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***Maryland Interagency Review Team Mitigation Banking Instrument***

***(Template Version: February 11, 2025)***

[BANK NAME] **MITIGATION BANK**

*Select and complete the appropriate type of submittal from below*

**[DRAFT/FINAL] [UMBRELLA] MITIGATION BANKING INSTRUMENT**

**[UMBI NAME/PROJECT NAME MITIGATION BANK MODIFICATION REQUEST TO ADD A NEW SITE]**

**Located in:**

**COUNTY NAME, STATE NAME**

MITIGATION BANK SPONSOR:

Sponsor Name

Sponsor Address

City, State, Zip Code

U.S. ARMY CORPS OF ENGINEERS

BALTIMORE DISTRICT

NAB-20**XX**-**XXXXX**

MARYLAND DEPARTMENT OF THE ENVIRONMENT

[*Enter full State permit number:* XX-NT-XXXX/20XX-XXXXX]

**Prepared By:**

Company name of agent

Company address

City, State, Zip Code

Version: Date of Draft/Final Instrument

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# INTRODUCTION

**[*If the proposal is to initially establish a new single-site mitigation banking instrument use this paragraph*]:** [**Bank Sponsor’s full legal name(s)]** (“Sponsor”) submits this Mitigation Banking Instrument (“Instrument”) dated \_\_\_\_\_\_\_\_\_, in accordance with 33 CFR 332, Compensatory Mitigation for the Losses of Aquatic Resources (Mitigation Rule) and applicable Maryland statute and regulations. Upon its execution, this Instrument sets forth the regulatory agreement among the Sponsor, [**Property Owner’s full legal name(s)]** (“Property Owner”), the U.S. Army Corps of Engineers, Baltimore District (USACE), the Maryland Department of the Environment (MDE), and each of the following agencies: the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the Maryland Department of Natural Resources (DNR), the Maryland Historical Trust (MHT), and the Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (CAC) [***if appropriate, add or delete specific agencies that are not participatory IRT members***]regarding the establishment, use, operation, protection, maintenance, and closure of the **[Bank Name]** Bank (“Bank”). The USACE and MDE, together with these state and federal agencies, are hereinafter collectively referred to as the Interagency Review Team (“IRT”). The Sponsor and the IRT are hereinafter referred to jointly as the “Parties”. USACE and MDE approval, in coordination with the IRT, of the Bank will constitute the regulatory approval required for this approved Bank to be used to provide compensatory mitigation for Department of the Army (DA) and/or MDE permits. This Instrument incorporates the detailed Mitigation Plan and all other Appendices and attachments to the Instrument as a part thereof.

[***If the proposal is to initially establish an Umbrella Mitigation Banking Instrument also add this paragraph*]:** In addition, this Instrument establishes the framework by which the IRT will review future umbrella Instrument modification requests for the addition and approval of umbrella mitigation Bank Sites. This Umbrella Mitigation Banking Instrument (UMBI) provides for future authorization of additional compensatory mitigation bank sites (“Bank Sites”) as new sites are identified and requested to be added to this Instrument as modifications, using the procedures in 33 CFR 332.8(g)(1). This Instrument becomes an UMBI when additional Bank Sites are added, upon approval of the USACE and MDE, in coordination with the IRT (33 CFR 332.8(h)). USACE and MDE approval of this Instrument constitutes the regulatory approval required for the initial Bank site, [**Mitigation Bank Site Name**]. Future USACE and MDE approval, in coordination with the IRT, of additional Bank Sites under this UMBI through the Instrument modification procedures will constitute the regulatory approval required for those approved Bank Sites to be used to provide compensatory mitigation for Department of the Army (DA) and/or MDE permits. All future approved Bank Sites must comply with the terms and conditions of this Instrument, as well as any modifications made to this initial Instrument for specific Bank Site operations and requirements and/or updated IRT procedures.

***[If the proposal is to submit an instrument modification to add a new umbrella mitigation Bank Site to an approved UMBI use this paragraph*]:**  [**Bank Sponsor’s full legal name(s)]** (“Sponsor”) submits this Mitigation Banking Instrument Modification (“Instrument Modification”) request dated **[month, date, year]**, in accordance with 33 CFR 332.8(d) of the Compensatory Mitigation for the Losses of Aquatic Resources (Mitigation Rule) and applicable Maryland statute and regulations. The Sponsor proposes to add the [**Mitigation Bank Site Name**] umbrella Bank Site (“Bank”) under the previously approved **[Umbrella Mitigation Bank Instrument Name]**. Upon its execution, this Instrument Modification sets forth the regulatory agreement among the Sponsor, [**Property Owner’s full legal name(s)**] (“Property Owner”), the U.S. Army Corps of Engineers, Baltimore District (USACE), the Maryland Department of the Environment (MDE), and each of the following agencies: the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the Maryland Department of Natural Resources (DNR), the Maryland Historical Trust (MHT), and the Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (CAC) [***if appropriate, add or delete specific participatory IRT agencies***]regarding the establishment, use, operation, protection, maintenance, and closure of the **[Umbrella Mitigation Bank Site Name]** Bank. The USACE and MDE, together with these state and federal agencies, are hereinafter collectively referred to as the Interagency Review Team (“IRT”). The Sponsor and the IRT are hereinafter referred to jointly as the “Parties”. USACE and MDE approval, in coordination with the IRT, of the Bank will constitute the regulatory approval required for this approved Bank to be used to provide compensatory mitigation for Department of the Army (DA) and/or MDE permits. This Instrument Modification incorporates the detailed site-specific Mitigation Plan and all other Appendices and attachments to the Instrument Modification as a part thereof.

***[All Instruments/Instrument Modifications include template information/text/sections below.]*** Note, throughout this document, any reference to a process being subject to review under the provisions of any portion of 33 CFR 332 and applicable state laws also implies that the review would be in accordance with the prevailing regulations at the time of the review.

## PURPOSE OF THE MITIGATION BANKING INSTRUMENT

USACE approval of this Instrument **[or if adding a new site to an UMBI, use: “Instrument Modification” here and throughout the document in place of “Instrument”]** constitutes the regulatory approval required for the [**Bank Name**] Bank to provide compensatory mitigation for Department of the Army (DA) permits pursuant to 33 CFR § 332 *et seq*. MDE approval of this Instrument constitutes regulatory approval for the [**Bank Name**] to provide compensatory mitigation for permits according to Environment Article, Annotated Code of Maryland, **[*add relevant state laws to the subject Bank such as*: Title 5 Subtitle 5, Title 5 Subtitle 9, and/or Title 16]**.

This Instrument is not a contract between the Sponsor or Property Owner and the USACE or any other agency of the federal government or the MDE, the State of Maryland, or its agencies. 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 this Instrument to the contrary.

The purpose of this Instrument is to set forth guidelines and responsibilities for the establishment, use, operation, protection, monitoring, maintenance, and closure of the Bank in accordance with 33 CFR § 332 *et seq*. and applicable state laws. This mitigation Bank has been established to provide compensatory mitigation for unavoidable impacts to [***select appropriate resources:* streams, [nontidal/tidal] wetlands, and Buffers**] and their associated functions authorized by permits issued pursuant to [***select appropriate federal authorities***: **Section 404 of the Clean Water Act (33 USC 1344), Section 10 of the Rivers and Harbors Act (33 USC 403)**], and [***select only relevant state laws to this Bank:* Maryland’s Waterway Construction Statute (Environment Article, Annotated Code of Maryland, Title 5, Subtitle 5), Maryland’s Nontidal Wetland Protection Act (Environment Article, Annotated Code of Maryland, Title 5, Subtitle 9), Maryland’s Tidal Wetlands Act (Environment Article, Annotated Code of Maryland, Title 16**], provided such activities have met all applicable requirements and are authorized by the appropriate agencies. When deemed appropriate, the mitigation credits may also be used to provide compensation for Corps Civil Works projects.

The Sponsor shall restore, establish, preserve, and/or enhance and then manage and maintain the approved Bank in accordance with this Instrument. Released credits generated by this Bank may satisfy compensatory mitigation requirements of DA and MDE permits provided the Bank complies with applicable law and with the terms and conditions of this Instrument, including but not limited to, Instrument appendices and performance standards.

USACE and MDE approval, in consultation with the IRT, of the Bank does not warrant or guarantee the ultimate viability as a compensatory mitigation mechanism or as a viable business enterprise. This Instrument does not provide authorization to impact any environmental resources, including wetlands, streams, and/or other Waters of the U.S. or Waters of the State. The Sponsor must obtain all required permits or other authorizations necessary to construct, operate, and maintain the Bank.

## MITIGATION BANK CONTACTS

Mitigation Bank Sponsor (Sponsor):

*Provide the name, point of contact, address, phone number, and email address for the Sponsor. If the Sponsor is a business entity (e.g., limited liability company, partnership, corporation, etc.), the Sponsor shall provide proof of the Maryland State Corporation Commission registration prior to Instrument approval. In addition, the Sponsor must provide documentation demonstrating that the party signing the Instrument has been appropriately authorized to sign on behalf of the company/partnership/corporation.*

Mitigation Bank Property Ownership:

*Provide the name, address, phone number, and email address for the Property Owner or legal entity that owns the Bank Property. If the Property Owner is a business entity (e.g., limited liability company, partnership, corporation, etc.), a contact name and documentation demonstrating that the party signing the site protection instrument has been appropriately authorized to sign on behalf of the corporation must also be provided.*

Long-Term Steward:

*Provide the name, address, phone number, and email address for the Long-Term Steward that will be responsible for long-term maintenance and management responsibility of the Bank. Generally, the Long-Term Steward is a third-party assignee, approved by USACE and MDE, but the Sponsor may elect to act as the Long-Term Steward.*

## INTERAGENCY REVIEW TEAM

The IRT is established by the USACE and MDE to review the documentation necessary for the establishment, use, operation, protection, management, and closure of the Bank. The USACE representative serves as chair of the IRT and is responsible for managing the review processes for proposed mitigation banks and credit release requests in accordance with the procedures and time frames specified in 33 CFR 332.8(d), (e), (g), and (o)(9). The MDE representative serves as co-chair of the IRT. The USACE and MDE are signatories to the Instrument; however, USACE and MDE have independent authority to approve or disapprove proposed mitigation banks, as well as credit releases from the mitigation banks they approve. Once signed by the Sponsor, the Instrument will not be valid until signed by the appropriate officials authorized to act on behalf of the USACE and MDE. Where the Instrument refers to action by the IRT, it is intended that the IRT will act through the chair and co-chair (“Chairs”).

The IRT may also include representatives from other federal, tribal, state, and local regulatory and resource agencies (collectively, the “Resource Agency IRT Members”) with a substantive interest in the establishment of a mitigation bank. To the extent that agency resources allow, the Resource Agency IRT Members will advise the Chairs in assessing Mitigation Plans, assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases, and approving modifications to an instrument.

While the signatures of the Resource Agency IRT Members are not required in order for the Chairs to approve an Instrument, the Resource Agency IRT Members may sign the Instrument if they choose. By signing the Instrument, the Resource Agency IRT Members indicate their agreement with the terms of the Instrument. As an alternative, a Resource Agency IRT Member may submit correspondence expressing their concurrence with the Instrument. The USACE and MDE retain final authority for approval of this Instrument.

An IRT agency may terminate its participation by providing written notice to the Sponsor and the Chairs. Participation of the IRT agency notifying the Sponsor and the Chairs will terminate 30 calendar days after written notification. The Instrument shall continue in full force and effect as to the remaining IRT members. An individual IRT agency representative may be replaced by written notification, to the Chairs, Resource Agency IRT Members, and the Sponsor. Such termination, replacement, or concurrence shall not invalidate the Instrument. The IRT consists of the agencies listed below.

Instrument Signatories:

USACE, Chair

MDE, Co-Chair

Resource Agency IRT Members:

EPA

FWS

NMFS

DNR

MHT

CAC

## OTHER LAWS AND AGENCY AUTHORITIES NOT AFFECTED BY THIS APPROVAL

The USACE and MDE have sole discretion to determine the amount and type of compensatory mitigation necessary to offset the impacts of permits issued in accordance with their respective regulatory programs. This discretion includes determining, in accordance with applicable regulatory program regulations, the number and type of credits required to mitigate for permits issued by such agency and whether a particular permittee’s proposed compensatory mitigation approach, including use of any particular mitigation bank credit(s), will satisfy permit requirements.

If the Sponsor encounters a previously unidentified archaeological or other cultural resource or evidence that a threatened or endangered species may be affected, the Sponsor must immediately stop work and notify the USACE and MDE of what has been found. Coordination with the MHT, USFWS, NMFS, Indian Tribe(s), DNR, and/or other federal or state resource agencies will commence, and the Sponsor will subsequently be advised when it may recommence work.

This Instrument does not in any manner limit the legal authorities or responsibilities of the IRT, or of any IRT agency. This Instrument will not be construed to circumscribe or to limit the authority of resource agencies to make consultative recommendations, nor will it alter the extent of any potential consultative recommendation that may be made by a resource agency in the future.

## TRANSFER OF RESPONSIBILITY FOR COMPENSATORY MITIGATION

In accordance with 33 CFR Part 332.3(l)(2), the Sponsor assumes legal responsibility for a permittee’s compensatory mitigation requirements, once that permittee has   
(1) secured the appropriate number and resource type of credits from the Sponsor; and (2) USACE and/or MDE has received an executed copy of documentation that confirms that the Sponsor has accepted legal responsibility for providing the required compensatory mitigation (see 33 CFR 332.3(l)(3)).

The Credit Transaction Documentation shall consist of a copy of a signed, “Baltimore District Compensatory Mitigation Responsibility Transfer and Sales Notice,” (using the latest District template). A copy of this template is provided on the Baltimore District’s regulatory mitigation webpage (<https://www.nab.usace.army.mil/Missions/Regulatory/Mitigation/>). Upon the transfer of each credit, the Sponsor shall provide a copy of the signed Credit Transaction Documentation to the permittee to verify the transfer of the mitigation responsibility for all DA and/or MDE permits with a mitigation requirement to be satisfied by the Bank. The Credit Transaction Documentation 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 language expressly specifying that the Sponsor, and its successors and assigns assume legal responsibility for accomplishment and maintenance of the permittee’s compensatory mitigation requirements.

Within 10 business days of each credit transfer, the Sponsor shall upload to RIBITS copies of the signed Credit Transaction Document, update the Bank Ledger in RIBITS, and notify the USACE and MDE Mitigation Bank Managers.

The Sponsor assumes responsibility to perform all work, in accordance with the provisions of this Instrument to establish, enhance, restore, monitor, and maintain the Bank until the Sponsor has demonstrated to the satisfaction of the Chairs, in coordination with the IRT, that the Bank complies in all respects with the requirements of this Instrument. Credits secured by a permittee shall not be resold or otherwise debited again.

During permit application evaluation, the applicant will investigate the availability of bank credits from applicable service areas. The Sponsor or its designee shall provide written verification to applicants (using the “Baltimore District’s Statement of Credit Availability” template) that the Sponsor is able to provide the required number and resource type of mitigation credits for which the Sponsor is willing to accept responsibility. A copy of this template is provided on the Baltimore District’s regulatory mitigation webpage at the link above.

Note that any document designating the authority of others to sign Credit Transaction Documentation on behalf of the Sponsor must be on record within the USACE’s and MDE’s administrative record for the Bank before their signature will be accepted. The designation document can only be signed by the Sponsor.

# AUTHORITIES, REGULATIONS, POLICIES, AND GUIDANCE

The establishment, use, operation, protection, and maintenance of the Bank is carried out in accordance with one or more of the following authorities, regulations, policies, and guidance [*include only authorities that are relevant for this particular Bank*]:

## FEDERAL:

### Clean Water Act (CWA) (33 U.S.C. § 1251 *et seq*.)

### Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. § 403)

### National Environmental Policy Act (42 U.S.C. § 4321 *et seq*.)

### Regulatory Programs of the United States Army Corps of Engineers, Final Rule (33 CFR Parts 320-332)

### Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230)

### Endangered Species Act (16 U.S.C. § 1531 *et seq*.)

### National Historic Preservation Act (16 U.S.C. § 470)

### Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq*.)

### Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq*.)

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

### Regulatory Guidance Letter No. 05-01. U.S. Army Corps of Engineers (February 14, 2005)

### Regulatory Guidance Letter No. 08-03. U.S. Army Corps of Engineers (October 10, 2008)

### Regulatory Guidance Letter No. 19-01. U.S. Army Corps of Engineers (February 22, 2019)

## STATE:

### Maryland Nontidal Wetlands Protection Act, Environmental Article, Annotated Code of Maryland, Title 5, Subtitle 9

### Nontidal Wetlands, Code of Maryland Regulations (COMAR) 26.23

### Maryland Waterway Construction Act, Environmental Article, Annotated Code of Maryland, Title 5, Subtitle 5

### Construction on Nontidal Waters and Floodplains, COMAR 26.17.04

### Maryland Tidal Wetlands Act, Environmental Article, Annotated Code of Maryland, Title 16

### Tidal Wetlands, COMAR 26.24

### State Tidal Wetland Licensing Procedures, COMAR 23.02.04

### Criteria for Review of Nontidal Wetland Permit Applications, COMAR 26.23.02.04

### Water Pollution, Water Quality, COMAR 26.08.02

# DEFINITIONS

All terms defined in Mitigation Rule, codified at 33 CFR Part 332, shall have the meanings provided therein and incorporated by reference herein. Other definitions for terms used in this Instrument are included for convenience:

BENEFICIARY OF FINANCIAL ASSURANCES – The party that agrees to receive distributions from Financial Assurances, and upon receipt of any such distribution, to use those distributions in accordance with the objectives of the Instrument and the Financial Assurance instrument(s) approved with this Bank.

BUFFER – An upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

BUFFER ENHANCEMENT– Improvements to Buffer areas, including but not limited to, removal of Non-Native and Invasive Species and supplemental plantings.

BUFFER ESTABLISHMENT – Establishment of Buffer areas where none were previously present. Buffer Establishment includes planting native species and associated measures such as fencing, posting, and livestock exclusion.

BUFFER PRESERVATION – Protection of existing Buffer areas adjacent to aquatic resources.

CONSERVATION EASEMENT – A perpetual Conservation Easement, as defined by Maryland law, in a form using the current Maryland IRT-approved Conservation Easement template.

CONSTRUCTION – 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 impacts authorized by DA and MDE permits. Construction associated with mitigation bank development may include, but is not limited to, activities such as moving earth, removal of stream/river blockage structure, plugging ditches, breaking drain tile, soil management, erosion control measures, installing floodplain improvement features (e.g., woody debris, microtopography, etc.), planting vegetation, installing fencing or signage).

CONSTRUCTION PHASE – A phase of the Bank in which all items required by 33 CFR 332.4(c) and consistent with this Instrument have been appropriately addressed and included within the approved final Mitigation Plan of this Instrument and its Appendices but is implemented in stages over time. The Construction Phase ends upon successful completion of all the modifications and planting as shown in the approved Mitigation Plan, and after the Chairs have provided written approval of the As-Built Plan. Implementation of a Construction Phase does not require an amendment of this Instrument. All Construction Phases of the Bank must be completed within five years from the date of Instrument approval.

CREDIT AVAILABILITY STATEMENT - A written statement provided by the Sponsor to potential credit purchasers stating the number and type of available credits.

CREDIT TRANSACTION – An approved transfer of credits by the Sponsor to satisfy compensatory mitigation requirements of a permit. Each instance of a transaction of credits to a third party shall be supported by a Mitigation Transfer of Responsibility and Sale Notice document signed by the sponsor or its designee.

CREDIT TRANSACTION DOCUMENTATION – The official documentation of the use of credits released to the Sponsor. This Credit Transaction Documentation shall consist of a copy of a completed and signed Mitigation Transfer of Responsibility and Sales Notice document using the current template and a Ledger report reflecting the beginning and ending balances from the transaction. The Credit Transaction Documentation 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 language expressly specifying that the Sponsor, and its successors and assigns, assume legal responsibility for achieving and maintaining the permittee’s compensatory mitigation requirements. The executed Credit Transaction Documentation will be maintained as part of the administrative record for the mitigation bank project and the DA and MDE permits.

DEFAULT – The omission or failure to perform any duty or responsibility under this Instrument.

ECOREGION – Geographic areas of general similarity in climatic conditions and ecosystems, and in the type, quality, and quantity of environmental resources. The Baltimore District utilizes the USEPAs Level III Ecoregions for Maryland (Middle Atlantic Coastal Plain, Southeastern Plains, Northern Piedmont, Blue Ridge, Ridge and Valley, Central Appalachians) in establishing mitigation service areas.

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

ESTABLISHMENT (creation) – 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 area and functions.

FINANCIAL ASSURANCE – A mechanism or instrument that ensures a sufficient amount of money will be available for use to complete or replace a Sponsor’s obligations to implement a required mitigation project and meet specified ecological performance standards and short-term management requirements in the event that the mitigation provider proves unable or unwilling to meet those obligations. Financial Assurances may be required for varying aspects associated with a mitigation bank site, including: a) a mechanism to guarantee the initial release of mitigation bank credits;   
b) monitoring and maintenance; and c) catastrophic events.

GROWING SEASON – Growing Season dates are determined consistent with the appropriate regional supplement to the Corps of Engineers Wetland Delineation Manual. Growing Season is determined through documented evidence of above-ground growth and development of vascular plants and the use of soil temperature as an indicator of microbial activity. If onsite data gathering is not practical, Growing Season dates may be approximated using WETS tables available from the NRCS National Water and Climate Center.

HYDROLOGIC UNIT CODE (HUC) – A nationwide hierarchical land classification system created by the United States Geological Survey utilizing a standardized sequence of numbers to delineate watershed based on surface hydrologic features. The Maryland IRT utilizes 8-digit HUCs (HUC8) in establishing service areas.

INTERIM MONITORING AND MAINTENANCE FINANCIAL ASSURANCE – The mechanism or instrument to guarantee the implementation of monitoring, maintenance, adaptive management, reporting, and other activities required to be implemented by the Sponsor during the Interim Monitoring and Maintenance Period.

INTERIM MONITORING AND MAINTENANCE PERIOD – The period after a bank has met all performance standards but before all credits have been debited during which the Sponsor is responsible for inspecting and maintaining the bank site to ensure that the site continues to meet performance standards until Bank Closure, transfer to a   
Long-Term Steward, and once the Long-Term Funding Mechanism has been fully funded for three years.

LEDGER – An accounting record of credits and debits, including beginning and ending balances, all addition and subtraction of credits, and changes in credit availability. The RIBITS Ledger is maintained by the Sponsor and audited by the USACE on an annual basis. The USACE official Ledger is managed on the Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) website.

LONG-TERM FUNDING MECHANISM – A funding source held by an entity approved by the Chairs, to generate income to fund perpetual management, maintenance, monitoring, catastrophic events, and other activities on the Bank Property consistent with the Long-Term Management Plan and Catastrophic Events provisions of this Instrument. At a minimum, funding should 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. Appropriate mechanisms for managing these funds include endowments, trusts, contractual arrangements, and other mechanisms determined appropriate by the Chairs. The provisions of the long-term management financing must be spelled out in the mitigation banking instrument.

LONG-TERM MANAGEMENT PHASE – The period that begins once the Monitoring and Maintenance Phase and any applicable Interim Monitoring and Maintenance Period ends and then continues in perpetuity, during which time the bank is to be managed, monitored, and maintained pursuant to the Long-Term Management Plan.

LONG-TERM MANAGEMENT PLAN (LTMP) - A description of how the mitigation bank will be managed and how management activities will be funded after performance standards have been achieved and the bank has been closed. The purpose of the LTMP is to ensure long-term sustainability of the resource and that the bank continues to meet its objectives in perpetuity after closure. The LTMP will include a description of long-term management needs and tasks, a description of annual cost estimates for these needs and tasks, the identity of the party responsible for ownership and long-term management of the mitigation bank, and identification of the Long-Term Funding Mechanism the Sponsor will establish to finance long-term management needs, including adjustments for inflation and contingencies.

LONG-TERM STEWARD – The party responsible for carrying out the LTMP of the Bank. Generally, the Long-Term Steward is a third-party assignee, approved by the USACE and MDE, but the Sponsor may elect to act as the Long-Term Steward. A Long-Term Steward can only take on the responsibility after performance standards have been met and once the bank is closed.

MITIGATION PLAN – A detailed physical Restoration, site protection, maintenance, monitoring, financial, and reporting plan that identifies specifically how aquatic resources and associated upland Buffers will be restored, created, enhanced, preserved, managed, and maintained as a mitigation bank governed by this Instrument. A complete compensatory Mitigation Plan must include all components in 33 CFR 332.4(c)(2-14) for each mitigation bank site.

MITIGATION WORK PLAN – Consistent with the description at 33 CFR 332.4(c)(7), the Mitigation Work Plan includes all technical work methods and descriptions for the bank and supports the verification of a permit for construction in wetlands, streams, and other regulated resources. The Mitigation Work Plan, which consists of final grading, design, and engineering specifications, governs construction and habitat Establishment, Restoration and Enhancement activities required to be conducted on the Bank Property to establish credits. The Mitigation Work Plan is approved by the USACE and MDE prior to verifying/authorizing/issuing a permit for work within wetlands, streams, and other regulated resources and is included in the final Instrument.

MONITORING AND MAINTENANCE PHASE – The phase initiated upon conclusion of the Construction Phase and continuing throughout the monitoring period. The Monitoring and Maintenance Phase ends once the final performance standards have been successfully attained, any and all adaptive management measures have been successfully completed, the Sponsor has funded 100% of the Long-Term Management Funding Mechanism, and all credits have been debited. The Monitoring and Maintenance Phase must be sufficient to demonstrate that the Bank has met performance standards, but not less than five years. A longer Monitoring and Maintenance Phase must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs) (33 CFR 332.6(b)).

MONITORING YEAR 1 (ONE) – Begins upon completion of construction activities, including planting and concludes at the end of the first complete Growing Season following completion of construction activities, including planting. The Monitoring Year 1 (one) begins in the calendar year the mitigation planting occurs, unless planting occurs after April 15, in which case the Monitoring and Maintenance Phase will not begin until the following calendar year.

NON-NATIVE AND INVASIVE SPECIES – A category of species that threaten the diversity or abundance of desirable native species, ecological stability, natural resources, economic activity, or human activity. Invasive species are identified on the 2010 National Park Service/U.S. Fish and Wildlife Service document, “Plant Invaders of the Mid-Atlantic Natural Areas,” and the Maryland Invasive Species Council “Invasive Species of Concern in Maryland.” Native status will be based on the Natural Resources Conservation Service Plants Database. Other species (e.g., *Phalaris arundinacea* and *Typha* spp.) may also be considered as invasive species by the IRT.

PHYSIOGRAPHIC PROVINCES – Geographic regions characterized by distinctive geology, topography, climate, and communities of native plants and animals. Maryland is made up of six Physiographic Provinces (Atlantic Continental Shelf, Atlantic Coastal Plain, Piedmont Plateau, Blue Ridge, Ridge and Valley, and Appalachian Plateau). The Maryland IRT utilizes Physiographic Provinces for establishing service areas for mitigation banks.

PRESERVATION – 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.

PROPERTY ASSESSMENT AND WARRANTY – The written property evaluation and assurance signed by the Property Owner.

PROPERTY OWNER – The holder(s) of fee simple title to the Bank Property and grantor of the Conservation Easement.

RE-ESTABLISHMENT – 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.

REGULATORY IN-LIEU FEE AND BANK INFORMATION TRACKING SYSTEM (RIBITS) – A web-based application developed and managed by the USACE to track mitigation bank and in-lieu fee program activity, including Credit Transactions.

REHABILITATION – 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 resources function but does not result in a gain in aquatic resource area.

RESTORATION - 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.

STREAM REACH - The length of a stream identified as representing a uniform set of physical, chemical, and biological conditions. It is the principal sampling unit for collecting physical, chemical, and biological data.

SUBORDINATION AGREEMENT – A written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank property consents to the recordation of the Conservation Easement and agrees to make 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.

SUBSEQUENT PHASE – A phase of a bank that is planned conceptually and for which complete components required by 33 CFR 332.4(c) are not included in the Appendices and approved as part of this Instrument. Subsequent Phases must be approved as a significant modification to this Instrument or developed as a new bank, as determined by the Chairs, in consultation with the IRT. Subsequent Phases shall require public notice and must comply with all procedures and requirements in effect at the time of submission of the complete documentation for the proposed Subsequent Phase. Each Subsequent Phase must be ecologically viable and acceptable as a stand-alone Bank, even if additional Subsequent Phases are never constructed.

TEMPORAL LOSS – The time lag between the loss of aquatic resource functions and services and the replacement of aquatic resource functions and services at the compensatory mitigation site.

UMBRELLA MITIGATION BANK INSTRUMENT (if applicable) – A single mitigation banking instrument may provide for future authorization of additional umbrella mitigation Bank Sites. As additional umbrella Bank Sites are selected and proposed, they must be approved as modifications under this original Instrument, using the procedures in 332.8(g)(1)), including public notice.

# ESTABLISHMENT OF THE BANK

## SPONSOR’S RESPONSIBILITIES FOR BANK DEVELOPMENT

The Sponsor agrees to perform all necessary work, in accordance with the terms and conditions of this Instrument. The work will establish, enhance, restore, monitor, and maintain the aquatic resources, and associated Buffers, as described in the Mitigation Plan, on the Bank Property until the Sponsor has demonstrated to the Chairs, acting in consultation with the IRT, that the Bank complies in all respects with all requirements of this Instrument, all credits are sold, and the Bank is closed. When submitting required documentation in accordance with this Instrument, the Sponsor must upload copies of this documentation to the Bank’s RIBITS Cyber Repository and notify, in writing, the Chairs and Bank Project Managers (PMs).

## PERMITS AND OTHER REQUIRED AUTHORIZATIONS

The Sponsor must obtain all required permits and other authorizations needed to construct, operate, and maintain the Bank prior to initiating construction activities on the Bank. This Instrument does not provide authorization to impact any environmental resources, including wetlands, streams, and/or other Waters of the U.S. or Waters of the State.

Notification to the USACE and MDE is required for the proposed use of any Nationwide Permit, Regional General Permit, or State General Permit in connection with the approval for construction of a mitigation bank site.

When the initial establishment of the Bank, or the development of a new project site under an umbrella banking instrument, involves activities requiring DA authorization permit to construct the Bank, the DA permit to construct the Bank should not be issued until all relevant provisions of the Mitigation Plan have been substantively determined to be complete (i.e., no outstanding issues, final design plans and other Mitigation Plan documents have been reviewed and approved, and only minor, nonsubstantive edits remain). This will help ensure that the DA permit accurately reflects all relevant provisions of the final approved Instrument, such as project design, ecological performance standards, and monitoring requirements. Permit conditions are included in the DA permit to incorporate the approved Instrument, Appendices, and the approved Mitigation Plan.

## BANK LOCATION AND OWNERSHIP

The Property Owner is the owner of real property containing approximately **[*insert: entire legal Property acreage*]** acres (the “Property”), located at [***insert: street address, city, county***], State of Maryland, [***latitude, longitude***], and recorded among the Plat Records of [***insert: County name***]County, Maryland in Plat Book \_\_\_, folio \_\_\_\_\_.

The Sponsor [and Property Owner, if different] desire to create the Bank over a [***insert: bank acreage to five decimals***]-acre portion of the Property (the “Bank Property”). The Bank Property is generally shown on the Bank Location Maps (Appendix A) and legally described in the Real Estate Records and Assurances (Appendix B) attached to and made a part of this Instrument. The Bank Property is located in the [***insert: HUC8 Watershed name***]Watershed (HUC8) [***insert: USGS 8-digit HUC***].

## MITIGATION PLAN

The Mitigation Plan must include site-specific information detailed in 33 CFR 332.4(c)(2) through (c)(14) for each separate compensatory mitigation Bank. The site-specific information must be sufficiently detailed to show that the elements in 332.4(c) have been appropriately addressed. The Parties to this agreement understand that a watershed approach to establish compensatory mitigation must be used to the extent appropriate and practicable. Each element of the Bank’s Mitigation Plan is discussed below.

An approved Mitigation Plan under this Instrument will be considered null and void if physical and biological improvements are not completed at the Bank within five years of the approval of this Instrument and associated Mitigation Plan. This provision is intended to ensure that the Mitigation Plan complies with current regulations and policies, to demonstrate that conditions affecting the feasibility of constructing the Bank as designed have not changed, and to ensure permits remain valid. The Sponsor may reinitiate the process by submitting a request for modification to the approved Instrument, including an updated Mitigation Plan consistent with current baseline information and requirements and standards in effect on the date of modification submission. This modification request would follow the procedures at 332.8(g)(1), requiring public and IRT comment.

## BANK GOALS AND OBJECTIVES

The Bank will provide a self-sustaining, functional natural aquatic system that replaces the functions and acreage of wetlands and streams anticipated to be impacted by authorized activities within a particular service area. The Bank’s aquatic resources shall achieve the intended level of aquatic ecosystem functionality with minimal human intervention, including long-term site management and maintenance.

**GOAL:** The goal of the Bank is to [***select as appropriate*:** **re-establish, rehabilitate, enhance, establish, preserve**] the functions of **[*insert acres*]** of [***list the type(s) of wetland***] wetland system and [***select as appropriate:*** **rehabilitate, enhance, preserve**] the functions of **[linear feet]** of stream system [***remove either wetland or stream if not proposed for the Bank***]. As approved by the USACE and/or MDE, credits from the Bank may be used as compensation for authorized, unavoidable impacts to wetlands and streams [***remove either wetland or stream if not proposed for the Bank***].

**OBJECTIVES:** Specifically, the intended objective(s) of the Bank are: [***select and add bullets to include all proposed mitigation methods, acreages, classifications, and anticipated functions addressing watershed needs. Use the terms shown in all capital letters below, consistent with their definitions provided in the Mitigation Rule, to identify the methods proposed to be utilized for the proposed project*].**

* ESTABLISHMENT of \_\_\_\_\_\_ acres/linear feet of [***describe Cowardin wetland type or Stream Flow type***] that provides [***describe the anticipated functions addressing watershed needs***].
* REHABILITATION of \_\_\_\_\_\_ acres/linear feet of [***describe Cowardin wetland type or Stream Flow type***] that provides [***describe the anticipated functions addressing watershed needs***].
* RE-ESTABLISHMENT of \_\_\_\_\_\_ acres/linear feet of [***describe Cowardin wetland type or Stream Flow type***] that provides [***describe the anticipated functions addressing the watershed needs***].
* ENHANCEMENT of \_\_\_\_\_ acres/linear feet of [***describe Cowardin wetland type or Stream Flow type***] that provides [***describe the anticipated functions addressing watershed needs***].
* PRESERVATION of \_\_\_\_\_\_\_ acres/linear feet of [***describe Cowardin wetland type or Stream Flow type***] that provides [***describe the anticipated functions addressing the watershed needs***].

*[Site-specific, anticipated ecological functions to be provided by the mitigation project, including descriptions of anticipated hydrologic conditions and vegetation communities, that are intended to achieve the Bank’s objectives (i.e., outcome(s)). Some examples may include, but are not limited to:*

* + *Restore 10 acres of uplands to forested wetlands.*
  + *Re-establish wetland hydrology to \_\_\_ acres of drained uplands through construction of an agricultural ditch plug.*
  + *Re-establish palustrine forested wetlands providing habitat complexity and diverse species richness to support fisheries/wildlife habitat/fish spawning areas.*
  + *Restore 1,000 linear feet of stream channel and stream Buffer to improve floodplain connectivity.*
  + *Rehabilitate stream channel hydrology and geomorphology to improve flood storage and nutrient reduction by increasing the frequency and extent of the floodplain for the stream.*
  + *Incorporate large woody debris to provide habitat for benthic organisms.*
  + *Create alternating riffles and pools to improve bed form diversity.*
  + *Re-establish riparian vegetation within the stream Buffer for long-term bank stability, shade cover, landscape connectivity and wildlife habitat corridors.*
  + *Enhance existing farmed wetlands improving wildlife habitat through removal of Non-Native and Invasive Species and planting with native FACW and OBL forest wetland species consistent with the included planting plan.*
  + *Preserve and maintain native wetland habitat for [add name of specific] rare or threatened and endangered species].*

*[Conversely, describe any aquatic resource functions that may be lost or negatively impacted by the proposed project (see definition of Enhancement herein)]*

Use of approved wetland and stream assessments for the Baltimore District will help to characterize and target the chemical, physical, and biological functions of wetland and stream resources for Restoration and incorporation into a mitigation project design. The successful achievement of the project objectives as described above will be through successful achievement of the Bank’s performance standards, which are developed to measure attainment of these objectives.

## SITE SELECTION

The Sponsor has proposed to establish a Bank on the site depicted in the Bank Location Maps (Appendix A) to the Instrument. Appendix A includes a general vicinity map, map of limits of Bank boundaries within the overall legal Property, and a map of other conserved lands in the vicinity of the Bank, if applicable (e.g., existing reserve or conservation areas such as a National Wildlife Refuge, State Wildlife Management Area, State Park, local parks or protected areas, non-profit conservation organization/land trust properties or portfolio areas, etc.).

The Sponsor and Property Owner have certified that the Sponsor possesses the requisite property interest to undertake the activities described in this Instrument and its Appendices by signing the Property Owner Acknowledgement of Property Rights and Agreement to Provide Access (Appendix B) to this Instrument.

The Sponsor has performed a Property Assessment and Warranty, in which the Sponsor has located and evaluated potential conflicts with the objectives of this Bank and all existing encumbrances or property interests recorded over the Property proposed for inclusion in the Bank. This Property Assessment and Warranty is attached to this Instrument (Appendix B). The Sponsor and Property Owner are responsible for ensuring that the information in the Property Assessment and Warranty in Appendix B is true and complete as of the date of this Instrument. Should the Sponsor or Property Owner become aware of any errors or omissions in the Property Assessment and Warranty after the date of this Instrument, the Sponsor and Property Owner shall notify the IRT in writing within 30 days of discovery. The IRT shall evaluate any impacts of the errors or omissions on the Bank, Bank Property, and the Grantee’s interest in the Conservation Easement area and the IRT may find Default pursuant to Section V.I (*Default*) of this Instrument in such circumstances.

The Sponsor has evaluated the Bank and considered the watershed needs and the practicability of accomplishing ecologically self-sustaining aquatic resource Restoration, Enhancement, and/or Preservation at the Bank using the current version of the *Site Evaluation Report for Stream and Wetland Mitigation in Maryland for the Baltimore District*. This document is located on the Baltimore District RIBITS website under the Bank and ILF Establishment for USACE District: Baltimore, District Processes (MD IRT). A description of this evaluation and its results are included in the Site Evaluation Report (Appendix C) to the Instrument. In addition, applicable state-requirements such as documentation/mapping for Environmental Justice, Climate Change, etc. are included in Appendix S to the Instrument.

*[Insert a brief summary of the factors considered during the site selection process and why it is a good candidate for fulfilling mitigation needs. Some factors that need to be considered in choosing a site are a source of water and the resulting water regime at the proposed site, type and condition of soil on the site, position of the Bank Property in the landscape, historical/current/future land uses of the site and adjacent areas, presence of federal and/or state listed species, presence of existing corridors to wildlife habitats (existing wetlands, natural areas or other aquatic sites), connection to other landscape features (may use Watershed Resources Registry to identify how this site fits with other resources and priorities), existing or potential vegetated Buffers, and extent of invasive species on the site as well as seed sources that might be nearby or upstream. In addition, include consideration of watershed needs, onsite alternatives where applicable, conflicting uses and encumbrances of the Bank Property, future foreseeable management needs, and the practicability of accomplishing ecologically self-sustaining aquatic resource Restoration, Establishment, Enhancement, and/or Preservation at the compensatory mitigation project site. See 33 CFR 332.3(d)].*

## SITE PROTECTION INSTRUMENT

*[Conservation Easements held by state or local governments, other federal or state resource conservation agencies, or non-governmental groups such as land trusts are the most secure form of site protection instrument and are a preferred type of real estate instrument over a declaration of restrictive covenant. When a site protection instrument other than a third-party Conservation Easement is proposed, the Sponsor shall provide documentation to the IRT demonstrating that establishing a Conservation Easement for the Bank is not practicable, including efforts to identify an appropriate holder for the Conservation Easement. This Instrument template assumes the legal site protection instrument will be a Conservation Easement. Should the use of a site protection instrument other than a Conservation Easement be approved by the Chairs, in coordination with the IRT, this document’s text must be revised consistently to describe the legal arrangements and instrument used to ensure the long-term protection of the Bank. In all cases, the Sponsor is required to provide details on the Conservation Easement holder’s qualifications, personnel, and experience relative to the preservation and management of aquatic resources and/or habitat conservation areas.]*

The Property Owner has sufficient and legal property interest (including mineral rights) in approximately \_\_\_ acres of land in \_\_\_\_\_\_ County, Maryland as described in Appendix B. A Property description with deed reference, and Title Report can be found in Appendix B. The site protection instrument for the Bank will be a Conservation Easement using the approved IRT template for Maryland. The Conservation Easement is provided at Appendix D. The Conservation Easement holder will be [***name of the Conservation Easement holder***].

The aquatic habitats, riparian areas, Buffers, and uplands that comprise the overall Bank Property must be provided long-term protection by the Sponsor and the Property Owner to ensure that the Bank is protected in perpetuity consistent with the terms and conditions set out in the Instrument. This perpetual Conservation Easement over the Bank Property will be established in accordance with State law and 33 CFR 332.8(t).

The Conservation Easement must be approved in writing by the Chairs and recorded in the chain of title for the Bank lands. The Sponsor will provide a copy of the recorded Conservation Easement to the Chairs within 30 days of recordation.

The Chairs will not release any credits until the Sponsor has provided evidence to the Chairs that the approved Conservation Easement has been recorded in the property records of the appropriate County land records and all other requirements for Bank establishment set forth in the Instrument have been met.

**[*insert paragraph as applicable***: For government properties where property transfer recordation in the chain of title is not practicable or otherwise legally available, site protection will be provided through facility management plans or integrated natural resource management plans, as appropriate, together with a conservation land use agreement. Implementation of a conservation land use agreement in addition to a federal management plan provides durability and reduces risk. The conservation land use agreement between the governmental Property Owner, the Sponsor, USACE, and MDE prohibits incompatible land uses and establishes a third-party right of site protection enforcement. If agency needs or mission results in an incompatible use on public lands originally set aside for compensatory mitigation, the public agency authorizing the incompatible use is responsible for providing alternative compensatory mitigation that is acceptable to the Chairs for any loss in functions resulting from the incompatible use (33 CFR 332.7(a)(4))**]**

The approved Conservation Easement shall establish, in a third-party Conservation Easement holder (“Holder”), the right to monitor and enforce the Conservation Easement provisions. The Holder shall be a qualified land trust, state natural resource agency, or other appropriate nonprofit organization approved by the Chairs. The Sponsor shall provide evidence that the identified Holder is authorized by Maryland law and regulations to perform functions granted to it and that the Holder and the Sponsor have reached agreement on both the financing mechanism and the amount of funds to be provided.

The Conservation Easement cannot be altered, amended, modified, vacated, or terminated in whole or in part in any way without the express approval of the Chairs, in coordination with the IRT. In accordance with the requirements of 33 CFR 332.7(a)(3), the Conservation Easement includes a provision requiring 60-day advance notification to the Chairs before any action is taken to void or modify the Conservation Easement, including transfer of title to, or establishment of any other legal claims over, the Bank Property. The Property Owner must provide this notice as a written request describing the existing language and the requested modification of the Conservation Easement to the Chairs. The request will be processed in accordance with the requirements of 33 CFR 332.8(g), as noted in Section VI.E (*Validity, Modification, and Termination of this Instrument*) of this Instrument. The Conservation Easement shall be recorded over all property within the Bank boundaries.

If applicable, the Conservation Easement shall:

1. Include the lender’s and trustee’s written agreement to subordinate the lien, dignity, and priority of any deed of trust to the covenants and restrictions in the Bank’s Conservation Easement; and
2. Ensure, through written Subordination Agreement (signed by the appropriate party(ies), that the Bank’s Conservation Easement is given superior priority to any easement or other real property interest that the IRT determines has potential to conflict with the mitigation and conservation purposes of the Bank.
3. As appropriate and as determined by the Chairs, include a written consent agreement signed by the appropriate party(ies), establishing a water resource easement overlay acknowledging and restricting the existing encumbrance within the Bank consistent with the Bank’s Conservation Easement restrictions and conservation benefits. The consent agreement shall acknowledge the compatibility of the uses, goals, and interests of the Bank and the existing encumbrance within the Bank’s Conservation Easement.

Development and/or review of a draft Instrument and site-specific Mitigation Plan shall not proceed until the Sponsor has coordinated with the holder of any easement or other real property interest and landowner and has received notice that the holder and landowner is willing to provide written Subordination Agreement/consent for compensatory mitigation on the existing encumbrance.

The Sponsor is responsible for ensuring that the site protection instrument is approved by the USACE and MDE and remains with the chain of title. Any future land conveyance shall not conflict with the intent and provisions of the approved site protection instrument, nor shall such conveyance enlarge or modify the uses specified in the site protection instrument.

## BASELINE INFORMATION

*[Baseline information may include, but is not limited to: descriptions of existing onsite wetlands/wetland Buffers/streams/floodplains, historic and existing plant communities/cover type/age, current hydrogeomorphic setting, historic and existing hydrology sources and hydrodynamics (surface and overbank flow, precipitation, known diversions), soil conditions and geology, current onsite drainage/ditching, current groundwater level monitoring (at least 1 year preferred) within proposed wetland Restoration or Establishment areas, historic land use uses/changes/alterations in the drainage area (onsite, adjacent, upstream and downstream), wildlife use (foraging, nestling, movement corridors), historic and cultural resources, threatened and endangered species, delineation, description of the causes of degradation of wetlands and streams, Watershed Resource Registry scoring, any stream crossings/roads/other structures that will be removed/replaced/or left in place must be identified on the plans. In general, crossing should be removed, and if necessary to be left in place, the crossing must be stable and not adversely affect the stream and wetlands, and other site characteristics appropriate to the type of resource proposed as compensation. In general, Establishment areas have a higher risk of failure and therefore require more detailed analysis to evaluate risk and uncertainty.]*

A detailed description of the current baseline conditions of the Bank, including a description of the existing functions and values of the Bank is described in Appendix E. Mapping of the Bank and its general watershed is included in, but not limited to, the attached Appendices, including USGS topographic quadrangle (Appendix E.1), historic and recent aerial imagery (Appendix E.2), soils mapping (Appendix E.3), FEMA   
100-year floodplain FIRM map (Appendix E.4), LIDAR imagery (Appendix E.5), national wetland inventory (NWI) map and DNR wetlands map (Appendix E.6), and a watershed scale map showing location of site relevant to terrestrial and aquatic features and public/private conservation areas (Appendix E.7) . Photographs of the mitigation site (Appendix E.8) and the baseline ecological assessments using the current   
IRT-approved methodologies (Appendix E.9) are attached to and made a part of this MBI.

Based on a wetland delineation report dated [**date of delineation report**] completed by the Sponsor and provided to the USACE and MDE, the limits of aquatic resources shown on the delineation plan dated **[date of delineation plan]** were verified by the USACE and MDE at the Bank Property. A copy of the delineation report and approved delineation plan for the Bank Property are included in Appendix E.10

Additional baseline data Appendices include a Non-Native and Invasive Species inventory map depicting the location (acres) and extent (coverage) of all individual species of invasive plants over the entire mitigation site (Appendix E.11); historic and cultural resources, if known and present on site (Appendix E.12); and federal and state rare, threatened, and/or endangered species, including USFWS IPaC results (<https://ecos.fws.gov/ipac/>) and any available State screening information   
(Appendix E.13). *Please attach any other reports and/or correspondence regarding historic properties, threatened or endangered species, essential fish habitat, and state environmental resources in Appendix C, Site Evaluation Report.*

## DETERMINATION OF CREDITS

A total of \_\_\_ potential [***insert: appropriate credit type***]credits are proposed to be generated from the Bank based on [***insert:* credit determination methodology *(e.g., MSMF***], provided that all areas meet the final performance standards. *Similar paragraphs will need to be included for all credit types generated, including any under multiple programs and authorities.*

The USACE and MDE, in coordination with the IRT, determines the number of potential credits at the time of Instrument approval. Credit classifications (e.g., palustrine emergent, palustrine scrub/shrub, and palustrine forested wetlands and stream) and credit determination methodology will be in accordance with the IRT procedures at the time the Mitigation Plan is approved by the USACE and MDE. The principal units of credits and debits are ***[include based on Bank type:* credit-acres (wetlands) and functional feet (streams)]**.

The total potential number of credits must reflect the anticipated difference between pre- and post-compensatory mitigation project site conditions and functions, as determined by a condition assessment or other suitable metric. Credits from this Bank are produced in accordance with the credit release schedule associated with this approved Instrument.

*[For the paragraph below, summarize only the credit type(s) specifically related to the credit type(s) being proposed for the Bank (e.g., nontidal wetland or streams). For Banks proposing tidal wetlands credits, this section should be revised to reference tidal wetland credit determination ratios/documentation.]*

Appendix F – *Determination of Credits* provides a summary of the anticipated wetland and/or stream credits by type proposed for the Bank. Wetland credits from the proposed mitigation methods and associated functional uplift were determined in consideration of existing baseline conditions and by applying the IRT-approved credit ratios outlined in the current IRT-approved document, *Typical Nontidal Wetland Mitigation Credit Values Using Ratio Method*, dated \_\_\_\_\_, or current Baltimore District-approved functional/conditional assessment/credit calculator. Stream credits from the proposed mitigation methods and associated functional uplift were determined by applying the IRT-approved current methodology, *Maryland Stream Mitigation Framework Calculator (MSMF), Version \_\_\_,* dated \_\_\_\_\_\_\_. [***future insertion upon Maryland Wetland Assessment Methodology (MDWAM) and associated calculator approval:*** Wetland credits from the proposed mitigation methods and associated functional uplift were determined by applying the IRT-approved methodology, *Maryland Wetland Assessment Methodology (MDWAM), Version \_\_\_,* dated \_\_\_\_\_, and its associated wetland credit calculator.]

Recordation of an approved Conservation Easement with an appropriate, qualified Conservation Easement holder may result in additional credit yield of up to 5%, as determined by the USACE and MDE, in coordination with the IRT. The current version of the *Maryland IRT Standards for Conservation Easement Holders for Mitigation Sites* shall be used in consideration of a proposed Conservation Easement holder and appropriateness of any additional credit yield. This document is located on the Baltimore District RIBITS website under the Bank and ILF Establishment for USACE District: Baltimore, Baltimore District Site Protection Templates and Models. The IRT will consider the nature of the Conservation Easement, the identity and accreditation of the easement holder, potential facilitated implementation and enforcement, potential of future disturbance such as government taking or eminent domain actions, and other such factors.

Documentation appropriate to support the determination of credits using the approved methodology(ies) is provided in Appendix F of this MBI. In addition, credits based solely on Preservation must satisfy all the criteria described at 33 CFR 332.3(h). [***If Preservation credit is proposed, include*:**An itemized description of how the proposed preserved aquatic resources meet each of these criteria is provided in Appendix F.] The IRT may conduct site visits or request additional information to verify the information provided by the Sponsor.

Adjustments to Credit Totals: Nothing in this Instrument entitles the Sponsor to a change in the number of potential credits generated by the Bank after the Instrument is approved. When an ecological assessment method is used to calculate gains or losses in aquatic resource functions or ecological conditions, a higher than anticipated degree of functionality for the Bank (i.e., ecological functions/conditions assessed in excess of those upon which the original approved credit totals and release schedule were based) cannot result in the approved credit totals for the Bank being increased or more credits being released. Therefore, this approved Instrument and Mitigation Plan should reflect high functioning resources. Credit totals may, however, be adjusted downward when the Bank does not achieve the expected degree of functionality based on the results of the ecological assessment method. In addition, if the Bank construction results in substantially more acres or linear feet of established, enhanced, or restored aquatic resource than was originally anticipated when the Mitigation Plan and associated credit release schedule was approved, the Sponsor may request a modification in accordance with the procedures at 33 CFR 332.8(g) associated with the request for as-built approval. The draft modification request must consist of appropriate documentation, including an as-built plan identifying the areas of additional aquatic resources and a revised credit breakdown for evaluation and approval by the USACE and MDE, in coordination with the IRT. The draft Instrument Modification request must also include a revised mitigation plan including, but not limited to, goals and objectives, baseline information, determination of credits, site protection instrument, credit release schedules, performance standards, monitoring requirements, financial assurances, long-term management, and adaptive management plan associated with the newly constructed additional aquatic resource areas. The as-built documentation, where applicable, will be the baseline measure for deviations from the initially approved Mitigation Plan. As-built information will also be utilized as a reference in subsequent monitoring reports.

## MITIGATION WORK PLAN

The Sponsor plans to establish aquatic habitats and their associated Buffers in accordance with the Mitigation Work Plan (MWP) (Appendix G). The MWP includes detailed site-specific written specifications and work description information in accordance with 33 CFR 332.4(c)(7). The MWP governs the construction and habitat Establishment, Restoration, and Enhancement activities required to be conducted on the Bank Property to establish credits. Prior to construction of any portion of the Bank, the Sponsor must submit a MWP for IRT review. The USACE and MDE must approve the MWP, in coordination with the IRT, and verify/authorize/issue a permit for work within wetlands, wetland Buffers, streams and floodplains prior to beginning work within these resources. The Sponsor shall construct the Bank in compliance with the approved MWP.

In the event that the Sponsor and/or IRT determine that modifications must be made to the MWP (Appendix G), the Parties shall meet to discuss the modifications, and the Sponsor shall submit a written request for approval of such modifications to the Chairs. The modification request shall explain the reasons for requesting the modification and demonstrate that the modified MWP would still result in an acceptable MWP according to existing site conditions and the objectives of the Bank. Upon agreement of the Parties, the Sponsor shall then implement all approved modifications to the MWP. Modification of the MWP may constitute an amendment to the Instrument. If the Chairs, in coordination with the IRT, elect to authorize modifications to the MWP, such authorization may be conditioned upon, among other things, a change in the number of credits available for release. The Chairs shall notify the Sponsor of such change in the credit determination. The Sponsor shall provide an Instrument Modification to revise the credit determination table in Appendix F as directed by the Chairs to reflect any change in the potential and/or available credits.

The Sponsor must follow the procedures outlined in the approved Adaptive Management Plan to notify the IRT if the project cannot be constructed in accordance with the final MWP.

## PHASING AND APPROVAL

Subsequent Phases – Each Subsequent Phase must independently meet the requirements for the establishment and operation of a mitigation Bank. Components of a Mitigation Plan will be evaluated independently for each Subsequent Phase. Establishment of each Subsequent Phase is subject to the approval by the Chairs, in coordination with the IRT. The Sponsor may propose a Subsequent Phase by submitting a written request to the IRT. Subsequent Phases will need to comply with all procedures and requirements in effect at the time of submission of the complete documentation for the proposed Subsequent Phase. A Subsequent Phase must be approved as a significant modification to this Instrument or developed as a new Bank, as determined by the Chairs, in coordination with the IRT. Approval of this Instrument does not obligate any IRT agency to approve any Subsequent Phase.

Construction Phases - The sponsor will establish the Bank in **[insert number of Construction Phases]** Construction Phase(s) that is(are) presented in full in this Instrument and within its Appendices. The Construction Phases and associated actions must be constructed in the sequence and timing (i.e., detailed schedule for implementation including specific actions tied to specific dates) specified in the approved Mitigation Work Plan (MWP) (Appendix G).

Implementation of the MWP must be initiated no later than the first full Growing Season after the date of the first Credit transfer associated with that Construction Phase. All Construction Phases must be completed within five years of the approval date of this Instrument. If approved physical and biological improvements are not completed within five years of the approval date of this Instrument, the approved Mitigation Plan for those uncompleted Construction Phases will no longer be valid under this Instrument, and the Sponsor must, prior to proceeding with any uncompleted Construction Phase, reinitiate the process by submitting a request for a significant modification of this approved Instrument (33 CFR 332.8(g)(1)), including an updated Mitigation Plan reflecting current baseline conditions, appropriate documentation for the modification, and any additional information deemed necessary by the Chairs. This significant modification request for the Instrument will be consistent with the current regulations, policies, and procedures in effect at the time of the submission of the complete documentation of the modification. Construction Phases that were completed within five years of the approval date of this Instrument, may continue to be administered and operated under the terms of this Instrument.

Final Mitigation Plans for each Construction Phase, which are fully developed, and include all components required by 33 CFR 332.4(c), are included in this Instrument and its Appendices, but may be implemented in stages over time. Components of the Final Mitigation Plan (e.g. credit assessment/functional assessment scoring, credit release schedules, work plan, financial assurances, long-term management and funding, accounting and reporting, closure, etc.), must be independently addressed for each proposed Construction Phase in this Instrument. The Sponsor shall provide a breakout of each Mitigation Plan component by Construction Phase. For example, the Sponsor shall provide a breakout of the Long-Term Management tasks, funding, and disbursements by Construction Phase. The phased final Mitigation Plans must demonstrate that each Construction Phase independently meets the mitigation bank establishment and operation requirements of the Instrument.

Final Mitigation Plans must clearly specify how each Construction Phase will be constructed and monitored in sufficient detail that a third-party acting on the construction Financial Assurance could complete establishment of any given phase. Short-term monitoring, management, adaptive management, reporting and other activities to be implemented by the Sponsor during Bank operation must be described in detail for managing each Construction Phase independently as well as together.

Required Financial Assurances must be itemized for each Construction Phase. All funding estimates shall be developed assuming that each Construction Phase is constructed and managed independently without the economies of scale or other cost reductions that may occur if construction of the entire Bank was implemented at one time.

An as-built report must be submitted by the Sponsor for each Construction Phase of the Bank following completion of the construction of that phase of the Bank.

The Sponsor will notify the IRT 30 calendar days before beginning and within 30 days after completing any Construction Phase.

## MAINTENANCE PLAN

The Sponsor agrees to perform all necessary work to maintain the Bank consistent with the site-specific maintenance plan in Appendix H to this Instrument until Bank Closure. Appendix H is a description and schedule of regular maintenance requirements to ensure the continued viability of the mitigation project once initial construction is completed and throughout the Monitoring and Maintenance Phase. The maintenance plan includes identifying the responsible party(ies), site-specific tasks, schedule, and funding (including contingencies). Tasks may include monitoring well maintenance, measures to control predation of mitigation plantings, Non-Native and Invasive Species control and management, supplemental and replacement planting plan, habitat and stream structure repair, measures to control erosion or sedimentation, measures to control road salt accumulation, trespassing control, and damage repair, fencing and signs repair or replacement, trash and debris removal, and visual inspections. The plan shall include the task frequency and duration until Bank Closure, when the responsibility is transferred to the Long-Term Steward. Maintenance activities shall be documented in all monitoring reports.

Deviation from the monitoring provisions in the approved Instrument and Mitigation Plan is subject to review and written approval by the Chairs, in consultation with the IRT. The Sponsor and/or the Long-Term Steward shall obtain any necessary federal, state, or local approvals as may be required by law prior to undertaking any maintenance activities. Upon Bank Closure, long-term maintenance responsibility is transferred to the Long-Term Steward.

## PERFORMANCE STANDARDS

*[Nontidal wetland and stream mitigation banks shall use the current performance standards as described in the document, “Ecological Performance Standards and Monitoring Protocol for Nontidal Wetland Mitigation Sites in Maryland” and “Stream Mitigation Performance Standards and Monitoring Requirements in Maryland”. Example performance standards for tidal wetland banks are available on the Baltimore District RIBITS website for initial use in development of the performance standards, however additional or alternate site-specific performance standards may be required based on the specific Bank proposal. Additional or alternate performance standards may be proposed for a Mitigation Plan. However, the sponsor must clearly identify those additions/changes where they deviate from the IRT standards and justification for those differences. Deviations from the IRT standards must be approved by the Chairs, in coordination with the IRT.]*

Ecologically-based standards will be used to determine whether the Bank is achieving its objectives, developing into the desired resource type, providing the expected functions, and attaining all other applicable metrics. Bank projects should result in resource structure and functional capacity that are comparable to high quality reference aquatic resources.

The IRT-approved [***insert:* nontidal/tidal wetland and/or stream**]performance standards for this Bank can be found in Appendix I. The Chairs may use any available information, including but not limited to monitoring reports and field observations during site visits, to determine whether the performance standards have been met.

As described in the IRT-approved performance standards, monitoring of nearby reference aquatic resources and comparison of ecological performance-based milestones at the mitigation site should be incorporated into monitoring and credit release requests. These reference site(s) should be proposed and approved as part of this Instrument. A compensatory mitigation site should have the relative ability to support and maintain a comparable community of organisms, species composition, diversity, and functional organization as a reference aquatic resource. Sponsors shall compare conditions from the monitoring efforts to the performance standards and explain whether those standards are met or not. In addition, data and observations from that nearby previously approved reference site are to be submitted as part of the monitoring to help explain why a performance standard may not be met at the mitigation site and whether a requested credit release (over all or a portion the site) is warranted. These reference aquatic resources can be used to reflect the range of variability exhibited by the class of aquatic resources. For example, measurements of hydrology and overall seasonal hydroperiod (depth, degree, duration, and periodicity) and comparison to reference aquatic resources of similar type and landscape position in the region may be used to show a similar response to drought or wetter than normal conditions. Another example may be to show variability from anthropogenic stressors on in-stream macroinvertebrate or fish communities at a mitigation site when compared to a nearby approved reference site.

Credits from a mitigation bank are produced with demonstrated success in meeting performance-based milestones in accordance with a credit release schedule associated with the approved Mitigation Plan. The mitigation site shall demonstrate success in meeting all performance-based milestones when full credit release is requested. Otherwise, appropriate actions shall be taken such as requiring adaptive management, decreasing available credits, delay of credit release or partial credit release until performance is achieved, etc.

## MONITORING REQUIREMENTS

*[Nontidal wetland and stream mitigation banks shall use the current monitoring standards as described in the document, “Ecological Performance Standards and Monitoring Protocol for Nontidal Wetland Mitigation Sites in Maryland” and “Stream Mitigation Performance Standards and Monitoring Requirements in Maryland”. Example monitoring requirements for tidal wetland banks are available on the Baltimore District RIBITS website for initial development of the monitoring plan; however, additional or alternate site-specific performance standards may be required based on the specific Bank proposal. Additional or alternate monitoring requirements may be proposed for a mitigation plan. However, the sponsor must clearly identify those additions/changes where they deviate from the IRT standards and justification for those differences. Deviations from the IRT standards must be approved by the Chairs, in coordination with the IRT.]*

Monitoring will include data collection 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.

Upon the as-built plan and construction completion report approval by the Chairs, the Sponsor agrees to be responsible for performing monitoring activities at the Bank until Bank Closure according to the Monitoring Requirements set forth in Appendix I to this Instrument. The Sponsor shall not deviate from these Monitoring Requirements without written approval from the Chairs.

The required Monitoring and Maintenance Phase for this Bank shall be 10 years and shall adhere to the approved monitoring report requirements. The Monitoring and Maintenance Phase begins the year the mitigation planting occurs, unless planting occurs after April 15, in which case the Monitoring and Maintenance Phase will not begin until the following year. The Chairs may extend the Monitoring and Maintenance Phase if the IRT determines that performance standards have not been met by the end of the Monitoring and Maintenance Phase.

Upon a determination by the Chairs, in coordination with the IRT, that the Bank has successfully achieved all its final performance standards, but all credits have not been sold, the Bank will enter the Interim Monitoring and Maintenance Phase. The Sponsor shall perform interim monitoring and maintenance activities for the Bank detailed in Appendix J until Bank Closure and once the Long-Term Funding Mechanism has been fully funded for three years. The interim monitoring report shall be submitted to the IRT no later than December 31st of each year until Bank Closure.

An interim monitoring and maintenance plan must be approved that describes the monitoring, management, adaptive management, reporting, and other activities to be implemented by the Sponsor during the Interim Monitoring and Maintenance Period. The Sponsor is responsible for providing an Interim Monitoring and Maintenance Financial Assurance to guarantee the implementation of the approved interim monitoring and maintenance activities and all required corrective and adaptive/management actions during the Interim Monitoring and Maintenance Period, as described in Appendix J.

The Sponsor will submit monitoring reports for the Bank during the Monitoring and Maintenance Phase and the Interim Monitoring and Maintenance Period. Monitoring reports shall be submitted via electronic mail attachment to the IRT and uploaded to RIBITS by December 31st of each monitoring report year. The Sponsor shall submit monitoring reports in the form of the current Baltimore District’s Mitigation Monitoring Report Summary Content Template, including appropriate appendices. The interim monitoring reports will describe site conditions in relation to the final performance standards.

## LONG-TERM MANAGEMENT

1. Long-Term Management Plan:

The Bank shall be designed, to the maximum extent practicable, to be self-sustaining once performance standards have been achieved. At the end of the Monitoring and Maintenance Phase, including any Interim Monitoring and Maintenance Period, when the Bank has met its performance standards and the Bank is closed, the Sponsor, or Long-Term Steward (if identified as a third-party) shall be obligated to manage, monitor, and maintain the Bank in perpetuity to preserve its habitat and conservation values in accordance with this Instrument and the Long-Term Management Plan (LTMP). The LTMP shall identify the party responsible for ownership and all long-term management of the Bank.

The LTMP for the Bank (Appendix K) identifies the perpetual management, monitoring, and reporting activities to be conducted after Bank Closure. The LTMP includes detailed descriptions of the long-term management tasks, annual cost estimates for these needs, identification of the Long-Term Funding Mechanism, and provisions to allow for the transfer of long-term management responsibilities. The LTMP and associated funding shall address adjustments for inflation and other contingencies. The LTMP also identifies and describes whether a third party has been granted the right to enforce the site protection instrument and the appropriate funding for such enforcement activities.

The Sponsor or Long-Term Steward (if identified as a third-party) may modify the LTMP, subject to the review and approval by the Chairs, in coordination with the IRT. The LTMP must contain a provision requiring 60-day advance notification to the Chairs before any action is taken to void or modify the LTMP, including transfer of title to, or establishment of any other legal claims over, the Bank. The LTMP, and any future modifications, must be approved and signed by the Sponsor, Long-Term Steward (if identified as a third-party), the Chairs, and all signatories to this Instrument.

[*Construction phasing and schedule for establishment, closure, and long-term management activities of a mitigation bank site must be described in detail in the Long-Term Management Plan, funding long-term management estimates, long-term management funding agreement, and the disbursement schedule.]*

Prior to Bank Closure, the Sponsor, in coordination with an identified third-party Long-Term Steward, shall review and revise, if necessary, the LTMP and associated long-term funding estimate to more accurately reflect actual management tasks required during the Long-Term Management Phase and their relative costs. If it is determined that the LTMP needs to be revised, the revised LTMP shall include updates to the description of long-term management needs and the itemized estimate of annual costs. The Long-Term Steward should review and approve the revised estimate of annual costs. The Long-Term Funding Mechanism shall be modified to incorporate the modified LTMP and itemized estimate of annual costs. The LTMP, long-term funding estimate, and Long-Term Funding Mechanism may only be amended or modified with the written approval of the Chairs and any other signatory Parties to these documents. The Sponsor [*and/*or] the third-party Long-Term Steward (if applicable) [*is/*are] responsible for execution of the approved LTMP and may only deviate from the approved LTMP upon written approval of the Chairs, in coordination with the IRT.

1. Responsibility for Long-Term Management:

Long-term management commences after Bank Closure. At the time of this Instrument approval, the [***insert as appropriate:* Sponsor or Name of Identified third-party Long-Term Steward**]shall be responsible for carrying out long-term management of the Bank in perpetuity to preserve its habitat and conservation values in accordance with this Instrument and the LTMP and shall be referred to as the Long-Term Steward in this Instrument and LTMP. [*In all cases, the Sponsor is required to provide details on the Long-Term Steward qualifications, personnel, and experience relative to preservation and management of aquatic resources and/or habitat conservation areas.]*

The Sponsor may transfer long-term management and maintenance responsibilities to another party, such as a land trust, nonprofit conservation organization, or private land manager. If the Sponsor transfers Long-Term Management responsibilities to a third party, the proposed Long-Term Steward, must be approved by the Chairs, in consultation with the IRT. The IRT will consider the qualifications of the proposed Long-Term Steward, including assessment of the entity’s qualifications, experience, and past performance. For transfer of long-term management, the proposed Long-Term Steward must have the legal authority to receive funds from the established Long-Term Management Funding Mechanism. Long-Term Management responsibilities will transfer only upon the proposed Long-Term Steward’s execution of the approved LTMP, with appropriate IRT-approved modifications. The Sponsor shall provide copies of the approved Instrument, Mitigation Plan, LTMP, and site protection instrument to the approved Long-Term Steward. After the date of any approved transfer by the Sponsor of their Long-Term Management responsibilities and the USACE and MDE approval of said transfer, the Sponsor shall have no further obligations hereunder and all references to the Long-Term Steward in this Instrument shall thereafter refer to the new, approved Long-Term Steward, except that the Sponsor’s liability for acts, omissions, breaches, or other compliance issues occurring prior to the transfer shall survive the transfer.

The Long-Term Steward will maintain a copy of the Instrument, including the Mitigation Plan, the site protection instrument, and LTMP. The Long-Term Steward shall be responsible for providing long-term management reporting in accordance with this Instrument, Section V.H (*Reporting Protocols*), and the Long-Term Funding Mechanism. [**Name of third-party entity responsible for enforcing the Conservation Easement such as governmental or non-profit resource management agency**] is responsible for the enforcement of the approved Conservation Easement, and the Sponsor has provided the resources necessary to monitor and enforce these site protections.

### Funding Long-Term Management Activities

*[If the long-term management fund is to be established utilizing a funding mechanism other than an endowment, the Sponsor must submit the alternative mechanism to the IRT for approval and demonstrate that the alternative mechanism would be sufficiently funded and managed to meet the needs of the Long-Term Management in accordance with the justification requirements as outlined in more detail below.]*

Prior to initial credit release upon MBI approval, the Sponsor shall establish a Long-Term Funding Mechanism through an endowment fund [***insert as appropriate:* trust or contractual arrangement (government agencies only)**] to finance long-term management and maintenance activities for the Bank. The Sponsor shall provide the approved, executed long-term management endowment funding agreement to the Chairs as a requirement for initial credit release. An approved, final version (unexecuted) of the long-term endowment funding mechanism is provided in   
Appendix K.

The long-term management endowment fund is intended to be an enduring source of funding for the activities described in the approved LTMP. The long-term management funding agreement establishing the endowment shall restrict use of the funds to the activities described in the LTMP. The approved endowment agent shall invest the endowment in an appropriate financial vehicle to grow the fund and shall hold the endowment principal and interest monies (the long-term management fund), to provide for the financial requirements of the long-term management of the Bank in accordance with the LTMP and the endowment assessment and schedule. Prior to its execution, the final funding agreement, including the endowment agent, endowment assessment, investment policy statement, and schedule, is subject to approval of the Chairs, in coordination with the IRT.

Unless otherwise approved by the Chairs in writing, the Sponsor shall ensure that the endowment agreement includes a provision that disbursement of funds will not be made from the endowment fund any earlier than Bank Closure and three (3) years after the long-term management fund has been 100% funded.

The Sponsor has submitted justification for the fully funded amount of the long-term management fund (Appendix K), and this justification is attached to the LTMP. The justification shall demonstrate that interest income generated by the long-term management fund, after accounting for inflation and any anticipated annual account maintenance fees, is reasonably expected to sufficiently cover the estimated annual cost of Long-Term Management without depleting principal. The justification includes:

* Endowment Assessment: Using the Nature Conservancy’s Long-Term Stewardship Calculator, an endowment assessment calculating the projected total annual cost of carrying out the activities consistent with the approved LTMP. The Sponsor shall identify a reasonable capitalization rate that accounts for inflation and any funding account maintenance fees. Each line-item shall include task descriptions, the unit used for pricing purposes (e.g., each item, hours, linear feet, etc.), number of units required to complete a discrete occurrence of the task, cost per unit, cost per discrete task occurrence, discrete task recurrence interval, and total annual cost for each task. The assessment shall also account for administrative expenses (10% of total annual costs) and contingency expenses (20% of total annual costs). The fully funded amount of the long-term management fund shall be determined by dividing the projected total annual long-term management cost by the identified capitalization rate. The endowment assessment, including the capitalization rate, annual costs, and the fully funded amount are subject to approval of the Chairs, in coordination with the IRT.
* Investment policy statement: The endowment fund shall 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. The investment policy shall define the objectives of the fund, responsibilities of the Parties involved, the level of risk the fund is willing to bear, the long-term strategic asset allocation of the fund, the capitalization rate, and expected annual rate of return.
* Endowment payment schedule: The endowment disbursement schedule reflecting the total long-term funding for each calendar year, including annual and applicable non-annual occurrence expenses, exclusive of any contingency amount as described in the endowment assessment.

*[****Insert this sentence if long-term management fund will be fully funded for initial credit release]*** The principal for the long-term management fund shall be deposited at the time the long-term management/catastrophic events funding mechanism is posted prior to initial credit release.] ***[Insert this paragraph if long-term management fund will be incrementally funded]*** The long-term management endowment fund has been approved by the Chairs to be funded in incremental stages and shall be 100% funded no later than the Monitoring Year 5 credit release, as further described in Section V.E (*Credit Release Schedule*). The Sponsor shall upload to RIBITS annual statements and individual proof of deposit receipts from the long-term management financial institution within 30 calendar days of each transaction to ensure that appropriate deposits have been made in compliance with this Instrument and credit release schedule. The Sponsor must deposit funds, including required adjustments for inflation, into the long-term management endowment fund no later than as outlined in the approved credit release schedule. This endowment must be fully funded as directly linked to achievement of performance-based milestones consistent with the approved credit release schedule in Section V.E (*Credit Release Schedule*) of this Instrument, and no later than Monitoring Year 5 credit release. An accelerated credit release schedule requires accelerated endowment funding and IRT approval.

Each year the long-term management endowment fund is not 100% funded, the Sponsor must increase (but not decrease) the amount of the long-term management fund’s principal to account for inflation. The Sponsor must make this adjustment on or before April 15 of each year (Adjustment Year), based upon the change using the United States Department of Labor’s Bureau of Labor Statistics’ Consumer Price Index (CPI) – Mid-Atlantic Region (1982-84=100), or the successor of each index over the same period of time. The Sponsor shall determine the change in the CPI by comparing the published CPI in March of the Adjustment Year to the CPI published in March of the year that the initial approved long-term management fund principal assessment was completed (i.e., ***insert year***). The endowment amount shall be increased by the percent change in the CPI and the product shall be the endowment amount for the Adjustment Year. If the percentage change in the CPI is less than or equal to zero for any Adjustment Year, then no adjustment shall be made for that year.

All expenditures above the annual Long-Term Management cost total estimates specified in the endowment assessment and payment schedule, regardless of the amount of the expenditure which causes the total annual costs to exceed the annual budget, or for Long-Term Management activities that are not specified in this Instrument, shall be approved by the Chairs prior to disbursement. Such expenditure requests from the Long-Term Steward shall be based on the requirements detailed in the LTMP, the long-term management provisions of this Instrument, and enforcing the site-protection instrument. If the value of the long-term management fund has decreased 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, the Long-Term Steward shall consult with the IRT to identify the most effective means to implement the management measures and tasks with the resources available.

## ADAPTIVE MANAGEMENT PLAN

As part of the site-specific Mitigation Plan, the Sponsor will implement adaptive management measures through the development and execution of an Adaptive Management Plan (AMP) (33 CFR 332.4(c)(12)). The Sponsor shall be responsible for conducting management, monitoring, and maintenance activities in accordance with the AMP for the Bank (Appendix L).

Adaptive management requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects. Adaptive management will:   
1) Address challenges that are likely to occur with compensatory mitigation projects, and 2) Address unforeseen changes to those projects. The AMP guides decisions for selecting appropriate measures that will provide aquatic resource functions comparable or superior to the originally approved project objectives and optimize ecological performance. Appropriate measures may include project modifications, revising compensatory Mitigation Plans, addressing design revisions during construction, responding to field conditions during the Monitoring and Maintenance Phase to better ensure projects meet performance standards, and/or implementing measures to address both foreseeable and unforeseeable circumstances that adversely affect the Bank’s ability to meet its objectives and performance standards.

If the Bank cannot be constructed in accordance with the approved Mitigation Plans, the monitoring or other information indicates that the Bank is not progressing towards meeting or maintaining its performance standards as anticipated, or the Bank is not performing in accordance with the objectives and criteria set forth in this Instrument, the Sponsor must notify the Chairs as soon as possible. The Chairs may determine adaptive management is needed or required. The Chairs will evaluate proposed measures to determine if they will address deficiencies in the compensatory mitigation project and/or require modification of the approved Mitigation Plans. The Chairs will consider whether the Bank is providing ecological benefits comparable to the original objectives of the approved Mitigation Plan. The Chairs may direct the Sponsor to modify the approved Mitigation Plan or implement adaptive management either alone or in combination with other measures, to address failure of the Bank to meet performance standards and/or noncompliance. The Chairs, in coordination with the IRT, retain the final decision on whether or not the project’s required mitigation goals and objectives are being achieved and whether or not remedial actions are required.

The application of adaptive management is part of the monitoring and maintenance program conducted during the operational phase of the Bank and into long-term management. The analysis of monitoring results and/or site visits will be used to identify and implement measures to rectify problems. Adaptive management may be required as a result of deficiencies detailed in one or more mitigation monitoring reports or site visits or for other noncompliance issues as deemed necessary by the Chairs, in consultation with the IRT.

Development of the adaptive management strategy involves the Chairs, in consultation with the responsible party (and IRT, as appropriate), evaluating deficiencies occurring at the Bank, considering whether the compensatory mitigation project is providing ecological benefits comparable to the original objectives of the Bank, evaluating proposed solutions or alternative approaches, and then determining appropriate and practicable measures necessary to bring the site into compliance or to meet performance objectives. If the proposed measures are not appropriate and practicable, the Chairs may determine that it is necessary for the Sponsor to provide alternative compensatory mitigation.

The Bank-specific AMP (Appendix L) addresses contingencies, foreseeable site-specific changes, adaptive triggers, and potential management actions for problems and circumstances, such as, but not limited to, invasive species, herbivory damage, diseased plant stock, vegetation growth and survival, hydrology and ground elevations, stream and floodplain stability, flood events, and beaver activity. Appropriate management measures discussed in the AMP include, but are not limited to, site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The measures must be designed to ensure that the modified compensatory mitigation project provides aquatic resource functions comparable to those described in the Mitigation Plan objectives (33 CFR 332.7(c)(3)).

Performance standards may be revised in accordance with adaptive management to account for measures taken to address deficiencies in the compensatory mitigation project. These deficiencies in the Bank may require changes in credit assessment when the original objectives of the Bank are not being met. Except in the case of natural disasters, the approved performance standards must not be revised unless they reflect ecological benefits that are comparable or superior to the originally approved objectives. Site-specific AMP measures that deviate from the approved Instrument and/or Mitigation Plans (e.g., performance standards, monitoring requirements, MWP) requires approval of the Chairs, and must comply with the conditions of the permit and/or approved Instrument. If a change is necessary that does not comply with the permit and/or the Instrument as approved, the permit and/or Instrument must be modified through appropriate procedures at 332.8(g). Alternative mitigation may be required to offset a shortfall in aquatic resource functions.

Where there are significant uncertainties about the future or the effects of proposed plans, phased implementation and adaptive management strategies are viable options to consider during project planning and Instrument review and approval.

## FINANCIAL ASSURANCES

Prior to the initial release of credits, the Sponsor shall provide sufficient short-term Financial Assurances to ensure a high level of confidence that the Bank will be successfully completed, in accordance with its applicable milestones and ecological performance standards. These Financial Assurances shall be established to cover the Construction Phase and the operational phase (including monitoring, maintenance, adaptive management, and interim monitoring), in a form and an amount approved by the Chairs, in consultation with the IRT. The amount of the required Financial Assurances shall be based on the size and complexity of the compensatory mitigation project, the degree of completion of the project at the time of project approval, the likelihood of success, the past performance of the Sponsor, and any other factors deemed appropriate.

The final form and amount of the Financial Assurance is subject to the written approval of the Chairs, in consultation with the IRT, prior to execution. The Financial Assurance must be maintained, renewed, extended, or replaced so that it remains effective until the Chairs determine that the Bank is successful in accordance with its performance standards and that the Financial Assurance is eligible for reduction or release. The Sponsor is responsible for identifying a party that is acceptable to the Chairs as the Beneficiary of each Financial Assurance. The Sponsor must demonstrate, to the satisfaction of the IRT, that the identified Beneficiary has agreed to comply with the requirements of both the assurance and the procedures described in the MBI in the event the Chairs call on the assurance. Financial assurances structured to provide funds to the USACE in the event of Default by the Sponsor are not acceptable.

Itemized cost estimates of the specific, identifiable actions for the sponsor’s mitigation project, itemized by project task, shall be based on independent third-party contractor or consultant bids and material supplier bids in present day dollars or equipment prices. An annual adjustment for inflation based on the Consumer Price Index for the Mid-Atlantic Region shall be made to the short-term Financial Assurance over the life of the assurance when the assurance mechanism is expected to last 5 or more years. The sponsor has provided a detailed, confidential itemized cost breakdown of projected construction, monitoring and maintenance, adaptive management, and site protection costs using the current Baltimore District financial assurance cost estimate worksheet. The itemized cost estimate breakdown shall consider those expected activities associated with the baseline documentation and approved Mitigation Work Plan and the expected monitoring and maintenance activities for the Monitoring and Maintenance Phase until Bank Closure.

The Sponsor shall provide executed copies of the approved Financial Assurances to the Chairs, as compliance with the requirements for initial credit release. Written concurrence by the Chairs must be obtained prior to any adjustment (whether an increase or decrease), partial release, amendment, modification, revocation, or termination of the Financial Assurances. Adjustment, partial release, amendment, modification, revocation, or termination of any Financial Assurance without the Chair’s written concurrence may result in a determination that the Bank is not in compliance with the Instrument. Such a determination may lead to the suspension of credit sales until any issue relating to Financial Assurances has been addressed and approved by the Chairs.

The Sponsor may, with written approval of the Chairs, modify an existing Financial Assurance or replace a third-party assurance provider with a different company, agent, surety, or other entity registered to do business in the State of Maryland. The Sponsor shall provide the Chairs with notice of its desire to modify the assurance or replace the entity and submit a draft of the new assurance for review and written approval prior to execution. The provisions of the new assurance shall comply with the requirements of this Instrument.

All Financial Assurances must be in a form that ensures that the Chairs and Beneficiary will receive notification at least 120 calendar days in advance of any termination or revocation. For third-party assurance providers, this may take the form of a contractual requirement for the assurance provided to notify the Chairs at least 120 calendar days before the assurance is terminated or revoked. If the Sponsor is deemed to be without Financial Assurances for any reason, they shall reestablish required Financial Assurances within 30 calendar days.

The Sponsor shall provide the following types of short-term Financial Assurances:

### Construction Financial Assurance (required when construction and as-built approval has not been completed prior to initial credit release): As a prerequisite for the initial credit release, the Sponsor shall establish and post a Construction Financial Assurance. The Sponsor shall provide an adequate Construction Financial Assurance in the amount of a reasonable third-party estimate or contract to establish, restore, or enhance wetlands and waterways in accordance with the Mitigation Plan. The Construction Financial Assurance is in the form of a [***Choose*: performance bond, letter of credit, casualty insurance, escrow account, appropriations, or other form of assurance approved in writing by the Chairs**] and is provided in Appendix M.

### Monitoring and Maintenance Financial Assurance including interim monitoring (operational financial assurance): As a pre-requisite for the initial credit release, the Sponsor shall establish and post a monitoring and maintenance Financial Assurance. The Sponsor agrees to provide a sufficient monitoring and maintenance Financial Assurance in an amount of actual third-party subcontractor, consultant, and material supplier bids to maintain and monitor in accordance with the Mitigation Plan. The monitoring and maintenance Financial Assurance is in the form of a [***Choose*: performance bond, letter of credit, casualty insurance, escrow account, appropriations, or other form of assurance approved in writing by the Chairs**] and is provided in Appendix M.

A detailed itemization of the cost estimates described above for each Financial Assurance, and the assurance reduction schedule as performance-based milestones and financial reporting requirements have been met can also be found in Appendix M to this Instrument.

The Sponsor shall provide the Chairs with appropriate documentation verifying that all the required activities have been successfully completed and/or all performance standards have been met. When activities specified in the approved Mitigation Plan and Instrument have been completed to the satisfaction of the Chairs, in coordination with the IRT, for which the Financial Assurance has been provided, the Financial Assurance for the completed activity(ies) may be reduced in increments or released upon approval by the Chairs. Specifically, the Construction Financial Assurance may be reduced upon completion of the required Restoration activities and approval of the as-built plans and construction completion report by the Chairs.

The monitoring and maintenance Financial Assurance may be reduced in increments upon approval of the monitoring report in monitoring report years showing that all performance-based milestones and financial reporting requirements have been met and a determination that the Financial Assurance is eligible for release by the Chairs, in coordination with the IRT. If interim monitoring is required, then an Interim Monitoring and Maintenance Financial Assurance will be retained that is sufficient to cover interim monitoring and maintenance activities and unexpected repairs, replacement, management actions and other contingencies until all credits have been debited or forfeited and Bank Closure has occurred. These short-term Financial Assurance requirements may be fully released upon the Chairs’ written approval of the Sponsor’s request for release and upon confirmation that all Performance Standards have been met and Bank Closure has occurred.

If the Chairs determine the Sponsor is in noncompliance with the Instrument or Mitigation Plan, and the Sponsor has failed to remedy the noncompliance, the Chairs may call upon the appropriate Financial Assurance by providing written notice to the Sponsor, the Beneficiary, and the financial institution or other holder of the Financial Assurance. All Financial Assurance instruments must indicate that, within 30 business days of receiving notice from the Chairs that the Sponsor is in noncompliance with this Instrument, the Beneficiary shall submit to the Chairs a plan to: 1) remedy the noncompliance to the satisfaction of the Chairs; or 2) tender the funds necessary to remedy the non-compliance to a third party approved by the Chairs. The Financial Assurance may also provide that, in exceptional cases, the Beneficiary may, subject to the approval by the Chairs, develop an alternative compensatory Mitigation Plan that would provide the appropriate type of mitigation. The Financial Assurance instrument must specify the process by which the Chairs may issue, to the Financial Assurance provider, notice of deficiency or Default by the Sponsor, as well as the process for initiating a claim or payment of the Financial Assurance.

No reduction of the Financial Assurance will occur unless USACE and MDE, in their sole discretion, determine that the required performance standards, obligations, and milestones, as set forth in this Instrument have been achieved or satisfied and certifies its determination in writing. USACE and MDE may authorize in writing that the required amount of the Financial Assurance, as applicable for each project phase, be reduced as proposed in Table 5 in Appendix M. This Financial Assurance Funding Reduction Schedule in Table 5 in Appendix M below shall remain in full force and effect until the date on which the Sponsor received written verification from the USACE and MDE that all required objectives and performance standards have been fully met and the Bank is closed. The USACE and MDE shall have the full and final authority to determine whether the Sponsor has performed and fulfilled some or all of the obligations, terms, conditions, and agreements of the approved Instrument (Instrument Modification).

## ADDITION AND APPROVAL OF UMBRELLA BANK SITES [only include this section if this is a proposal for an initial UMBI]

This Instrument allows the Sponsor to submit proposals to include new umbrella Bank Sites as modifications to this Instrument in accordance with 33 CFR 332.8(h). The addition and approval of new umbrella Bank Sites, or the expansion of previously approved mitigation Bank Sites, to this Instrument, requires following the full instrument modification procedures at 33 CFR 332.8(g)(1) and the procedures below. To add a new umbrella Bank Site to this Instrument, the Sponsor will prepare and submit all applicable information consistent with 33 CFR 332.8(d), (g), and (h).

In response to a proposal to add a new umbrella Bank Site to this Instrument, the USACE and MDE, in consultation with the IRT, will review the proposed Instrument Modification, including a site-specific Mitigation Plan, and determine whether the site is acceptable for providing compensatory mitigation for DA and MDE permits within the service area governed by that amendment. In accordance with current Maryland IRT procedures, documentation associated with the initial Instrument Modification submittal to add a new umbrella mitigation Bank Site will include a written letter requesting a modification to this Instrument and, at a minimum, the information provided at 33 CFR 332.8(d)(2) and the Baltimore District’s “Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)”. The draft Instrument Modification for establishment of a new umbrella Bank Site under this Instrument will include documentation that is appropriate for the modification (e.g., a new or revised site-specific Mitigation Plan, information regarding provisions of the approved Instrument proposed for site-specific modification). Submittal of a draft prospectus for each umbrella Bank Site is optional.

Each Instrument Modification to add a new umbrella Bank Site must include a site-specific geographic service area, credit release schedule, and Mitigation Plan defined in each Instrument amendment. Credits generated and approved by the IRT, on a site-specific basis, may be used for projects requiring compensatory mitigation within the approved site-specific service area. All additional umbrella Bank Sites to be included in this initial Instrument must meet the IRT requirements identified in the “Nontidal Wetland and Stream Mitigation Bank/In-Lieu Fee Credit Release Schedule for Maryland” before any credits can be sold or transferred. After the initial credit release, further releases are tied to achievement of milestones and performance standards in accordance with the approved site-specific credit release schedule. Each new umbrella Bank Site and associated site-specific Mitigation Plan approved as an amendment under this Instrument will abide by the terms and conditions set forth in this Instrument and all modifications requested on a Bank Site-specific basis.

# OPERATION OF THE BANK

## GEOGRAPHIC SERVICE AREA

The geographic service area is the designated area wherein this Bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and streams. Geographic service areas must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area.

In Maryland, the geographic service area(s) are defined utilizing watersheds based on the U.S. Geological Survey 8-digit Hydrologic Unit Code (HUC8) and Physiographic Provinces/Ecoregions. The primary service area is defined as the entire HUC8 where the Bank is located (regardless of Physiographic Province/Ecoregion). The secondary service area is defined as any HUC8 (or portion thereof) adjacent to the primary service area and located within the same major river basin (HUC6) and within the same Physiographic Province (i.e., Atlantic coastal plain, piedmont plateau, blue ridge, ridge and valley, and Appalachian plateau). Secondary service area(s) will generally not include the adjacent HUC8 watersheds within the same major river basin (HUC6) that are located across the Chesapeake Bay. There may be cases in which adjacent HUC8s, or portions thereof, outside the HUC6 may be considered part of the secondary service area on a case-by-case basis (e.g., Susquehanna HUC8, Blue Ridge Province).

The primary geographic service area (GSA) for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Bank is the entire [***HUC8 Name***] HUC8 [**HUC8 code**]. The secondary service area is defined as the [**HUC8 Name(s)**] HUC8 [**HUC8 code(s)**] Watershed(s) abutting the primary GSA within the same 6-digit HUC river basin, and within the same Physiographic Province/Ecoregion (i.e., ***insert as appropriate:* Atlantic Coastal Plain, Piedmont Plateau, Blue Ridge, Ridge and Valley, and Appalachian Plateau**) as the Bank Property. The primary and secondary service areas and the location of the Bank are depicted in Appendix N to the Instrument. [***insert either****:* **The proposed service areas are consistent with the IRT’s standards and criteria.** OR **The proposed service areas are not consistent with the IRT’s standards and criteria. The watershed-based rationale (and other factors considered) for the proposed service areas are <insert rationale>.**]

The Bank’s primary service area will have priority over any other approved bank’s secondary service area for all mitigation requirements, where appropriate credits are available. The use of this Bank for compensatory mitigation for unavoidable impacts located in the secondary service area may be considered during the permit evaluation only when there are no available credits in the primary service area of any other bank and the applicant can demonstrate with documentation that the secondary service area will appropriately replace the lost aquatic functions at the impact site with in-kind mitigation.

Projects with impacts that overlap the Bank’s service area boundary may use this Bank. At the sole discretion of the USACE and MDE project managers requiring the compensatory mitigation for a federal/state authorization, the Bank may be used to compensate for impacts outside the designated service area(s). Compensation will be determined on a case-by-case basis as part of the project-specific permit decisions and higher ratios will generally be required for impacts outside the service area(s).

## SITE ACCESS

The Sponsor shall obtain and record an appropriate site protection instrument which ensures, in perpetuity, access to the Bank by the Sponsor, members of the IRT or their agents or designees, the Long-Term Steward or the Long-Term Steward’s agents or designees, and the easement holder (if any), as reasonably necessary, for the purpose of inspection, compliance monitoring, and corrective action inspections consistent with the terms and conditions of this Instrument. Access will be granted throughout the period of establishment, construction, monitoring, operation, maintenance, and long-term management. The Property Owner understands that by signing the “MDE Application for Mitigation Bank Approval” and the “Joint Federal/State Application for Alternation of any Floodplain, Waterways, Tidal or Nontidal Wetland in Maryland,” permission is being granted to MDE, USACE, and the agencies responsible for approval of this Bank, or their duly authorized agents or designees, reasonable access to enter the Bank Property. In addition, the Property Owner shall sign the acknowledgement for property rights and agreement to provide access provided in Appendix B.3 of this Instrument. Access locations are identified in the MWP in Appendix G.

## PROJECTS ELIGIBLE TO USE THE BANK

The following types of projects may be eligible to use the Bank:

* Projects that require an authorization under **[*select as appropriate*:** Maryland’s Nontidal Wetland Protection Act, Maryland’s Tidal Wetlands Act, and/or Waterway Construction statute**]** and their associated regulatory programs, a General Permit (e.g., Nationwide Permit, Regional General Permit), or an Individual Permit under Sections 401 and 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 appropriate agencies and are located within the geographic service areas(s) of the Bank established pursuant to this Instrument.
* Credits “may also be used to provide compensatory mitigation for Corps 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).”

## CONDITIONS ON TRANSFER AND USE OF CREDITS

Credits generated at this Bank from the ecological benefits associated with successful achievement of performance standards may be used as compensatory mitigation for unavoidable impacts to Waters of the U.S. and Waters of the State, including [***select as appropriate:* streams, wetlands**], and their associated functions, authorized under [***select as appropriate:*** **Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, Maryland Waterway Construction Statute, Maryland Nontidal Wetlands Protection Act, and Maryland Tidal Wetlands Act**]. The Bank is appropriate for use as compensatory mitigation to offset unavoidable impacts to aquatic resources similar to those restored, enhanced, and/or established at the Bank.

Although an impact may occur within the service area, this Bank may not be appropriate for use as compensatory mitigation for impacts to sensitive resources, impacts to critical habitat of federally listed species where such habitat is not found at the Bank, or impacts to aquatic resources unlike those that exist at the Bank. Use of the Bank to offset impacts outside of its approved service area may be approved on a case-by-case basis as determined by the appropriate regulatory authority under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act or Maryland’s Nontidal Wetland Protection Act, Tidal Wetlands Act, and/or Waterway Construction statute and their associated regulatory programs if it is the most environmentally preferable compensatory mitigation option.

Under no circumstances may the same credits, or the ecological functions represented by those credits, be used to provide compensatory mitigation for more than one permitted activity. Mitigation banks may be used to satisfy the environmental requirements of other programs in accordance with 33 CFR 332.3(j). The Bank may only be used for another program if the specific program and administering co-Chair agency are specifically identified in the approved Instrument, the Instrument is signed by the administering co-Chair agency representative, the Instrument is consistent with the terms and requirements of both the USACE and co-Chair agency’s programs, and the Instrument includes detailed descriptions and procedures for generating, linking (i.e., stacking), and debiting/retiring credits between programs.

The Sponsor identified in the Instrument is the only entity who can sell credits. In no case shall the number of transferred credits exceed the total number of credits of that type, which have been released, as approved by the Chairs. If the Bank is operating at a credit deficit (i.e., credit transfers exceed the credits authorized for release, as adjusted in accordance with this Instrument), then USACE and MDE shall notify the Sponsor of its Default and take actions accordingly. Upon receipt of notification, the Sponsor shall cease credit transfers immediately and is not authorized to resume credit transfers until notified in writing by USACE and MDE.

The USACE and MDE, after consultation with the appropriate federal and state review agencies through the permit review process, shall make final decisions concerning the amount and type of compensatory mitigation to be required for unavoidable, authorized wetland and/or stream impacts, and whether or not the use of credits from the Bank is appropriate to offset those impacts. Use of credits from the Bank to compensate for unavoidable impacts to wetlands and/or streams, under any permit issued by USACE or MDE, can only occur after approval by USACE and/or MDE. 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. In the case of permit applications and compensatory mitigation required solely under the MDE Wetlands and Waterways Protection Program, the MDE will determine the number of credits that can be withdrawn from the Bank. In the case of permit applications and compensatory mitigation required solely under the USACE authorities, the USACE will determine the number of credits that can be withdrawn from the Bank.

Implementation of the approved MWP (i.e., construction of the physical and biological improvements) must be started no later than the end of the first full Growing Season after the date of the first Credit Transaction associated with the Bank to ensure timely construction of the Bank (33 CFR 332.8(m)). The transfer of credits may begin only upon approval of the initial credit release. The Sponsor shall have the exclusive right to determine the price for any and all Bank credits offered for sale.

This Instrument applies only to those credits released by agencies that are signatories to this Instrument and set forth in Appendix O – *Credit Release Schedule*.

## CREDIT RELEASE SCHEDULE

The credit release schedule must be tied to performance-based milestones (e.g., construction, planting, establishment of specified plant and animal communities) and attainment of interim and final performance standards. The release of credits involves a determination by the Chairs, in coordination with the IRT, that credits associated with the approved Instrument, including the Mitigation Plan, are available for sale or transfer. All credit releases, including the initial release, must be authorized in writing by the Chairs. Under no circumstance shall credits be sold or transferred prior to this written authorization.

The detailed approved credit release schedule for this Bank, identifying the total number and type(s) of credits that the Bank has the potential to generate, is included in Appendix O. The approved credit release schedule for the Bank will be used to determine the number and resource type of credits that are released, as long as appropriate performance-based milestones are achieved. Before any credits can be sold or transferred, the Chairs, in coordination with the IRT, must approve the initial credit release in accordance with the credit release schedule ensuring that all applicable criteria are met, and that those credits are acceptable for providing compensatory mitigation for USACE and MDE permits. The credit release schedule shall reserve a significant share (i.e., 15-25%) of the total potential credits for release only after full achievement of ecological performance standards.

Upon receipt of the Sponsor’s written request and accompanying documentation of compliance with all applicable requirements of this Instrument, the USACE and MDE may convert potential credits to released credits, as described below and in accordance with the current IRT standard release schedule described in *Nontidal Wetland and Stream Mitigation Bank/In-Lieu Fee Credit Release Schedule for Maryland*, **[date of document*].***

In order for credits to be released, the Sponsor must submit a written request and accompanying documentation to the Chairs of compliance with all applicable requirements set forth in this Section and the milestones of the approved credit release schedule. The Chairs may release credits for use as described in the approved credit release schedule. All credit releases must be approved by the IRT and based on the IRT’s determination that performance standards described in Appendix I to this Instrument and any other applicable requirements have been achieved. The actual number of credits released shall be determined in writing by the Chairs, in coordination with the IRT, based upon as-built conditions, baseline condition and ecological lift, extent of waters and wetlands delineated on the site, attainment of performance standards, funding of the endowment fund, and compliance with requirements of this Instrument and any associated authorizations.

The credit release schedule is structured around appropriate and performance-based milestones and is the primary risk management tool for ensuring mitigation banks produce gains in ecological functions that offset losses of ecological functions caused by permitted activities. If the Bank is not meeting performance standards or complying with the terms of the Instrument, appropriate actions will be taken, such as adaptive management, additional monitoring, decreasing available credits, suspending credit sales, and/or directing financial assurance resources be used to perform remediation or alternative mitigation. The Sponsor is responsible for taking corrective actions to achieve the Bank’s specified objectives and ecological performance standards. If those corrective actions are not successful, then the Sponsor must notify the Chairs and work with them on adaptive management actions to address deficiencies in the Bank.

Credit releases are contingent on achieving applicable performance-based milestone(s) in the credit release schedule. Under adaptive management, the credit release schedule may be adjusted (e.g., additional number of interim credit releases, adjust the number of released credits to reflect the actual ecological performance of the Bank), and performance standards revised to account for measures taken to address deficiencies in the Bank. A performance-focused approach to mitigation bank review may involve additional interim credit releases to help identify the need to take corrective actions to achieve the Bank’s objectives and ecological performance standards, conduct adaptive management, or adjust the number of released credits to reflect the actual ecological performance of the Bank. To continue operating, the approved Bank must comply with the terms of this Instrument and the 2008 Mitigation Rule, and the Chairs will take appropriate actions if credits are not produced in accordance with the approved credit release schedule described in Appendix O.

The Chairs, in consultation with the IRT and the Sponsor, may modify the credit release schedule, including decreasing the number of available credits or suspending credit sales or transfers altogether, where necessary to ensure that all credit sales or transfers remain tied to compensatory mitigation projects with a high likelihood of meeting performance standards. A modification to the credit release and approved credit release schedule would follow the streamlined modification review process in accordance with 332.8(g)(2). Upon each credit release, USACE shall enter the number of credits released into the RIBITS Ledger.

Prior to final release of credits and/or Bank Closure, the Sponsor agrees to conduct a final assessment of the mitigation site and conduct any maintenance, if necessary, prior to the long-term steward taking responsibility for the site. This includes:

* 1. Ensuring that there are no active encroachments present on the site.
  2. Repair or replacement of easement markers that are missing, damaged, or not visible.
  3. Removal of all monitoring devices/infrastructure from the mitigation site (e.g., rain/groundwater gauges, silt fences, cameras, plot corner or tree markers, cross-section markers, etc.).
  4. Completing any contingency actions identified by the Chairs as a condition of site closeout, including conducting a final treatment of invasive species, if identified as a contingency.

The Sponsor understands that they are required to maintain an accurate accounting for credits generated by the site, including acknowledgement of credit transfers for future credit sales. Credit Ledgers shall be provided by the Sponsor to the USACE and MDE with every Credit Transaction, and at least annually if no Credit Transaction has occurred over a 12-month period. If the Sponsor chooses to withdraw from the management and sale of credits generated by the Bank, it is understood that all remaining credits on the site shall be forfeited/extinguished.

## AS-BUILT CONSTRUCTION COMPLETION REPORT AND SURVEY

The Sponsor shall submit an as-built report to the IRT within 60-days following completion of construction and planting of the Bank, or respective Construction Phase(s) of the Bank, if construction is to occur in defined Construction Phases as described in the Mitigation Plan. The IRT may schedule a compliance site visit to verify that the Bank has been successfully completed in accordance with the approved Mitigation Plan. Based on a review of the as-built report and survey and a site inspection by the IRT, the IRT will confirm whether or not the Sponsor’s construction has been completed in accordance with this Instrument or make a request to the Sponsor for additional information.

The as-built construction completion report and survey shall depict the completed portions of the Bank, including a plan view of the constructed, restored, enhanced, and/or preserved wetlands, streams, and associated approved Buffers with locations of all permanent sampling stations, photo stations, and monitoring wells, etc. In addition, the as-built report and survey shall include a survey showing finished grades, and planting zones and densities. The as-built report and survey shall describe, in detail, deviations from the requirements described in the approved MWP, any impacts on anticipated credits, and a revised credit breakdown (if applicable) for evaluation and approval by the USACE and MDE, in coordination with the IRT. Based on the contents of the as-built report and survey, the IRT may request changes to the Bank.

The as-built information, where applicable, will be used as a baseline measure for deviations from the approved Mitigation Plan, revised credit breakdown, and stream and wetland performance monitoring. As-built information will be utilized as a reference in subsequent monitoring reports.

## ACCOUNTING PROCEDURES

The Sponsor shall establish and maintain a Ledger to account for all Credit Transactions for the Bank. The official Ledger of all validated Credit Transactions will be maintained in the online Regulatory In-Lieu Fee and Bank Information Tracking Systems (RIBITS). Within 10 business days of the date of each approved Credit Transaction, the Sponsor shall upload copies of the signed Credit Transaction Documentation to RIBITS, update the bank Ledger in RIBITS, and notify the USACE and MDE Mitigation Bank Managers in writing.

At a minimum, each RIBITS Ledger entry must include the following information: type of transaction, date the transaction occurred, jurisdiction (federal or non-federal), project name, name of permittee, USACE and MDE permit numbers, credit classification used for transaction’s credits, number of credits involved in this transaction, the number of acres associated with the wetland credits used, the number of linear feet associated with the stream credits, impact HUC8, impact quantity of acres or linear feet of impact entered on withdrawal transactions, resource classification of impact, impact latitude, impact longitude, NAB functional feet, and comments. Wetland impacts and credits shall be reported to five decimal places (i.e., hundred thousandths of an acre). Stream impacts and credits shall be reported to the one linear foot (whole number – no decimals). Each Ledger transaction in RIBITS must have the executed Credit Transaction Document attached and uploaded to RIBITS.

The Sponsor shall provide true and accurate Credit Availability Statements to prospective purchasers when requested. Credit Availability Statements shall only be issued if the Bank has available credits at the time the statement is requested. Credit Availability Statements shall contain, at a minimum, the following information: Bank name; Bank permit number(s); type of credits reserved/available (Palustrine Forested (PFO)/palustrine scrub-shrub (PSS)/palustrine emergent (PEM) wetland and stream); number of credits currently available (acres/functional feet); impact project name; USACE and MDE permit numbers for the impact (if assigned); impact location HUC8, county, and latitude and longitude; whether the impact is within the Bank’s geographic service area(s); date(s); and signature of the Sponsor and applicant.

In each Credit Availability Statement, the Sponsor shall certify that the information provided is true and accurate based on the information provided to them by the prospective purchaser. The submittal or transmission of false or inaccurate Credit Availability Statements may be treated as noncompliance with this Instrument.

## REPORTING PROTOCOLS

The Sponsor shall submit the following reports to the IRT describing the conditions of the Bank and relating conditions to the performance standards approved as part of the Mitigation Plan as well as monitoring provisions. All submittals shall contain the following certification statement:

*“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

These reports shall be submitted via electronic mail attachment to the Chairs and uploaded by the Sponsor to RIBITS.

1. As-Built Report/Survey: An as-built report/survey shall be submitted to the IRT within 60 days of completion of Construction Phase activities contained in the approved Mitigation Plan. The completion of Construction Phase activities is typically marked by the completion of planting activities. Note that all substantial differences between the approved Mitigation Plan and the as-built report must be reviewed and approved by the Chairs, in coordination with the IRT. General guidelines for as-built reports/surveys are included below and should be consistent with Section V.F (*As-Built Construction Completion Report and Survey*) of this Instrument, the monitoring protocol, and performance standards approved for this Bank. The as-built report shall include:
2. Title page with Bank name, Bank phase (if applicable), USACE and MDE permit numbers, any requested action (e.g., credit release, IRT review, Financial Assurance release/reduction), Sponsor name and contact information (i.e., address, phone number, and email address), and preparer name and contact information.
3. Plan view of the constructed/restored wetlands, streams, and/or adjacent Buffers depicting finished grades. A figure that provides a surface-to-surface comparison between the as-built and proposed (design) elevations and/or any redline revisions using one-foot contours with the location of all permanent sampling stations, photo stations, monitoring wells, in-stream and stream bank structures, and all permanent cross-sections and profiles.
4. GIS shapefiles depicting the location and extent of the Bank Property and, as appropriate, separate data layers and/or shape files that describe the various mitigation or Restoration types (e.g., PFO, PSS, PEM, etc.) and easement boundary.
5. Photographs of the completed Bank taken from permanent photo stations.
6. For all stream Restoration projects, profiles of a subset of in-stream structures, cross-sections (a minimum of two permanent cross-sections shall be established in each restored Stream Reach), location of all in-stream structures, locations of any/all grading at or below the top of bank and longitudinal stream profiles taken from permanent locations and compared to design plans, unless otherwise specified in the Mitigation Plan.
7. Planting zones, composition, densities.
8. Stream gage and/or groundwater well locations.
9. As-built elevations.
10. Revised credit breakdown in the same format at the Mitigation Plan.
11. Detailed descriptions of any substantial deviations from the requirements described in the approved Mitigation Plan.
12. Wetland Restoration, Establishment, or Enhancement: As-built survey for Wetland Restoration, Establishment, or Enhancement will accurately document the post-construction condition including any hydrologic/hydraulic measures implemented. The as-built survey will be used as a baseline condition for comparison against subsequent surveys and/or assessments completed as part of monitoring activities. The final as-built planting schedule will be provided in lieu of the as-built survey if no grading or manipulation to other physical, chemical, or biological attributes of the site was required per the approved Mitigation Plan.
13. Streams: The stream as-built survey will document the post-construction condition of restored Stream Reaches. The as-built survey will be used as a baseline condition for comparison against subsequent surveys and/or assessments completed as part of monitoring activities.
14. Monitoring Reports: The Sponsor will submit monitoring reports to the IRT by December 31st of each monitoring report year. Monitoring reports shall be consistent with the current IRT monitoring protocol requirements for reporting, and other performance standards, protocols, or requirements approved in the Mitigation Plan. Monitoring reports will be provided during the Monitoring and Maintenance Phase, including the Interim Monitoring and Maintenance Period. The current Baltimore District’s Mitigation Monitoring Report Summary Content Template, including appropriate appendices, found on the Baltimore District RIBITS website will be used when submitting monitoring reports. If the Sponsor fails to submit or is more than 30 days late in submitting a monitoring report, the Sponsor may be subject to restrictions on credit debiting and extensions to the Monitoring and Maintenance Phase, including the Interim Monitoring and Maintenance Period.
15. Annual Ledger Report: During Bank operation, the Sponsor will prepare an annual Ledger report by December 31st of each year for the previous year. The Ledger report must be submitted to the Chairs, who will distribute copies to the IRT members. The Ledger report will document the balance in credits, including the beginning and ending balance of available credits, permitted impacts for each resource type, all additions and subtractions of credits, and any other changes in credit availability (e.g., additional credits released, credit sales suspended). The annual Ledger report will include the mitigation Bank name, beginning and ending balances, Permittee name, project name, USACE and MDE permit number(s), type and amount of impact, type and amount of credit delivered, impact HUC, other changes in credit availability (e.g., credits released, credit sales suspended).
16. Financial Assurance Funding Reports: The Sponsor will submit annual financial reports detailing the status of the short-term financial assurances. The annual report will include: the beginning and ending balances, deposits into, and any withdrawals from current financial assurance(s) required for construction and Bank operations. The report will also include information on the status of assurances, including any potential expiration. In addition, documentation must be provided that the Sponsor is active and in good standing with the Maryland State Department of Assessments and Taxation. The documentation shall be in the form of an account statement from the financial institution or endowment manager. The Sponsor will submit the annual financial reports by December 31st of each year.
17. Long-Term and Catastrophic Event Funding Activity Reports: The Long-Term Steward will submit annual financial activity reports detailing the status of the long-term management and catastrophic event funding mechanisms. The annual report shall include the balance of each fund at the beginning of the calendar year, deposits, disbursements, fees, earnings, gains, losses and other investment activity accruing to the Long-Term Management fund and catastrophic event fund during the previous calendar year, administrative expenses, the balance of the Long-Term Management fund and catastrophic event fund at the end of the calendar year, and the specific asset allocation percentages of the portfolio in which the Long-Term Management and the catastrophic event funds are invested. The account documentation shall be in the form of an account statement from the endowment manager. The Long-Term Steward will submit these annual financial activity reports to the Chairs by March 30 of each year.
18. Long-Term Management Reporting: After Bank Closure, the Long-Term Steward shall be responsible for monitoring, management, and reporting in accordance with the approved Long-Term Management Plan. The Long-Term Steward shall submit the Long-Term Management report to the IRT by December 31st of each year. Each Long-Term Management report shall contain an itemized account of the management tasks conducted during the reporting period in accordance with the Long-Term Management Plan, including:

### Time period covered (i.e., dates “from” and “to”).

### Description of each management task conducted, overall level of effort, and budget expended.

### General conditions of the Bank, recommendations regarding Enhancement measures deemed to be warranted, any problems that need near-, short-, and long-term attention (e.g., fence repair if any, erosion control), and any changes in the monitoring or management program that appear to be warranted based on monitoring results to date.

* Documentation of the cost of any recommended maintenance and repairs.

## DEFAULT

The authorization to sell credits to satisfy compensatory mitigation requirements in DA and MDE permits is contingent on compliance with all the terms of the approved Instrument (33 CFR 332.8(l)(2)). The Sponsor has responsibilities for compliance with the Instrument and conditions of the DA permit and state authorizations, including constructing the project within required timeframes, remediation of habitat that does not meet performance standards, furnishing short-term financial assurances, funding of the long-term management endowment, timely and complete monitoring reports, appropriate accounting procedures, remediation of habitat that does not meet performance standards, and maintenance/management of Bank in accordance with the maintenance plan and Long-Term Management Plan. USACE and MDE will take appropriate action if the Bank is not meeting performance standards, or the Sponsor is not complying with the terms of this Instrument.

The Chairs, in consultation with the IRT, shall find the Sponsor in Default if the Sponsor omits or fails to perform any duty or responsibility required of the Sponsor under this Instrument. In the event of a determination of a material Default of any provision of this Instrument or Mitigation Plan, the Chairs, in consultation with the IRT, shall provide written notice to the Sponsor. This written notice shall include sufficient details regarding such Default. Upon written notice of such determination, the Sponsor agrees to immediately cease all transfers of credits until the Chairs inform the Sponsor that transfers may be resumed.

Promptly following Sponsor’s receipt of such notice, the Sponsor and Chairs, in coordination with the IRT, shall meet to attempt in good faith to discuss resolutions to the Default, including the option to initiate an AMP to remedy any Default related to performance standards, subject to the approval by the Chairs, in coordination with the IRT. If the Chairs, in consultation with the IRT, determine that a site visit is necessary, a site visit will be scheduled as soon as is practicable to assess the identified issues and proposed corrective actions. The Sponsor shall generate a corrective action plan and submit it to the IRT. The Chairs, in coordination with the IRT, shall have 60 days of receiving this documentation, or site visit, whichever is later, to review and approve/deny or comment on the Sponsor’s proposal. If, within 60 calendar days of such meeting, the Chairs, in coordination with the IRT and Sponsor, are unable to agree on a plan to resolve the Default, the Chairs will take appropriate action, which includes but is not limited to, adaptive management/remedial action, delay release of credits, reduce available credits, suspend credit sales/transfers, modification of the permit or Instrument, require alternative mitigation, suspend operations, permit suspension/revocation, utilize Financial Assurances, and terminate the Instrument. Upon termination, the Sponsor agrees to perform and fulfill all obligations under this Instrument relating to credits that were transferred prior to termination.

This section shall not be construed to modify or limit any specific right, remedy, or procedure in any section of this Instrument or any remedy available under applicable state and/or federal law.

## BANK CLOSURE

Operational Bank Closure occurs when all available credits have been sold or forfeited. Upon Bank Closure, no further credit sales/transfers shall occur. Prior to closure of the Bank, the IRT will perform a final compliance inspection. Upon the Chairs determining, in consultation with the IRT, that the following criteria are met, and once the last released credit has been transferred, the Chairs will provide written notification to the Sponsor within 45 days of the final compliance site inspection stating official closure of the Bank and the Long-Term Management Phase will commence.

The criteria that must be met for Bank Closure are:

### All applicable performance standards prescribed in the Mitigation Plan have been achieved.

### The USACE and MDE have confirmed a final delineation of the Bank consistent with the areas/lengths of wetlands and streams contained in the approved Mitigation Plan and as-built plans, as approved by the USACE and MDE.

### All released credits for the Bank have been debited or forfeited.

### The Sponsor has reviewed and revised, if necessary, the Long-Term Management Plan and funding estimate to represent current site conditions at Bank Closure, and the revised Long-Term Management Plan and funding estimate, has been approved by the Chairs, in consultation with the IRT.

### The Sponsor has either: (i) Assumed responsibilities for the Long-Term Management Plan, in which case the Sponsor will fulfill the role of Long-Term Steward, or (ii) Has assigned those responsibilities to another Long-Term Steward.

### The Long-Term Steward has signed the Long-Term Management Plan.

### Where the Sponsor has assigned another Long-Term Steward, the Long-Term Management funding endowment has been transferred to the permanent Long-Term Steward. The Long-Term Management funding endowment must be fully funded at the time of transfer.

### The catastrophic event and long-term management endowment funds have been fully funded for no less than three years before Bank Closure.

### The Long-Term Steward is the Beneficiary of the catastrophic event and long-term management funds.

### Confirmation that the Long-Term Steward is authorized to perpetually access the Bank for the purposes of performing long-term maintenance, monitoring, and management tasks.

### The Sponsor has prepared and submitted to the IRT, a GIS shapefile or similar electronic Appendix depicting the location and extent of the Bank Property.

### The Bank has complied with all other terms of this Instrument, including the Mitigation Plan.

In the event this Instrument is terminated, or the Bank is closed prior to the transfer of all authorized credits, any remaining credits under this Instrument shall be extinguished and will no longer be available for transfer/sale. Prior to Bank Closure and subject to review and approval by the IRT, the Sponsor may request, and the IRT may agree in writing, to remove from the Bank that portion of the Bank Property that has not had credits debited from it, provided the removal and any subsequent utilization does not adversely impact the Bank areas from which credit has been debited. The IRT will determine through its Chairs, in its sole discretion, whether any such removal or utilization of Bank lands adversely impacts Bank lands for which credits were transferred or debited and whether any such removal is approved. Any lands removed from the Bank are no longer subject to the provisions of this Instrument.

# OTHER PROVISIONS

## FORCE MAJEURE

The Sponsor shall maintain the Bank Property and perform repair or corrective action on any portion of the Bank, as determined by the IRT, in order to meet the performance standards, except for damage or non-compliance caused by events of Force Majeure, as described below:

“Force Majeure” shall mean an irreparable material and detrimental impact on the Bank over which the Sponsor or any entity controlled by the Sponsor could not have anticipated or controlled (excepting those events specifically identified as “catastrophic events” in other sections of this Instrument). Force Majeure excludes mere economic hardship or the failure to attain performance standards. Subject to administrative review and related remedies contained in 33 CFR 332, the Chairs, in coordination with the IRT, have discretion to determine whether an event is a force majeure event as defined herein, whether significant adverse impacts to the Bank have occurred, and to what extent changes to the Bank or its management will be permitted. The Sponsor shall bear the burden of demonstrating to the IRT’s satisfaction that:

### Damage or non-compliance was caused by circumstances beyond the control or anticipation of the Sponsor, Property Owner, and any person or entity under the direction or control of the Sponsor or Property Owner, including its employees, agents, contractors, and consultants.

### Neither the Sponsor, Property Owner, nor any person or entity under the direction or control of the Sponsor or Property Owner, including its employees, agents, contractors, and consultants, could have reasonably foreseen and prevented such damage or non-compliance.

### The period of damage or non-compliance was a direct result of such circumstances.

### Damage is irreparable by any practicable and reasonable means as determined in the discretion of the Chairs, in coordination with the IRT.

### Should an event of Force Majeure occur that affects the long-term viability of the Bank during the Monitoring and Maintenance Phase, or before all credits from the Bank have been debited, the Sponsor shall notify the Chairs within 24 business hours of the Sponsor becoming aware of the issue. As promptly and reasonably possible thereafter, the Sponsor and IRT shall meet to consult on a course of action for each occurrence. As a result of this consultation, the Sponsor may be required to prepare an AMP to address the extent of changes to the Bank, and/or its management, as a result of the Force Majeure event. Financial Assurances may be used to provide alternative compensatory mitigation if the compensatory mitigation project fails as a result of a natural disaster that occurs before the Monitoring and Maintenance Phase, including the Interim Monitoring and Maintenance Period, has ended. In the meantime, the Sponsor shall continue to manage and maintain the Bank to the fullest extent practicable in accordance with the approved Mitigation Plan.

## CATASTROPHIC EVENTS

The Sponsor shall be responsible for repair and remediation from catastrophic events described below by using Long-Term Funding Mechanisms designated for natural disasters and catastrophic event corrective actions by the Sponsor or Long-Term Steward. Examples of catastrophic events include the following:

### Floods greater than a presently projected 100-year flood, where “flood” refers to a runoff event.

### Tornado of F-2 or greater magnitude on the Fujita Tornado Scale (F-Scale).

### Hurricane of a Category 2 or greater magnitude on the Saffir-Simpson scale.

### Earthquakes of a magnitude greater than 6.5 on the Richter scale.

### Extreme drought (Drought Monitor classification of D3 or greater or Palmer Drought Index of -4.0 or less) if such event has broad regional impact and is not endemic to the Bank and its immediate locale.

### Insect or animal damage to planted vegetation that occurs across a majority of the Bank, at a magnitude such that vegetation fails to achieve the approved performance standards, after each phase of planting has surpassed the contractor’s one-year warranty (if a one-year warranty was required). Note that throughout Maryland, it is expected that herbivory will be a detriment to plant survival and growth. Deer browse, beavers cutting trees, and rodent damage is often expected, and precautions should be documented in the Mitigation Plan and implemented as part of the construction and maintenance activities for the Bank. These occurrences do not qualify as catastrophic events.

### Breach of berms, embankments, or spillway and/or damage to outlet structures, washout of stream structures and riparian plantings (including cross vanes, J-hooks, rock weirs, imbricated riprap, vegetated stream banks, coir logs, fascines, and riparian plantings) from a 100-year or greater magnitude storm event.

If a catastrophic event affects the long-term viability of the Bank during initial monitoring or before all credits have been debited, the Sponsor shall submit a written description of the proposed corrective actions, implementation schedule, and required funding disbursement associated with any proposed corrective action to the IRT. The Sponsor is responsible for demonstrating damage and the Sponsor or any entity controlled by the Sponsor could not have anticipated or controlled the damage and that the proposed corrective actions and schedule are appropriate to repair the damage. If the Chairs, in consultation with the IRT, determine that a site visit is necessary, a site visit will be scheduled as soon as is practicable, to assess site damage and proposed corrective actions. The IRT, acting through the Chairs, shall have 60 days of receiving this documentation, or site visit, whichever is later, to review and approve/deny or comment on the Sponsor’s proposal.

Reasonably foreseeable technical problems, unanticipated or increased costs, expenses associated with the implementation of actions called for by this Instrument, or a change in financial or business circumstances in and of themselves shall not serve as the basis for modifications of this Instrument or excusing the performance of the requirements of this Instrument.

Catastrophic events assurances shall be funded through an endowment prior to initial credit release. The endowment agent, or other IRT Chair-approved Long-Term Funding Mechanism provider (such as a third-party fund manager, typically a non-profit or financial institution that can then invest the endowment in a proper financial vehicle to grow the fund), shall hold the endowment principal and interest monies (the catastrophic event fund), until such monies are appropriated to fulfill the purposes for which payments into it are made. All expenditures shall be approved by the Chairs prior to spending. Such expenditure requests from the catastrophic events fund shall be based on a catastrophic event consultation with the Chairs, as well as other supporting documentation which may be required by the Chairs to authorize the expenditure of these funds and will be utilized in accordance with the catastrophic event provisions of this Instrument. Upon Bank Closure, the catastrophic event fund shall be transferred from the Sponsor to the Long-Term Steward. Depending on the type of catastrophic event assurance, “transfer from the Sponsor to the Long-Term Steward” shall mean that the Long-Term Steward takes the Sponsor’s place as Beneficiary of the catastrophic event endowment.

If a natural disaster, including catastrophic events, causes deficiencies in the Bank, the Chairs will evaluate the circumstances and may determine that alternative compensatory mitigation is required to offset a shortfall in aquatic resource functions. Financial Assurances or the catastrophic events endowment, may be used to provide alternative compensatory mitigation if the compensatory mitigation project fails as a result of a natural disaster that occurs before the Monitoring and Maintenance Phase has ended.

## EMINENT DOMAIN

If any party with eminent domain authority institutes an action to condemn or take the Bank in whole or in part through eminent domain, the Sponsor or its successor in interest, Long-Term Steward, or the Property Owner, shall notify the Chairs in writing within 60 days of receiving notification of a potential exercise of eminent domain.

If the Bank is taken in whole or in part through eminent domain, the IRT, acting through the Chairs, will determine the impacts of the taking on the total Bank and its functions. If the Bank has unsold credits, the Chairs may adjust the potential credits, including unsold released credits available in the Bank to reflect the loss of Bank area and functions. The IRT, acting through the Chairs, will be responsible for determining the extent of the Bank and functions lost through the eminent domain process. The area of loss may include not only the area secured through the eminent domain but also the area within the Bank affected by the condemnation (e.g., through alteration of the hydrologic regime of the surrounding areas). The IRT shall consider encouraging the taking entity and/or adjudicating party to pursue alternatives, and/or take into account the cost of replacement mitigation when determining just compensation for the eminent domain act.

The replacement mitigation shall be provided within the same service area as the affected Bank and must be approved by the IRT. If the Bank is taken in whole or in part through eminent domain or other encroachment takings, the consequential loss in the value of the Bank protected by the site protection instrument is the cost of replacement of the conservation functions, services, and values of the aquatic and terrestrial resources on the Bank Property, including higher mitigation ratios (e.g., 3:1 PFO/PSS, 2:1 PEM, etc.) that recognizes Temporal Losses between initiation of the mitigation and condemnation of the Bank area.

In the event the party exercising eminent domain authority requires a USACE and/or MDE permit for activities which impact the Bank as a result of the taking, the USACE and/or MDE may require substantially more compensatory mitigation from the permittee impacting the Bank as a result of eminent domain or condemnation to reflect the permanent adverse effects resulting from regulated activities and Temporal Loss of functions and services associated with the eminent domain action and subsequent permitted activities.

If a monetary compensation award is made and a USACE and/or MDE permit is not required, that proportion of the award that represents the value of the land, functions, services, and values provided by credits that have already been debited must be used by the Sponsor and/or Property Owner to procure and replace the aquatic and terrestrial resource functions and values, including Temporal Losses, associated with the area condemned and must be approved by the IRT.

The Sponsor or its successor in interest, Long-Term Steward, or the Property Owner must notify the Chairs within 60 days of conclusion of the eminent domain process.

The following notice shall be added to the site protection instrument for the Bank:

**Notice to Parties with Eminent Domain Authority:** Exercise of eminent domain by any party (Condemning Party) to take land held as part of this Bank may remove restrictions that the Sponsor, Long-Term Steward, USACE, and MDE intend will protect the Bank and preserve the land serving as compensation for other permitted impacts, in perpetuity. Where the Condemning Party (1) intends to take action(s) that will have impacts on Bank land associated with debited credits; and (2) is required to obtain a USACE and/or MDE permit for such impacts, the USACE and MDE have discretion to increase the Condemning Party’s wetland and stream compensation requirements, as part of the permitting process, in order to account for the loss of functions and values associated with the credits already debited and/or released from the Bank.

## DISPUTE RESOLUTION

Resolution of disputes about application of this Instrument shall be in accordance with the USACE and EPA regulations entitled Compensatory Mitigation for Aquatic Resources (33 CFR Part 325 – Processing of Department of the Army Permits, 33 CFR Part 332 – Compensatory Mitigation for Losses of Aquatic Resources, and 40 CFR Part 230 – Section 404(b)(1)), as well as other applicable federal or state regulations governing mitigation bank operation, including COMAR 26.23.04. Disputes related to satisfaction of performance standards may be subject to independent review from government agencies or academia that are not part of the IRT as the law provides. The Chairs, in consultation with the IRT, will evaluate this input and recommendations or conclusions and determine whether the performance standards are met.

Notice of disputes arising between the Sponsor and the IRT shall be made in writing, and, to the extent practicable, by email to the Sponsor and Chairs. The Sponsor shall submit a written plan to the IRT to resolve the dispute within 90 days. The Sponsor shall have a 30-day consultative resolution period, within which to negotiate a resolution with the IRT, if necessary. Following this period, the Chairs, in consultation with the IRT, will approve the plan or find the Sponsor in Default.

This Instrument does not waive United States sovereign immunity and does not provide the Sponsor with a cause of action in federal or state court.

## VALIDITY, MODIFICATION, AND TERMINATION OF THIS INSTRUMENT

### This Instrument is valid on the later date of either the Sponsor’s signature or the signature of the representative of the USACE and MDE.

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

### This Instrument, including the Mitigation Plan, may be amended or modified only with the written approval of all signatory Parties and shall be subject to the modification provisions at 33 CFR 332.8(g). All amendments and modifications shall be fully set forth in a separate document signed by all signatory Parties that shall be appended to this Instrument. All amendments and modifications will require submittals consistent with the current IRT documentation standards or the most current template approved for use in effect on the date of the submission of the modification. No Instrument can be modified once approved by the IRT, without mutual consent of the IRT and Sponsor.

### Modifications to the Instrument are required for major changes affecting site design, addition and approval of new umbrella mitigation Bank Sites, or site expansions of previously approved Banks. These modifications and adding any new credit types not approved in the Instrument previously must follow the procedures at 33 CFR 332.8(g)(1).

### Minor modifications reflecting adaptive management of the Bank, credit release schedules, or changes that the Chairs determine are not significant will follow the streamlined review process at 33 CFR 332.8(g)(2).

Other modifications associated with Bank operations are possible and may require modification of the Instrument/Mitigation Plan or permit and shall be in writing and approved by the Chairs, in coordination with the IRT, as appropriate. Other modifications may include changes in sponsors or site protection instrument holder, financial assurances, assessment tools, geographic service area, land transfer, and Long-Term Steward.

### The Sponsor may terminate the Bank and this Instrument at any time before a credit from the Bank is sold, provided that the wetlands and waters and other habitat values existing on the Bank Property prior to initiation of any efforts to restore or enhance the Bank shall be restored to a condition at least equal to that which existed prior to initiation of Bank establishment efforts, and as the site protection instrument may require. The Sponsor must provide written notice to the Chairs and termination shall become effective as of the date set forth in such notice (“Early Termination Date”). In that notice, the Sponsor shall certify to the IRT that no credits from the Bank have been sold or transferred. As of the Early Termination Date, the Instrument shall be terminated, any credits under this Instrument shall be extinguished, and the Sponsor shall have no right to sell credits from the Bank. From and after the Early Termination Date, the Sponsor shall have no further liability or obligation with respect to this Instrument. Any active Financial Assurance amount shall be returned in full to the Sponsor. Sponsor’s Early Termination right set forth in this provision shall expire on the date Sponsor transfers its first credit from the Bank. The Chairs, in coordination with the IRT, may terminate this Instrument if the Sponsor sells or conveys the Bank without the prior written concurrence of the Chairs.

## SPECIFIC LANGUAGE OF THIS INSTRUMENT SHALL BE CONTROLLING

The Parties intend the provisions of this Instrument and each of the documents incorporated by reference in it 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 conflict between or among them. However, to the extent that specific language in this Instrument conflicts with specific language in any document that is incorporated into this Instrument by reference, the specific language in the Instrument will be controlling.

## MARYLAND LEGAL ENTITIES REGISTRY

In order to legally operate in Maryland, all corporations, limited liability companies, limited liability partnerships, and limited partnerships must register to do business with the Maryland State Department of Assessments and Taxation (SDAT). Proof of such registration is required with submission of this Instrument, as outlined in Section I.B (*Mitigation Bank Contacts*) of this Instrument. If the Sponsor is no longer registered to conduct business in the State of Maryland but continues to identify itself as such, then the liability falls to the named partners as individuals. It would be a violation of Maryland law for the partners to continue to operate an LLC, if the LLC is not registered with the SDAT.

## NOTICE

Any notice or other communication required or permitted by this Instrument shall be in writing and deemed to have been given when received in the office of the individual or organization to whom notice is directed. Notice may be delivered by (1) hand delivery; (2) receipt-confirmed electronic mail; (3) United States mail, postage prepaid, by registered or certified mail, return receipt requested; or (4) Federal Express or similar next day nationwide delivery system. Electronic submittals shall be sent to: (1)   
[nab-regulatory@usace.army.mil](mailto:nab-regulatory@usace.army.mil) and/or directly to the applicable current USACE Bank Manager email address; and (2) directly to the applicable current MDE Bank Manager email address. The current IRT contact list is provided at Appendix P. (*Addresses and emails listed in this contact list will be used and updated as contacts change)*.

Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.

## ENTIRE AGREEMENT

This Instrument, all Appendices, schedules, and agreements referred to in this Instrument, constitute the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements or undertakings. No alteration or amendment of this Instrument shall be valid or binding unless contained in a written amendment in accordance with Section VI.E (*Validity, Modification, and Termination of this* Instrument) of this Instrument.

## INVALID PROVISIONS

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

## HEADINGS AND CAPTIONS

Any paragraph heading or captions contained in this Instrument will be for convenience of reference only, will not affect the construction or interpretation of any provisions of this Instrument, and shall not define or limit any of its terms or provisions.

## COUNTERPARTS

This Instrument may be executed by the Parties in any combination, in one or more counterparts, all of which together will constitute one and the same Instrument.

## BINDING

This instrument and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this Instrument.

## NO LIABILITY OF REGULATORY AGENCIES

The responsibility for financial success and risk to the investment initiated by the Sponsor rests solely with the Sponsor. The regulatory agencies that are Parties to this Instrument administer their regulatory programs to best protect and serve the public’s interest in its wetlands and waterways, and not to guarantee the financial success of mitigation bank sites, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual mitigation bank site. The Sponsor should not construe this Instrument as a guarantee in any way that the agencies will ensure sale (use) of credits from this Instrument or that the agencies will forgo other mitigation options that may also serve the public interest. Because the agencies do not control the number of mitigation banks proposed or the resulting market impacts upon success or failure of individual banks, any information, conclusions, or expectations regarding the potential and future demand for bank credits are the sole responsibility of the Bank proponent.

## TRANSFER OF BANK SITES/OWNERSHIP/THIRD PARTY RESALE OR BROKERAGE OF CREDITS

Changes in Bank Property ownership, Bank sponsorship, or long-term stewardship are subject to review as a modification to the Instrument under the provisions of 33 CFR 332.8(g). All transfers of any interest in the Bank Property are subject to the applicable provisions of the approved site protection instrument (Appendix D). Additionally, any transfer of Bank Property, sponsorship, or long-term stewardship may require the transfer of any permits or authorizations issued for the establishment and operation of the Bank project. Finally, any transfer of Bank Property, sponsorship, or long-term stewardship may require the transfer or replacement of the site protection instrument, financial assurances, or long-term financing mechanisms.

The Sponsor shall notify the USACE and MDE no less than 60 days prior to the transfer. Once the transfer has been executed, the Transferee/new owner remains responsible for the Bank and all applicable provisions of the approved Instrument. The Transferee/new owner must also provide appropriate financial assurances, including long-term management financing, as needed. Any sale or transfer of the Bank or Bank Sites or Instrument made without prior written notification to the Chairs may, at the discretion of the IRT, result in the termination of this Instrument. Third-party resale or brokering of mitigation credits or transfer of credits to any entity for resale or re-transfer to a permittee is not permitted under the terms of the Instrument.

No Property Rights from Instrument Approval: IRT approval of this Instrument does not provide the Sponsor or Long-Term Steward any property rights in or to the Bank lands, and by approving the Instrument, the IRT makes no warranty or other assertion that the Sponsor or Long-Term Steward has the right to access or perform work on the Property. IRT approval of the MBI does not authorize any injury to property or invasion of other rights.

IRT Reliance on Sponsor’s Certification of Property Rights: In approving this Bank, the IRT has relied on the Sponsor’s certification that it possesses property rights that are sufficient to carry out the proposed compensatory mitigation project and to preserve the Bank Property in perpetuity. The Sponsor is responsible for complying with its obligations under this Instrument, notwithstanding limitations on the Sponsor’s property rights. Nothing in this MBI shall be construed as a limitation on the liability of the Sponsor or its officers for making false statements.

The applicable transfer procedures are detailed in Appendix Q. Appendix R shall be completed by the new owner/Sponsor when transferred.

## BANKRUPTCY OF THE SPONSOR OR FINANCIAL ASSURANCE PROVIDER

The Sponsor shall notify the Chairs by email and certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the Sponsor as debtor, within 10 days after commencement of the proceeding. The Sponsor shall notify the Chairs by certified mail within 10 calendar days of receipt of notice that any Financial Assurance provider has filed for bankruptcy or is otherwise named as debtor in a bankruptcy proceeding. Any Financial Assurance instrument prepared to meet a requirement of this Instrument must require that the assurance provider notify the Chairs by certified mail within 10 days of filing for bankruptcy or otherwise being named as debtor in a bankruptcy proceeding.

# LIST OF APPENDICES

The following Appendices are attached hereto and incorporated by this reference into this Instrument:

1. **Appendix A – Bank Location Maps**

**A.1 General Vicinity Map**

**A.2 Property Map including Bank Property Boundary**

**A.3 Map of Conserved Areas in Bank Property Vicinity (if applicable)**

1. **Appendix B – Real Estate Records and Assurances**

**B.1 Title Report, Legal Description, and Parcel Map(s)**

**B.2 Property Assessment and Warranty**

**B.3 Property Owner Acknowledgement of Property Rights and Agreement to Provide Access**

**B.4 Plat Map(s)**

**B.5 Title Insurance Commitment/Policy**

1. **Appendix C – Site Evaluation Report**
2. **Appendix D – Site Protection Instrument**

**D.1 Conservation Easement Instrument and Exhibits**

1. **Appendix E – Baseline Conditions**

**E.1 U.S. Geological Survey (USGS) Topographic Quadrangle**

**E.2 Aerial Imagery**

**E.3 Natural Resource Conservation Service (NRCS) Soils Mapping**

**E.4 FEMA 100-year Floodplain FIRM map**

**E.5 LIDAR Imagery**

**E.6 National Wetland Inventory (NWI) map and DNR Wetlands Map**

**E.7 Watershed scale map showing location of site relevant to terrestrial and aquatic features and public/private conservation lands**

**E.8 Photographs of mitigation site**

**E.9 Conditional assessment results**

**E.10 Delineation of aquatic resources on the mitigation site**

**E.11 Non-native and invasive species inventory map**

**E.12 Historic and cultural resources**

**E.13 Threatened and endangered species**

1. **Appendix F – Determination of Credits**

**F.1 Maryland Stream Mitigation Framework Calculator Credit Evaluation and Credit Table**

**F.2 Maryland Wetland Assessment Methodology Evaluation Results**

1. **Appendix G – Mitigation Work Plan**
2. **Appendix H – Maintenance Plan**
3. **Appendix I – Performance Standards and Monitoring Requirements**
4. **Appendix J – Interim Monitoring and Maintenance Activities**
5. **Appendix K – Long-Term Management Plan and Long-Term Funding**

**K.1 Long Term Management Plan**

**K.2 Endowment Fund Analysis, Cost Justifications, Investment Policy Statement, and Funding Schedule Description**

**K.3 Endowment Agreement**

1. **Appendix L – Adaptive Management Plan**
2. **Appendix M – Financial Assurances**

**M.1 Construction Financial Assurance, Cost-Estimate Analysis, and Reduction Schedule**

**M.2 Monitoring and Maintenance Financial Assurance, Cost-Estimate Analysis, and Reduction Schedule**

1. **Appendix N – Geographic Service Area**
2. **Appendix O – Credit Release Schedule**
3. **Appendix P – IRT Contact List**
4. **Appendix Q – Transfer Procedures for Bank Property Ownership, Sponsorship, or Long-Stewardship**
5. **Appendix R – Mitigation Bank Transfer Page**
6. **Appendix S – Other Documentation, Correspondence, Notes (e.g., State-requirements such as mapping for Environmental Justice, Climate Change, etc.) *(add as applicable)***

LIST OF TABLES:

Table 1: Potential Stream Mitigation Calculator Credits

Table 2: Potential Wetland Credits and Ratios

Table 3: Decision-Making and Implementation Steps for Corrective Management Actions

Table 4: Adaptive Management Triggers

Table 5: Standard Financial Assurance Release Schedules and Target Milestones

Table 6: IRT Credit Release for Nontidal Wetland, Stream, and Fish Barrier Removal Projects in Maryland

*(Each signature below should be provided as separate pdf pages to the final Instrument.)*

SPONSOR:

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

The Sponsor’s signature below indicates that the Sponsor accepts and agrees to comply with the terms and conditions of this Instrument, including the site protection instrument, financial assurances, long-term management funding, and associated Department of the Army Permit and State authorizations.

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

[Sponsor/Authorized Agent Name] Date

[Title, if applicable]

[Address]

[Phone Number and Email]

MARYLAND DEPARTMENT OF THE ENVIRONMENT

This Instrument becomes effective when the appropriate officials, designated to act for the MDE, have signed below.

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

Matthew C. Rowe Date

Assistant Director

MDE – Water and Science Administration

UNITED STATES ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT

This Instrument becomes effective when the appropriate officials, designated to act for the USACE, have signed below.

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

Wade B. Chandler Date

Chief, Regulatory Branch

USACE, Baltimore District

*(Each appendix should be provided as separate pdf appendices to this document when submitting an instrument for review rather than one very large, consolidated instrument pdf with all appendices.)*

**APPENDIX A**

**BANK LOCATION MAPS**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

**A.1 General Vicinity Map**

*This vicinity map should show the Bank location in relation to cities, towns, or major roads, and other distinguishable landmarks and be at such a scale that the nearest town is easily discernible to allow the Bank Property to be easily located. The latitude and longitude to the center of the Bank Property and the Bank Property boundaries should be included on the map.*

**A.2 Property Map including Bank Property Boundary**

*This map should illustrate the entire legal Property and the Bank Property limits, Construction Phases, and any planned Subsequent Phases on a topographic map. A shapefile with metadata for the mapped Bank project boundary, and latitude and longitude (decimal degrees) of the center point of the mitigation Bank project, shall be uploaded to RIBITS.*

**A.3 Map of Conserved Areas in Bank Property Vicinity (if applicable)**

*This map should depict other conserved lands in the vicinity of the proposed Bank boundary (i.e., conservation easements, public park lands, etc.).*

**APPENDIX B**

**REAL ESTATE RECORDS AND ASSURANCES**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

**B.1 Title Report, Legal Description, and Parcel Map(s)**

*Parcel map(s) and a legal description as well as a Title Report (dated within six months) which includes pertinent exceptions (e.g., excepted or reserved easements or rights, liens, encumbrances, and other matters affecting title), of the Property and Bank Property.*

**B.2 Property Assessment and Warranty**

*Property Assessment and Warranty prepared in accordance with the approved template (see below).*

**B.3 Property Owner Acknowledgement of Property Rights and Agreement to Provide Access**

*Property Owner Certification of Property Rights and Agreement to Provide Access prepared in accordance with the template below.*

**B.4 Plat Map(s)**

*Plat map(s) supporting the Property Assessment and Warranty that illustrate the physical extent of the title exceptions and identify the locations of all structures, roads, fences, and other physical improvements.*

**B.5 Title Insurance Commitment/Policy** (*attach once received)*

*Applicable for final Instrument approval under all circumstances. A title insurance commitment (TIC) must be submitted with the draft Instrument and should reflect Department of Justice (DOJ) guidelines for title. The title insurance commitment shall provide the following information:*

* *The TIC must be no more than 90 days old.*
* *The TIC must identify and provide 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 must also include 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.*
* *DOJ guidelines focus on looking at the prior 40-60 years. Therefore, the TIC should cover, at a minimum, the last 40-60 years.*

*If the Property was purchased with special funding sources, such as state or federal programs or with grants, the funding sources should be identified, and specific information related to these programs or grants should be provided. Likewise, if any grants or reimbursement programs have been associated with restoration or maintenance of the Property, please identify them.*

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

**APPENDIX B.2**

**PROPERTY ASSESSMENT AND WARRANTY CHECKLIST**

**(Version date: September 2024)**

*PLEASE NOTE: The following information is provided as a standard template document. Any modifications to this template shall be identified and explained in an attached addendum. This Property Assessment and Warranty must be completed to the satisfaction of the Chairs prior to Instrument approval.*

This Property Assessment and Warranty (“Property Assessment”) is made as of this \_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_, by *[****insert:* Property Owner/Bank Sponsor full legal name***]* (“Bank Sponsor”), for the benefit of the Baltimore District of the U.S. Army Corps of Engineers and the Maryland Department of the Environment, which agencies are jointly referred to in this Property Assessment as the “Chairs”. The Bank Sponsor and Property Owner acknowledge that this Property Assessment and the statements in it may be conclusively relied upon by the Chairs in entering into the Mitigation Banking Instrument (“Instrument”) ***[or* Umbrella Mitigation Banking Instrument Modification (“Instrument Modification”)*]*** for the *[****insert:* Bank name***]*.

This Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the “Property” and “Bank Property” (as described below), including, without limitation, each exception listed in the Preliminary Title Report issued by *[****insert:* title company name, title report date, insert title report number**] (“Preliminary Title Report”), covering the Property and Bank Property as described in **Attachments 1 and 2** attached hereto and incorporated by this reference. The Preliminary Title Report must be completed within six months of this submittal. This Property Assessment includes a narrative explaining each lien, encumbrance, or other exception to title and the manner in which it may affect the Conservation Easement to be recorded against the Bank Property pursuant to the Instrument/Instrument Modification.

The Sponsor and the Property Owner covenants, represents, and warrants to each of the Chairs as follows:

The Property Owner is the sole owner in fee simple of certain real property containing approximately \_\_\_\_ acres located in the County of [**County name**], State of Maryland, designated as [**plat/parcel number(s)**] (the “Property”) as legally described in the Preliminary Title Report.

The Sponsor and Property Owner have executed an agreement/certification confirming that the Sponsor has the requisite interests and property rights to carry out the mitigation project described in the Instrument/Instrument Modification and its exhibits. Such agreement/certification should demonstrate that the Sponsor has the right to perform and protect in perpetuity all work, functions, and values under an approved Instrument/Instrument Modification. This agreement/certification grants Bank Property access to the Sponsor, their agents, the Chairs, and the IRT resource agencies.

The Bank Property includes legal access to and from **[insert: name of public street or road]**. ***[If special access rights are required to reach the Bank Property, those access rights must also be addressed in this Property Assessment].***

The Sponsor has provided a title insurance policy, or multiple title insurance policies, covering the entirety of the Property proposed for inclusion in the Bank (Bank Property) with the draft Instrument/Instrument Modification.

The Sponsor has provided a copy of each of the recorded deeds or other encumbrance documents referenced in the title report/policy’s exclusions from coverage.

The Sponsor has provided a copy of plat or multiple plats covering the entirety of the Property proposed for inclusion in the Bank.

The Sponsor has performed and provided documentation of a Property Assessment, to include locating all existing interests listed in the exclusions from title policy coverage, providing a narrative summary and evaluation of the existing interests potential to create conflicts with the Bank’s objectives and/or likelihood of success (**Attachment 3**), and providing an accurate depiction of those existing interests and the areas affected by each exception to title on a drawing of the Bank and the Bank Property (**Attachment 4**).

If mineral interests are severed, a mineral remoteness report, prepared by a licensed, professional geologist is required that includes the following information:

* Introduction – report purpose, location maps, legal description
* Bank property preliminary title report examination describing what type of leases are on the project and description of surface and mineral estate ownerships
* Description of specific mineral resources included and excluded in the mineral estate
* Review of locatable, useable, and salable mineral resources on the Bank Property
* Map and aerial photographs of Property with delineated mineral estates
* Assessment of mineral resource potential, including: a map showing locations, discussion of environmental constraints that may constrain mining, opinion as to the likelihood of surface mining or other forms of mining, including a determination whether the “probability of surface mining is so remote as to be negligible”, references cited, preparer’s qualifications. Assessment shall consider reserve size, depth, type, amount, depth of bedrock, quality of formation, surface/sub surface, proximity of other existing mineral exploration operations and infrastructure, future development intentions of holder, current state of the energy market as it relates to the specific type of minerals on-site, and any existing permits that cover the site (i.e., mining permits, NPDES, etc.).

The Sponsor and Property Owner understand that a Subordination Agreement provision shall be included in the draft site protection instrument when existing encumbrances with the potential to create conflicts with the Bank’s objectives and/or likelihood of success are identified on the Bank Property.

The Property Owner has not granted any options, or committed or obligated to sell the Property or any portion thereof.

The Sponsor acknowledges that the Bank Property has not been used for the purpose of generating compensatory mitigation credits for a previous project(s), is not land purchased for designated purposes that are not consistent with habitat preservation, and does not include existing interests that are incompatible with the purposes of the Bank.

The Sponsor acknowledges that it must record the approved site protection instrument before any potential credits are released.

The Sponsor and Property Owner understand that when the Bank Property is owned by federal or state governments with no authority to record a restriction on property deed, a separate conservation land use agreement (memorandum of agreement between Sponsor, Property Owner, and Chairs on management of resources) may be used in conjunction with a future federal/state facility resource management plan to include a designation for the mitigation site as “environmental conservation use”.

The site protection instrument includes a legal description of the protected area that has been prepared by a registered surveyor and includes the metes and bounds of the entire Bank.

The site protection instrument establishes in an appropriate third party, if one has been identified, the right to monitor and enforce the site protection provisions.

The Sponsor has provided documentation demonstrating that the third party who will monitor and enforce the site protection provisions has accepted such role and is authorized by Maryland law to perform the functions granted to it.

The Sponsor has provided documentation demonstrating that the Sponsor and the third party who will monitor and enforce site protection provisions have agreed upon a mechanism to finance long-term management responsibilities.

The Sponsor acknowledges that the site protection instrument, management plan, and long-term protection mechanism must contain a provision requiring 60-day advance notification to the Chairs before any action is taken to void or modify the instrument, management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over, the Bank.

The Sponsor has provided the Chairs a written statement from the Property Owner certifying that, to the Property Owner’s knowledge, there are no easements, encumbrances, or transfers of the Property, in whole or in part, not disclosed in the title policy (**Attachment 5**).

The Sponsor and Property Owner have provided the Chairs a written detailed statement that identifies and describes any Federal, state, or public funding received, or expected to be received, for natural resources acquisition, protection, Enhancement, Restoration, or other purposes within all or a portion of the proposed Bank boundary (e.g., funding source, amount received, purpose, number of acres affected by each purpose, etc.) (**Attachment 6**).

If the Property Owner is a corporation or partnership, the Property Owner shall provide documentation that recordation of the site protection instrument has been approved in accordance with [state] law.

If the Property Owner is not an individual, the Property Owner shall provide documentation that the person executing the site protection Instrument has the authority to sign on behalf of the company.

If the Bank land has multiple Property Owners, all Property Owners have signed below and will sign the site protection instrument when executed.

The Sponsor has concluded, in the Property Assessment, that all existing interests either: create a negligible risk of conflict with the Bank’s objectives and likelihood of success, are located entirely outside of the Bank boundaries, are located entirely within an area that will not generate any credits, have been appropriately subordinated to the site protection instrument, or have been terminated. By signing below, the Sponsor certifies that the Property Assessment is true, accurate, and complete.

By signing below, the Sponsor certifies that, to the best of the Sponsor’s knowledge, there are no existing encumbrances that will conflict with the objectives of the Bank (including, without limitation, mineral interests).

The following Attachments are incorporated by reference in this Property Assessment:

1. Attachment 1 – Preliminary Title Report
2. Attachment 2 – Encumbrance Documents, including copies from the Official Records of the county recorder’s office of all recorded exceptions to the title (e.g., easements, mortgages, mineral rights, etc. etc.)
3. Attachment 3 – Summary and Explanation of Encumbrances (see below for format) to be provided by the Sponsor.
4. Attachment 4 – Map(s), preferably in GIS format, illustrating the boundary of the Bank Property and the location of each exception to the title.
5. Attachment 5 – Written, signed statement from the Sponsor and Property Owner certifying there are no easements, encumbrances, etc., not disclosed in the title policy.
6. Attachment 6 – Written, signed statement from the Sponsor and Property Owner that identifies and describes any federal or state funds received, or expected to be received, for natural resources protection, Enhancement, or Restoration within the Bank Property.

CERTIFICATION: I certify that the information provided herein is true, accurate, and complete.

Bank Sponsor Date

Property Owner Date

**NOTARY SEAL**

**Attachment 3**

**Sample Format for: Summary and Explanation of Any Encumbrances**

MONETARY LIENS

Note: Any deeds of trust or other monetary lien(s) must be released or subordinated to the Conservation Easement by a recorded Subordination Agreement approved by the Chairs.

• Preliminary Report Exception or Exclusion #:

• Amount or Obligation secured:

• Term:

• Date:

• Grantor:

• Trustee:

• Beneficiary:

• Description:

\_\_\_\_ acres of Bank Property subject to lien

\_\_\_\_ acres of Bank Property *not* subject to lien

EASEMENTS AND RIGHTS OF WAY

• Preliminary Report Exception or Exclusion #:

• Date:

• Grantor:

• Grantee:

• Holder (if different from Grantee):

• Description:

• Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Bank Property*]

\_\_\_\_ acres of Bank Property subject to easement

\_\_\_\_ acres of Bank Property *not* subject to easement

LEASES

• Preliminary Report Exception or Exclusion #:

• Date:

• Landlord/Lessor:

• Tenant/Lessee:

• Premises:

• Term:

• Description:

• Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Bank Property*]

\_\_\_\_ acres of Bank Property subject to lease

\_\_\_\_ acres of Bank Property *not* subject to lease

COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS

• Preliminary Report Exception or Exclusion #:

• Dated:

• Grantor or Declarant:

• Grantee (if applicable):

• Description:

• Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Bank Property*]

\_\_\_\_ acres of Bank Property subject to exception/exclusion

\_\_\_\_ acres of Bank Property *not* subject to exception/exclusion

OTHER INTERESTS (INCLUDING MINERAL OR OTHER SEVERED INTERESTS)

• Holder

• Description: [*must address whether or not the interest includes any surface rights and, if applicable, a description of those rights*]

• Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Bank Property*]

\_\_\_\_ acres of Bank Property subject to interest

\_\_\_\_ acres of Bank Property *not* subject to interest

**APPENDIX B.3**

**Property Owner Acknowledgement**

**of Property Rights and Agreement to Provide Access**

By signing this acknowledgement, the Property Owner acknowledges and understands that:

* + 1. The Sponsor’s proposed activities involve work on the Property Owner’s property.
    2. The Sponsor has certified in the Property Assessment and Warranty in Appendix B to the Instrument/Instrument Modification that the Sponsor has the requisite property rights to carry out the mitigation project described in this Instrument and its Appendices.
    3. This Instrument/Instrument Modification requires that a site protection instrument be recorded on the Property Owner’s property within the limits of the Bank.
    4. The site protection instrument will prohibit certain activities within the Bank and require that the Property Owner provide the Sponsor, members of the IRT or their agents or designees, the Long-Term Steward or the Long-Term Steward’s agents or designees, and the easement holder (if any), access to the Bank as reasonably necessary, for the purpose of inspection, compliance monitoring, and corrective action inspections consistent with the terms and conditions of this Instrument.
    5. The Property Owner will be a signatory to the site protection instrument when it is executed.

The Property Owner agrees to notify the Chairs within 60 calendar days of the following circumstances:

1. Any action is taken to void or modify the site protection instrument, including transfer of title to, or establishment of any other legal claims over, the Bank.
2. Receiving notification of a potential exercise of eminent domain.
3. Conclusion of the eminent domain process.

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

[Property Owner(s) Name] Date

[Title, if applicable]

[Address]

[Phone Number and Email]

**Notary Seal**

**APPENDIX C**

**SITE EVALUATION REPORT**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

**APPENDIX D**

**SITE PROTECTION INSTRUMENT**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

*Include a draft form of the site protection instrument/Conservation Easement and all exhibits using the approved site protection template.*

**APPENDIX E**

**BASELINE INFORMATION**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

*Baseline conditions, qualitative and quantitative, on each assessment area should be provided for the compensatory mitigation site. Resource mapping and an associated narrative shall discuss the watershed and landscape characteristics for the proposed site and its surroundings that provides context of the Bank, such as sources of hydrology, landscape, and existing topography. Baseline data shall include information such as groundwater well data, surface water stage data, soil profile descriptions, estimated or measured hydroperiod data, stream bank stability and channel morphology data, vegetation data, and, if applicable, water quality data (e.g., temperature, conductivity, oxygen levels). Baseline data collected pre-construction shall be considered a benchmark for the degree of change in function the post-construction state achieves. Unless otherwise specified, this information will be included in this Appendix and the MWP, as appropriate. Baseline information may include, but is not limited to:*

* + Resource Mapping
    - USGS Topographic Quadrangle (Appendix E.1)
    - Current and Historic Aerial Imagery (Appendix E.2)
    - NRCS Soils Map (Appendix E.3)
    - FEMA 100-year Floodplain FIRM Map (Appendix E.4)
    - LIDAR imagery (Appendix E.5)
    - National Wetland Inventory (NWI) Map and DNR Wetlands Map (Appendix E.6)
    - Watershed scale map showing location of site relevant to terrestrial and aquatic features (e.g., streams, wetlands, fish passage barriers, FIDS habitat, etc.) and public/private conservation lands (Appendix E.7)
  + Photographs of proposed mitigation site (Appendix E.8)
  + Existing baseline condition assessment of existing onsite streams and wetlands using current IRT assessment methodology(ies) (Appendix E.9)
  + Delineation of all wetlands, other special aquatic sites, and other waters, such as streams, lakes, and ponds on the proposed compensatory mitigation project site. The delineation is performed in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and appropriate regional supplement(s). Include all data point locations on the map and data sheets (Appendix E.10)
  + Non-Native and Invasive Species inventory map depicting the location (acres) and extent (coverage) of all individual species of non-native and invasive plants over the entire mitigation site (Appendix E.11)
  + Historic, archaeological, and cultural resources mapping, if known and present on site (Appendix E.12)
  + Federal and state rare, threatened, and/or endangered species mapping, including USFWS IPaC results (<https://ecos.fws.gov/ipac/>) and any available state screening information (Appendix E.13)
  + Current hydrogeomorphic setting
  + Current groundwater levels within proposed wetland Restoration or Establishment areas (for one year, if possible), with the MWP
  + Historic and existing soil conditions, including soil profiles described within proposed wetland Restoration or Establishment areas, with identification of any sulfidic materials
  + Descriptions of historic and existing plant communities/cover type, and age
  + Stream order and type
  + For areas of proposed wetland Restoration, Establishment, or Enhancement, a historical characterization of the area, including historic and existing land use, and reasons and methods for conversion from wetlands (i.e., historic/current ditching, re-contouring, filling, etc. for farming, silvicultural or other land use activities)
  + Description of the nature, extent, and probable stressors/causes of degradation of wetlands and streams
  + For areas of proposed stream Restoration, provide pre-Restoration aquatic macroinvertebrate surveys and water quality measurements with the MWP
  + For areas of proposed stream Preservation downstream of stream Restoration or Enhancement, provide pre-Restoration stream cross sections with the MWP
  + For areas of proposed stream Restoration or Enhancement, a survey of existing typical channel cross section, plan view, and profile indicative of each stream type, classification, and order, and existing geomorphological characteristics data with the MWP
  + Any other site characteristics appropriate to the type of resource proposed as compensation

**APPENDIX F**

**DETERMINATION OF CREDITS**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

1. IRT-APPROVED ASSESSMENT METHODOLOGY

Credits for the Bank have been determined by the Sponsor, and approved by USACE and MDE, in coordination with the IRT, in accordance with the applicable IRT standards or methodology at the time of Bank approval.

1. Stream Credits

The number of potential credits for stream compensatory mitigation was determined using the most current version of the Maryland Stream Mitigation Framework (MSMF V.\_\_\_, dated \_\_\_\_\_\_) (“Stream Calculator”). Each linear foot of stream within the Bank was designated by Stream Reach, which are unique in quality, proposed treatment, or activity (Restoration, Enhancement, or Preservation). The stream quality parameter of the Stream Calculator was determined by assessing existing and proposed Stream Reach conditions using the current IRT-approved functional or conditional assessment methodology. The total potential functional feet across all reaches represents the total stream credit generated by the Bank, and is summarized in Table 1 below. The Maryland Stream Mitigation Framework Calculator results are provided in Appendix F.1. Based on this assessment and the use of the Stream Calculator, the Bank is expected to generate approximately \_\_\_\_\_\_ potential functional-foot stream credits. *[Use the example table below to summarize the projected credits generated by this Bank.]*

Table 1: Potential Stream Mitigation Calculator Credits

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Reach | Stream Classification (intermittent, perennial) | Mitigation Activity (Restoration, Enhancement, Preservation) | Existing Stream Length (LF) & (Quality %) | Proposed Stream Length (LF) & (Quality %) | Potential Stream Credits (Functional Feet) |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Totals | | |  |  |  |

1. Wetland Credits

The number of potential credits for nontidal wetland compensatory mitigation was determined using the current IRT-approved credit ratios as outlined in the IRT document, *Typical Nontidal Wetland Mitigation Credit Values Using Ratio Method*. (IRT, June 3, 2021) *[or use updated latest version]*. Wetland credit ratios depend on the amount of functional uplift associated with the proposed mitigation activities. The Maryland Wetland Assessment Methodology (MDWAM) shall be used to assess the baseline and future proposed site conditions. The MDWAM results are provided in Appendix F.2. In the event that a wetland credit calculator for compensatory mitigation is approved in the future for use in Maryland, the Sponsor will use the methodology(ies) as required by the IRT. The anticipated wetland credits is shown below in Table 2.

*Insert a brief explanation of the rationale for this determination, including the proposed mitigation method for each wetland, and ecological consideration such as expected lift in function, extent of Restoration of ecological processes, likelihood of success, rarity of habitat types, etc. Include a table below to show the proposed ratio method, consistent with the IRT standards, and including rationale for proposed ratio when there is a range provided in the IRT standard ratios.*

Table 2: Potential Wetland Credits and Ratios

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Wetland Mitigation Activity (Establishment, Re-establishment, Rehabilitation, Enhancement, Preservation, Buffer) | Classification of Wetland Resources | Existing Wetland Area (acres) | Ratio | Rationale for Proposed Ratio | Potential Wetland Credits (acre-credits) |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Conservation Easement (0-5%)\* |  |  |  |  |  |
| TOTAL WETLAND CREDIT SUM | |  |  |  |  |

\*Note: Range for the proposed % increased value based on expected protection benefits provided by Conservation Easement, any existing site protections, and proposed easement holder (see Section C (*Conservation Easement Credits)* below).

1. Conservation Easement Credits

In accordance with local district procedures, the number of credits for wetland and stream compensatory mitigation may be considered to have an increased value of up to 5% when an approved Conservation Easement is recorded over the Bank Property with an IRT-approved land trust, non-profit conservation organization or government organization with resource management directives named as the easement holder. The standards identified in the IRT-approved, *Maryland Interagency Review Team – Standards for Conservation Easement Holders for Mitigation Sites*, dated May 3, 2021 *[or use latest IRT-approved version]*, shall be used to determine whether the proposed Conservation Easement holder is acceptable and if any increased value of credits for an approved Conservation Easement is warranted. If the IRT finds that a re-evaluation of the number of potential credits results in an increase of that number of credits at as-built or a decrease due to performance over the Monitoring and Maintenance Phase, the % of Conservation Easement credits will be adjusted accordingly.

1. TIMING OF POTENTIAL CREDIT DETERMINATIONS
   1. Mitigation Work Plan (MWP)

The IRT will determine the total number of potential compensatory mitigation credits generated by this Bank, by applying the methodologies described in Section I (*IRT-Approved Assessment* Methodology) above to the Sponsor’s proposed Establishment, Re-establishment, Rehabilitation, Enhancement, or Preservation work described in the MWP.

* 1. As-Built Reports

If the Chairs, in coordination with the IRT, finds that application of the IRT-approved assessment methodology to the as-built report yields fewer credits than determined based on the approved MWP, the IRT will decrease the Bank’s number of potential credits.

The Sponsor may request that the Chairs, in coordination with the IRT, re-evaluate the number of potential credits based on the Sponsor’s as-built report and demonstration of a substantial difference in the area of established, enhanced, or restored stream or wetlands than was originally anticipated when the mitigation plan and associated credit release schedule was approved. The Sponsor may request a modification in accordance with the procedures at 33 CFR 332.8(g) to the Mitigation Plan and associated number of potential credits in accordance with the findings of the updated as-built drawing.

* 1. Monitoring Reports

Performance standards for the Bank should reflect high functioning resources. For each monitoring year, the Bank must be re-evaluated using the current credit assessment methodology and mitigation calculator and those results included in the monitoring report. The number of credits released, and credit totals may be adjusted downward when the Bank does not achieve the expected degree of functionality based on monitoring results and assessment and mitigation calculator results. However, a higher than anticipated degree of functionality for a Bank cannot result in more credits being released or the credit totals for the Bank being increased over the amount of credits approved when the Bank was approved.

**Appendix F.1. Maryland Stream Mitigation Framework Calculator results**

**Appendix F.2. Maryland Wetland Assessment Methodology results**

**APPENDIX G**

**MITIGATION WORK PLAN**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

*The Sponsor shall submit and obtain approval of the Mitigation Work Plan (MWP) for the Bank from the Chairs, in coordination with the IRT. The MWP includes detailed written specifications and work descriptions, including but not limited to, the geographic boundaries of the Bank 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; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures. For stream banks, the MWP should also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.*

**APPENDIX H**

**BANK OPERATIONS MAINTENANCE PLAN**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

**APPENDIX I**

**PERFORMANCE STANDARDS AND MONITORING REQUIREMENTS**

*[insert copies of latest version of approved Maryland IRT performance standards and monitoring protocol requirements – Include nontidal/tidal wetland and/or stream, as applicable]*

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

**APPENDIX J**

**INTERIM MONITORING AND MAINTENANCE ACTIVITIES**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

Interim Monitoring Report Measurements:

### Wetland Area(s) – Restoration and Enhancement:

#### Estimate percentage of the Bank with saturation to surface/inundation during site visit;

#### Estimate percentage of the Bank with a minimum 85% absolute and relative cover with native wetland vegetation (FAC or wetter);

#### Estimate percentage relative cover of Non-Native and Invasive Species. Follow the Non-Native and Invasive Species management as described in this Instrument, Appendix I – Performance Standards and Monitoring Requirements;

#### Estimate density per acre of native tree/shrubs (FAC or wetter) having a minimum height of 10 inches;

#### Estimate percentage native tree canopy cover;

#### Visual inspection to assess condition of berms and other structures (e.g., ditch plugs, fencing); and

#### Other issues of concern (e.g., erosion, encroachment, insect, or animal damage, etc.)

### Buffer Area(s) – Enhancement

#### Estimate percentage relative cover of Non-Native and Invasive Species. Follow the Non-Native and Invasive Species management as described in this Instrument, Appendix I – Performance Standards and Monitoring Requirements;

#### Estimate density per acre of native tree/shrubs (FAC or wetter) having a minimum height of 10 inches;

#### Estimate percentage native tree canopy cover; and

#### Other issues of concern (e.g., erosion, encroachment, insect, or animal damage, etc.).

### Stream Area(s) – Restoration and Enhancement

#### Observation of land use surrounding streams, including any changes to Buffer within 10 feet;

#### Estimation of the percentage native tree canopy cover of the riparian vegetation;

#### Observation of the flow regime (perennial, intermittent, or ephemeral) in stream areas;

#### Visual inspection of levee breech points for stability;

#### Visual inspection of the stream channel vertical and lateral stability (including changes in planform sinuosity);

#### Visual inspection of stream structure for stability;

#### Visual inspection of bedform diversity; and

#### Observation of water quality at the time of the inspection.

### Stream Area(s) – Buffer

#### Estimate percentage relative cover of Non-Native and Invasive Species. Follow the Non-Native and Invasive Species management as described in this Instrument, Appendix I – Performance Standards and Monitoring Requirements.

#### Estimate percentage of native tree canopy cover;

#### Visual inspection to assess condition of berms and other structures (e.g., ditch plugs, fencing, etc.); and

#### Other issues of concern (e.g., erosion, encroachment, insect, or animal damage, etc.)

**APPENDIX K**

**LONG-TERM MANAGEMENT PLAN AND LONG-TERM FUNDING**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

**Appendix K-1 Long-Term Management Plan -** *The Long-Term Management Plan identifies the perpetual management, monitoring, and reporting activities to be conducted after Bank Closure. The most current district template must be used, and any proposed modifications must be documented using tracked changes. All major changes from the template must be justified in writing.*

**Appendix K-2 Endowment Fund Analysis, Cost Justifications, Investment Policy Statement, and Funding Schedule Description** –*The Nature Conservancy’s Long-Term Stewardship Calculator shall be used to estimate long-term management costs by Long-Term Stewards and easement holders to determine the funding needed to complete long-term management tasks before they assume responsibility. The endowment fund analysis, cost justifications, and funding schedule shall consist of a table and/or spreadsheet that shows the projected annual capitalization rate, all of the tasks (management, monitoring, reporting); task descriptions, labor (hours), cost per unit, cost, frequency, timing, or scheduling of the tasks; the total annual funding necessary for each task; and any associated assumptions for each task required by the Long-Term Management Plan. The total annual expenses should also include a minimum 10% administration and 20% contingency expenses. The endowment fund analysis and schedule shall be developed assuming that each Construction Phase is constructed and managed by itself without the economies of scale or other cost reductions that may occur if all Construction Phases are implemented.*

*Cost estimates shall be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars.*

*The Endowment Fund Analysis and Schedule in this Appendix K is specific to funding long-term management of the Bank Property, including any incremental funding deposits and inflation adjustments. The endowment funding required by the Grantee to hold and monitor the Conservation Easement must be addressed by the Sponsor in a separate and distinct Endowment Agreement to be included as part of Appendix B, Real Estate Records and Assurances.*

**Appendix K-3 Endowment Agreement** – *A copy of the executed endowment agreement will be included as an Appendix to this Instrument. The USACE and MDE must approve a final draft of the endowment agreement prior to execution.*

**APPENDIX L**

**ADAPTIVE MANAGEMENT PLAN**

An integral part of a successful compensatory mitigation Bank is early detection of problems during implementation, determining the cause(s) of those problems, and attempting to correct those problems so that the compensatory mitigation Bank achieves the objectives and ecological performance standards described in the approved Instrument. Interim performance-based milestones are critical to ensuring compensatory mitigation performance follows a trajectory to attain final compensatory mitigation success. Adaptive management triggers are thresholds at which adaptive management interventions need to be considered, such as an observation or data that performance standards are not being met or may not be met in future years. Triggers should be established in a manner that precedes undesirable outcomes, unintended consequences, or negative impacts so that corrective measures can be taken to re-direct the trajectory of the project before such results would occur.

Adaptive management typically involves four steps: 1) plan for uncertainty, 2) monitor the site, 3) analyze project outcomes/performance, and 4) take appropriate adaptive action incorporating the results of analysis into future actions. The adaptive management process is a feedback mechanism and is a plan to adapt to changing conditions. Adaptive management is based on the analysis of monitoring results to identify potential problems of a compensatory mitigation project and the identification and implementation of measures to rectify those problems. Adaptive management includes the selection of appropriate measures that will ensure that the project meets performance standards and provides the desired aquatic resource functions.

An adaptive management plan (AMP) considers the risk, uncertainty, and dynamic nature of compensatory mitigation projects. The AMP is a strategy that anticipates challenges to successful mitigation project implementation and addresses foreseen and unforeseen changes in site conditions or other components of the Bank. In addition, AMPs must consider potential natural disasters that may occur, to the extent that they can be reasonably foreseen.

Construction – If the Bank cannot be constructed in accordance with the approved Mitigation Plans, the Sponsor must notify the USACE and MDE. The USACE and MDE will determine whether modification of the approved Mitigation Plan and Instrument is necessary to ensure compliance with the permit and authorizations and/or this approved Instrument.

Monitoring – If monitoring or other information indicates that the Bank is not achieving its performance standards as anticipated, the Sponsor must notify the USACE and MDE as soon as possible. USACE and MDE will evaluate proposed measures to determine if they will address deficiencies in the Bank and/or require modification of the approved Mitigation Plan and Instrument to ensure compliance with the permit and authorizations and approved Instrument.

If an adaptive management response requires a change to the permit and/or approved Mitigation Plan, or the adaptive management response does not comply with the permit or Instrument, as approved, the permit and/or Instrument must be modified. The Sponsor will notify the USACE and MDE, requesting approval of the proposed measures, and a modification of the permit and/or Instrument. The USACE and MDE will determine whether the measures are appropriate and practicable, and whether the Bank is providing comparable ecological benefits to the original objectives, when determining whether it is necessary to require adaptive management. Alternative compensatory mitigation or decreasing available credits may be required to offset a shortfall in aquatic resource functions or when the Bank is not providing comparable ecological benefits to the original objectives. Except in the case of natural disasters, revisions to performance standards are not allowed unless they reflect ecological benefits that are comparable or superior to the originally approved objectives.

When an adaptive management trigger is identified, Table 3 below lists the general chronology, responsible party, and timeline for completing corrective action steps.

Table 3: Decision-Making and Implementation Steps for Corrective Management Actions

|  |  |  |
| --- | --- | --- |
| **Chronological Corrective Action Steps** | **Party Responsible** | **Timeline** |
| 1. Identification of adaptive management trigger | Sponsor or IRT | On each occurrence |
| 1. Consult to determine extent and cause of issue and appropriate corrective action(s), if any needed at this time. | Sponsor and IRT | As necessary |
| 1. Provide Sponsor written notification of failure to meet performance standards | Chairs | Soonest practicable option |
| 1. Prepare written AMP, including proposed measures to address issue, including schedule | Sponsor | 30 days1 |
| 1. Determine if new permits/modifications to the existing permit are needed. | Sponsor and Chairs |  |
| 1. Submit AMP to IRT | Sponsor |  |
| 1. Approval of AMP | Chairs, in coordination with IRT | As necessary |
| 1. Implementation of AMP | Sponsor | 90 days following approval of AMP2 |
| 1. Monitoring of AMP success | Sponsor | Within one full Growing Season3 |
| 1. Compliance Site Visit | IRT | At IRT or Sponsor’s request following completion of AMP |
| 1. Determination of Bank compliance, allowance of time4 for additional corrective actions, or declaration of Default | IRT | 60 days following compliance site visit |

1. From the date the need for adaptive management action was first identified in writing to the Sponsor by the Chairs unless otherwise delayed by seasonal constraints that may delay fieldwork needed to develop the plan (e.g., snow cover or frozen ground).
2. Unless otherwise affected by seasonal constraints that may delay field work needed to implement the corrective action (e.g., snow cover or frozen ground, poor time of year for planting).
3. Following the date that the AMP action(s) were implemented.
4. If the Chairs grant Sponsor time to implement additional AMP actions, return to step 4, or as otherwise determined at the discretion of the Chairs.

Construction: Changes in existing site conditions prior to construction that would affect the proposed design or implementation will be documented and incorporated into the final MWP. Relatively minor changes will be documented and reflected on the post-construction as-built, along with a discussion of the site conditions that had changed, and any resulting changes in mitigation design or credit yield. Substantial changes that affect the approved mitigation scope and design or credit yield will be coordinated with the IRT for review and approval prior to incorporating the proposed change. The changes affecting the mitigation scope or design, or credit yield will be documented and reflected on the post-construction as-built, along with a discussion of the site conditions that had changed, and any resulting changes in design, scope, or credit yield.

Post-Construction: Following construction, a construction completion report, including an as-built plan and photographs (including aerial photography, if possible), showing details of the as-built features will be provided to the IRT as the basis of the AMP. This plan will be updated via visual assessment and survey as appropriate through the Monitoring and Maintenance Phase to record significant changes that occur at the Bank, including areas of stream and floodplain instability, low stem density or poor vegetative growth and viability, Non-Native and Invasive Species, herbivory damage, encroachment, beaver activity, or other areas of concern. Visual monitoring is intended to identify, track, and address potential problems, when necessary. The baseline imagery will also inform assessment of the rate of change within the restored area, and the effectiveness of Restoration and subsequent management actions.

Table 4 shows linkage between the Bank’s performance standards, monitoring, management triggers, and potential adaptive management measures to better ensure that the project meets its performance standards and provides the desired functions.

*[Table 4 below provides an example of adaptive management triggers that ties together performance standards, monitoring, management triggers, and adaptive management. Please complete your own Bank-specific Table 4 using the headers provided below to describe required performance standards, management triggers and appropriate adaptive management measures.]*

Table 4 – Adaptive Management Triggers

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Category | Performance Measure(s) (Targeted Outcome) – See Appendix | Monitoring Methods and Design | Management Trigger | Potential Management Measures |
| Non-Native and Invasive Species | Performance Standard I.B.3 - No more than 10% of relative plant cover over the entire site shall be made up by Non-Native and Invasive Species, with no individual colony greater than or equal to 5% of relative plant cover. | Routine vegetation monitoring | -Presence of Non-Native and Invasive Species at percentages exceeding performance standards  -Establishment of invasive species colonies  -Failure to establish native vegetation | -No action  -Invasives will be treated more aggressively through multiple methods of control (herbicides, hand-pulling, etc.) |
| Vegetation Establishment | Performance Standard I.B.6 – Average tree height of tallest five native wetland trees within each sample plot is at least 3 feet in height at year three and at least five feet in height at year five and each monitoring year thereafter. | Routine vegetation monitoring | -Not meeting performance standards  -Rates of vegetation establishment are slower than predicted  -Vegetation health is observed to be poor and may result in future mortality | -Replanting of specified plant species  -Changes to planting plan and replanting |
| Hydrology | Inundated or water table is 12 inches or less below the soil surface for at least 14 consecutive days during the Growing Season in most years. | Routine water levels and hydrograph | -The site does not appear to be on the trajectory to meeting hydrology performance standards  -Wells are not meeting the required performance standard | Potential management actions may include excavation of sediment or debris.  -Potential adjustments to elevations/water control structures |
| Stream channel stability/bank erosion/scour | Riffle crest and/or structure thalwags shall be stable as documented using data from monumented cross-sections | Monumented valley-wide cross sections | -Not meeting performance standards  -Change in cross-sectional areas may indicate erosion or aggradation | -No action  -Adjustments to grades, structures |
|  |  |  |  |  |

The specific AMP, including proposed measures developed in response to a trigger shall include a detailed plan showing location of proposed measures, a summary of site performance deficiencies and causes, a description of proposed measures(s) to address deficiencies, a proposed implementation schedule, a proposed evaluation plan of implemented corrective action success, and a pathway for re-evaluation in coordination with the IRT.

To the extent practicable, the Sponsor shall minimize effects that would lead to improved conditions for Non-Native and Invasive Species colonization. The IRT-approved document, *Management Considerations for Invasive and Non-Native Species in Nontidal Wetland, Stream, and Buffer Mitigation Sites in Maryland*, identifies priority Non-Native and Invasive Species that trigger eradication measures and should be controlled aggressively. When the Bank is not progressing towards meeting the Maryland IRT performance standard for Non-Native and Invasive Species, the Sponsor must notify the USACE and MDE as soon as possible. USACE and MDE, in coordination with the Chairs may consider a focused management approach for controlling Non-Native and Invasive Species designed to consider a holistic strategy, reducing harmful herbicide usage while still accounting for the original objectives and long-term site success. Implementation of these measures must be designed to ensure that the Bank provides aquatic resource functions comparable to those described in the original approved Mitigation Plan objectives. USACE and/or MDE may reduce the number of available credits or require alternative compensatory mitigation for any changes in performance standards, management strategies, and objectives that result in a shortfall in aquatic resource functions or ecological benefits that are not comparable with the original approved objectives.

**APPENDIX M**

**FINANCIAL ASSURANCES**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

**Appendix M.1 Construction Financial Assurance, Analysis, and Schedule**

**Appendix M.2 Monitoring and Maintenance Financial Assurance, Analysis, and Schedule**

The amount of the approved Financial Assurances may be reduced by the Chairs, by the following scheduled amounts shown in Table 5. No reduction in the Financial Assurances will occur unless the Chairs, in their sole discretion, determine that performance of those actions, obligations, and milestones as set forth in this Instrument/Instrument Modification have been achieved or satisfied and certifies its determination in writing. The amounts scheduled below will remain in full force and effect until the date on which the Sponsor receives written verification from the Chairs that the conditions for reduction in the Instrument/Instrument Modification have been fully met.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Table 5: Standard Financial Assurance Release Schedule and Target Milestones | | | | | |
| Financial Instrument Used | Project Phase Covered | Specific Items Covered | Approximate Amount Reduced | Approximate Amount Reserved | Explanation |
| Performance Bond | Construction & Establishment | Construction | (0%) | $ XX.XX (100%) | 100% of funds remain in place until construction is complete |
| Approval of As-Built Construction Completion Report and Survey Plans | 100% | 0% | Upon submittal and approval of the as-built construction completion report and survey plans, the construction bond is released. |
| Performance Bond | Monitoring and Maintenance | Year 1-10 monitoring and maintenance, scheduled monitoring reporting | 0% | $ XX.XX (100%) | The bond will cover maintenance, monitoring, and reporting for the Monitoring and Maintenance Phase and Interim Monitoring and Maintenance Period through Bank Closure. |
| Approval of 1st monitoring report: Following successful achievement of Year 2 Performance Standards and required remedial measures implemented | $XX.XX  (XX%) | $ XX.XX  (XX%) | Upon submittal and approval of the Year 2 monitoring report |
| Approval of 2nd monitoring report: Following successful achievement of Year 3 performance standards and required remedial measures implemented | $XX.XX  (XX%) | $ XX.XX (XX%) | Upon submittal and approval of the Year 3 monitoring report |
| Approval of 3rd monitoring report: Following successful achievement of Year 5 performance standards and required remedial measures implemented | $XX.XX  (XX%) | $ XX.XX (XX%) | Upon submittal and approval of the Year 5 monitoring report |
| Approval of 4th monitoring report: Following successful achievement of Year 7 performance standards and required remedial measures implemented | $XX.XX  (XX%) | $ XX.XX (XX%) | Upon submittal and approval of the Year 7 monitoring report |
| Approval of 5th monitoring report: Following successful achievement of Year 10+ performance standards and required remedial measures implemented. Interim monitoring until Bank Closure. | $XX.XX  (XX%) | 20% | Note: The bond cannot be closed out if all performance standards have not been met or if credits remain available. Financial assurance for interim monitoring required until Bank Closure and the Bank is transferred to the LTS. |

**APPENDIX N**

**GEOGRAPHIC SERVICE AREA**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

*This section should identify the proposed service area, as stated in 33 CFR 332.8(d)(2)(iii). The service area must be appropriately sized to ensure that the aquatic resources provided by the proposed mitigation bank will effectively compensate for adverse environmental impacts occurring within it. A figure depicting the proposed service area should be included in Appendix N. The figure should depict all relevant Hydrologic Unit Codes (HUC), Ecoregions, Physiographic Provinces, etc. and include all relevant information in the legend. Consistent with the Mitigation Rule, provide a watershed-based rationale for the extent of the proposed service area limits. The service area is the geographic area within which impacts can be mitigated at a specific mitigation bank, as designated in its instrument.*

*In Maryland, USACE and MDE, in coordination with the IRT, have developed procedures for establishing appropriate ecologically-suitable service areas for nontidal aquatic resource mitigation banks proposing credits to compensate for losses under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Service areas will be based on the U.S. Geological Survey (USGS) 8-digit HUC watersheds (HUC). The entire HUC8 in which a bank site is located will serve as the Primary Service Area, regardless of Physiographic Province divisions. The Secondary Service Area will include adjacent 8-digit HUC(s) abutting the 8-digit HUC in which a bank site is located, within the same 6-digit river basin (HUC6), and within the same Physiographic Province/Ecoregion as a proposed bank site. Secondary Service Areas will not include HUC8 watersheds within the same major river basin (HUC6) that are located across the Chesapeake Bay. Service areas for tidal aquatic resource mitigation banks and in-lieu fee programs would be determined on a project-specific watershed basis (consistent with provisions of 33 CFR 332.3(b) and 332.8(6)(ii)(A)). Please ensure that the service area determinations follow the procedures noted above.*

**Appendix N.1 Map(s) of the Bank’s Service Area(s)** *Include Service Area map(s) showing the area within which each type of credit (e.g., nontidal wetland, nontidal stream, etc.) may be sold or transferred.*

**Appendix N.2.Narrative Description(s) of the Bank’s Service Area(s)** *Include a detailed description of the area, and a basis for that Service Area, within which each type of credit may be sold or transferred. Include sufficient details to be able to determine the boundaries, including counties, landmarks, roads, etc. on all sides of the service area.*

**APPENDIX O**

**CREDIT RELEASE SCHEDULE**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

*[Select Bank credit release schedule from table below - the IRT standard release schedule or optional IRT accelerated release example. These schedules are generally considered reasonable by the IRT. For your Instrument, select and display in a table below either the standard or the accelerated release schedule in this appendix. Sponsors should consider current Baltimore District’s procedures, including “Credit Release Schedule General Considerations and Regulatory Guidance Letter 19-01” and “Nontidal Wetland and Stream Mitigation Bank/In-Lieu Fee Credit Release Schedule for Maryland” (found on the Baltimore District’s RIBITS website) when proposing a credit release schedule for their Bank. Mitigation banking instruments proposing the optional accelerated release example must provide project-specific justification/discussion of each factor outlined in the “Credit Release Schedule General Considerations and Regulatory Guidance Letter 19-01”, as early as possible in the banking instrument review process for the IRT’s evaluation and consideration in determining the appropriate credit release schedule.]*

Table 6. IRT credit release for nontidal wetland, stream, and fish barrier removal[[1]](#footnote-1) projects in Maryland.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Milestone** | **Interagency Review Team (IRT) Standard Release Example** | | **Optional IRT Accelerated Release Example (“Managed-Risk” Projects)** | |
|  | **Credit Received** | **Cumulative** | **Credit Received** | **Cumulative** |
| Initial Credit Release[[2]](#footnote-2) | 15% | 15% | 25% | 25% |
| Construction Credit Release | Up to 15% | 30% | Up to 25% | 50% |
| 1st Monitoring Report (Yr 2) | Up to 20% | 50% | Up to 10% | 60% |
| 2nd Monitoring Report (Yr 3)[[3]](#footnote-3) | Up to 10% | 60% | Monitoring report submittal required with no associated credit release |  |
| 3rd Monitoring Report (Yr 5) | Up to 10% | 70% | Up to 20% | 80% |
| 4th Monitoring Report (Yr 7) | Up to 10% | 80% | Monitoring report submittal required with no associated credit release |  |
| 5th Monitoring Report (Yr 10) | 20% | 100% | 20% | 100% |

The applicable written credit release approval by the Chairs must occur prior to any credit sale/transfer. The IRT Standard Credit Release schedule is as follows:

Initial Credit Release:

1. Up to 15% of the total anticipated wetland and stream credits (excluding credits derived from Preservation).
2. Up to 100% of Preservation credits (only when long-term management financial mechanism is fully funded).
3. Approval of MBI, including final Mitigation Plan.
4. Securing the property interests necessary for the entire Bank limits (e.g., fee simple acquisition, acquisition of a conservation easement, or otherwise securing appropriate property interest).
5. Submittal of a copy of the approved and recorded site protection instrument that protects the Bank in perpetuity, including the plat graphic and Bank Property description.
6. Establishment and full funding of the construction Financial Assurance.
7. Establishment and full funding of the short-term performance (monitoring and maintenance) Financial Assurances.
8. Establishment and full funding of catastrophic events endowment principal.
9. Approval of the Long-Term Management Plan.
10. Execution of approved long-term management fund agreement.
11. Federal and state approvals to conduct work in waters and wetlands for construction of the mitigation Bank.
12. Submittal of a construction schedule that shows that all physical and biological improvements associated with the construction shall be initiated no later than the end of the first full Growing Season following initial debiting from the Bank.
13. All the above documents and all associated Appendices submitted electronically to the USACE and MDE and uploaded to RIBITS.
14. Submittal of KML files of the Bank limits and geographic service area.
15. Any other requirements set by the USACE and/or MDE are met.
16. No long-term management funding is required unless 100% Preservation credit release is requested.

Construction (as-built) Credit Release 2:

1. Up to an additional 15% (30% cumulative) of the total as-built wetland credits and stream credits upon successful completion of all required physical and biological wetland and stream work in accordance with the approved MBI and Mitigation Plan.
2. Submittal of as-built drawing and construction completion report documenting that all physical and biological improvements were completed pursuant to the approved Instrument and Mitigation Plan no later than the first full Growing Season following initial debiting from the Bank.
3. Written approval of the as-built condition by the USACE and MDE, in consultation with the IRT.
4. 30% of the total long-term management and maintenance endowment principal has been funded.
5. Credit release 1 has occurred.

Credit Release 3 (Year 2):

1. Up to 20% (50% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 1st monitoring report.
3. All Year 2 performance standards have been attained and monitoring report accepted.
4. 55% of the total long-term management and maintenance endowment principal has been funded (70% funded with an approved accelerated credit release schedule).
5. Submittal of all required administrative reporting (Ledger, transactions, and financial).
6. Credit release 2 has occurred.
7. A minimum of two years of monitoring has been conducted (two full Growing Seasons have occurred) since site construction/planting was completed.

Credit Release 4 (Year 3):

1. Up to 10% (60% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 2nd monitoring report.
3. All Year 3 performance standards have been attained and monitoring report accepted.
4. 70% of the total long-term management and maintenance endowment principal has been funded.
5. Submittal of all required administrative reporting (Ledger, transactions, and financial).
6. Credit release 3 has occurred.
7. A minimum of three years of monitoring has been conducted (three full Growing Seasons have occurred) since site construction/planting was completed.

Credit Release 5 (Year 5):

1. Up to 10% (70% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 3rd monitoring report, including delineation of aquatic resources.
3. All Year 5 performance standards have been attained and monitoring report accepted.
4. Aquatic resource delineation, as verified by the USACE and MDE, is consistent with the approved Mitigation Plan and contains at least as much wetland acreage and waterway linear feet as required in the Mitigation Plan.
5. 100% of the total long-term management and maintenance endowment principal has been funded.
6. Submittal of all required administrative reporting (Ledger, transactions, and financial).
7. Credit Release 4 has occurred.
8. A minimum of five years of monitoring has been conducted (five full Growing Seasons have occurred) since site construction/planting was completed.

Credit Release 6 (Year 7):

1. Up to 10% (80% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 4th monitoring report.
3. All Year 7 performance standards have been attained and monitoring report accepted.
4. Submittal of all required administrative reporting (Ledger, transactions, and financial).
5. Credit release 5 has occurred.
6. A minimum of seven years of monitoring has been conducted (seven full Growing Seasons have occurred) since site construction/planting was completed.
7. Supplemental plantings must be present for at least two full Growing Seasons before counting towards meeting performance standards.

Final Credit Release (Year 10):

1. Remaining 20% (100% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 5th monitoring report, including delineation of aquatic resources.
3. All final performance standards have been attained and monitoring report accepted.
4. Aquatic resource delineation, as verified by the USACE and MDE, is consistent with the approved Mitigation Plan and contains at least as much wetland acreage and waterway linear feet as required in the Mitigation Plan.
5. Final assessment of the site and any required maintenance activities are completed prior to the Long-Term Steward taking responsibility for the site.
6. All required remedial actions and adaptive management are completed, with any remediation[[4]](#footnote-4) having occurred a minimum of 2 years ago (two full Growing Seasons).
7. Supplemental plantings must be present for at least two full Growing Seasons before counting towards meeting performance standards.
8. Any additional performance standards required as a result of required adaptive management, or remedial actions have been attained.
9. Submittal of all required administrative reporting (Ledger, transactions, and financial).
10. Full funding of short-term Interim Monitoring and Maintenance Financial Assurance to assure performance until Bank Closure.
11. Credit release 6 has occurred.
12. A minimum of ten years of monitoring has been conducted (ten full Growing Seasons have occurred) since site construction/planting was completed.

[***Insert when an accelerated credit release schedule has been approved:*** The optional Maryland Accelerated Credit Release schedule is as follows:

Initial Credit Release:

1. Up to 25% of the total anticipated wetland and stream credits (excluding credits derived from Preservation).
2. Up to 100% of Preservation credits (only when long-term management financial mechanism is fully funded).
3. Approval of MBI, including final Mitigation Plan.
4. Securing the property interests necessary for the entire Bank limits (e.g., fee simple acquisition, acquisition of a conservation easement, or otherwise securing appropriate property interest).
5. Submittal of a copy of the approved and recorded site protection instrument that protects the Bank in perpetuity, including the plat graphic and Bank Property description.
6. Establishment and full funding of the construction Financial Assurance.
7. Establishment and full funding of the short-term performance (monitoring and maintenance) Financial Assurances.
8. Establishment and full funding of catastrophic events endowment principal.
9. Approval of the Long-Term Management Plan.
10. Execution of approved long-term management fund agreement.
11. Federal and state approvals to conduct work in waters and wetlands for construction of the mitigation Bank.
12. Submittal of a construction schedule that shows that all physical and biological improvements associated with the construction shall be initiated no later than the end of the first full Growing Season following initial debiting from the Bank.
13. All the above documents and all associated Appendices submitted electronically to the USACE and MDE and uploaded to RIBITS.
14. Submittal of KML files of the Bank limits and geographic service area.
15. Any other requirements set by the USACE and/or MDE are met.
16. No long-term management funding is required unless 100% Preservation credit release is requested.

Construction (as-built) Credit Release 2:

1. Up to an additional 25% (50% cumulative) of the total as-built wetland credits and stream credits upon successful completion of all required physical and biological wetland and stream work in accordance with the approved MBI and Mitigation Plan.
2. Submittal of as-built drawing and construction completion report documenting that all physical and biological improvements were completed pursuant to the approved Instrument and Mitigation Plan no later than the first full Growing Season following initial debiting from the Bank.
3. Written approval of the as-built condition by the USACE and MDE, in consultation with the IRT.
4. 30% of the total long-term management and maintenance endowment principal has been funded.
5. Credit release 1 has occurred.

Credit Release 3 (Year 2):

1. Up to 10% (60% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 1st monitoring report.
3. All Year 2 performance standards have been attained and monitoring report accepted.
4. 70% of the total long-term management and maintenance endowment principal has been funded.
5. Submittal of all required administrative reporting (Ledger, transactions, and financial).
6. Credit release 2 has occurred.
7. A minimum of two years of monitoring has been conducted (two full Growing Seasons have occurred) since site construction/planting was completed.

No Credit Release 4 (Year 3):

1. Submittal of 2nd monitoring report.
2. All Year 3 performance standards have been attained and monitoring report accepted.
3. Submittal of all required administrative reporting (Ledger, transactions, and financial).
4. Credit release 3 has occurred.
5. A minimum of three years of monitoring has been conducted (three full Growing Seasons have occurred) since site construction/planting was completed.

Credit Release 5 (Year 5):

1. Up to 20% (80% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 3rd monitoring report, including delineation of aquatic resources.
3. All Year 5 performance standards have been attained and monitoring report accepted.
4. Aquatic resource delineation, as verified by the USACE and MDE, is consistent with the approved Mitigation Plan and contains at least as much wetland acreage and waterway linear feet as required in the Mitigation Plan.
5. 100% of the total long-term management and maintenance endowment principal has been funded.
6. Submittal of all required administrative reporting (Ledger, transactions, and financial).
7. Credit Release 4 has occurred.
8. A minimum of five years of monitoring has been conducted (five full Growing Seasons have occurred) since site construction/planting was completed.

No Credit Release 6 (Year 7):

1. Submittal of 4th monitoring report.
2. All Year 7 performance standards have been attained and monitoring report accepted.
3. Submittal of all required administrative reporting (Ledger, transactions, and financial).
4. Credit release 5 has occurred.
5. A minimum of seven years of monitoring has been conducted (seven full Growing Seasons have occurred) since site construction/planting was completed.
6. Supplemental plantings must be present for at least two full Growing Seasons before counting towards meeting performance standards.

Final Credit Release (Year 10):

1. Remaining 20% (100% cumulative) of the total as-built wetland and stream credits.
2. Submittal of 5th monitoring report, including delineation of aquatic resources.
3. All final performance standards have been attained and monitoring report accepted.
4. Aquatic resource delineation, as verified by the USACE and MDE, is consistent with the approved Mitigation Plan and contains at least as much wetland acreage and waterway linear feet as required in the Mitigation Plan.
5. All required remedial actions and adaptive management are completed, with any remediation[[5]](#footnote-5) having occurred a minimum of 2 years ago (two full Growing Seasons).
6. Supplemental plantings must be present for at least two full Growing Seasons before counting towards meeting performance standards.
7. Any additional performance standards required as a result of required adaptive management, or remedial actions have been attained.
8. Submittal of all required administrative reporting (Ledger, transactions, and financial).
9. Full funding of short-term Interim Monitoring and Maintenance Financial Assurance to assure performance until Bank Closure.
10. Credit release 6 has occurred.
11. A minimum of ten years of monitoring has been conducted (ten full Growing Seasons have occurred) since site construction/planting was completed.]

**APPENDIX P**

**IRT CONTACT LIST**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

U.S. Army Corps of Engineers

Regulatory Branch (CENAB-OPR)

2 Hopkins Plaza

Baltimore, MD 21201

Attention: Beth Bachur 410-937-9586

[NAB-Regulatory@usace.army.mil](mailto:NAB-Regulatory@usace.army.mil)

Maryland Department of the Environment

Wetlands and Waterways Protection Program

1800 Washington Boulevard, Suite 430

Baltimore, MD 21230

Attention: Kelly Neff 410-537-4018

[Kelly.Neff@maryland.gov](mailto:Kelly.Neff@maryland.gov)

U.S. Environmental Protection Agency, Region III

Wetlands Branch

Four Penn Center

1600 John F. Kennedy Boulevard, Mail Code 3WD10

Philadelphia, PA 19103

Attention: Aaron Blair

Blair.Aaron@epa.gov

U.S. Fish and Wildlife Service

Chesapeake Bay Ecological Services Field Office

177 Admiral Cochrane Drive

Annapolis, MD 21401

Attention: Ray Li

[Ray\_Li@fws.gov](mailto:Ray_Li@fws.gov)

National Marine Fisheries Service

Habitat and Ecosystem Services Division

200 Harry S. Truman Parkway, Suite 460

Annapolis, MD 21401

Attention: Jonathan Watson

[Jonathan.Watson@noaa.gov](mailto:Jonathan.Watson@noaa.gov)

Maryland Department of Natural Resources

Environmental Review Program

Tawes State Office Building, B-3

580 Taylor Avenue

Annapolis, MD 21401

Attention: Rachel Temby

[Rachel.Temby@maryland.gov](mailto:Rachel.Temby@maryland.gov)

Maryland Historical Trust

Office of Preservation Services

100 Community Place

Crownsville, MD 21032

Attention: Dixie Henry

[Dixie.Henry@maryland.gov](mailto:Dixie.Henry@maryland.gov)

Maryland Critical Area Commission

1804 West Street, Suite 100

Annapolis, MD 21401

Attention: Claudia Jones

[Claudia.Jones@maryland.gov](mailto:Claudia.Jones@maryland.gov)

**APPENDIX Q**

**TRANSFER PROCEDURES FOR BANK PROPERTY OWNERSHIP, SPONSORSHIP, OR LONG-TERM STEWARDSHIP**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

### Transfers of Property

#### 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:

##### The Transferee is able to assume and agrees to assume the obligations of the Property Owner as set forth in this Instrument; and

##### The Transferee understands and agrees to the allowed/prohibited uses of the Bank Property as set forth in the site protection instrument.

#### Notice of Property Transfer:

##### The Property Owner must provide notice to the USACE, MDE, and to the Sponsor (if different from the Property Owner) that he/she intends to transfer the Bank Property at least 60 days prior to the effective date of the transfer. This notice must include the proposed Transferee’s name (and the name of its authorized representative if the Transferee is not an individual), address, phone number, email, anticipated date of the transfer, and a statement signed by the proposed Transferee that the Property Owner has:

###### Provided copies of this Instrument and the approved site protection instrument to the Transferee; and

###### Explained the allowed/prohibited uses of the Bank Property to the Transferee; and

###### Explained to the Transferee that any transfer of the Bank Property is subject to the terms and conditions contained in the Instrument.

##### 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 the USACE and MDE at least 60 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. This notice must verify that the Transferee has acknowledged:

###### Being provided copies of this Instrument and the approved site protection instrument; and

###### Having the allowed/prohibited uses of the Bank Property fully explained; and

###### Being advised that any transfer of the Bank Property is subject to the terms and conditions contained in the Instrument.

##### After receipt of the notice of transfer, USACE and MDE, 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 the USACE, MDE, and the IRT.

##### Any transfer of the ownership made without the required 60-day notice by the Property Owner/Sponsor may result in a suspension of credit transfers until the appropriate information is provided for review and evaluation by the USACE, in coordination with the IRT.

#### Once the transfer of the Bank Property has been approved by the USACE and MDE, the Transferee must sign the Property Owner Transfer Page as Property Owner and attest as follows:

##### It has read and understands and agrees to the terms and conditions of the Instrument and the approved site protection instrument; and

##### It agrees to assume all obligations and responsibilities of the Property Owner contained in this Instrument.

#### 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 S.

#### From and after the date of any transfer of the Bank Property becomes effective (after written approval by the USACE and MDE), 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.

### Transfers of Sponsorship

For this section only, the term Transferor refers to the current Sponsor and the term Transferee refers to the proposed. Sponsorship transfers can be requested at any time.

#### Upon written approval from USACE and MDE, in consultation with the IRT, the Transferor may sell, assign, covey, or otherwise transfer its interest in the Bank at any time 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 Sponsor as set forth in this Instrument.

#### Notice of Intent to Transfer Sponsorship:

#### The Transferor must provide notice to USACE and MDE and, if different, to the Property Owner of its intent to transfer sponsorship at least 60 days prior to the transfer. This notice must include:

##### The proposed Transferee’s name and, if different, the name of its authorized representative, its address, phone number, email, and the anticipated date of the transfer.

##### The proposed Transferee’s qualifications (background, resources, and experience) to perform the Sponsor’s responsibilities.

##### New Financial Assurance mechanisms to the satisfaction of the USACE and MDE.

##### A statement signed by the proposed Transferee attesting that the Transferor has provided them with the following:

###### A copy of the mitigation banking instrument,

###### A copy of the site protection instrument,

###### A current Ledger listing all Credit Transactions for the Bank and the associated permits.

###### Copies of financial statements,

###### A recent monitoring report providing a description of current conditions including:

A discussion of the status of all completed mitigation activities and all remaining work (if any) necessary to fulfill requirements of the work plan.

The general condition of all structures, plantings, monitoring wells, roads, site security measures; and

An indication of the degree of exotic/invasive plant and animal species occurrence/infestation and measures required to control them.

#### Once USACE and MDE have approved the proposed transfer of sponsorship, the Transferee must sign the Mitigation Bank Transfer Page as the Sponsor. By signing the form, the Transferee/new Sponsor attest as follows:

##### That it has read and understands and agrees to the terms and conditions of the Instrument and the approved site protection mechanism; and

##### That it agrees to assume all of the obligations and responsibilities of the Sponsor contained in this Instrument.

#### The new Sponsor must provide the USACE and MDE with a copy of the completed and signed Mitigation Bank Transfer Page, which will be included in Appendix R.

#### Any transfer of sponsorship made without the written 60-day prior notification to the USACE and MDE and transfer approval from the USACE and MDE may result in suspension of credit sales until the Transferee provides the information required in the notice, has the transfer approved by the USACE and MDE, signs the Instrument as Sponsor, and provides a copy of the executed Instrument to the IRT.

#### From and after the date of any approved transfer by the Transferor of its interest in the sponsorship and USACE and MDE 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.

### 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.

a) Upon written approval from USACE and MDE, 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.

#### Notice of Intent to Transfer Stewardship:

#### The Transferor must provide notice to USACE and MDE and, if different, to the Property Owner of its intent to transfer the sponsorship at least 60 days prior to the transfer. This notice must include:

##### The proposed Transferee’s name and, if different, the name of its authorized representative, its address, phone number, email, and the anticipated date of the transfer.

##### The proposed Transferee’s qualifications (background, resources, and experience) to perform the Steward’s responsibilities.

##### A statement signed by the proposed Transferee attesting that the Transferor has provided them with the following:

###### A copy of the mitigation banking instrument

###### A copy of the site protection instrument

###### Copies of financial statements

###### For transfer of Stewardship, the Transferee must have the legal authority to receive funds from the established Long-Term Management Funding Mechanism.

###### A recent monitoring report providing a description of current conditions including:

A discussion of the status of all completed mitigation activities and all remaining work necessary to fulfill requirements of the Long-Term Management Plan,

The general condition of all structures, plantings, monitoring wells, roads, site security measures, and

An indication of the degree of exotic/invasive plant and animal species occurrence/infestation and measures required to control them.

#### Once the USACE and MDE have approved the proposed transfer of stewardship, the Transferee must sign the Mitigation Bank Transfer Page as the Steward. By signing the form, the Transferee attest as follows:

##### That it has read and understands and agrees to the terms and conditions of the Instrument and the approved site protection instrument; and

##### That it agrees to assume all obligations and responsibilities of the Steward contained in this Instrument.

#### The new Steward must provide the USACE and MDE with a copy of the completed and signed Mitigation Bank Transfer Page, which will be included in Appendix S.

#### Any transfer of the stewardship made without the written 60-day prior notification to the USACE and MDE and transfer approval from USACE and MDE may result in termination of this Instrument until the Transferee provides the information required in the notice, has the transfer approved by the USACE and MDE, signs the Instrument as Steward, and provides a copy of the executed Instrument to the IRT.

### From and after the date of any approved transfer by the Transferor of its interest in the sponsorship and the USACE and MDE 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.

**APPENDIX R**

**MITIGATION BANK TRANSFER PAGE**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

TRANSFER OF BANK/INTRUMENT OWNERSHIP

When the Bank/Instrument ownership associated with this Bank is transferred, the terms and conditions of this Instrument will continue to be binding on the new Sponsor and Property Owner. To validate the transfer of this Instrument and the liabilities associated with compliance with its terms and conditions, the Transferee must sign and date below.

The Sponsor’s signature below indicates that the Sponsor accepts and agrees to comply with the terms and conditions of this Instrument.

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

[Sponsor/Authorized Agent Name] Date

[Title, if applicable]

[Address]

[Phone number and email]

The Property Owner’s signature(s) below indicate that the Property Owner(s) accept and agree to comply with the terms and conditions of this Instrument.

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

[Property Owner] Date

[Title, if applicable]

[Address]

[Phone number and email]

**APPENDIX S**

**OTHER DOCUMENTATION, CORRESPONDENCE, NOTES, ETC.**

**MODIFICATION DATE:** (Appendix is presumed to be original version approved if no date provided)

*Include State-required documentation/mapping such as Environmental Justice, Climate Change, etc.*

1. Fish barrier removal projects may have an alternate credit release schedule determined on a case-by-case basis. [↑](#footnote-ref-1)
2. Up to 100% release of Preservation credit (only when Long-Term Management Funding Mechanism is fully funded). [↑](#footnote-ref-2)
3. For mitigation projects proposing use of the IRT Accelerated Credit Release schedule, monitoring reports will still be required in Years 3 and 7. [↑](#footnote-ref-3)
4. IRT may waive this requirement if we determine the remediation to be minor and will not affect the long-term sustainability of the site. [↑](#footnote-ref-4)
5. IRT may waive this requirement if we determine the remediation to be minor and will not affect the long-term sustainability of the site. [↑](#footnote-ref-5)