers to the proposed. Sponsorship transfers can be requested at any time. If the transferee is a company, a modification to Appendix A will be required and additional information will be provided according to the Appendix.
- h. Notice of Intent to Transfer Sponsorship: The Transferor must provide notice to USACE and, if different, to the Property Owner of its intent to transfer the sponsorship at least 90 days prior to the transfer. This notice must include:
 - i. The proposed Transferee's name and, if different, the name of its authorized representative, its address and phone number, and the anticipated date of the transfer;

- ii. The proposed Transferee's qualifications (background, resources and experience) to perform the Sponsor's responsibilities.
- iii. New financial assurance mechanisms to the satisfaction of USACE.
- iv. A statement signed by the proposed Transferee attesting that the Transferor has provided them with the following:
 - a) A copy of the mitigation banking instrument.
 - b) A copy of the site protection instrument.
 - c) A current ledger listing all credit transactions for the bank and the associated permits.
 - d) Copies of financial statements.
 - e) A recent monitoring report providing a description of current conditions including;
 - 1. a discussion of the status of all completed mitigation activities and all remaining work (if any) necessary to fulfill requirements of the work plan;
 - 2. the general condition of all structures, plantings, fire lines/breaks, monitoring wells, roads, and site security measures; and
 - 3. an indication of the degree of exotic/invasive plant and animal species occurrence/infestation and measures required to control them.
- i. Once USACE has approved the proposed transfer of sponsorship, the Transferee must sign the Mitigation Bank Transfer Form as the Sponsor. By signing the form, the Transferee/new Sponsor attest as follows:
 - i. That it has read and understands and agrees to the terms and conditions of the Instrument and the approved site protection mechanism; and
 - ii. that it agrees to assume all of the obligations and responsibilities of the Sponsor contained in this Instrument.
- j. The new Sponsor must provide USACE with a copy of the completed and signed Mitigation Bank Transfer Form which will be included in Appendix A.
- k. Any transfer of the sponsorship made without the written 90-day prior notification to USACE and transfer approval from USACE may result in suspension of credit sales until the Transferee provides the information required in the notice, has the transfer approved by USACE, signs the Instrument as Sponsor, and provides a copy of the executed Instrument to the IRT.
- l. From and after the date of any approved transfer by the Transferor of its interest in the sponsorship and USACE approval of said transfer, the Transferor shall have no further obligations hereunder and all references to Sponsor in this Instrument shall thereafter refer to the Transferee, except

that the Transferor's liability for acts, omissions, breaches or other compliance issues occurring prior to the transfer shall survive the transfer.

- m. Transfer of Stewardship: For this Section only, the term Transferor refers to the current Bank Steward and the term Transferee refers to the proposed Bank Steward. Upon written approval from USACE, in consultation with the IRT, the Transferor may sell, assign, convey or otherwise transfer its interest in the Bank at any time, except as noted above, provided the Transferor is in full compliance with all requirements of this Instrument (including all financial assurance and long-term management funding requirements), and the Transferee provides a written statement agreeing to assume the obligations of the Steward as set forth in this Instrument.
- n. Notice of Intent to Transfer Stewardship: The Transferor must provide notice to USACE and, if different, to the Property Owner of its intent to transfer the stewardship at least 90 days prior to the transfer. If the transferee is a company, a modification to Appendix A will be required and additional information will be provided according to the Appendix. The transfer notice must include:
 - i. The proposed Transferee's name and, if different, the name of its authorized representative, its address and phone number, and the anticipated date of the transfer;
 - ii. The proposed Transferee's qualifications (background, resources and experience) to perform the Steward's responsibilities.
 - iii. A statement signed by the proposed Transferee attesting that the Transferor has provided them with the following:
 - a) A copy of the mitigation banking instrument.
 - b) A copy of the site protection instrument.
 - c) Copies of financial statements.
 - d) For transfer of Stewardship, the Transferee must have the legal authority to receive funds from the established long-term management funding mechanism.
 - iv. A recent monitoring report providing a description of current conditions including:
 - a) a discussion of the status of all completed mitigation activities and all remaining work (if any) necessary to fulfill requirements of the work plan;

- b) the general condition of all structures, plantings, fire lines/breaks, monitoring wells, roads, and site security measures; and
 - c) an indication of the degree of exotic/invasive plant and animal species occurrence/infestation and measures required to control them.
- o. Once USACE has approved the proposed transfer of stewardship, the Transferee must sign the Mitigation Bank Transfer Form as the Steward. By signing the form, the Transferee attest as follows:
- i. That it has read and understands and agrees to the terms and conditions of the Instrument and the approved site protection instrument; and
 - ii. that it agrees to assume all of the obligations and responsibilities of the Steward contained in this Instrument.
- p. The new Steward must provide USACE with a copy of the completed and signed Mitigation Bank Transfer Form which will be included in Appendix A.
- i. Any transfer of the stewardship made without the written 90-day prior notification to USACE and transfer approval from USACE may result in suspension of credit sales until the Transferee provides the information required in the notice, has the transfer approved by USACE, signs the Instrument as Steward, and provides a copy of the executed Instrument to the IRT.
- q. From and after the date of any approved transfer by the Transferor of its interest in the sponsorship and USACE approval of said transfer, the Transferor shall have no further obligations hereunder and all references to Steward in this Instrument shall thereafter refer to the Transferee, except that the Transferor's liability for acts, omissions, breaches or other compliance issues occurring prior to the transfer shall survive the transfer.

H. OTHER PROVISIONS

1. Extraordinary Circumstances

- a. The Bank Sponsor, Property Owner, and IRT in its review of the MBI, have made a concerted effort to identify the preservation, restoration, and management measures for the Bank Property, including Adaptive Management, necessary to qualify as compensatory mitigation for Waters of the U.S and to manage and maintain these resources in perpetuity. However, the Parties recognize that there may be an Extraordinary Circumstance in which the Bank can no longer serve its intended purpose

as compensatory mitigation, in whole or in part, for the specific resources for which it was established. An Extraordinary Circumstance of this type may lead to Bank Sponsor and/or Property Owner being relieved of some or all of its obligations under this MBI. The Parties agree that USACE, in consultation with the IRT, will consider whether it is appropriate to relieve Bank Sponsor and/or Property Owner of any obligations under the process outlined below:

- i. If the Bank Sponsor or Property Owner believes that Extraordinary Circumstances have taken place that Party shall send written notification to USACE as promptly as possible, but no later than 14 calendar days following the date of discovery of the Extraordinary Circumstance. The Party sending the notification (invoking) will fully describe the nature of the Extraordinary Circumstance, its effect on the Party's performance of the obligations under this MBI, the habitat values affected by the Extraordinary Circumstance, and any expected timeframe of non- performance attributable to the Extraordinary Circumstance. As promptly as reasonably possible after providing notification, the Party invoking Extraordinary Circumstance shall meet with USACE, with invitation to the IRT, to discuss whether the event qualifies as an Extraordinary Circumstance. The Party invoking the Extraordinary Circumstance shall bear the burden of demonstrating that an Extraordinary Circumstance has occurred. Until such time the USACE determines whether the event qualifies as an Extraordinary Circumstance and whether it is appropriate to suspend performance pursuant to this MBI, the Property Owner or Bank Sponsor shall continue to manage and maintain the Bank Property to the fullest extent practicable consistent with this MBI and other applicable documents.
- ii. If the USACE concurs that an Extraordinary Circumstance has taken place, the agency will provide written notification to the Bank Sponsor or Property Owner. Within 14 calendar days of notification of concurrence from USACE, with invitation to the IRT that an Extraordinary Circumstance has occurred, or on a date mutually agreed upon by all Parties, the Parties will meet to discuss the course of potential action to be taken in response to such occurrence, including potential Remedial Action as defined in this Section and the MBI and potential suspension of Performance Standards as described in this Section. Remedial Action in such circumstances may include, but is not limited to, restoration of the Bank Property, out-of-kind improvements on the Bank Property, a smaller restoration on the Bank Property (taking into account the diminution of habitat values across the Service Area), improvements to another property, or the

purchase of credits from another bank. Once approved by the IRT, the Party invoking the Extraordinary Circumstance shall carry out the Remedial Action within a mutually agreed upon timeframe.

- iii. If the Bank Sponsor or Property Owner is prevented from or delayed in performing an obligation under this MBI by an Extraordinary Circumstance that commences after the Bank Authorization Date, USACE may suspend the Bank Sponsor and/or Property Owner's obligation to perform, as well as the ability of the Bank Sponsor to provide any remaining Credits released, prior to Sale and/or Transfer, as compensatory mitigation.
 - iv. Following the meeting discussed in this Section to consider potential actions to be taken in response to the event, USACE will, in writing, (1) inform the Property Owner or Bank Sponsor as to what, if any, performance is suspended, and (2) direct the Property Owner or Bank Sponsor as to what specific Remedial Action is required. The Bank Sponsor or Property Owner will continue to perform all other obligations that are not suspended.
 - v. Within 60 calendar days of notification described in this Section, or by a date mutually agreed upon by all Parties, the Party invoking the Extraordinary Circumstance will submit to the USACE, with a courtesy copy to each IRT agency, in writing, the implementation plan to meet the required Remedial Action. At a minimum, the Remedial Action will be sufficient to ensure that the habitat values which underlie all previously Transferred Credits will be supported.
 - vi. If the Remedial Action agreed upon and implemented does not meet an agreed upon objective or standard within the agreed upon timeframe, the Bank Sponsor or Property Owner and the USACE, with invitation to the IRT, will reconvene to evaluate if alternative Remedial Action would be appropriate.
- b. Failure to act in good faith to participate in the process outlined above in this Section or to implement any approved Remedial Actions shall be a default under this MBI.
 - c. In accordance with this Section of this MBI, the USACE may, at their discretion, direct Bank Sponsor to suspend Sale and/or Transfer, prohibit the release of additional Credits, and/or reduce the number of Credits allocated to the Bank in proportion to such damaged area unless and until the Bank Sponsor has remedied the defect pursuant to the Remedial Action as described in this Section.

- d. Disputes over whether an event is a result of an Extraordinary Circumstance, or any Remedial Action taken in response pursuant to this Section, shall be resolved in accordance with this Section.
- e. Bank Sponsor and Property Owner are not entitled to termination of this MBI under this Section of this MBI as a result of Extraordinary.

2. Dispute Resolution

The signature Parties agree to work together in good faith to resolve disputes concerning this MBI. Unless a Party has initiated legal action in connection with the particular dispute, any Party may elect (“Electing Party”) to employ an informal dispute resolution process whereby:

- a. The Electing Party shall notify all other Parties to this MBI of the dispute through a Dispute Notice. The Dispute Notice shall identify the Parties against whom the Electing Party is commencing the informal dispute resolution process (“Implicated Parties”), the position of the Electing Party (including, if applicable, the basis for contending that a violation has occurred), and the resolution the Electing Party proposes.
- b. Each Implicated Party shall have 45 calendar days after receipt of the Dispute Notice (or such other time as the Parties may mutually agree) to respond to the electing Party. During this time, any Party to this MBI that received the Dispute Notice may seek clarification of the Dispute Notice.
- c. Within 45 calendar days after each Implicated Party’s response was provided or due, whichever is later, the Electing Party and the Implicated Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution or shall establish a specific process and timetable to seek such resolution.
- d. The dispute resolution process may be terminated by the Electing Party or any Implicated Party upon written notice to all other Parties to this MBI.

3. Conveyance of Bank or Bank Property or Other Interests

- a. All transfers of any interest in the Bank Property are subject to the applicable provisions of the Conservation Easement.
- b. Property Owner shall have the right to sell, assign, transfer or convey its interest in the Bank Property at any time; provided, however, that any such sale, assignment, transfer or conveyance on or after the date of this MBI must be made in accordance with this MBI and the Conservation Easement and shall be subject to prior written concurrence by the IRT and Bank Sponsor. Such concurrence shall be subject to the requirement that the purchaser, assignee or transferee assumes and agrees in writing to observe and perform

all of the Property Owner's obligations pursuant to this MBI and the Conservation Easement. From and after the date of any sale, assignment, transfer, or conveyance by Property Owner of its interest in the Bank Property in which the purchaser, assignee, or transferee has assumed and agreed in writing to observe and perform all of the Property Owner's obligations pursuant to this MBI, the Property Owner shall have no further obligations hereunder and all references to Property Owner in this MBI shall thereafter refer to such purchaser, assignee or transferee, except that the Property Owner's liability for acts, omissions, or breaches occurring prior to the assignment and assumption shall survive the assignment and assumption. Any transfer or assignment and assumption of the Property Owner's interest in the Bank Property made without the prior written concurrence of the IRT constitutes a default pursuant to this Section of the MBI and the IRT may take action accordingly.

- c. In accordance with Instrument modifications per 33CFR332.8(g), the Bank Sponsor may sell or convey its interest in the Bank at any time, provided that no uncured event of default exists, Bank Sponsor is in full compliance with all requirements of this MBI (including all financial assurance requirements), and subject to an amendment as required by this Section of this MBI. If any of the financial assurances required under this MBI are not completely funded at the time the Bank Sponsor requests IRT approval of a sale or conveyance, then USACE and the IRT shall not approve such sale or conveyance unless and until either the current Bank Sponsor, or the proposed replacement Bank Sponsor, shall have provided all required financial assurances. In addition, prior to sale or conveyance, the Bank Sponsor shall provide to USACE a written agreement signed by the replacement Bank Sponsor, acceptable to the IRT in form and substance, in which the Bank Sponsor assigns to the replacement Bank Sponsor, and the replacement Bank Sponsor assumes and agrees to perform all of the responsibilities and obligations of the Bank Sponsor under the MBI. Any such sale or conveyance made without the prior written concurrence of the IRT constitutes default pursuant to this Section of the MBI and the IRT may take action accordingly.

4. Amendment and Modification

In accordance with Instrument modifications per 33CFR332.8(g), prior to Bank closure, this MBI, including its Appendices, may be amended or modified only with the written approval of the signature Parties, who may choose to withhold or deny approval. All amendments and modifications shall be fully set forth in a separate document signed by all Parties that shall be appended to this MBI.

After Bank closure, amendments or modifications to this MBI, including its Appendices, which do not impact obligations of the Bank Sponsor under this MBI must be approved in writing by the Property Owner and USACE, who may choose to withhold or deny approval. All amendments and modifications shall be fully set forth in a separate document signed by all required parties that shall be appended to this MBI.

5. Default

The Bank Sponsor and/or Property Owner shall be in default if that party fails to observe or perform any obligations or responsibilities required of it by this MBI. If the Bank Sponsor and/or Property Owner fails to remedy the default within the allotted time, USACE will take appropriate action, which includes but is not limited to, suspending Credit Sales and/or Transfers, reducing available Credits, utilizing financial assurances, and terminating the MBI. This Section shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this MBI or any remedy available under applicable State and/or Federal Law.

6. Controlling Language & Headings

The Parties intend the provisions of this MBI and each of the documents included or incorporated by reference to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this MBI conflicts with specific language in any document that is specifically stated or incorporated into this MBI by reference, the specific language within the Pre-signature sections of the MBI and the required text language shall be controlling. Any instrument Appendices, Attachment, or associated document expirations, deadlines, caveats or other conditioning language that pertains to requirements or may be construed as conflicting is included and identified in this instrument Sections 1-3 under the corresponding headings. These items are disclosed and clearly identified herein prior to the signature lines. This language is also be highlighted in the originating Appendices. The captions and headings of this MBI are for convenient reference only and shall not define or limit any of its terms or provisions.

7. Entire instrument

This MBI, and all appendices, schedules and instruments referred to in this MBI, constitute the final, complete, and exclusive statement of the terms of the instrument by the Sponsor. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section II.J (Amendment and Modification). Sponsor acknowledges that no representation, inducement, promise oral or otherwise, has been made by anyone acting on behalf of the sponsor unless the same has been embodied herein.

8. Successors and Assigns

This MBI and each of its covenants and conditions shall be binding on and shall inure to the benefit of the sponsor and any USACE approved respective successors and assigns subject to the limitations on sale, assignment, transfer and conveyance set forth in this MBI.

9. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this MBI to be invalid or unenforceable, in whole or in part, for any reason or as to any Party, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this MBI would be defeated by loss of the invalid or unenforceable provision or its invalidity or unenforceability.

10. Notices

- a. Any notice, demand, approval, request, or other communication permitted or required by this MBI shall be in writing and deemed given when written acknowledgement is received for required submittals.
- b. Any responsible party may change its notice address by giving notice of change of address to the USACE in the manner specified in this Section. Additional party notification requirements are included in Appendix A.

Bank Sponsor:

[NAME]
[ADDRESS]
Attn:
Fax:

[Insert: Property Owner] [NAME]
[ADDRESS]
Attn:
Fax:

I. TERMINATION OF THIS INSTRUMENT

- 1. If USACE determines that the Sponsor is in material default of any provision of this Instrument, USACE may notify the Sponsor that the sale or transfer of any credits will be suspended until the appropriate deficiencies have been remedied.
- 2. Upon notice of such suspension, the Sponsor agrees to immediately cease all sales or transfers of credits until USACE informs the Sponsor that sales or transfers may be resumed. Should the Sponsor remain in default, USACE may terminate the Instrument and any subsequent Bank operations.

3. Upon termination, the Sponsor agrees to perform and fulfill all obligations under this Instrument relating to credits that were sold or transferred prior to termination to ensure that the compensatory mitigation they are obligated to provide is maintained.
4. USACE may void its recognition of the Bank and terminate the Sponsor's future participation in this Instrument for misrepresentation, misapplication, misappropriation, improper management, non-disclosure of pertinent information or non-compliance with the terms of this Instrument by the Sponsor.
5. Nothing in this Section is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to USACE in the event of default by the Sponsor. Further, no language in this instrument limits any inherent USACE authority.

J. BANK CLOSURE

1. Upon Bank closure, no further Credit Sales and/or Transfers shall occur.
2. Bank closure shall be deemed to take place upon written approval by USACE following occurrence of all of the following:
 - a. All Performance Standards have been met and all Remedial Action required under this MBI have been completed as evidenced by:
 - i. Submission of all required annual reports in accordance with this MBI.
 - ii. The completion of all Remedial Action, if any, in accordance with the applicable Remedial Action plan(s).
 - iii. An on-site inspection by USACE in coordination with the IRT (as appropriate).
 - b. Either (1) The Transfer of the last authorized Credit; or (2) Bank Sponsor provides written request to USACE and USACE provides written approval of the closure.
 - c. All financial responsibilities of the Bank Sponsor have been met, including 100% funding of the Endowment Amount for no less than three years. All other applicable terms and conditions of the MBI must be met at the time of closure approval.

APPENDICES

Mitigation bank projects are comprised of many components which may require modification in the future. In order to provide clear information on these items in a manner which will allow for the Instrument to be modified with the least amount of disturbance to the overall structure of the document, each item below is being provided as separate appendices to this document.

Appendices are the original version approved if no modification date is otherwise specified on the cover page and Appendices headers. Where any language in the Appendices contradicts the text in Sections I-III of this MBI, Sections I-III will be controlling. The Appendices have been reviewed by USACE for acceptability relative to the MBI, as a whole. Any substantive changes to the proposed final draft language (as determined by USACE) of documents to be executed after USACE MBI signature may be viewed as an alteration in bad faith and the instrument invalidated accordingly. Therefore, the draft document language included herein (e.g. conservation easement, financial agreements etc.) represents the Sponsor's assurance that these documents reflect the Sponsor's current and contemporary document language intended to be executed after the MBI approval.

APPENDIX A – SIGNATURE PAGES

Signature Page: *Upon signature of the final instrument by the Sponsor and USACE (same page). USACE will coordinate for IRT signatures (on separate pages) as needed.*

Pursuant to 18 U.S.C. Section 1001, by signing this document, each signatory understands that they have full legal authority and are fully bound by all applicable penalties for any false or misleading statements and that no changes were made to the documents without prior written approval by USACE.

SPONSOR: *(Name of Sponsor e.g. MITIGATION BANKING INC.)*

(Name of the Sponsor's Legal Signatory)

Date

(Title)

LANDOWNER: *(Full legal name of surface owner)*

(Name of Landowner's Legal Signatory)

Date

(Title)

U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

Nicholas Laskowski, P.G.
Chief, Regulatory Division

Date

Signature Page:

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6

Charles W. Maguire
Director, Water Division

Date

Signature Page:

USDA-Natural Resources Conservation Service

Kristy Oates
State Conservationist

Date

Signature Page:

TEXAS PARKS AND WILDLIFE DEPARTMENT

David Yoskowitz, Ph.D.
Executive Director

Date

Signature Page:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Robert Sadler
Director, Water Quality Division

Date

Signature Page:

TEXAS GENERAL LAND OFFICE

Dawn Buckingham, M.D.
Land Commissioner

Date

Signature Page:

U.S. FISH AND WILDLIFE SERVICE (If applicable)

Date

Chuck Ardizzone
Project Leader - Texas Coastal and Central Plains Ecological Services

or

NOAA - NATIONAL MARINE FISHERIES SERVICE (If applicable)

Date

Andy Strelcheck
Southeast Regional Administrator

CURRENT ORGANIZATIONAL DOCUMENTS

APPENDIX B – FIGURES

- Figure 1: Project Location
- Figure 2: Final USACE Verified Delineation Graphic (including data point locations)
- Figure 3: Final USACE iHGM Verification Graphics
- Figure 4: Project Boundary/Site Map
- Figure 5: Regional Significance Map
- Figure 6: U.S. Geologic Service (USGS) Topographic Map
- Figure 7: LiDAR Map to appropriate scale and separate DEM(s) to 6” contours
- Figure 8: National Wetland Inventory (NWI) Map
- Figure 9: Natural Resource Conservation Service (NRCS) Web Soil Survey Hydric Rating by Map Unit Map
- Figure 10: National Hydrography Dataset (NHD) Map
- Figure 11: Existing Hydrology Flow Direction Map (including all existing culverts, ditches, berms, and structures)
- Figure 12: Projected Hydrology Flow Direction Map (including all existing culverts, ditches, berms, and structures)
- Figure 13: Historic Aerial Imagery (images depicting site changes over time, w/ oldest available & most recent)
- Figure 14: Existing Vegetative Communities Map
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- Figure 16: Baseline Transect Orientation & Photo Stations
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- Figure 19: Target Vegetative Communities Map
- Figure 20: Proposed Flow Map
- Figure 21: Proposed Hydrologic Improvement Structure Location Map
- Figure 22: 80% (min) Construction Plans (plan view & cross-sectional drawings depicting all proposed work & acreage of dredge/fill in WOTUS, all staging areas, planting locations, tree thinning/removal locations, pine bed breaching/leveling locations, w/ existing and proposed inverts for all structures & ground elevations)
- Figure 23: Prescribed Burn Unit Map (including location & acreage of fire breaks)
- Figure 24: Invasive/Exotic Treatment Locations and Treatment Method Map
- Figure 25: Security Measure Location Map (gates, signage, cameras, fencing, etc.)
- Figure 26: Monitoring Location Map (including transect, well, photo, soil monitoring, etc.)

APPENDIX C – SERVICE AREA DESCRIPTION

The geographic primary, and secondary service areas for proposed wetland and stream mitigation banks will be determined utilizing watersheds based on the 8-digit HUC and the Level III Ecoregions of Texas (Omernik 2004).

The primary service area is defined as the entire 8-digit HUC within which the mitigation bank is located (regardless of Ecoregion). The secondary service area is defined as any 8-digit HUC (or portion thereof) adjacent to the primary service area and located within the same Level III Ecoregion as the mitigation bank. All secondary service areas must be located within the same major river basin as the primary service area (San Jacinto, Sabine, Neches, Trinity, Brazos, Colorado, etc.).

Ratios for service areas will generally be as follows: Primary Service Area 1:1 and Secondary Service Area 1.5:1. Specific service areas may be developed for individual banks or banks with estuarine credits on a case-by-case basis.

For tidal credits: See attached pre-approved Tidal Service Area Map as applies to this bank location respectively.

The service area is the watershed, ecoregion, physiographic province, and/or other geographic areas within which the mitigation bank is authorized to provide compensatory mitigation required by DA permits. Service areas must be appropriately sized for each credit type to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area respectively consistent with the “watershed approach”(ref 33CFR332).

The primary service area for the (name of bank) is identified as the (name of HUC) USGS 8-digit HUC (insert 8digit number). The primary service area includes portions of (list County(s)) Counties. Impacts occurring within the primary service area shall be debited on a 1 : 1 basis.

The secondary service area for the (name of bank) is identified as the (name of HUC) USGS 8-digit HUC (insert 8digit number). The secondary service area includes portions of (list County(s)) Counties. Impacts occurring within the secondary service area shall be debited on a 1.5 : 1 basis (see map attached as Fig (X) Appendix B).

The Service Area map (attached after this page) shall include all relevant HUC, Ecoregions, etc. and includes all relevant information in the legend.



2024-08-29 SWG SA
MAP w mod.kmz

Tidal Service Area Map:

APPENDIX D – GOALS AND OBJECTIVES

The first step of a mitigation project is to identify the goals and objectives. The goals and objectives are expected to follow the SMART guidance. They are expected to be Specific, Measurable, Achievable, Realistic, and Timely. Utilizing the “USACE Galveston District Mitigation Bank Credit Classification Categories”, identify the credit Classification Category(ies) anticipated to result from the proposed activities within the identified Community Type(s). Identify the acreage of each proposed target community anticipated to result from the proposed activities in accordance with the information pertaining within the Work Plan (Appendix I). Identify the proposed methods for establishing the mitigation bank in accordance with the regulations at 33 CFR 332.2 and to support previous specifications in this instrument. There are four methods of carrying out compensatory mitigation projects:

1. Restoration – divided into two categories:
 - a. RE-ESTABLISHMENT (gain in aquatic resource area and functions),
 - b. REHABILITATION (gain in functions only),
2. ENHANCEMENT (gain in selected aquatic resource function/s, may cause decline in other functions),
3. ESTABLISHMENT (creation, gain in aquatic resource area and functions), and
4. PRESERVATION (no gain in aquatic resource area or functions).

Use of the terms (shown in all capital letters above) to identify the methods proposed to be utilized for the proposed project is mandatory.

Identify the aquatic resource functions that will be restored or enhanced by the proposed project. (For example, sediment retention, nutrient attenuation, wildlife habitat, etc.). Conversely, describe any aquatic resource functions that may be lost or negatively impacted by the proposed project (see Enhancement above).

GOALS AND OBJECTIVES

- A. **GOAL** - Clearly defined project goal(s) should provide the intended results of the mitigation project in terms of aquatic ecosystem functions and hydrologic conditions within a watershed context. A goal identifies what the mitigation project is trying to accomplish, i.e. what the end product will be.

Example Goal:

The overall goal of XXXMB is to [preserve, establish, rehabilitate, re-establish, and/or enhance] approximately XXX acres of upland and wetland ecosystems to ultimately improve fish and wildlife habitat use/connectivity and the overall integrity of the communities within the XXX watershed.

- B. **Objectives** - Project objectives identify the specific mitigation activities that are proposed to be undertaken in order to meet the goal(s) of the mitigation project. The objectives include a list of specific, measurable outcomes for the proposed mitigation activities. These outcomes

will be used to demonstrate whether or not the goals of the mitigation plan have been achieved. One goal may have several objectives, but each objective is tied to a particular goal.

When listing the specific elements of the objectives, if more than one goal has been identified, please indicate which goal each element is tied to. Objectives should include the following information: (not all inclusive):

- A description of the resource type(s) and amount(s) that will be provided.
- The method (Rehabilitation, Re-establishment, Enhancement, Establishment, Preservation) (per information noted above) to be utilized for the project.
- How the anticipated functions of the mitigation project will address watershed needs.

Each existing community assessment area (which may consist of numerous polygons on-site) needs to have specific objectives describing the proposed mitigation activities to be accomplished and the desired resulting target assessment area community.

• Example Objectives:

1. Enhancement of XXX acres of Herbaceous Scrub-Shrub through removal of exotics, removal of shrubs, and planting of native FACW and OBL species consistent with the included planting plan.
2. Re-establishment of hydrology to 200 acres of isolated forest will be accomplished through filling 500 linear feet of on-site ditches and raising the invert of two culverts that drain water off-site by 8 inches which will result in a sustained water table within 12" of the surface for extended periods within 200 acres, assessment area W1.

APPENDIX E – SITE SELECTION

The (BANK NAME) Mitigation Bank project, encompassing (***) acres, is located [Provide general information here to give geographic boundaries-EXAMPLE: north of U.S. Highway 90, west of Highway-146, south of Trinity River Wildlife Refuge, and contiguous with the southeastern shore Trinity River.] More specifically, the proposed project is located in [Section/s *, Township * south/north, Range * east/west, (repeat as appropriate)]; in **** County, near [city, town, municipality], Texas (LAT:*****, LONG:****).

A MBI must provide a description of the factors considered during the site selection process (33 CFR 332.4(c)(3)). Selecting an appropriate site helps ensure the mitigation project will provide the desired functions and be ecologically effective over the long term. A site should be selected where mitigation activities can provide enough increase in functions to compensate for the functions lost to wetland impacts and it should also be sustainable over the long term. Site selection should also consider whether the proposed project location has been identified in or is consistent with local & regional watershed plans, sub-area management plans, habitat management plans, & resource inventories. Wetlands are dynamic systems whose existence depends on a variety of environmental factors (physical, chemical, and biological) that are limited to specific locations in the landscape.

Factors considered in choosing site include:

A. Source of water and the resulting water regime at the proposed site. [Water is the most critical environmental factor in selecting a mitigation site. Likewise, establishing the correct water regime is perhaps the most important factor in a successful project. Failure to have an adequate and self-sustaining source of water is a major cause of failure for compensatory mitigation projects.]

B. Type and condition of soil on the site. [Soil is another critical factor that affects wetland functions and is therefore important in selecting a site for compensatory mitigation. Soil affects a site's ability to retain water, support plant communities, and to provide certain functions (e.g., nutrient transformation and trapping pollutants)].

C. Position of the property in the landscape. [Consideration should be given to the location of a potential site in relation to environmental processes occurring on the landscape, other wetlands, and habitats. For example, are there wetlands or other habitat areas in proximity to the potential site? If not, the potential site may not provide habitat for wildlife because wildlife cannot move to and from the wetland to other habitats.]

D. Land uses (historical, current, and future) of the site and adjacent areas. [Understanding past and current land uses can help identify both the constraints and opportunities of a potential mitigation site. Some historical land uses/management practices have long-term consequences that may reduce a project's success. For example, previous agricultural activities may have altered the flow of water (e.g., ditches and drainage tiles) which could influence the water source for the site. This could be either an obstacle or an advantage allowing opportunities for re-establishing or rehabilitating hydrologic processes. On the other hand, future adjacent land uses could influence the long-term management and viability of the project. In order to sustain functions in the long term, a proposed mitigation site should not conflict with the existing and projected/future land uses. The mitigation project should also be consistent with existing land-use plans and zoning codes. Therefore, it is important to characterize all of these land uses to determine how they will affect the proposed mitigation efforts.]

E. Presence of federally listed species. [Provide any information related to federally listed species found on or utilizing the proposed Bank site. Describe the benefits of the mitigation project on those species (e.g., habitat provided, food source, corridor, etc.).]

F. Presence of existing corridors to wildlife habitats (existing wetlands, natural areas or other aquatic sites). [Landscape connectivity may be critical for the persistence of some native species and to provide wildlife habitat. If applicable, the mitigation proposal should identify means to protect an unprotected corridor, or provide the plan for removing any barrier that hinders the movement of wildlife in a corridor.]

G. Existing or potential vegetated buffers. [Buffers play an important role in supporting and maintaining wetland functions. The width and characteristics of a buffer needed to protect a wetland mitigation site depend to a great extent on the functions the site is expected to provide and on the current and future condition (i.e., land uses) of the surrounding landscape. The mitigation proposal should identify adjacent upland or other habitats that can provide, or be developed to provide, a buffer of sufficient width to protect the target aquatic resource functions for the long term.]

H. Extent of invasive species on the site as well as seed sources that might be nearby or upstream. [In most cases, the potential mitigation site should provide a good opportunity for establishment of vegetation appropriate for the ecoregion in which the project is located. This means that invasive species are of special concern. Choosing a site dominated by invasive species can present challenges. The ability to control invasive species at a site will be limited if the site itself or its surrounding areas are heavily infested with invasive species. In this case, intensive and long-term maintenance will be required to control the unwanted species at a minimum. The mitigation plan should identify target invasive species, located on the bank site and on adjacent lands, and describe all required management and monitoring activities necessary to eliminate the species or reduce and maintain the species to a specified level on the site. Existing native and non-native seed sources should be evaluated.]

Along with the information above, provide detailed information about the size (acres) and location of the site (i.e. lat/long coordinates near the center of the site, county, section, township, range, nearby road crossings, etc.) and a general description of the surrounding property with regards to its current, and any known future, uses. A location map, identified as Figure 1 in Appendix B Figures, should clearly show the location of the site in relation to nearby towns, communities, water features, and landmarks. The names of each of these should be shown on the map and the distance from the site should be easily determined (for example, the scale of the map should be displayed.)

APPENDIX F – SITE PROTECTION/CONSERVATION EASEMENT

The site protection instrument is required to ensure that all requirements of the Instrument are fulfilled, and the Bank is protected in perpetuity consistent with the terms and conditions set out in the Instrument. The site protection instrument must include a legal description of the property along with a survey of the property. With few exceptions, a Conservation Easement (CE) will be required as the site protection instrument.

This Appendix includes a signed Letter of Intent from the proposed CE holder.

The final draft CE includes provisions to protect and defend the CE in perpetuity.

The following page provides an SWG pre-Approved Draft CE that meets the expectations of this district for a sufficient Site Protection Instrument.

under authority of Section 404 of the Clean Water Act (33 USC § 1344, et seq.) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC § 403, et seq.). Any uses of the Property that may impair or interfere with these Purposes of the Conservation Easement are expressly prohibited.

E. The preservation of the Property is a condition of the Permit, required to mitigate for unavoidable adverse impacts to waters of the United States. Grantor and Grantee agree that third-party rights of enforcement shall be held by the USACE, Galveston District, and any successor agencies, and that such rights are in addition to, and do not limit, the rights of enforcement under the Permit and/or MBI.

Agreement:

NOW THEREFORE, for good and valuable consideration paid by Grantee, the receipt and legal sufficiency of which are hereby acknowledged by Grantor, and in consideration of the covenants, mutual agreements and conditions herein contained, Grantor has TRANSFERRED, BARGAINED, GRANTED, SOLD, CONVEYED, ASSIGNED, SET OVER and DELIVERED, and by these presents does TRANSFER, BARGAIN, GRANT, SELL, CONVEY, ASSIGN, SET OVER and DELIVER, to Grantee a conservation easement on, over, under, across, along and through the Property on the terms set forth herein, together with all other rights reasonably necessary or desirable to accomplish the objectives of the Mitigation Plan and the rights granted under this Agreement (the "Conservation Easement"), subject to the following terms, reservations, covenants, limitations and exceptions:

1. **Duration of Easement.** The Conservation Easement shall be perpetual. The Conservation Easement is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, and Grantor's successors, assigns, lessees, agents, and licensees.

2. **Property Description.** In addition to the metes and bounds legal description of the Property set forth in Exhibit "A" and incorporated herein by reference for all purposes are metes and bounds surveys of the Property by a Texas Registered Professional Land Surveyor. In connection with the application for the Permit, Grantor has previously provided to the USACE a copy of a wetland survey map which delineates all waters of the United States, including wetlands, within the Property. In addition to the wetland survey, Grantor has also provided photographs of the Property.

3. **Present Condition of the Property.** The wetlands, scenic, resource, environmental, and other natural characteristics of the Property, and its current use and state of improvement, are described in Section ____, Appendix ____ of the Mitigation Plan dated ____, prepared by Grantor and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both Grantor and Grantee have copies of this report. It will be used by the parties to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

4. **Prohibited Activities.** Any activity on, or use of, the Property inconsistent with the purpose of the Conservation Easement is prohibited. The Property shall be preserved in its natural condition and restricted from any development that would impair or interfere with the conservation values of the Property (except as expressed in the MBI). Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted, or reserved as indicated hereunder:

(a) **Vegetation:** There shall be no removing, destroying, cutting, trimming, mowing, shredding, burning, harming, or altering of any vegetation, or disturbing or changing in any way the natural habitat existing on the Property except as expressly allowed in the MBI and MP and in order to fulfill the objectives and standards of that plan. Grantor may remove diseased, invasive or non-native trees, shrubs,

or plants; cut and mow firebreaks and existing road rights-of-way; and remove trees, shrubs, or plants to accommodate maintenance of permitted improvements or other uses expressly permitted under the terms of this Conservation Easement. With written approval of Grantee and Third Party (ies), Grantor may remove potentially invasive plants from the Property for habitat management purposes consistent with the intent of this Conservation Easement. Except as necessary for activities expressly permitted in this Conservation Easement and with written permission from Grantee and Third Party (ies), there shall be no farming, tilling, or destruction and removal of native vegetation on the Property. There shall be no planting of invasive or potentially invasive non-native plant species anywhere on the Property. Grantee will provide a list of potentially invasive species upon request. There shall be no use of pesticides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as expressly allowed in the MBI/MP.

(b) Predator and Nuisance Species Control: Grantor, with written approval of Grantee and Third Party (ies), shall have the right to control, destroy, or trap predatory, exotic, invasive, and problem animals that pose a material threat to people, livestock, other animals, or habitat conditions in accordance with applicable state and federal laws and requirements.

(c) Uses: No agricultural, residential or industrial activity shall be conducted upon the Property. There shall be no storing or dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property that may negatively impact or be detrimental to the Property or to the surface or subsurface waters of the Property. Livestock animals shall not be allowed on the Property. Any right of passage for any activity or use set forth in this paragraph is also prohibited.

(d) Subdivision: The Property may not be further divided, subdivided, or partitioned.

(e) Topography: There shall be no change in the topography of the Property except as expressly provided in the MP. There shall be no surface mining, filling, excavating, grading, dredging, mining or drilling upon the Property, and there shall be no removing of topsoil, peat, sand, gravel, rock, minerals or other materials from the Property except to restore natural topography or drainage patterns.

(f) Soil or Water Degradation: There shall be no use of, or the conducting of any activity on, the Property that causes or is likely to cause soil degradation, erosion, depletion or pollution of, or siltation on, any surface or subsurface waters of the Property, and there shall be no change to the surface or subsurface hydrology of the Property in any manner. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding, or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Property by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. It is understood that with respect to the prohibited activities set forth in this Section 4(f), Grantor may not and will not engage in any such prohibited activities on the Property or on any other real property owned by Grantor and adjacent to the Property (the "Grantor Land").

(g) Construction: There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock, or any other temporary or permanent structure or facility or any other man-made structures on the Property except in connection with the repair, maintenance, or replacement (but not expansion) of any structures and other improvements located on the Property as of the Effective Date of this Agreement. Grantor shall have the right to maintain, renovate, and repair existing buildings, structures,

fences, pens, wells, dams and reservoirs, utilities, soft-surface roads, and other improvements, and in the event of their destruction, to reconstruct any such existing improvement with another of similar size, function, capacity, location, and material.

(h) Roads: There shall be no construction of roads, trails, or walkways on the Property; nor any enlargement, widening, improvement or modification to any existing roads, trails, or walkways or any other rights of way on the Property. Maintenance of existing roads shall be limited to removal of dead vegetation, necessary pruning or removal of obstructing trees and plants, and/or application of permeable materials (e.g., sand, gravel, and crushed stone) as necessary to correct or prevent erosion.

(i) Waters: There shall be no polluting, altering, manipulating, depleting or extracting of surface or subsurface water (including, but not limited to, ponds, creeks or other water courses) or any other water bodies on the Property, and there shall be no conducting or (to the extent in Grantor's control) allowing any entity or person to conduct activities on the Property that would be detrimental to water purity or that alter the natural water level or flow in or over the Property (including, but not limited to, damming, dredging or construction in any free flowing water body, nor any manipulation or alteration of natural water courses, fresh water lake and pond shores, marshes or other water bodies). It is understood that with respect to the prohibited activities set forth in this Section 4(i), Grantor may not and will not engage in any such prohibited activities on the Property.

(j) Vehicles: Use of vehicles shall be limited to access to the site for monitoring, maintenance, fire protection/emergency action, or other approved activities, as specified in the MBI. Off road vehicular access is expressly prohibited.

(k) Easements: There shall be no granting or conveying of any easements on, over, under, across, along or through the Property, including, but not limited to, access easements and utility easements; provided, however, that pursuant to the Conservation Easement and in order to access the Property to take such actions which are consistent with the Conservation Easement and the Permit, Grantee and the USACE have the right of pedestrian and vehicular ingress and egress to and from the Property.

(l) Signage: Construction or placement of any signs, billboards, or other advertising displays on the Property is not permitted, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be placed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, to post the Property to control unauthorized entry or use, or to identify the property as being protected by this Conservation Easement.

(m) Development Rights: No development rights that have been encumbered or extinguished by this Agreement or the Conservation Easement granted herein shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

(n) Hunting: Grantor and Grantor's lessees and guests may conduct hunting, fishing or trapping activities in accordance with appropriate federal, state and local laws and restrictions that conform to terms of this Conservation Easement and the Permit and Mitigation Plan. Grantor may expressly construct hunting blinds, the size, design, location, and number of which shall be subject to Grantee's prior written approval. No non-native animal species may be introduced to the Property.

(o) Dumping: There shall be no dumping or storing of any material, such as trash, wastes, ashes, sewage, garbage, scrap material, sediment discharges, oil and petroleum by-products, leached compounds, toxic materials or fumes, or any "hazardous substances" (as hereinafter defined). For the purposes of this

paragraph, the phrase “hazardous substances” shall be defined as in the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) and/or a substance whose manufacture, processing, distribution in commerce, use, possession, or disposal is banned, prohibited, or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(p) **Other Prohibitions:** Any other use of, or activity on, the Property which is or may become inconsistent with the purposes of the Conservation Easement granted herein, the preservation of the Property in its natural condition, or the protection of its environmental systems, is prohibited.

5. **Rights Reserved to Grantor.** The Grantor expressly reserves for itself, its successors and assigns, the right of access to and the right of continued use of the Property for all purposes not inconsistent with this Agreement and the Conservation Easement granted herein, including, but not limited to, the right to quiet enjoyment of the Property, the rights of ingress and egress with respect to the Property, the right to fence the Property and to prohibit public access thereto, and the right to the right to sell, transfer, gift or otherwise convey the Property, in whole or in part, provided such sale, transfer, or gift conveyance is subject to the terms of, and shall specifically reference, the Conservation Easement. Except as may be expressly provided otherwise in this Agreement, neither this Agreement nor the Conservation Easement granted herein in any way limits, restricts or in any way affects any property of Grantor other than the Property, including without limitation, any property adjacent to, surrounding or near the Property. The rights conveyed by this Agreement and the Conservation Easement granted herein do not constitute a conveyance of a fee interest in the Property, nor of any of the mineral rights therein and thereunder. The rights retained by Grantor as set forth in this Section 5 are referred to hereinafter as the "Reserved Rights".

6. **Rights of Grantee.** Grantee or its authorized representatives, successors, and assigns, and the USACE, shall have the right to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if the Grantor or any of its successors and assigns is complying with the terms, conditions, restrictions, and Purposes of the Conservation Easement. The easement rights granted herein do not include any public access rights. Grantor shall indemnify, defend and hold harmless Grantee and its affiliates, partners, members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them from and against any and all liability, loss, cost or damage arising out of or in connection with Grantor's exercise of its rights under the Conservation Easement. Nothing construed herein shall constitute a contract with the Government or an agreement by USACE to indemnify, defend or hold harmless either Party, or any of the above-listed parties, from and against any liability, loss, cost or damage.

7. **Liens and Taxes.** Grantor shall keep the Property free of any and all liens, including, without limitation, liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, and shall upon written request by Grantee furnish Grantee with satisfactory evidence of payment.

8. **Enforcement.** In the event of a breach of this Agreement by Grantor, the Grantee, any third party or any third party working for or under the direction of Grantor or the Grantee, the Parties and the USACE (SWG Regulatory Division) shall be notified immediately.

Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to correct the conditions constituting the breach. If the conditions constituting the breach are corrected in a timely and reasonable manner, no further action shall be warranted or authorized. If the conditions constituting the breach are such that more than thirty (30) days are required to cure the breach, Grantor shall not be in default hereunder if Grantor undertakes the cure of such breach during the thirty (30) day period following notice of the breach and diligently pursues the cure of the breach to completion.

If Grantor fails to initiate such corrective action within thirty (30) days or fails to complete the necessary corrective action, the Grantee may enforce the Conservation Easement by appropriate legal proceedings, including an action for damages, injunctive and other relief. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive relief or other appropriate relief if the breach of any provision of the Conservation Easement is materially impairing or would irreversibly or otherwise materially impair the benefits to be derived from the Conservation Easement. Grantor and the Grantee acknowledge that under such circumstances, damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with the Conservation Easement. The costs of a breach of this Agreement and the costs of any correction or restoration, including the Grantee's expenses, court costs and attorney's fees, shall be paid by Grantor. The USACE shall have the same right to enforce the terms and conditions of the Conservation Easement as the Grantee.

Any forbearance or failure on the part of the Grantee or the USACE to exercise its rights in the event of a violation shall not be deemed or construed to be a waiver of either Grantee's or the USACE's rights hereunder. Nor shall forbearance or failure to enforce any covenant or provision hereof shall discharge or invalidate such covenant or provision or any other covenant, condition, or provision hereof or affect the right to the Grantee and the USACE to enforce the same in the event of a subsequent breach or default.

Nothing contained in this Agreement or the Conservation Easement granted herein shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Property, or for any violation of any covenant or provision of this Agreement, resulting from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from any of such causes.

9. **Duration.** The burdens of this Agreement and the Conservation Easement shall run with the Property and shall be enforceable against Grantor and all future interests in and to the Property in perpetuity. Grantor agrees that the future transfer or conveyance of any interest in or to the Property shall at all times be subject and subordinate to the terms, conditions, restrictions and purposes of the Conservation Easement and a reference to this Agreement shall be included in each instrument of transfer or conveyance of any interest in or to the Property from and after the Effective Date; provided, however, that nothing in this Agreement shall be construed to in any way limit Grantor's ability to freely sell, convey, assign, or otherwise transfer the property interest and rights, or any portions thereof, granted by this Agreement to any other person or entity.

10. **General Provisions.**

(a) **Notices.** Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor:

To Grantee:

To the USACE: Regulatory Division
 Galveston District
 U.S. Army Corps of Engineers

P. O. Box 1229
Galveston, Texas 77553

(b) Severability. In the event any provision of this Agreement is determined by the appropriate court to be void and unenforceable, all remaining terms shall remain valid and binding.

(c) Agreement Binding. The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of Grantor, Grantee and their respective executors, administrators, heirs, legal representatives, successors and assigns. Notwithstanding the foregoing, Grantee not may assign (i) this Agreement, or (ii) any rights or interests in this Agreement, without the prior written approval of Grantor and the USACE.

(f) Warranty. Grantor warrants, covenants, and represents that it owns the Property in fee simple, and that Grantor either owns all interests in the Property which may be impaired by the granting of the Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to the Conservation Easement. Grantor further warrants that Grantee shall have the use of and shall enjoy all the benefits derived from and arising out of the Conservation Easement, and that Grantor will warrant and defend title to the Property against all persons claiming by, through or under Grantor, but not otherwise.

(g) Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement and the Conservation Easement in any deed or other legal instrument that transfers any interest in all or any portion of the Property. Grantor agrees to provide written notice to Grantee and USACE of such transfer at least thirty (30) days prior to the date of the transfer. Grantor and Grantee agree that the terms of the Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof and shall not be amended, modified or terminated without the prior written consent and approval of the USACE.

(h) Assignment or Transfer. The parties agree that the benefits of the Conservation Easement are in gross and assignable by the Grantee; provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns the Conservation Easement, the organization receiving the interest will be a qualified holder under applicable state and federal law. The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this Agreement.

(i) Obligations of Ownership. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with any federal, state, or local laws, regulations and permits that may apply to the Property in connection with the exercise by Grantor of the Reserved Rights.

(j) Extinguishment. In the event that changed conditions render impossible the continued use of the Property for the conservation purposes as contemplated by this Agreement, the Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding in any court of competent jurisdiction.

(k) Eminent Domain. Whenever all or any part of the Property is taken in the exercise of eminent domain so as to substantially abrogate the restrictions imposed by this Agreement and the Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

(l) Proceeds. The Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of the Property is sold, exchanged, or involuntarily converted following an extinguishment of all or any portion of the Conservation Easement, or following the exercise of eminent domain, Grantee shall be entitled to the fair market value of the Conservation Easement. The parties stipulate that the fair market value of the Conservation Easement shall be determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the Effective attributable to improvements) by the ratio of the value of the Conservation Easement as of the Effective Date to the value of the Property (without deduction for the value of the Conservation Easement) at the time of this grant. The values as of the Effective Date and as referenced in this Section 9(l) shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended (whether eligible or ineligible for such a deduction). Grantee shall use its share of any proceeds in a manner consistent with the purposes of the Conservation Easement (i.e., all proceeds from any such action will be expended only for purchase and protection in perpetuity of another property to replace any loss of aquatic resources that may have occurred.

Nothing herein shall constitute a contract with the Government or a grant of real property or proceeds to the USACE.

(m) Failure of Grantee. If at any time Grantee is unable or fails to enforce the Conservation Easement, or if Grantee ceases to be a qualified grantee, and if within a reasonable period of time after the occurrence of any of such events, Grantee fails to make an assignment of its interest pursuant to the Conservation Easement, then Grantee's interest shall become vested in another qualified grantee in accordance with and as provided by an appropriate and final, non-appealable proceeding in a court of competent jurisdiction.

(n) Amendment. This Agreement and the Conservation Easement granted herein may be amended, but only in a writing signed by the Parties hereto; provided, however, that such amendment does not affect the qualification of the Conservation Easement or the status of the Grantee under any applicable laws, is consistent with the conservation purposes of this Agreement and the Conservation Easement granted herein, and does not conflict with the Permit No. _____ or its related Mitigation Plan. Sixty (60) days advance notice of such amendment shall be provided to the USACE.

TO HAVE AND TO HOLD the Conservation Easement for the purposes herein described, subject, however, to the matters herein set forth and to all matters of record with respect to the Property, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself, its successors and assigns to warrant and defend the Conservation Easement and the rights granted herein, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

[SIGNATURE PAGE FOLLOWS]

EXECUTED And DELIVERED to be effective as of the Effective Date.

GRANTOR: _____

GRANTEE: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on January __, 2015 by _____,
on behalf of _____.

Name:
Notary Public, State of Texas
My commission expires:_____

Exhibit A
to
Conservation Easement Agreement

Metes and Bounds Legal Description of the Property

[TO BE PROVIDED]

Exhibit B
to
Conservation Easement Agreement

The Permit

[TO BE ATTACHED]

Exhibit C
to
Conservation Easement Agreement

Mitigation Banking Instrument

[TO BE PROVIDED]

APPENDIX G – BASELINE INFORMATION

A MBI must provide a baseline description of the ecological characteristics of the site (33 CFR 332.4(c)(5)). This must generally include an approved jurisdictional delineation of all waters of the United States according to the 1987 Corps of Engineers Wetland Delineation Manual (Manual) and any appropriate regional supplement to the Manual. The baseline information must also include a verified functional assessment (e.g., iHGM) or conditional assessment (e.g., SWG Stream SOP), as applicable, for the determination and establishment of credits to provide the required compensatory mitigation and the baseline assessment of the functions of all existing aquatic resources on the site. The following additional items should also be included: site location map; site photographs (including historic aerials); historic land use; descriptions of historic and existing hydrology; plant communities; soil description; Routine Analysis Soil Profile Test results (from accredited NELAC laboratory (e.g. Texas A&M AgriLife Extension - <http://soiltesting.tamu.edu/>); and, Sponsor's written statement as to whether or not any party or parties to the proposed bank are or have been USDA or other Federal (e.g., Wetlands Reserve Program, Conservation Reserve Program, Partners for Fish and Wildlife Program) or State Program participants.(see Baseline Report(s) Attachment C)

Provide baseline details, qualitative and quantitative, on each assessment area for each element listed below. These elements will be utilized for all future monitoring activities. Baseline vegetation, soil, and hydrology information is necessary to inform the proposed restoration, develop quantifiable performance standards, and provide the basis for the monitoring necessary to evaluate success.

Surrounding Land Use Information:

[Narrative information regarding any activities occurring in the properties surrounding the bank that may directly or indirectly have an impact on the bank site, it's development, operations, or maintenance. Appendix B includes maps & proximity information as appropriate.]

Hydrology:

[Narrative description of historical and current on-site hydrology including water flow, connectivity to downstream waters, hydrologic barriers, alterations, ditches, culverts. Please include all relevant figures in Appendix B.]

Vegetative:

[Narrative description of historical and current vegetative communities present on-site. Existing community conditions should be identified.

Existing vegetative community assemblages should be based on quantitative data collected from fixed transects/sample plots. The number and size of transects/plots

should be established in a manner that it provides accurate and representative assessments of the community types present (for all wetland and upland areas).

The representative baseline data collected will be used to inform the mitigation activity and be compared against performance standards to evaluate success during monitoring events. Representative values of the absolute percent cover of vegetation for the shrub, herbaceous and woody vine strata, the stems per acre and basal areas of the sapling and tree stratum, as well as percentage of invasive exotic species and nuisance species within assessment areas (upland and wetland) should be reported in tabular format for each Wetland Assessment Area.

Provide a thorough description of the proposed vegetation sampling methodology, including equations and calculations utilized to determine baseline community composition for the vegetative strata across transects/sample plots. Additionally, provide a schematic depicting the sampling configuration. Finally, please provide transect and assessment area sampling information as depicted in the example tables below.

Example Transect and Assessment Area Sampling Information Tables:

Wetland Assessment Area (WAA)	Acreage	Number of Transects	Canopy Acreage Sampled	Percent of AA	Shrub Acreage Sampled	Percent of AA	Herbaceous Acreage Sampled	Percent of AA

Wetland Assessment Area and Transect Number								
Transect Length								
Transect Width								
Number of Herbaceous Plots								
Area of Herbaceous Plots								
Number of Shrub Plots								
Area of Shrub Plots								

Number of Tree Plots								
Area of Tree Plots								

Vegetative strata for sampling purposes, consisting of either the four or five strata approach, according to the Atlantic and Gulf Coastal Plain Regional Supplement is defined below. Please include the strata definitions for the approach utilized in the MBI. Only one approach may be used.

Five Strata Approach:

- A. Tree Stratum: Consists of woody plants, excluding woody vines, approximately 20' or more in height and 3" or larger DBH.
- B. Sapling Stratum: Consists of woody plants, excluding woody vines, approximately 20' or more in height and less than 3" or DBH.
- C. Shrub Stratum: Consists of woody plants, excluding woody vines, approximately 3-20' in height.
- D. Herb Stratum: Consists of all herbaceous (non-woody) plants, including herbaceous vines, regardless of size, and woody species, except woody vines, less than approximately 3' in height.
- E. Woody Vines: Consists of all woody vines, regardless of height.

Four Strata Approach:

- A. Tree Stratum: Consists of woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height.
- B. Sapling/Shrub Stratum: Consists of woody plants, excluding vines, less than 3 in. DBH and greater than or equal to 3.28 ft (1 m) tall.
- C. Herb Stratum: Consists of all herbaceous (non-woody) plants, regardless of size, and all other plants less than 3.28 ft tall.

D. Woody Vines: Consists of all woody vines greater than 3.28 ft in height.

Please include figures, in Appendix B, depicting the assessment areas, location of all transects/sampling plots, the sampling scheme, vegetative communities and acreage, and location of on-site photographs. Field notes and raw data from transects/sampling plots should be included in this Appendix.

Photographs:

[Please include photographs taken in the cardinal directions at each transect monitoring location, as well as, all other established permanent photos stations. Additionally, any other relevant photographs, such as soils, hydrologic conditions, wildlife, culverts, etc. Photographs should also include lat/long, cardinal direction, and WAA information imposed.]

Topographical:

[Please provide a narrative description of on-site topography. Please include all relevant figures such as USGS topographic maps, LiDAR, etc. in Appendix B.]

Soils:

[Provide a narrative description of on-site soil conditions based on data collected during wetland delineation and transect sampling compared to USDA NRCS soil mapping and land use history. Include relevant soil maps such as the Web Soil Survey Hydric Rating By Map Unit in Appendix B, along with tabular soils data]

Wildlife:

[Provide a narrative description of on-site wildlife utilization and tabular data of observed species on site. Please include discussion of the federally-listed threatened and endangered species known to occur on-site.]

Wetland Delineation:

[A wetland delineation, utilizing federal delineation methodology, is required in order to identify the limits of aquatic resources present on-site, establish current site conditions, and develop a restoration plan. Please include the wetland delineation map figure in Appendix B and wetland delineation data sheets and associated photographs in Appendix Y. Wetland delineations must be done in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual (U.S. Army Corps of Engineers 1987) and the most current version of the Atlantic and Gulf Coastal Plain Region Supplement. If an AJD or PJD were approved by USACE for the subject Bank, please include the AJD or PJD in Appendix Y.]

APPENDIX H – DETERMINATION OF CREDITS AND PROJECTIONS OF UPLIFT

(PER SWG SPECIFIED FUNCTIONAL ASSESSMENT TOOLS)

For full verified Baseline HGMI document, see Appendix Z

This section contains a detailed description of how the functional assessments was and will be applied to the bank for uplift comparison. It also describes challenges encountered in establishing and applying the SWG HGM tool to the bank initially and for comparison to assess and project future lift potential.

A full (show your work) discussion document (including tables) is included at the end of this Appendix that provides all the necessary information for USACE to thoroughly review and QA the proposed uplift representations that contributed to the projection totals used to determine Credit Release Schedule Percentages as presented in this DMBI.

Provide a statement, using the format below:

A total of ___ potential (insert appropriate Galveston District Credit Classification) credits are proposed to be generated from the ___MB, including ___ (insert appropriate Galveston District Credit Classification) credits and ___ (insert appropriate Galveston District Credit Classification) credits (See Table 1), provided that the Bank meet the pre-determined performance standards and final success criteria. In accordance with the Final Rule for the Compensatory Mitigation for Losses of Aquatic Resources issued by the USACE and the EPA, dated April 10, 2008, these quantities are not guaranteed and can be adjusted (by USACE) downward if ecological performance standards are not met or adjusted upward if the ecological performance standards are significantly exceeded.

Include USACE verified iHGM verification/Stream Assessment in Appendix Y.

APPENDIX I – MITIGATION WORK PLAN

MITIGATION WORK PLAN **INCLUDE FULL DESCRIPTIONS & SUPPORTING SCHEMATICS**

A Mitigation Work Plan is the one of the most important aspects in the development of a mitigation banking instrument.

The Mitigation Work Plan includes a detailed itemization of all construction specifications and descriptions for both targeted wetland and uplands. These specifications are designed to meet the project specific goals and objectives. Mitigation work plan provides detailed written specifications and work descriptions for all upland and wetland assessment areas within the mitigation project and is heavily influenced by Appendix D Goal and Objectives. The plan will include, but is not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methodology for establishing desired plant communities; invasive species control; proposed grading plan, including elevations and substrate; soil management; and erosion control measures.

The Mitigation Work Plan includes detailed anticipated increases in functions and services of existing aquatic resources and their corresponding effect within the watershed (i.e. habitat diversity and connectivity, floodplain management, or other landscape scale functions).

Mitigation Activities:

The specific mitigation activity that is being proposed within each assessment area is identified herein. They include (establishment, re-establishment, rehabilitation, enhancement, preservation). Supporting data is provided to justify the proposed mitigation activity. For example, Areas proposed for re- establishment include data identifying that the area is currently upland but was historically wetland. Areas proposed for establishment must be evidenced as historically and currently to be upland.

A table is included which depicts the baseline community with acreage, the proposed mitigation activities, and target communities with acreages. This table was also utilized to represent projected bank final lift from the detailed information presented at the end of this Appendix. Example table below:

Baseline Community	Acres	Mitigation Activity	Target Community	Acres

--	--	--	--	--

Earthwork:

A detailed description is included for proposed earthwork including location of proposed earthwork, including for example specific location of staging areas (permanent and temporary), locations of temporary stockpiling of material, excavated material disposal plan, type of earthwork, type of equipment proposed to be used, erosion and turbidity controls; and timing or sequence of earthwork activities. Activities need to be identified on the construction plans with plan view and cross-sectional drawings depicting pre and post ground surface elevations and OHWM and/or bankfull indications as appropriate.

Planting:

The proposed initial and supplemental planting activities are disclosed herein including, location, type of planting (seed, bare root, containerized, etc.), plant size/height, plant species, spacing of plants, quantity (stems/acre, seeds/acre, total plants). This includes a list of ecologically appropriate plant species for each assessment area for which performance standards will be evaluated. Also included in the construction plans is a schematic depicting planting zones for all species to be planted in each applicable assessment area.

Includes specific acceptable planting lists to be used at the bank. Plant lists include scientific name, at least one regionally common name, NWPL classification and native, nuisance or invasive status. List will be further arranged by strata of mature plant.

Appendix B includes a map to where each grouping of species from the list are to be planted.

Noxious Invasive Exotic Species Control:

Invasive/Exotic species will be identified according to the Texas Department of Agriculture listed by the most current Texas Department of Agriculture Noxious and Invasive Plant List (Title 4, Part 1, Chapter 19, Subchapter T, §19.300 of the Texas Administrative Code). The specific species considered Invasive/Exotic/Nuisance species for this bank are included in Appendix FF. USACE, in coordination with the IRT, may revise the list based on evaluation of the site. Proposed treatment methodologies per species (herbicide, fire, manual removal, mechanized land clearing, etc.) and applicable maps are also included in Appendix B. Figures/Maps must include designated Wetland Assessment Areas (WAAs).

EXAMPLE NOXIOUS INVASIVE EXOTIC SPECIES CONTROL

Selective treatment of the thirty-five noxious invasive exotic species (NIES) listed by the Texas Administrative Code by the Texas Department of Agriculture Rule §19.300 (TAC) and four additional species: *Rosa bracteata*, *Colocasia esculenta*, *Ligustrum* spp., and *Poncirus trifoliata* (Appendix C), will result in improvements in native plant community composition. To accomplish this, all identifiable stems and colonies of these species will be selectively treated using standard herbicide application in accordance with herbicide labels or other treatment methodologies (mechanical, cutting, felling, removal, etc.) as may be appropriate and applicable. In all cases, reasonable efforts will be made to reduce the likelihood of damaging

native woody species during treatments.

Prescribed Burning [if applicable]:

It is recommended that the prescribed burning plan is developed in consultation with a certified prescribed fire manager. The work plan should include a detailed prescribed burn plan that includes burn methodology, burn cycle (frequency return interval), fire line location and management, burn units, burn schedule, etc. Please include description of management alternatives if prescribed burn is not able to be accomplished. Please note that the inability to conduct prescribed burns may result in credit reduction. The prescribed burn plan should identify the communities proposed for burning with burn intervals, identify the percent burn area determined to be a successful burn, and incorporate prescribed fire into performance standards, success criteria, and long-term management plan. The prescribed burn plan should include a figure depicting the burn units, location of all fire lines, and burn cycle.

Please provide discussion regarding potential restrictions or constraints to conducting prescribed burns, the burn window criteria (i.e., what suitable weather conditions are necessary in order to safely conduct a burn), and based on the burn window criteria, provide the number of suitable winter and growing season burn days anticipated per year.

Complete Hydrology Modification Plan:

The work plan includes a complete description of all proposed hydrologic improvements including low water crossings, culverts, ditch plug/fill, water control structures, well decommissioning, cessation of irrigation, rerouting of flow, etc.

It includes hydrology study reports and maps of before & post construction hydrology flow paths across the site.

Also included the construction and hydrology plans are cross sectional and plan view drawings depicting all proposed hydrologic restoration structures/activities, pre and post invert elevations, and extent of hydrologic restoration per assessment area.

Baseline conditions are necessary to inform the proposed mitigation activities and to establish measurable performance standards. At least one year of water table monitoring to determine baseline conditions is recommended for sites that include the establishment, re-establishment, or enhancement of hydrology. It is highly recommended that the proposed number and location of wells is coordinated with the USACE project manager prior to installation. Failure to coordinate with the USACE Project Manager or insufficient baseline hydrology data could result in project delay and the need for additional baseline monitoring.

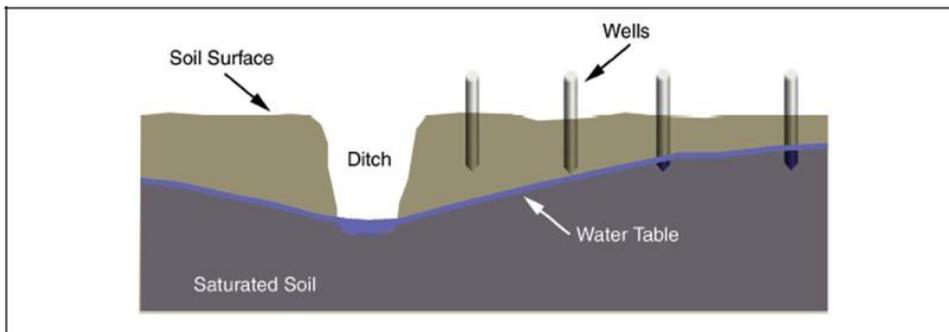
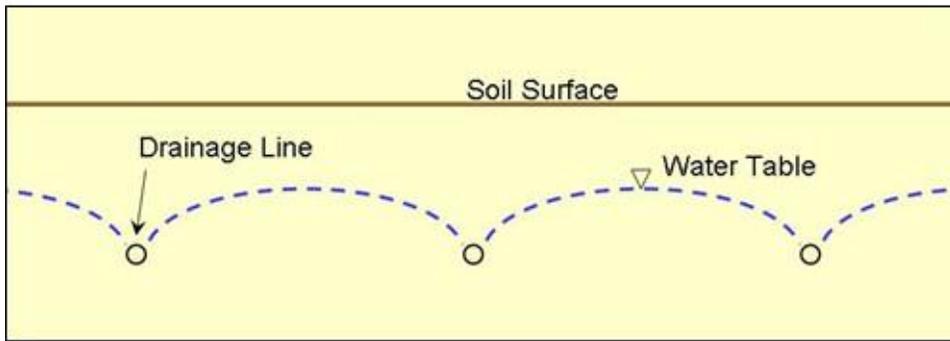
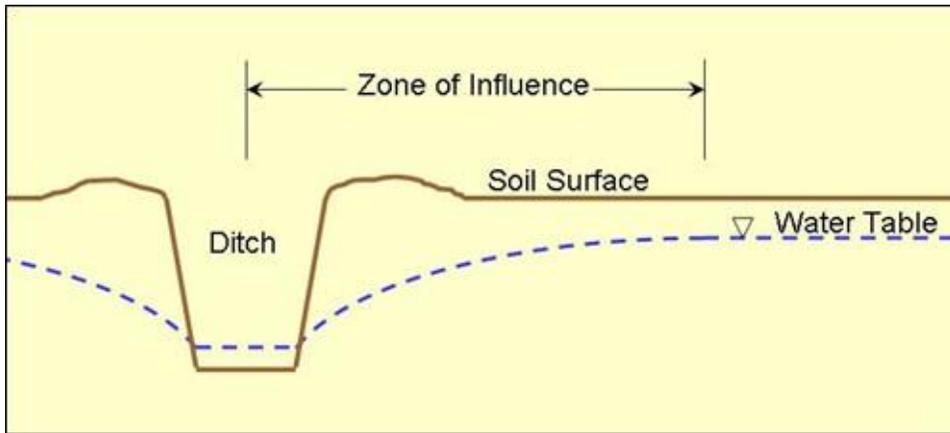
Wells should be installed and data reported according to the USACE Technical Standard for Water Table Monitoring of Potential Wetland Sites (2005). This includes providing the associated soil characterization data form and monitoring well installation data form (from Appendix A & B of the technical standard) for each well. Data should be presented in graphical format depicting the water table in relation to

ground surface elevation along with daily precipitation totals. Please also provide raw water table data in an Excel spreadsheet. Additionally, provide an analysis of rainfall normality using the USACE Antecedent Precipitation Tool (APT). The link to the APT is under the “Climate and Precipitation Data and Tools” heading at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/techbio/> The APT Help Page (the orange question mark in the top-right portion of the APT interface) leads to detailed instructions describing how to read and generate precipitation analyses using the APT.

If hydrologic modeling is proposed to establish baseline hydrology, inform mitigation activities, and monitor for successful restoration, then please coordinate with the USACE project manager to discuss appropriate modeling parameters to be utilized prior to executing the model. A discussion of the modeling and presentation of the results with associated tables and figures should be included in the MBI once a modeling approach has been agreed upon. Please do not include the hydrologic modeling report in the MBI as they can be hundreds of pages and considerably increase the file size and functionality. The hydrologic modeling report should be provided under separate cover and referenced in the MBI discussion.

The USACE Technical Standard for Water Table Monitoring of Potential Wetland Sites and additional guidance regarding water table monitoring project design can be found on RIBITS at <https://ribits.ops.usace.army.mil> Once on the RIBITS homepage, select "Galveston" from the "ALL DISTRICTS" drop down menu located in the lower left corner of the screen. Once the district filter has been selected, click on the “Banks & ILF Establishment” link located in the Navigation box (upper left corner). Both documents are located under the “Miscellaneous Technical Documents” section. If you are unable to access the web address, an electronic copy of either document can be provided upon request to the Galveston District Mitigation Review Team.

For sites with impaired hydrology that is proposed for restoration, it is essential that the extent of impaired hydrology is determined. For example, a site that has been drained by ditches or drain tiles one would need to determine the zone of influence that the ditches or drain tiles have on site hydrology. This can often be determined by installing monitoring wells perpendicular to the ditch into the assessment area (see below examples).



Construction Implementation Timetable:

Please provide a discussion and table depicting the proposed estimated construction/implementation timetable per assessment area.

APPENDIX J – MAINTENANCE PLAN

MAINTENANCE PLAN

This Appendix includes general discussion and specific details regarding the Maintenance plan including when it initiates.

Funding for the maintenance plan is identified in the implementation financial assurances Appendix M.

A maintenance plan is defined as a description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed. Initial construction is considered complete when all activities associated with the post-construction credit release have been completed and approved by USACE.

The maintenance plan includes descriptions, schedules, treatment frequency, anticipated repairs, and inspection frequency for the following items (at minimum):

- Prescribed burns
- Invasive/Exotic/Nuisance species treatment and management (See Additional information on Invasive/Nuisance Control efforts in appendix FF)
- Re-planting
- Site security (signage, fencing, surveillance, etc.)
- Hydrologic monitoring and control structures
- *Feral Hog management
- Tree thinning and shrub reduction
- Any other activities required for routine maintenance of the project

*Feral Hog Management:

If feral hog activity has the potential to adversely affect the project site's ability to generate credits, then a hog management plan will be required. Effective methods of hog control range from commercially available large-scale traps to modified home-made versions with similar capabilities to scale while others continue to rely on standard hunting techniques.

APPENDIX K – PERFORMANCE STANDARDS

PERFORMANCE STANDARDS

In accordance with 33 CFR 332.5 performance standards shall be ecologically based criteria that will be used to determine whether the bank is achieving its objectives. At a minimum, in order for a Bank to be considered acceptable for mitigating wetland impacts associated with DA permits, the vegetation, soils, and hydrology within the Bank must meet the wetlands criteria described in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0 (Nov 2010) (Supplement); and/or stream criteria described in the MWP. Credits will be established as Functional Capacity Units (FCUs); or SWG Stream Credits. Wetland Assessment Areas (WAAs) that do not meet minimum requirement to be classified as wetlands, will result in a reduction of credits/FCUs from the ledger. The following list of performance standards (PS) provides the minimum level of success to comply with the terms of this MBI. These are examples of PS generally required respective to credit type, however USACE in coordination with the IRT will evaluate and determine the project specific requirements and PS for each proposal. Reference wetlands are preferred for evaluating functional lift with iHGM, informing proposed restoration (planting plans, vegetative community compositions, hydroperiods) and developing comparable/measurable performance standards.

General PS:

1. The Sponsor shall record a conservation easement with the (name) County Clerk that has been approved by the USACE in coordination with the IRT and provide a copy of the recorded conservation easement to the USACE SWG Regulatory Division Chief, prior to initial credit release.
2. The Sponsor shall establish and execute financial assurances, approved by the USACE in coordination with the IRT, and provide copies of the respective executed documentation to the USACE SWG Regulatory Division Chief prior to initial credit release.
3. The Sponsor shall establish and execute the long-term management (fund/agreement etc.), approved by the USACE in coordination with the IRT, and provide copies of the respective executed documentation to the USACE SWG Regulatory Division Chief prior to initial credit release.
4. The Sponsor shall fully fund the long-term management endowment and provide copies of the respective documentation to the USACE SWG Regulatory Division Chief, within (0-7) years of the Bank Authorization Date.
5. Within two (2-3) calendar years of the Bank Authorization Date, the Sponsor must provide the USACE and IRT an as-built report with plan drawings (to scale) that include elevations and horizontal distances, and a signed statement demonstrating that construction and planting is complete and compliant with the MBI.

6. Deep-rooted sedge (*Cyperus entrerianus*), Macartney rose (*Rosa bracteata*), trifoliolate orange (*Poncirus trifoliata*), privets (*Ligustrum spp.*), elephant ear (*Colocasia esculenta*), cogon grass (*Imperata cylindrica*), Chinese tallow (*Triadica sebifera*), and all species listed by the most current Texas Department of Agriculture Noxious and Invasive Plant List (Title 4, Part 1, Chapter 19, Subchapter T, §19.300 of the Texas Administrative Code) must comprise no more than five percent (5%) absolute cover of the herbaceous, shrub-sapling, and tree strata.
7. Sponsor shall submit all monitoring, transaction, and other reports on time in accordance with the requirements of this MBI.
8. The Sponsor shall conduct the hydrologic improvements in accordance with the specifications of the MBI. To assess hydrologic improvements, the Sponsor will install, maintain, and monitor continuous water level recorders at locations indicated in the MWP. Hydrographs produced from data collected will be correlated to the field indicators sampled and be provided in all monitoring and credit release reports. This will include documentation of precipitation conditions (normal, wet, dry) during annual monitoring periods using a National Food Security Act Manual WETS analysis, the Palmer Drought Severity Index, or other suitable metric.
9. Once an area is credited, the sponsor shall maintain wetland conditions as determined by the applicable parameters described in the local Regional Supplement to the Wetland Delineation Manual (U.S. Army Corps of Engineers, 2010) and in conjunction with data collected from the monitoring wells and water level recorder described in MWP.

SWG Riverine Herb/Scrub-shrub Wetlands PS:

1. Within two calendar years of USACE receipt of the as-built report, the sponsor must achieve and maintain a minimum of 50 percent aerial cover of herbaceous plant species either identified in the planting list or other native hydrophytic species naturally recruited throughout all herbaceous wetland areas; with at least 50 percent represented by FACW or OBL species.
2. Within three calendar years of USACE receipt of the as-built report the sponsor must achieve and maintain a minimum of 75 percent aerial cover of native herbaceous plant species within buffer areas.
3. Within four calendar years of USACE receipt of the as-built report the sponsor must achieve and maintain a minimum of 75 percent aerial cover of herbaceous plant species either identified in the planting list or other native hydrophytic species throughout all herbaceous wetland areas; with at least 50 percent of the cover represented by FACW or OBL species.
4. Within five calendar years of the USACE receipt of the as-built report, all herbaceous wetland areas must contain less than fifteen (15) percent of unvegetated open water.
5. Within five calendar years of the USACE receipt of the as-built report, no single species shall exceed 60 percent absolute aerial cover throughout all wetland areas.

6. Within five calendar years of the USACE receipt of the as-built report, at least (10) native herbaceous plant species shall be present within the bank.

SWG Stream PS:

1. As-built reports documenting completion of construction and planting, in accordance with the Mitigation Work Plan (no deviation greater than 15% within min/max range from final design plans) must be submitted to USACE within two (2) years from the initial credit release associated with the bank.
2. As-built reports for forested wetlands and buffers must affirm the existence of at least 200 stems per acre of desirable listed tree species with no species representing more than 25%.
3. Geomorphology variables riffle area at bank-full, sinuosity, belt width, overall stream slope, and pool to pool spacing shall be within 15% of the minimum/maximum range in the final stream design, and riffle width to depth ratio shall be no more than 2.0 units above the maximum or 2.0 units below the minimum range in the final stream design.
4. Bank-full events must be at least 1-year apart for credit release purposes and must be documented and provided to USACE using the following methods:
 - On-site observation (georeferenced and date/time stamped photo / video of Bank-full events, recent showing evidence of bank-full event, out-banking (e.g. drift deposits), etc. at multiple stream reaches.
 - On-site empirical measurements: Crest gauge data (e.g. manual or pressure transducer gauges) installed and monitored, correlated with on-site precipitation data.
5. Four years after submittal of the as-built, (For the Year 4 & 7 credit release) (stream reach name—Main Stem, Tributary 2), shall each achieve and maintain a Rapid In-Stream Macroinvertebrate Observation (MV) at or above baseline scores as documented in Appendix E, when averaged across the entire stream reach, and Regionalized Index of Biotic Integrity for Fish (FV) greater than or equal to 2.0 when averaged across the entire stream reach, per the USACE Level 2 Stream Condition Assessment.
 - If this performance standard is not met, The Sponsor will implement an adaptive management plan, approved by the USACE, in coordination with the IRT. Credits will not be withheld until at least three (3) years of monitoring during normal climatic conditions fail to meet performance standards. During that three (3) year period, the Sponsor can also implement an adaptive management plan, approved by the USACE, in coordination with the IRT.
6. Wetland hydrology and hydric soils must be documented within wetland areas within stream buffers. This will be done through documentation of wetland hydrology and hydric soils indicators within previously delineated wetlands.

7. Within 2 years after submittal of the as built, forested wetlands, upland buffers, and riparian buffer areas shall have greater than 320 stems / acre of desirable tree species and greater than 30 percent absolute coverage of native woody vegetation.
8. Within 5 years after submittal of the as built Forested wetlands, upland buffers, and riparian buffer areas shall have greater than 280 stems / acre of desirable tree species and greater than 45 percent absolute coverage of native woody vegetation.
9. Within 5 years after submittal of the as built wetlands within the stream buffer score at least 0.4 in each iHGM functional category per the SWG Riverine Forested iHGM (TSDSW, MPAC, and RSEC).
10. Within 7 years after submittal of the as-built report, forested wetlands, upland buffers, and riparian buffer areas shall have greater than 240 stems / acre of desirable tree species and greater than 60 percent absolute coverage of native woody vegetation.
11. Within 7 years after submittal of the as built Wetlands within the stream buffer score at least 0.5 in each iHGM functional category per the SWG Riverine Forested iHGM (TSDSW, MPAC, and RSEC).
12. Within 10 years after submittal of the as built Forested wetlands and upland buffers shall have greater than 150 trees / acre of desirable tree species and greater than 60 percent absolute coverage of native woody vegetation.

SWG Riverine Forested Wetlands PS:

1. Within three (3) Calendar years of Bank Authorization Date, the Sponsor must achieve a minimum stocking density of 400 stems per acre consisting of native bottomland hardwood tree species listed in Table 4, with ≥ 3 different species representing $\geq 5\%$ composition of the stand.
2. After five (5) years from the Bank Authorization Date, all wetland assessment areas must achieve a minimum density of 400 stems per acre of native bottomland hardwood tree species identified in the planting list (Table 4), with a minimum of 4 species representing $\geq 5\%$ composition of the stand, and $\geq 11\%$ absolute cover within the sapling-shrub stratum.
3. After five (5) years from the Bank Authorization Date, woody species richness must be ≥ 9 species throughout the bank.
4. After five (5) years from the Bank Authorization Date, all wetland assessment areas must contain less than 15% non-vegetated open water. Non-vegetated open water will be removed from the creditable acreage of the bank.
5. Within seven (7) Calendar years of the Bank Authorization Date, the Sponsor must achieve a minimum stocking density of 250 stems per acre of which ≥ 150 stems per

acre are desirable species (oak, hickory, cypress, maple and/or elm), with ≥ 4 different species representing $\geq 5\%$ composition of the stand, and have $\geq 34\%$ woody coverage of native woody vegetation that is ≥ 3 ft in height. Woody species richness must be ≥ 9 species across the bank.

6. Within twelve (12) Calendar years of the Bank Authorization Date, the Sponsor must achieve a minimum stocking density of 100 stems per acre of which ≥ 60 stems per acre are desirable species (oak, hickory, cypress, maple and/or elm), with ≥ 5 different species representing $\geq 5\%$ composition of the stand, and have $\geq 67\%$ woody coverage of native woody vegetation that is ≥ 3 ft in height. Species richness of native woody species will be ≥ 9 species across the bank.

APPENDIX L – MONITORING REQUIREMENTS (PLAN)

Annual Monitoring Reports include the information described below.

Annual Monitoring Reports also include Financial Status Audits and documentation at construction and thereafter every 2 years until year 10.

Time Zero Monitoring Report: The time zero or post-construction monitoring report is due within 60 days of completion of construction related activities. The post-construction monitoring report includes a description of all completed construction activities and associated timeline. It also includes the following; as-built survey; map of permanent photo stations, representative post-construction photographs of assessment areas; figures depicting locations of all planting areas, transects, monitoring wells, locations & extent of prescribed burn locations, all fire lines if prescribed fire was implemented, invasive/exotic and nuisance species treatment areas, and the location of security measures (fencing, signage, gates, etc.).

It further includes a table with numbers, type, and size of plantings for each assessment area. Additionally, it will document that all irrigation, pumping or any other wells associated with a state water use or permits have been appropriately abandoned (as applicable).

If applicable, include a post-burn report from a certified burn manager & include the burn manager's qualifications & cert # within that report.

Implementation Monitoring:

Will include an annual qualitative & quantitative monitoring assessment conducted after completion of all the work required to restore or enhance the wetland areas and will continue until attainment of final success according to the provisions of the MBI. The annual monitoring assessment will be documented by an annual monitoring report which shall be submitted no later than **January 31** for the previous calendar year.

Implementation Monitoring Timeframe:

The Bank Sponsor will be responsible for submitting to USACE annual monitoring reports after completion of bank construction until final success has been achieved as determined by USACE. Reports will provide the necessary information to document site conditions and demonstrate whether the compensatory mitigation project is meeting all requirements under the MBI as well as its ecological objectives and performance standards. Monitoring reports must be submitted to USACE by **January 31st** for the previous calendar year. Monitoring must be conducted a minimum of once per year during the monitoring years following construction of any phase of the bank site. USACE may increase the frequency of extend the original monitoring period upon a determination that performance standards have not been met or the bank is not being managed appropriately to meet them. A change to the monitoring provisions does not constrict USACE from exercising other options to ensure bank performance.

Implementation Monitoring Reports:

The first annual monitoring report is due by **January 31st** of the year following completion of construction and subsequent reports by **January 31st** of each year. Generally, for each monitoring report, qualitative and quantitative monitoring shall be conducted between July and November. Additional site visits during other time periods may be necessary for specific data collection as required to meet performance standards identified in the MBI.

Monitoring reports will include the following information:

A. Title Page: Title page indicating the bank name, bank phase, monitoring year, any requested action (e.g., credit release, IRT review), Bank Sponsor identification (name, address, phone number, and email address), preparer identification (name, address, phone number, and email address).

B. Introduction:

- Written description of the Bank location including coordinates of the mitigation site (expressed as latitude and longitude in decimal degrees).
- Date(s) of site inspections.
- Provide a table including the dates when each of the mitigation construction elements were started and completed.
- Provide a narrative, along with associated table, and figures identifying all activities that have occurred on site post-construction to date.
- A discussion on whether the performance standards are being met.
- Specific recommendations for any required corrective or remedial actions.
- Provide anticipated maintenance activities required in the upcoming year.

C. Performance Evaluation Summary:

For Performance Standards (specifically): The report will include a table which depicts the assessment areas, associated performance standards, quantitative & qualitative values from monitoring, and an indication if each performance standard is being met & addressed per the other Compliance Requirements discussion as described in the report “Conclusions” section below.

D. Financial Assurance Summary: The Sponsor shall provide an end-of-year statement from the bank/lender showing the current balance of the Implementation Financial Assurance Fund and if it is performing sufficiently to meet the MBI projections.

E. Photographs: Include photographs from established photo stations taken during field sampling (pictures should be taken in the same direction as the previous field visit). Photo location points should be identified on the appropriate figures and labeled with the direction in which the photo was taken. Photos will be included as Appendix A of the monitoring report.

F. Maps and Figures: Please include the following maps and figures with associated dates of work, to date post-construction:

- Vegetation management figure
- Prescribed burn area
- Feral hog damage area
- Invasive exotic and nuisance treatment
- Annual hydrographs
- Maps and figures will be included as Appendix B of the monitoring report.

G. Field Collected Vegetation Data: all field collected transect/sample plot data is included in tabular form by assessment area in Appendix C of the monitoring report.

H. Prescribed Burn Requirements: If prescribed fire was to be implemented per the MBI, the burn plan by the Certified Prescribed Burn Manager is provided, with a figure depicting the burn area and percent area burned. If it is not feasible to conduct a prescribed burn during the approved burn return interval, then justification should be provided by the Certified Prescribed Burn Manager.

I. Conclusions: Include a comprehensive “COMPLIANCE REQUIREMENTS LIST” (CRL) of every requirement identified in the MBI & included Appendices.

Relative to each item on the CRL, describe how that item was Sponsor self-assessed during the monitoring period & what the findings of compliance status were.

Include any relevant support documents as Appendices of the monitoring report.

Further include discussion of any and all corrective or adaptive management measures implemented prior to the date of the Monitoring Report. Also include the dates when the non-compliance notification was made (in writing) to USACE regarding any deviations & include copies of those notifications.

Also include a statement that describes overall conditions of the mitigation bank. If compliance items are not being met, but have not already been addressed, the report must further explain the deficiencies and potential remedial actions proposed by the Bank Sponsor, including a timetable for completion for USACE to consider. USACE and IRT, will ultimately determine if the mitigation site is successful for a given monitoring period.

J. Monitoring Report Measurements:

i. Wetland Area(s)

a. Vegetation:

i. Vegetative strata definitions will follow the most current Atlantic and Gulf Coastal Plain (or appropriate) Supplement consistent with the approach identified in Appendix G: Baseline Information (Monitoring Report).

ii. During each monitoring year, the report will document the stems per acre and basal area in the tree strata & describe the methodology for that assessment. It will also record absolute percent cover of plant species in the shrub, sapling, herbaceous, and woody vines strata. The report will document the vegetation species with the corresponding NWPL wetland indicator status and will specify if the species were those from the established MBI plant lists. It will document the absolute percent cover of any FLEPPC Category I and Category II species and nuisance species.

iii. Additional measurements of vegetation will be included based upon performance standards identified in the MBI (ex. species richness, mortality/survivorship, and tree height/growth requirements).

b. Hydrology:

i. Monitoring well locations should be mapped and specified. The resultant data should be reported in graphical format in relation to ground surface elevation, including precipitation, highlighting periods where the performance criteria and appropriate water level durations were met. Data will be included for each well separately and then summarized by assessment area. Well locations should be identified on the Figure 24 Monitoring Map in Appendix B. Raw data will also be submitted as an Excel file.

ii. Discussion will be included on rainfall. Additionally, provide an analysis of rainfall normality using the USACE Antecedent Precipitation Tool (APT). The link to the APT is under the "Climate and Precipitation Data and Tools" heading at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/techbio/> The APT Help Page (the orange question mark in the top-right portion of the APT interface) leads to detailed instructions describing how to read and generate precipitation analyses using the APT.

c. Soils:

i. Monitoring data to determine if hydric soils are actively developing. This must include evidence that saturated and anaerobic soil conditions are being met, as measured by alpha-alpha Dipyrindyl, IRIS tubes, or platinum electrodes. Locations of soil tests should be identified on the appropriate maps. See Hydric Soils Technical Standard for data reporting guidance. ii.

Include photographs of IRIS Tubes and alpha-alpha Dipyrindyl tests if utilized to document achievement of a performance standard.

d. Remediation:

- i. Describe any problems observed within the mitigation site, such as: excessive inundation, insufficient hydrology, seasonal drought conditions, invasion by undesirable species of plants or wildlife, disease condition for plants, poor plant establishment, adverse water quality impacts (i.e., excessive sediment loading, water pollution, etc.), human encroachment, and slope failures or erosion problems.
- ii. Describe the proposed remedial measures to address the problems noted above.
- iii. Remedial measures proposed by the Bank Sponsor are subject to review and approval by USACE in consultation with the IRT prior to implementation. In the event that remedial measures are implemented, the monitoring period may be extended on a case- by-case basis. The IRT may request the submittal of a formal adaptive management plan to address deficiencies.

Long-Term Monitoring:

The long-term monitoring period begins once final success has been achieved, all credits have been released, and written concurrence has been provided from USACE. Annual qualitative monitoring data for long term monitoring shall be submitted no later than January 31 for the previous calendar year. Additional monitoring may be required in cases where the Bank is failing to maintain its ecological integrity.

An abbreviated qualitative and quantitative assessment of the bank site including transects and random, meandering pedestrian evaluation to provide an accurate representation of all assessment area will be conducted. Pedestrian evaluations will be in different locations every year and bisect assessment areas. Provide estimates of dominant species coverage, stems per acre or basal area, and invasive exotic and nuisance species coverage. The report will include a figure depicting locations of all pedestrian transects. Additionally, geo-referenced photographic documentation at all permanent photo stations and along all pedestrian evaluation routes will be provided to further validate all undertaken management efforts and status of onsite communities.

For banks that include prescribed burning as a management tool, the Report must include an analysis performed by an Applicable State Certified Prescribed Burn Manager for the site, including a description of existing fuel loads, extent of the prescribed burns (for the monitoring year, along with figure depicting all cumulative burns per year), and prescribed burn acreage. Provide the burn plan from the Certified Prescribed Burn Manager, with a figure depicting the burn area and percent area burned. If it is not feasible to conduct a prescribed burn during the approved burn return interval, then justification should be provided by the Certified Prescribed Burn Manager.

The Sponsor shall provide an end-of-year statement from the bank/lender showing the current balance of the Long-Term Management Financial Assurance Fund & Discussion and itemized table of annual cost/expenses associated with the implementation of all management activities for that given year (along with documentation/receipts to validate the costs).

APPENDIX M – FINANCIAL ASSURANCES (IMPLEMENTATION & LONG-TERM)

See at end 2016-10-18 SWG Draft Performance Bond

This Appendix includes general information and further includes specific, itemized tables with full Cost Estimates & drafts of each funding agreement & mechanism.

The documents included are provided in good faith & reflect current draft documents as verified prior to submittal by the Sponsor. Substantive changes to these draft documents after MBI signatures may invalidate the MBI.

Implementation Financial Assurance Funding

Implementation financial assurance mechanisms will be fully funded prior to the initial credit release.

In determining & verifying the assurance amount, the District Engineer shall consider the cost of providing replacement mitigation, including costs for land acquisition, planning and engineering, legal fees, mobilization, construction, and monitoring in consideration of 33 CFR 332.3(n)(2). The cost estimates associated with implementation of the Bank includes, but is not limited to, the cost of equipment acquisition and mobilization, acquisition of materials (e.g. fencing, plants and seeds, fill material, cameras, monitoring equipment, sod, turbidity barriers, silt fencing, culverts, weirs, signs, security measures, etc.), labor, actual construction efforts, administrative costs, initial burn efforts, etc. The cost estimates for fire management include estimates for alternative methods of addressing situations where fire management is necessary but cannot be accomplished in the traditional manner.

The cost estimates shows the units used for each entry item, the cost per unit, the total number of units expected to be associated with each item and the total cost estimate for each item. The cost estimate may be divided into categories for specific efforts (e.g., Construction and Structures, Monitoring and Reporting efforts, Nuisance and Exotic Control efforts, Administrative Costs, etc.).

The final amount of the implementation financial assurance should be no less than 110% of the implementation cost estimate. The additional 10% reflects the minimum contingency amount required. However, USACE may require additional funds on a case-by-case basis.

Implementation Cost Estimate Table

Supporting documentation is provided that validates the proposed cost estimates, including contractor quotes for all anticipated activities, and any other relevant information.

EXAMPLE IMPLEMENTATION COST ESTIMATE TABLE

	Cost (\$)	Unit Type	Quantity	Total Cost (\$)
Construction & Structures				
<i>Annual Aerial Photo</i>		per acre		
<i>Mobilization</i>		per acre		
<i>Construction Monitoring</i>		per hour		
<i>Road Maintenance - Mowing</i>		linear feet		
<i>Road Maintenance - Grading</i>		linear feet		
<i>Excavate Roadway</i>		linear feet		
<i>Gate Installation</i>		per gate		
<i>Gate Maintenance</i>		per gate		
<i>Fence Installation</i>		linear feet		
<i>Fence Maintenance</i>		linear feet		
<i>Fence Removal</i>		linear feet		
<i>Loose Rock LWC Installation</i>		per ton		
<i>Loose Rock LWC Maintenance</i>		per hour		
<i>GeoWeb LWC Installation</i>		linear feet		
<i>GeoWeb LWC Maintenance</i>		per hour		
<i>GeoWeb and Slag LWC Installation</i>		linear feet		
<i>Gabion LWC Installed</i>		linear feet		
<i>LWC Installation</i>		total cost		
<i>LWC Maintenance</i>		per hour		
<i>Remove Sediment from LWC</i>		per hour		
<i>FDOT Stone for LWC</i>		per ton		
<i>Geo Mat Installation</i>		per hour		
<i>Culvert Removal</i>		per culvert		
<i>Culvert Installation</i>		per culvert		
<i>Culvert Maintenance</i>		per hour		
<i>Concrete Weir Installation</i>		linear feet		
<i>Liner Installation</i>		linear feet		
<i>Clearing/Grubbing</i>		per hour		
<i>Erosion Mat</i>		linear feet		
<i>Ditch Pavement</i>		linear feet		
<i>Rip Rap</i>		per ton		
<i>Weir (Side Slope 5H:1V) Installation</i>		per hour		
<i>Weir (Side Slope 10H:1V) Installation</i>		per hour		
<i>Weir Maintenance</i>		total cost		

<i>Structure Demolition</i>		per hour		
<i>Structure Installation</i>		per hour		
<i>Structure Maintenance</i>		per hour		
<i>Ditch Fill</i>		cubic yard/ton		
<i>Ditch Fill Maintenance</i>		per hour		
<i>Ditch Plug Installation</i>		cubic yard		
<i>Ditch Plug Maintenance</i>		cubic yard		
<i>Fill Barrow Pit</i>		cubic yard		
<i>DOT Mixed Rock</i>		per ton		
<i>Install 18" ADS</i>		total cost		
<i>Berm Construction</i>		cubic yard		
<i>Berm Removal</i>		cubic yard		
<i>Berm Maintenance</i>		cubic yard		
<i>Piezometer Equipment</i>		per unit		
<i>Piezometer Installation</i>		per hour		
<i>Staff Gauge Equipment</i>		per gauge		
<i>Staff Gauge Installation</i>		per hour		
<i>Remove Wind Rows</i>		acres		
<i>Savannah Harrow Bedded Rows</i>		acres		
<i>Restoration Grading</i>		per hour		
<i>Roller Chopping</i>		per hour		
<i>Beds and Furrows (Flattening)</i>		acres		
<i>Beds and Furrows (Breaching)</i>		acres		
<i>Pine Thinning/Clearing - Premerch</i>		acres		
<i>Pine Thinning/Clearing - Merch</i>		acres		
<i>Site Preparation</i>		acres		
<i>Creek Restoration</i>		total cost		
<i>Pond Creation</i>		total cost		
<i>Floating Turbidity Barriers</i>		linear feet		
<i>Silt Fence</i>		linear feet		
<i>Silt fence installation</i>		per hour		
<i>Erosion Control- Matting</i>				
<i>Erosion Control- Hay bales</i>		per bale		
<i>Erosion Control- Stakes</i>		per stake bundle		
<i>Erosion Control- Installation Cost- Loader</i>		per hour		

<i>Erosion Control- Installation Cost- Track Hoe</i>		per hour		
<i>Sign Installation</i>		per hour		
<i>Security</i>		total cost		
<i>Road Removal</i>				
<i>Swale Backfilling</i>		cubic yard		
<i>Cattle Guard Instillation</i>		per guard		
<i>Cattle Guard Maintenance</i>		per guard		
<i>As-Build Survey</i>		total cost		
<i>Surveying</i>		acres		
<i>Earthwork</i>		cubic yard		
<i>Engineering</i>		per hour		
<i>Access Easement Maintenance</i>		per hour		
<i>Solid Waste Disposal</i>		per ton		
<i>Other Costs</i>				
Planting				
<i>Tree Cost- Potted</i>		per tree		
<i>Tree Cost- Bare Root Price</i>		per tree		
<i>Tree Cost- RPM</i>		per tree		
<i>Tree Cost- Installation</i>		per hour		
<i>Herbaceous- Plugs</i>		per plug		
<i>Herbaceous- Plugs Installation</i>		per hour		
<i>Remedial Tree costs</i>		per tree or acre		
<i>Seeding Mix</i>		per lb.		
<i>Seeding Labor</i>		per hour		
<i>Hydro-Seed</i>		per acre		
<i>Sod</i>		per acre		
<i>Pine Thinning/Disking</i>		per acre		
<i>Wattering</i>		per acre		
<i>Wetland Tree Planting</i>		per hour		
<i>Upland Tree Planting</i>		per hour		
Vegetative, Wildlife & Hydrologic Monitoring and Reporting				
<i>Monitoring Piezometers</i>		per hour		
<i>Monitoring Staff Gauges</i>		per hour		
<i>Establish Transects/Photo Stations</i>		total cost		
<i>Monitoring Equipment Maintenance Cost</i>		per hour		
<i>Vegetative & Wildlife Monitoring- Field Work</i>		per hour		

<i>Baseline Vegetative Monitoring/Reporting</i>		total cost		
<i>Hydrologic Monitoring- Field Work</i>		per hour		
<i>Travel Expenses</i>		total cost		
<i>Mileage and Materials</i>		total cost		
<i>Data Analysis & Report Preparation</i>		total cost		
<i>Management/Reporting of Hog Control</i>		total cost		
<i>Report Preparation Materials</i>		total cost		
Nuisance, Exotic and Inappropriate Species Control				
<i>Pine Management</i>		per acre		
<i>Site Inspection</i>		per hour		
<i>Exotic Species Control Equipment (Airboat, ATV, ect.)</i>		per acre		
<i>Exotic Species Control Chemicals</i>		per acre		
<i>Mapping</i>		per acre		
<i>Labor/Application</i>		per hour		
<i>Mobilization</i>		total cost		
<i>Pond Maintenance</i>		total cost		
<i>Removal Nuisance Fauna (Hogs, etc.)</i>		per acre		
<i>Remedial Mulching</i>		per acre		
<i>Hand Removal of Hardwoods and Shrubs</i>		per hour		
<i>Hand Removal of Exotic/Invasive</i>		per hour		
<i>Hand removal of Shrubs</i>		per hour		
Burn Management				
<i>Prescribe Burning</i>		per acre		
<i>Fireline Construction - Plowing</i>		linear feet		
<i>Fireline Construction - Harrowing</i>		linear feet		
<i>Other Fireline Construction</i>		linear feet		
<i>Fireline Maintenance</i>		linear feet		
<i>Shrub/Fuel Reduction</i>		per acre		
<i>Mobilization</i>		total cost		
<i>Equipment</i>		per hour		

<i>Standby/Man Power</i>		total cost		
<i>Burn Plan/Authorization</i>		total cost		
Administrative Costs				
<i>Consulting</i>		total cost		
<i>Accounting</i>		total cost		
<i>Insurance</i>		total cost		
<i>Trust Costs</i>		total cost		
<i>Legal</i>		total cost		
<i>Other Administrative Costs</i>		total cost		
TOTAL				
Total including (insert percent contingency here)				

Implementation

Before the initial credit release, an implementation financial assurance document will be established in the amount of \$ENTER AMOUNT. The document will be in the form of a ENTER TYPE OF DOCUMENT UTILIZED and, upon approval, it will be included in this Appendix. The amount of the financial assurance will be no less than 110% of the calculated implementation cost estimate provided by the Sponsor.

When activities specified in the work plan schedule have been completed to the satisfaction of USACE for which the financial assurance has been provided, the financial assurance for the completed activity may be released upon confirmation by USACE that the activity has been completed.

Long-Term Management (LTM) Financial Assurance/Endowment Funding

Long-Term financial assurance mechanism may be funded on an incremental basis as specified previously in this MBI.

The cost estimate information for the endowment must include all cost for any and all activities associated with the long-term management of the Bank to include, but not limited to, the cost of equipment acquisition and mobilization, maintenance/repair/replacement of structures (e.g. gates, fencing, culverts, water control structures, roads, sign, cameras, etc.) continuing control of nuisance and exotic species, monitoring and reporting, fire management, administrative costs, etc. Additionally, due to the potential for changes in the use or development of the land surrounding the Bank property, the cost estimates for fire management should include estimates for alternative methods of addressing situations where fire management is necessary but cannot be accomplished in the traditional manner.

The cost estimate must further show the units used for each entry item, the cost per unit, the total number of units expected to be associated with each item, the expected life of each item (as appropriate) and the total cost estimate for each item. The cost estimate may be divided into categories for specific efforts (e.g. Structure Maintenance, Monitoring and Reporting efforts, Nuisance and Exotic Control efforts, Fire Management, Administrative Costs, etc.).

Long-Term Cost Estimate Table

Supporting documentation validating the proposed cost estimates, including contractor quotes for all anticipated activities, and any other relevant information is herein provided.

EXAMPLE LONG-TERM MANAGEMENT COST ESTIMATE TABLE

	Cost (\$)	Unit Type	Quantity	Total Cost (\$)
Structure & Earthwork Maintenance				
<i>Annual Aerial Photo</i>		per acre		
<i>Mobilization</i>		per acre		
<i>Road Maintenance - Mowing</i>		linear feet		
<i>Road Maintenance - Grading</i>		linear feet		
<i>Road Maintenance</i>		linear feet		
<i>General Mowing</i>		linear feet		
<i>General Maintenance</i>		per hour		
<i>Gate Replacement</i>		per gate		
<i>Gate Installation</i>		per gate		
<i>Gate Maintenance</i>		per gate		
<i>Fence Installation</i>		linear feet		
<i>Fence Maintenance</i>		linear feet		
<i>Fence Removal</i>		linear feet		
<i>Cattle Guard Maintenance</i>		total cost		
<i>Loose Rock LWC Maintenance</i>		total cost		
<i>LWC Maintenance</i>		total cost		
<i>LWC Replacement</i>		total cost		
<i>Earthwork Maintenance LWC</i>		total cost		
<i>Weir Maintenance</i>		total cost		
<i>Weir Replacement</i>		total cost		
<i>GeoWeb LWC Maintenance</i>		total cost		
<i>Ditch Pavement/Ditch Block Maintenance</i>		total cost		
<i>Ditch Fill Maintenance</i>		Cubic Yard		
<i>Ditch Plug Maintenance</i>		Cubic Yard		
<i>Culvert Maintenance</i>		total cost		

<i>Culvert Replacement</i>		total cost		
<i>Earthwork</i>		total cost		
<i>Structure Maintenance</i>		total cost		
<i>Structure Maintenance (Concrete)</i>		total cost		
<i>Structure Maintenance (Metal)</i>		total cost		
<i>Berm Maintenance</i>		cubic yard		
<i>Sign Maintenance</i>		total cost		
<i>Sign Replacement</i>		per sign		
<i>Security</i>		total cost		
<i>Solid Waste Disposal</i>		per ton		
<i>Access Easement Maintenance</i>		total cost		
<i>Other Costs</i>		total cost		
Vegetative, Wildlife & Hydrologic Monitoring and Reporting (Perpetual)				
<i>Monitoring Equipment Maintenance Cost- Piezometer</i>		per unit		
<i>Monitoring Equipment Maintenance Cost- Staff Gauge</i>		per gauge		
<i>Vegetative & Wildlife Monitoring - Field Work</i>		per hour		
<i>Hydrologic Monitoring - Field Work</i>		per hour		
<i>Field Work</i>		per hour		
<i>Travel Expenses</i>		per person		
<i>Mileage and Materials</i>		total cost		
<i>Data Analysis & Report Preparation</i>		total cost		
<i>Report Preparation Materials</i>		total cost		
<i>Management/Reporting of Hog Control</i>		total cost		
<i>Consultant Proposal</i>		total cost		
Nuisance, Exotic, Inappropriate Species Control				
<i>Pine Management</i>		per acre		
<i>Inspection</i>		per hour		
<i>Exotic Species Control Equipment (Airboat, ATV, sprayer, etc..)</i>		per hour		

<i>Exotic Species Control Chemicals</i>		per acre		
<i>Mapping</i>		per acre		
<i>Labor/Application</i>		per hour		
<i>Mobilization</i>		per acre		
<i>Pond Maintenance</i>		per acre		
<i>Removal of Nuisance Fauna (Hogs, etc.)</i>		per acre		
<i>Hand Removal of Hardwoods and Shrubs</i>		per hour		
<i>Hand Removal of Exotic/Invasive</i>		per hour		
<i>Hand removal of Shrubs</i>		per hour		
Hunt Management				
<i>Wildlife Biologist Field Work</i>		per hour		
<i>Data Analysis & Report Preparation</i>		per hour		
<i>Hunter Survey/Harvest Data</i>		per hour		
<i>Report Preparation Materials</i>		total cost		
Burn Management				
<i>Prescribed Burning</i>		per acre		
<i>Fire line Maintenance</i>		linear feet		
<i>Equipment</i>		per hour		
<i>Mobilization</i>		total cost		
<i>Standby/Man Power</i>		per hour		
<i>Burn Plan/Authorization</i>		total cost		
Administration				
<i>Consulting</i>		total cost		
<i>Accounting</i>		total cost		
<i>Insurance</i>		total cost		
<i>Trust Costs</i>		total cost		
<i>Legal</i>		total cost		
<i>Other Administrative Costs</i>		total cost		
Total				
Total @ XX% of annual return				

The percent annual return for LTM financing mechanisms should be based on no more than a 3% annual rate of return unless it can be demonstrated that a higher return rate can be achieved.

Add SPECIFIC Endowment calculation, language requirements & SWG default variables in this section....

Bank Endowment Calculation example for reference:

“The capitalization rate was estimated using a 3.1% annual inflation rate, + an estimated (0.65) % for investment fees & taxes, (0.50% for Texas Parks and Wildlife Foundation’s) administrative fees. The 3.1% annual inflation rate is based on the geometric mean of the annual December to December change in the Consumer Price Index from 1913 – 2017. The target nominal return of X (7.7%) is based on the expected 15-year portfolio statistics for the long-term portfolio offered by the Texas Parks and Wildlife Foundation.

*To offset potential effects of inflation before the endowment is fully funded, the amount of the endowment shall be adjusted by the sponsor annually, on January 31 of each calendar year following the bank approval date (hereafter, “Adjustment Date”), by a percentage equal to the percentage increase, if any, in the Consumer Price Index (CPI), All Items (1982-1984 = 100) for All Urban Consumers for the Houston-The Woodlands-Sugar Land, TX Core Based Statistical Area, or successor geographic revision, published by the U.S. Bureau of Labor Statistics, CPI Program. An adjustment to the endowment is the percentage increase of the CPI published for the month most immediately preceding the Adjustment Date, as compared to the CPI published for the month most immediately preceding the date of mitigation banking instrument signature by the U.S. Army Corps of Engineers. Each adjustment will be applied to the endowment amount of \$***,***.00. If there is an increase in the CPI, then the endowment will be adjusted upward by the same percentage. If there is no change or a decrease in the CPI, then no adjustment will be made. “*

Long Term Management

Before the initial credit release, a long-term financing mechanism will be provided in the initial amount of \$ENTER AMOUNT. The long-term financing mechanism will be in the form of a ENTER TYPE OF DOCUMENT UTILIZED and, upon approval, will be included in this Appendix N. The amount of the long-term financing mechanism will be based on the agreed upon calculated annual long-term management costs.

The Sponsor may be required to adjust the amount of the financial responsibility provided by the long-term management financial mechanism at specified intervals and provide them a cost adjustment statement accompanied by supporting documentation. If so, copies of the cost adjustment statements and supporting documentation shall also be provided to USACE. USACE may require additional financial assurances to address inflationary adjustments and other contingencies if it is determined that the cost adjustment amount is insufficient to address the long-term management of the Bank.

Adjustment, Partial Release, Amendment, Modification, Revocation or Termination

1. Written concurrence by USACE must be obtained prior to any adjustment (whether an increase or decrease), partial release, amendment, modification, revocation or termination of the Implementation financial assurance or Long-Term Management financing mechanism.
2. USACE must be provided written notice at least 120 days in advance of termination or revocation of any financial assurance or Long-Term financing mechanism.
3. USACE must be provided written notice at least 30 days in advance of any proposed modification, amendment, or partial release of any financial assurance or Long-Term Management financing mechanism.

4. Adjustment, partial release, amendment, modification, revocation or termination of any financial assurance or Long-Term financing mechanism without USACE written concurrence may result in a determination that the Bank is not in compliance with the MBI. Such a determination may lead to the suspension of credit sales until any issue relating to financial assurances or Long-Term financing mechanism have been addressed and approved by USACE.

Mitigation Bank Performance Bond

Date Executed:

Prepared for:

Galveston District
United States Army Corps of Engineers
2000 Fort Point Road
Galveston, Texas 77551

Principal: (Legal name and business address)

Surety(ies): (Legal name(s) and business address(es))

Type of Organization: (Individual, Joint Venture, Partnership, Corporation, or Limited Liability Company)

Penal Sum of Bond: (amount determined solely by Oblige)

State of Incorporation:

Permit Date:

Permit No.:

Obligation:

We, the Principal and Surety(ies) hereto, are firmly bound as Obligors to the U.S Army Corps of Engineers (the "Obligee") in the above penal sum. This obligation is for the purpose of financial guarantee to assure success and compliance with the terms of Corps of Engineers permit # _____ and the _____ Mitigation Banking Instrument dated _____ that is a part of and attachment thereto. For the payment of the penal sum, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown below the name of the Surety. The limit of liability shall be the full amount of the penal sum.

CONDITIONS:

The Principal received the Permit identified above.

THEREFORE:

The above obligation is void if the Principal –

- (a) Specifically performs and fulfills all of the obligations, covenants, terms, conditions and agreements of the permit during the original term of the permit and any extensions thereof that may be granted by the Corps of Engineers (Obligee), with or without notice to the Surety(ies), and during the life of any guaranty required under the permit, and –
- (b) Also specifically performs and fulfills all of the obligations, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the permit that may hereafter be made. Notice of those modifications to the Surety(ies) are waived.

IT IS FURTHER EXPRESSLY PROVIDED THAT:

The Obligee shall have the full and final authority to determine whether the Principal and Surety(ies) have specifically performed and fulfilled some or all of the obligations, covenants, terms, conditions and agreements of the permit.

In accordance with regulation at 33 C.F.R. § 332.3(n)(5), the Surety(ies) shall provide the Obligee notification at least 120 days in advance of termination, revocation, or modification of this bond.

Within thirty (30) business days of receiving notice from the Obligee that the Principal has defaulted on some or all of the obligations, covenants, terms, conditions and agreements of the permit, the Surety(ies) shall either –

- (a) Remedy the default of the Principal to the full satisfaction of the Obligee by a certain date determined by the Obligee, or -

* Surety must provide documentation to show their licenses to provide this bond, state(s) of license and operation, principal offices, bonding capacity, certification by an authorized officer of the Surety and this bond must be affixed with the Suretys original corporate seal. The District Engineer may require any other documents deemed necessary to demonstrate Surety is legality and financially capable and committed to be the surety for this mitigation bank.

STATE OF
COUNTY OF

I hereby certify that on the _____ day of _____, 20_____, before me, the subscriber, a notary public of the State of _____, in and for _____, personally appeared _____ and made oath in due form of law that the matters contained in the above-stated Bond are true to the best of his/her knowledge, information and belief.

As witness, my hand and notarial seal.

Notary Public

My commission expires: _____

STATE OF
COUNTY OF

I hereby certify that on the _____ day of __, 20_____, before me, the subscriber, a notary public of the State of _____, in and for _____, personally appeared _____ and made oath in due form of law that the matters contained in the above-stated Bond are true to the best of his/her knowledge, information and belief.

As witness, my hand and notarial seal.

Notary Public

My commission expires: _____

APPENDIX N – LONG-TERM MANAGEMENT PLAN

Specific tables that itemize cost estimates are included in this Appendix.

The Long-Term Steward for this Bank is: [\(Sponsor\)](#)

[Include qualifications for the LTS in Appendix S](#)

Long-term management begins once final success has been achieved, all credits have been released, the Long-Term financing mechanism has been fully funded, and written concurrence has been provided from USACE.

The Long-Term Management Plan may be reviewed and/or revised, as necessary by USACE, prior to the bank moving into Long-Term Management. This may also occur at any point the IRT determines that the bank is no longer maintaining final success criteria.

Long-term management will begin once final success has been achieved, all credits have been released, the Long-Term financing mechanism has been fully funded, and written concurrence has been provided to the Sponsor by USACE. The Long-Term Management Plan will include a description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resources, including long-term financing mechanisms and the party responsible for long-term management. The Long-Term Management Plan will be reviewed and/or revised, as necessary and at the Corp's discretion, prior to entering into Long-Term Management, and at any point the IRT determines that the bank is no longer maintaining final success criteria.

The Long-Term Management Plan includes a discussion of the following:

Narrative discussion describing how the project will consistently maintain the ecological integrity of the mitigation bank, including a detailed description of all management efforts to be conducted (along with relative corresponding figure depicting all plan elements). Management efforts include but are not limited to:

- Patrolling the site to prevent trespassing
- Evaluation of the integrity of gates, locks, fences, signs, and all applicable site security measures,
- Inspection of all the areas to ensure integrity of all approved activities and hydrological control structures (culverts, weirs, low-water crossings, ditch plugs, berms, etc.),
- Access maintenance to ensure trail roads are in working condition
- Specific maintenance treatments (including technique for each species) for control of exotic, invasive, and nuisance species. This should be specific for each species to be treated. Please note that the management plan needs to ensure that the exotic, invasive, nuisance species are consistently maintained at levels described/approved in the MBI.
- Evaluation of wildlife nuisance species and proposed control plan.
- Include a table depicting the prescribed burn management schedule for all applicable pyrogenic communities as defined in the Appendix I Mitigation Work Plan.
- Provide itemized cost estimate spreadsheet detailing estimated annual costs for long-term management activities.

APPENDIX O – CREDIT RELEASE SCHEDULE

Credit Release Schedule - Credits are the currency of Mitigation Banks. The USACE approves the number of mitigation credits that would be available for sale dependent on the specifics of each bank, including considerations such as baseline condition and ecological lift. Credits become available for use or sale only at such time as certain requirements are met. The following credit release schedules based on further analysis of a particular proposal, will be considered reasonable by the IRT; however, further analysis may be required for unique sites or situations. No more than one (1) credit release may be submitted per calendar year.

Preservation Credits

100% - Released after the conservation easement is executed and the financial assurance and long-term management endowment is fully funded.

Forested Wetland Credits

- CR1- 10% Initial release (Compliance with all initial success criteria)
- CR2- 15% Construction release (Post planting, construction, and submittal of as-built)
- CR3 - Interim release based on functional assessment (Including success criteria)
- CR4- Interim release based on functional assessment (Including success criteria)
- CR5- Interim release based on functional assessment (Including success criteria)
- CR6- Final release based on functional assessment (All success criteria + 8 years after planting)

Non-forested (Herb/SS) Wetland Credits

- CR1- 10% Initial release (Compliance with all initial success criteria)
- CR2- 15% Construction release (Post planting, construction, and submittal of as-built)
- CR3 - Interim release based on functional assessment (Including success criteria)
- CR4- Interim release based on functional assessment (Including success criteria)
- CR5- Interim release based on functional assessment (Including success criteria)

SWG Stream Credits

- CR1- 20% Administrative release
 - CR2- 20% Construction release
 - CR3- 15% Interim release 1st Bank-full Event
 - CR4- 15% Interim release 2nd Bank-full Event
 - CR5- 15% Interim release Year 4 Monitoring (4yrs from as-built)
 - CR6- 15% Final release Year 7 Monitoring (7yrs from as-built)
- (* bank-full events must be a minimum of 1 year apart.)

[SPONSOR to add Credit Release Table](#)

APPENDIX P – ASSURANCE OF WATER RIGHTS

Documentation necessary to support representations in Sections 1-3 on the subject of Water Rights is included below.

Select one of the two options below & provide additional supporting information.

1. Water rights were secured and will be maintained for the bank operations to ensure needed Riverine water availability during times of drought in perpetuity (see water rights application information, issuance confirmation and maintenance plan documentation).

OR;

2. Water rights could not be secured for this banking project at this banking location due to the following factors:

- a) A detailed discussion of water rights acquisition impediments for this specific bank and contributing Riverine resource. Discussion addresses bank construction & hydrology plan w/ demand details, structural considerations, locations of and diversion methodology relative to “OHWM” and “Bankfull” (or lack thereof), hydrology source classifications and status, as well as relevant notations made by the banker and by the agency administering the water rights assignment program per the bank location state. Relevant documentation from the state allocation agency is included.
- b) Documentation showing current water rights holders & use types upstream and downstream of the bank Riverine source with their allocation amounts. This section also includes discussion of current water rights availability at the bank location and reasonably foreseeable allocation demands in the future for this site and the surrounding area.
- c) A detailed contingency plan to overcome foreseeable bank impacts that may occur in a drought circumstance where competing and/or conflicting current or future water rights holders were to fully exercise their secured rights.

APPENDIX Q – REMOTENESS OPINION-MINERAL MANAGEMENT PLAN-SURFACE USE AGREEMENT

If the mineral rights have been severed on the Bank Property, the Mineral Remoteness Opinion, prepared by an applicable state licensed Geologist, is required per Internal Revenue Service Code Section 170(h) and included herein. This report includes an expert opinion as to the likelihood of surface mining, or other forms of mining, including a determination whether the “probability of surface mining occurring on such property is so remote as to be negligible. The basis of that finding is also included in the findings document. The Licensed Geologist’s qualifications documentation is included in Appendix S

Also provided herein is:

A complete accounting of any existing surface and subsurface oil, gas, and other mineral (OGM) interests listed or otherwise identified on the site (including any other known OGM interests). This information should detail the specific materials reserved, location of the interests with regards to the mitigation bank boundaries, the owners and ownership percentages, the current status of any associated rights such as access rights. Also described is any history of OGM development of those interests in the past or present, and/or any past attempts from the Surface owner to acquire outstanding interests.

Included is a complete minerals management plan (including mapped set aside areas).

Signed Surface Use Agreements are also included for minerals or O&G interests where they could be secured.

A list of mineral or O&G interests where SUA’s could not be secured includes:

- 1.
- 2.
- 3.

These interests are clearly denoted on the attached map.

APPENDIX R – PHASE I ENVIRONMENTAL SITE ASSEMENT

The Phase I ESA conducted for this site that adheres to representations in Sections 1-3 of this MBI is included herein (as requested by USACE)

APPENDIX S – AGENT & THIRD-PARTY QUALIFICATIONS

includes separate pages to describe the qualifications, certifications, etc. for the following parties:

Sponsor's Agent

Title Attorney

Applicable State Licensed Geologist

Surveyor & Company

Earthwork & Construction Companies

Land Steward

Conservation Easement Holder

Bond, Insurance, &/or other any financial commitment issuance entities

APPENDIX T – ATTORNEY’S STATEMENT OF TITLE WITH REAL ESTATE ASSESSMENT DOCUMENTS

The title search performed on the properties included within the proposed bank area extend back a minimum of 100 years. The exact term of the comprehensive title search and evaluation performed on this bank property was: _____ yrs.

The Attorney’s Statement of title is included herein. All bank-relevant search identified documentation is included thereafter in this appendix.

The Licensed Real Estate Attorney’s qualifications documentation is included in Appendix S

APPENDIX U – EXCEPTIONS TO REAL ESTATE TITLE

A description of all exceptions to the real estate title identified during the title search is included herein. This section further includes a map, showing section, township and range, and depicts all encumbrances on the proposed bank property (e.g., mineral interests, easements, timber contracts, etc.). Exceptions to the real estate title including any mortgages on the property are subordinated to the site protection instrument (include subrogation documents in Appendix X). Any exceptions to the real estate title that are not subordinated to the site protection instrument, include an explanation as to the purpose of the exception/easement, who holds the exception/easement, what effects it may have on the mitigation bank, any proposed mitigative factors to reduce effects, and what effects it may have on credit determination.

USACE reserves the right to require subrogation of any exception in order to approve the bank.

APPENDIX V – TITLE INSURANCE COMMITMENT POLICY

Included is a complete accounting of any existing surface and subsurface oil, gas, and other mineral (OGM) interests listed on the Title Insurance Commitment (TIC). This information details the specific materials reserved, location of the interests with regards to the mitigation bank boundaries, the owners and ownership percentages, the current status of any associated rights such as access rights, the effect of Marketable Records Title Act on those rights and interests, any history of OGM development of those interests in the past or present, and/or any past attempts from the Surface owner to acquire outstanding interests.

The TIC is included herein. The TIC package reflects Department of Justice (DOJ) guidelines for title and provide the following information:

- The TIC is no more than 90 days old.
- The TIC identifies and provides copies of all mortgages, liens, easements, right of ways, servitudes, leases, covenants, conditions, restrictions, reservations, or any other interests or encumbrances as well as the history of property ownership including any information related to ownership interests and/or rights to surface and sub-surface oil, gas, or minerals that may affect rights to develop the property as planned and the ability to place conditions or restrictions on the property.
- The TIC package also includes a figure which depicts the location of all easements and encumbrances in relation to the proposed bank boundary with enough accuracy (i.e. boundary survey and legal description) to allow for verification of the boundaries.
- The TIC covers (at a minimum) the last 100 years.

If the property was purchased with special funding sources, such as state or federal programs or with grants, the funding sources are identified, and specific information related to these programs or grants is provided. Likewise, if any grants or reimbursement programs have been associated with restoration or maintenance of the property, they are identified.

If the property has any mitigation/restoration requirements associated with previous state or federal permitting or enforcement actions, those requirements are identified, and copies of the relevant permits and documentation are provided. Additionally, if the property was part of the project area of a previous state or federal permit, this is also identified herein and the associated permits are provided.

APPENDIX W – Example CREDIT LEDGER

EXAMPLE CREDIT LEDGER



APPENDIX X – SUBROGATION DOCUMENTS (FOR ALL SITE ENCUMBRANCES)

This section includes documents as titled also includes documentation & correspondence of failed attempts (inquiries & responses) to acquire subsurface rights or other subrogation-related agreements and documentation.

APPENDIX Y – VERIFIED DELINEATION & HGM (FULL VERIFIED
REPORTS & FINAL LETTER(S))

APPENDIX Z – SURETY BOND PROVIDER

APPENDIX AA – AS-BUILT CONSTRUCTION PLANS

**(TO BE SUBMITTED AS PART OF CONSTRUCTION RELEASE
DOCUMENTATION)**

As built plans will be attached herein after the submittal of the Construction Credit Release.

APPENDIX BB – AGREEMENTS BETWEEN THE OWNER AND SPONSOR

(IF NOT THE SAME ENTITY)

Any and all agreements between the bank Property Owner and the Sponsor are included herein.

Personal data or private financial information (such as account routing numbers and the like) have been redacted from this submission.

This section may be removed from the final MBI as determined by **USACE** and upon request by the Sponsor and/or Owner.

APPENDIX CC – OTHER(S)

OTHER(S)

APPENDIX DD – DEFINITIONS

A. **“Adaptive Management”** The development of a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. Development of the strategy involves USACE, IRT, Sponsor and/or Property Owner discussing deficiencies occurring on the mitigation bank site and coming to agreement on appropriate possible solutions or alternative approaches necessary to bring the site into compliance or to meet performance objectives.

B. **“Assessment Area”** means all or part of a wetland or surface water impact site or a mitigation site that is sufficiently homogeneous in character, impact, or mitigation benefits to be assessed as a single unit.

C. **“Bank Authorization Date”** is the date determined pursuant to Section II.L.

D. **“Bank Property”** means the land within the boundary of the mitigation bank site. This is more specifically described in the site protection instrument.

E. **“Construction”** means all activities used to Establish, Enhance, Re-establish, Rehabilitate and/or Preserve a mitigation bank site in association with the anticipated generation of functional lift to be used as compensation for unavoidable wetland impacts authorized to waters of the United States. Construction associated with mitigation bank development may include, but is not limited to, activities such as moving earth, building weirs, plugging ditches, breaking drain tiles, removing dikes, planting vegetation, and removing cattle.

F. **“Credit”** means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.

G. **“Credit Release”** means an action taken by USACE, generally in coordination with the IRT, to make specified credits available pursuant to the credit release schedule. Credit releases may be associated with the submittal of required documentation, the completion of specific construction activities and/or the achievement of associated performance standards. Credit releases must be documented by a Credit Release letter from USACE to be applicable.

H. **“Credit Transaction”** means the approved transfer of credits by the Sponsor to satisfy compensatory mitigation requirements of a permit. Credits “...may also be used to provide compensatory mitigation for USACE Civil Works projects (see section 2036(c) of the 2007 Water Resources Development Act) or activities conducted on military installations (see 10 U.S.C. 2694b).” Each instance of a transaction of credits to a third party shall be supported by a Credit Transaction document. Credit Transaction documents will be maintained as part of the USACE administrative record for the mitigation bank project by USACE.

I. **“Credit Transaction documentation”** means the official documentation of the use of credits released to the mitigation bank sponsor. Each Credit Transaction document must be signed by the sponsor or its designee and include the permit number of the impacting project, number and type of credits involved and must include language expressly specifying that the Sponsor, and its successors and assigns assume legal responsibility for accomplishment and maintenance of the transferee’s compensatory mitigation requirements.

J. **“Deficiency”** means the project has failed to meet or no longer meets a function, value or component of the mitigation bank which was expected to be attained or which had already been attained and was expected to be maintained.

K. **“Ecoregion”** means geographic regions where climatic conditions are similar and the ecosystems (including wetlands) are relatively homogeneous. The Galvston District utilizes the U.S. Environmental Protection Agency’s Level III Ecoregions in evaluating mitigation service areas.

L. **“Enhancement”** means the manipulation of the physical, chemical or biological characteristics of an aquatic resource to heighten, intensify or improve specific function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic function(s). **Enhancement does not result in a gain in aquatic resource area.**

M. **“Endowment Agreement”** means the document which establishes the terms and conditions pursuant to which the Endowment Holder will accept custody of and manage the Endowment Fund.

O. **“Endowment Deposit”** is the deposit or series of deposits made or required to be made by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund. Endowment Deposits received by the Endowment Holder shall be deposited into the Endowment Fund.

P. **“Endowment Fund”** is a financial account, held in trust for the benefit of the long- term stewardship of the Bank Property. The Endowment Fund is intended to be maintained and managed in perpetuity in accordance with the MBI, and the Endowment Agreement. The Endowment Fund is intended to be invested in accordance with an investment policy statement that is designed to generate earnings and appreciation in value over the long-term. The Endowment Fund is to be used in funding perpetual management, maintenance, monitoring, and reporting pursuant to the Long-term Management Plan

Q. **“Endowment Holder”** means an entity qualified to hold the Endowment Fund otherwise approved by the IRT.

R. **“Establishment (Creation)”** means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. **Establishment results in a gain in aquatic resource and area.**

S. **“Exotic Invasive Species”** a species introduced to Texas, purposefully or accidentally, from a natural range outside of Texas that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Furthermore, an exotic invasive species has not only naturalized, but is capable of expanding on its own into Texas native plant communities.

T. **“Extraordinary Circumstance”** shall mean an event or circumstance that has a material and detrimental impact on the Bank Property or on the ability of Bank Sponsor to attain Performance Standards and: (1) was neither foreseen nor foreseeable by the Bank Sponsor, Property Owner, or IRT; and (2) neither Bank Sponsor nor Property Owner (or anyone acting on behalf or under the control of either of them) caused or could have prevented; and (3) prevents Bank Sponsor or Property Owner from achieving an objective or undertaking an action required of it under this MBI. Extraordinary Circumstances excludes mere economic hardship.

U. **“Functional Assessment”** means the process by which the capacity of aquatic resources to perform a function is measured or characterized. This approach analyzes the capacity to perform a function often using a numeric model. Assessments are methods that generate a number that represents an estimate of the performance of an aquatic resource function. The number generated is relative to a predetermined standard. (e.g., level of function provided by reference wetlands or other aquatic resource).

V. **“Hydrologic Unit Code”** (HUC) means a hierarchical system created by the United States Geological Survey utilizing a sequence of numbers to identify hydrological features like drainage basins or watersheds.

W. **“Implementation Financial Assurance”** means the financial assurances required to ensure all required components of the Implementation Phase are successfully completed and maintained in accordance with established performance standards.

X. **“Implementation Phase”** means the period of time from the establishment date of the bank (when the Instrument is signed and dated by USACE) until full success has been achieved and all potential credits have been released to the Sponsor. This phase includes all construction, maintenance, and monitoring activities necessary to ensure the site achieves and maintains the established ecological performance standards.

Y. **“Interagency Review Team”** means an interagency group of federal, state, tribal, and/or local regulatory and resource agencies whose primary role is to facilitate the establishment of mitigation banks or in-lieu fee programs through the development of mitigation banking or in-lieu fee program instruments.

Z. **“Ledger”** means the official accounting record that documents beginning and ending balances, all addition and subtraction of credits and changes in credit availability. The official ledger will be maintained by the bank sponsor and audited by USACE on an annual basis. The banks ledger is also managed on the Regulatory In-lieu Fee and Bank Information Tracking System web site.

AA. **“Long-term Funding Mechanism”** means a funding source held by an entity approved by USACE, to generate income to fund perpetual management, maintenance, monitoring, and other activities on the Bank property consistent with the Long-term Management Plan. At a minimum, funding will be maintained so that, on an annual basis, the original principal amount does not decline in terms of absolute dollars or depreciate due to inflation.

BB. **“Long-Term Management Phase”** means the period beginning after final success has been achieved and all potential credits have been released to the Sponsor. This phase continues in perpetuity, during which time the mitigation bank property is to be managed, monitored and maintained by the Sponsor or the Long-Term Steward pursuant to the Long-Term Management Plan.

CC. **“Long-Term Management Plan”** means a document which provides a description of long-term management needs; annual cost estimates to address those needs and identifies the proposed funding mechanism. It may include provisions to address inflationary adjustments and other contingencies.

DD. **“Long-Term Steward”** is the party charged with long-term maintenance and management responsibility of the mitigation bank. Generally, the Long-Term Steward is similar to an approved sponsor; or a third-party assignee (of liability), approved by USACE, but until approved, the Sponsor must elect to serve as the Long-Term Steward.

EE. **“Mitigation Bank”** means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument. In this document this term refers to this instrument unless otherwise stated.

FF. **“Mitigation Bank Instrument”** means the legal document for the establishment, operation, and use of a mitigation bank. Identified as Instrument or MBI throughout this document.

GG. **“Mitigation Work Plan”** means detailed written specifications and work descriptions for the mitigation project. Activities include, but are not limited to, construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; proposed grading plan, including elevations and slopes of the substrate; soil management and erosion control measures.

HH. **“Monitoring”** means a data collection plan developed for the purpose of determining if the mitigation activities are on track to meet performance standards and if adaptive management is needed. Monitoring will include both qualitative and quantitative data collection activities.

II. **“Notification of Deficiency”** means a document, either hard-copy or electronic, produced by the Sponsor or USACE to provide notification of a deficiency on the mitigation bank property. The Notice of Deficiency will include a detailed explanation of the deficiency. If the Notice of

Deficiency is generated due to unanticipated event (natural or man-induced), it will provide an identification of the event and detail the adverse impacts which have already occurred and those anticipated to occur if no actions are taken to address the situation.

JJ. “**Operational Life**” is that portion of the Implementation Phase during which the Bank is operating to provide available credits to perspective clients. This lasts from approval of the initial release of credits until all of the credit potential for the Bank has been associated with permit requirements or relinquished.

KK. “**Performance Standards**” are observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives. They document a desired state, threshold value, or amount of change necessary to indicate that a particular function is being performed or structure has been established as specified in the Mitigation Work Plan.

LL. “**Phasing**” means the implementation of construction activities in distinct components of overall bank development. Each phase is evaluated as potentially being able to stand-alone since all of the components will not all be covered under a land protection instrument at the same time.

MM. “**Phase I Environmental Site Assessment**” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-013 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.

NN. “**Preservation**” means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. **Preservation does not result in a gain of aquatic resource area or functions.**

OO. “**Property Owner**” means the holder(s) of fee simple title to the bank property.

PP. “**Re-establishment (Restoration)**” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and **results in a gain in aquatic resource area and functions.**

QQ. “**Rehabilitation**” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. **Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.**

RR. “**Restoration**” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or

degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and Rehabilitation.

SS. **“Sale”** means the sale of Credits by the Bank Sponsor. A Sale without a Transfer does not confer legal responsibility for providing compensatory mitigation to the Bank Sponsor.

TT. **“Service Area”** means the geographic area within which impacts can be mitigated at a specific mitigation bank or in-lieu fee program, as designated in its instrument.

UU. **“Site Protection instrument”** A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project site.

VV. **“Sponsor”** means any public or private entity responsible for establishing, and in most circumstances, operating a mitigation bank or in-lieu fee program. Any documents required to be signed by a Sponsor must be signed by a person with appropriate legal authority to obligate the Sponsor.

WW. **“Subordination Agreement”** means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank Property makes the lien or encumbrance subject to and of lower priority than the Conservation Easement, even though the lien or encumbrance was recorded before the Conservation Easement.

XX. **“Suite of Functions”**: The Hydrogeomorphic (HGM) Assessment models are developed to produce a Functional Capacity Index (FCI), which is an estimate of the capacity of a wetland to perform a function relative to other wetlands within the same HGM subclass (e.g., riverine forested). The models are calibrated by the conditions under which the highest sustainable level of function is achieved across the suite of functions performed by reference wetlands within the same regional wetland subclass (Brinson and Rheinhardt 1996). Consequently, credits (FCUs) must be traded as the “suite of functions” within the same HGM subclass (in-kind).

YY. **“Transfer”** means the use or application of Credits to mitigate for a particular project’s impacts.

ZZ. **“Watershed”** means a land area that drains to a common waterway, such as a stream, lake, estuary, wetland, or ultimately the ocean.

AAA. **“Waters of the U.S.”** means all waters and wetlands over which USACE and the U.S. Environmental Protection Agency are granted jurisdiction in the Clean Water Act, 33 U.S.C. 1251, et seq., and USACE is provided jurisdiction in the River and Harbor Act, 33 U.S.C. 401, et seq. This definition encompasses both the term “waters of the United States” as defined in 33 CFR 328, and “navigable waters” as defined in 33 CFR 329.