

*Draft/Final Instrument*

*Bank or ILF Site Name*

NWK-XXXX-XXXXX (*Bank or ILF Site Project Number*)

*Cover Photo*

Prepared *for/by*

*Sponsor Name*

*Date*

## Table of Contents

*Insert table of contents here.*

## 1. Introduction

- a. Location: *Describe location. Include map(s), PLSS, Lat/Long, etc.*
- b. Establishment and Operation: *Describe how the mitigation property will be established and operated.*
  - i. *USACE policy requires the inclusion of the following provision for approval of all mitigation bank instruments, in-lieu fee program instruments, and modifications of such. This language is mandatory and non-negotiable, and must be included verbatim: The U.S. Army Corps of Engineers (USACE) approval of this Instrument constitutes the regulatory approval required for the [INSERT NAME OF THE MITIGATION BANK OR ILF PROGRAM] to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Sponsor or the Property Owner and the USACE or any other agency of the federal government. Any dispute arising under the Instrument will not give rise to any claim by the Sponsor or the Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.*
- c. Current and Long-Term Ownership Arrangements and Long-Term Management Strategy: *Describe current & long-term ownership arrangements and an overview long-term management strategy.*
- d. Sponsor Qualifications: *Describe the sponsors qualification to establish and operate a mitigation bank/site.*
- e. Statement of assumption of legal responsibility for providing compensatory mitigation: *The [Sponsor] assumes all legal responsibility for satisfying the mitigation requirements of the Corps permit for which fees have been accepted (i.e., the implementation, performance, and long-term management of the compensatory mitigation project(s) approved under this instrument [and subsequent mitigation plans if an Umbrella site]). The legal responsibility for fulfilling compensatory mitigation requirements is transferred to the [Sponsor] once a permittee purchases credits from the [Sponsor] and the Corps has recorded the purchase of those credits in the official bank ledger. The [Sponsor] is only legally responsible for type and quantity of compensatory mitigation requirements specified in the credit purchase (i.e., Corps permittees may satisfy all or a portion of their compensatory mitigation requirements through the [Sponsor]).*

## 2. Service Area: *Describe the Service Area(s) and provide Map(s)/Figure(s) showing the Service Area and the site. Service area(s) must be those currently approved by the NWK.*

## 3. Watershed Approach to Mitigation

- a. Goals and Objectives

- i. Goal and objectives: *Describe the goals and objectives for the service area.*
- ii. Resource Types and Amounts Provided: *Include a description of the resource type(s), methods used for compensation, and approximate amount(s) that will be provided by the site.*
- iii. Functions, services, and ecological needs to be provided by mitigation site: *Identify functions, services, and ecological resource needs to be provided by the mitigation site and how they meet some or all of the goals and objectives for the service area.*

b. Site Selection

- i. Location and ecological suitability within watershed: *Describe the mitigation site's location within the watershed or landscape and explain how this placement is most likely to either replace lost aquatic resource functions or enhance existing, impaired functions. Detail how the site addresses identified ecological priorities and needs within the project landscape, addressing chronic environmental conditions such as flooding, impaired water quality, or insufficient habitat for important aquatic species. Explain the ecological suitability of the mitigation site to provide the desired aquatic resource functions and services within the chosen watershed and landscape position.*
- ii. Former and currently degraded aquatic features: *Identify areas that were formerly aquatic resources or are currently degraded aquatic resources.*
- iii. Buffers: *Identifying existing buffers, both on and off the mitigation site, that currently provide protection from surrounding land uses and potential impacts.*
- iv. Adjacent conservation corridors and aquatic resources: *Identify adjacent conserved aquatic resources, if any, such as natural parks, conservation areas, protected wildlife areas or easements, etc. and note if a conservation corridor is established or extended.*
- v. Compatibility with land uses, both onsite and adjacent, and watershed management plans: *Describe onsite and adjacent land uses and watershed management plans, along with any potential constraints or limitations, such as existing easements or rights-of-way, and a discussion of their importance to successful mitigation site establishment or operation. This section should also include a description of any probable contaminants from surrounding lands, detail any potential conflicts or issues with the surrounding land use, and, if development is known or anticipated within the vicinity of the site, a description of how that development may affect the site. Furthermore, describe connections to major waterways, existing wildlife corridors, greenways, and other natural areas (forests, wetlands, grasslands, etc.) within the area.*

#### 4. Site Protection

- a. Long Term Site Protection Mechanism: *Include the proposed long-term site protection mechanism (conservation easement, declaration of restrictions, etc.). The Kansas City District highly encourages the use of the most recent approved conservation easement template. Deviation from this template will require further evaluation and legal reviews by the USACE and may not be approved. Include a copy of the proposed site protection mechanism in Appendix D.*
- b. Other Property Interests (Easements, etc.): *List any other interests in the property (financial, mineral/timber, water rights). Provide an explanation as to how those other interests may affect the mitigation site.*
- c. Public Lands and/or Additional Long-Term Protection Measures: *If on public lands, describe any additional long-term protection measures and the adequacy and/or limitations. If the site is to be included in part of a natural resource management plan, or subject to a Memorandum of Understanding (MOU), these documents, or any other long term protection documents, must be included and approved by the Corps.*
- d. Site Protection Instrument/Agreement Amendment, alteration, and/or Termination Procedures: *For projects using the approved conservation easement, state "Any change to the conservation easement will follow the procedure outlined in the Conservation Easement." For projects proposing something other than the approved conservation easement, the site protection instrument/agreement must state "This [site protection instrument/agreement], granted in perpetuity, may be amended, altered, released, canceled, or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of [County, State]. No action shall be taken, however, without advance written approval thereof by the U.S. Army Corps of Engineers (USACE). USACE approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the [site protection instrument/agreement], and said letter shall be informal and shall not require notarization. It is understood and agreed that USACE approval requires a minimum of sixty (60) days written notice, and that the USACE may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written USACE approval thereof shall then be filed in the public records of [County, State], within 30 days thereafter." This should be included here and in the site protection instrument/agreement. If the above options are not suitable for the proposed project (i.e. Memorandum of Understanding on public lands) then a similar statement needs to be written and submitted for approval.*
- e. Signage: *State that mitigation signage will be installed at the mitigation site(s). Include the typical details for signs and stipulate that the quantity and placement of signs will be determined in the site(s) mitigation plan, and will be in an amount to sufficiently demarcate the mitigation site boundaries. State that the final sign placement will be included in the site as-builts for USACE approval. Sign upkeep and replacement must be accounted for in the long term stewardship calculator.*

## 5. Baseline Information

- a. **Historic and Current Land Use:**
  - i. **Historic and current land use descriptions:** *Provide basic descriptions of the historic and current land uses for the site.*
  - ii. **Known contaminants.** *(If any) A phase 1 environmental survey is generally not required. Examples include NPDES permit discharges, historic mines/heavy metals, rural non-point sources, urban runoff/storm sewers, land disturbance from development, CWA 303d impairments and any other relevant information from the 305(b) Integrated Water Quality Report. This list is not exhaustive.*
  - iii. **Surrounding land uses:** *Provide basic description of surrounding land uses*
  - iv. **Historical aerials:** *If applicable, provide historic aerials. Historic Aerials should be limited to only those that provide pertinent information such as building construction or removals, stream straightening, etc.*
- b. **Current Hydrology:** *Provide descriptions of the site's hydrology, including channelized and un-channelized flows, groundwater (if applicable), and drain tile information (if applicable), accompanied by a figure illustrating the current hydrologic conditions. Furthermore, anything that relates to or affects hydrology on the site must be described and depicted in the figure, including, but not limited to, spring locations, levees or other restrictions (structures), pertinent offsite structures, drainage ditches, and drain tile locations. A general description of existing wetland and stream hydroperiods (if applicable) should also be included. All pertinent hydrologic inputs should be described in this section.*
- c. **Floodplain Mapping:** *Provide the FEMA Floodplain Map. If the FEMA Floodplain is notably different from the EPA EnviroAtlas estimated 100-year floodplain map, then both maps should be provided. Any other floodplain map that may be pertinent to the proposed project should also be provided. An example of this would be the Johnson County, Kansas Floodplain maps which were developed separately from the FEMA maps and are generally very accurate. Additionally, describe any potential conflicts or issues that may arise from floodplains or floodways.*
- d. **Onsite Geology and Soils:** *Include topographic and/or LIDAR maps of the site. Provide general descriptions of the soil types and the geology or geological features present (i.e., caves, sinkholes, fissures, shallow bedrock, location of general rock outcrop areas, talus areas, etc.). If figures can be effectively included in this section, they should be. Otherwise, Web Soil Survey reports and other figures should be included within Appendix A.*

- e. National Wetlands Inventory Mapping: *Provide figure of the NWI features present on the site. Any other wetland mapping platform output/figure can be added to this section in addition to the NWI map.*
  
- f. Natural Resource Conservation Service (NRCS) *(if applicable)*
  - i. NRCS Determinations: *Describe any NRCS Determinations, if any have been completed. Include any documentation in Appendix A.*
  - ii. NRCS Programs or Agreement: *Include any NRCS Programs or agreements on the site and their contracts. For example, any land within the Conservation Reserve Program (CRP), Wetland Reserve program (WRP), Environmental Quality Incentives Program (EQIP), and any other NRCS program or agreements should be included here. Include any documentation in Appendix A.*
  - iii. NRCS Easements or land agreements: *Include any NRCS program easements or land agreements currently present on the site. Include any documentation in Appendix A.*
  
- g. Wetland and Stream Delineation: *A formal delineation report must be included in Appendix B*
  - i. Wetlands – *Include a description of delineated wetlands including type (Cowardin), size, dominant species, unique qualities or kind. Each wetland must have its boundary delineated. Digital copies of the boundaries must be submitted to the USACE, \*.shp or \*.kml files are acceptable. If appropriate, wetland descriptions should be grouped together if they have similar characteristics. For example, if a site has multiple farmed wetlands that all have similar characteristics, then those wetlands should be grouped together with one description.*
  - ii. Streams - *Delineated streams and their associated riparian buffers should be thoroughly characterized, including stream type (using a classification system like Rosgen or Strahler), drainage area, Ordinary High Water Mark (OHWM), and the dominant riparian plant species with their relative abundance. Characterization should also note the dominant stream bed substrate (e.g., sediment, cobble, bedrock) and specific stream features like riffle-pool complexes, waterfalls, losing stream reaches, channelized sections, incision, and floodplain connectivity. Stream surveys must accurately depict the stream length and centerline. Digital copies of the streams must be submitted to the USACE, \*.shp or \*.kml files are acceptable. Proposed in-stream improvements require survey-quality cross-sections, centerlines, bankfull width, and slope/profile information. When characterizing streams, streams with similar features, such as multiple ephemeral channels with similar characteristics, should be grouped and described collectively.*
  - iii. Wetland and Stream Table and Figures - *A comprehensive table should be provided summarizing all delineated wetlands and streams. For each wetland,*

*the table must include its type, size, and geographical coordinates. Similarly, for each stream, the table should specify its type, length, Ordinary High Water Mark (OHWM), and geographical coordinates. Figure(s) depicting the limits of wetlands and streams must be included in this section. Wetlands and streams must be clearly labeled within the figure(s).*

- h. **Plant Community(s) Figures and Descriptions:** *Describe each existing plant community and provide a map that clearly shows the location and acreage of each (i.e. agricultural row crop field, riparian forest, fallow field, smooth brome hay field, etc.) located on the mitigation site. Similar Plant Communities should be grouped together. For example, riparian areas that differ slightly (one is dominated by sycamore and silver maple while the other is dominated by sycamore and American elm) should be grouped together as one plant community. Though near monoculture areas with similar species should still be separated, for example, a cedar dominated field that is 95% cedar with an occasional Osage orange should not be grouped together with a field dominated by 95% Osage orange with an occasional cedar. Agricultural row crop fields should be considered a plant community and included. Each plant community description should include the dominant species and their approximate percentage, invasive/undesirable species and their potential problem areas with approximate percentages, and potential problem species like ash infected with emerald ash borer and their relative abundance. The description should also describe any unique characteristics such as a high-quality fens, habitat for rare species, etc., and any habitat potentially used by state or federally listed species, including candidate species, like mussel beds or bat hibernacula. Note that many plant community descriptions will not have unique characteristics or rare, threatened, or endangered species, and therefore, do not need to be addressed in each description, if applicable. However, the presence or absence of invasive/undesirable species should be addressed in each description even if there are none present. Finally, in Appendix A, include a Photo Log showing each plant community along with any unique characteristics and a Photo Log Figure showing the location and directions of photos. The photo log should include as few photos as possible to accurately represent each plant community. For small areas a single photo may suffice, but plant communities that are expansive may require multiple photos to show that the same plant community is present throughout. Photos of areas with unique characteristics and/or areas completely dominated by invasives should also be included in the photo log.*

  - i. **Plant Community 1** – *(i.e. maple riparian forest, upland pasture, etc.):*
  - ii. **Plant Community 2** – *(i.e. oak Hickory, row crop field, etc.):*
  - iii. *Add Plant Communities as needed.*
  
- i. **Historic and Archeological Resources:**

  - i. **Known historic properties or archeological resources:** *Provide a description of any known historic properties or archeological resources and whether at risk.*
  
  - ii. **Cultural Resource Survey Overview (If applicable):** *If a cultural resource survey has been performed at the site, provide an overview of the findings here.*

- iii. Statement of Cultural Resource Survey being submitted separately: *If a cultural resource survey is required state* The Cultural Resource Survey Report, *[File Name]*, dated *[Date of Survey Report]*, was submitted separately on *[Date Sent]*. This document was transmitted via *[Method of Delivery, e.g., email, secure file transfer, registered mail]*. *Copies of any cultural resource survey reports (if a survey is required) must be submitted to the USACE separately as supplemental information in order to complete the USACE National Historic Preservation Act compliance determination.*
  
- j. Summary of Title, Easements, Rights-of-way, and/or Other Legal Encumbrances or Property Restrictions: *Describe the property's title status and ownership. All existing easements, including but not limited to levee/drainage districts, watershed districts, utility, pipeline, flowage, Partners for Fish & Wildlife, state agency conservation, USFWS conservation, NRCS, and access easements for neighboring properties, must be described. Furthermore, any other rights-of-way, legal encumbrances, or property restrictions affecting the property must also be described. A figure showing the location and extent of all easements, rights-of-way, legal encumbrances, and property restrictions must be provided. Finally, Appendix A should include a copy of the title and title policy, with a listing (typically found in Schedule B) of any non-standard exceptions from coverage, specifically easements, rights-of-way, and other legal encumbrances affecting the property.*
  
- k. Zoning Designations: *Describe all zoning designations (if any) and any potential conflicts or issues with the zoning designations.*
  
- l. Additional Figures: *If it is determined additional figures are needed to accurately describe the baseline conditions, those figures should be included in Appendix A.*

## 6. Credit Determination

### a. Wetlands

- i. Credit determination method: *The following should be used for sites within Missouri* Wetland credit determination will adhere to the current version of the Missouri Wetland Mitigation Method (MWMM) in effect at the time of instrument review and approval. Should a new wetland mitigation method be approved after instrument approval and all wetland credits have not yet been sold, all unsold wetland credits will be grandfathered under the methodology used during approval, or at the sponsor's discretion, updated to the current method.

*For sites within Kansas the following should be used.* A standardized wetland crediting ratio is necessary to ensure that mitigation activities are credited consistently across Kansas. Wetland credits in Kansas are generated and accounted on an acreage basis. The USACE has adopted the following crediting ratios for wetland related mitigation activities within Kansas (Wetland Area : Wetland Credits).

**1:1 Credit Ratio**

- a. **Establishment:** 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.
- b. **Restoration:** 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.
- c. **Rehabilitation:** Farmed wetlands that are restored to a natural and/or historic fully functional aquatic resource.

**2:1 Credit Ratio**

- d. **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. On a case-by-case basis higher credit ratio may be approved for enhancing existing wetlands that are highly degraded.

**4:1 Credit Ratio**

- e. **Buffer:** an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions.

**10:1 Credit Ratio**

- f. **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. Preservation credit ratios for rare, unique, or habitats supporting threatened or endangered species may warrant a higher credit per acre ratio and may be proposed and considered on a case-by-case basis.

*To ensure accurate assessment and reporting, wetland types will be identified and classified according to the Cowardin classification system, specifying categories such as PFOs (Palustrine Forested), PSS (Palustrine Scrub-Shrub), and PEM (Palustrine Emergent).*

- ii. **Wetland types and Justifications:** *If applicable, a description and justification for each wetland mitigation activity should be provided. This should be done by providing a figure showing each area generating credit with a corresponding description in this section describing the mitigation activities. For example, "Wetland Net Benefit 1 – Establishment at this area is generated by the conversion of 25 acres of upland agricultural row crop field to an emergent wetland. This will include grading, the construction/installation of water control structures to establish and maintain hydrology, and the establishment of native vegetation through seeding and plugging." Please note that enhancement of existing functioning wetlands may require*

*additional information to describe the environmental lift that is occurring. Any area of a mitigation site generating wetland credit must be described by a Wetland Net Benefit area, including buffers.*

- iii. **Address preservation requirement:** *If applicable, address how wetland preservation meets the Mitigation Rule's requirements for preservation (33 CFR 332.3(h)).*
- iv. **Buffers:** *If applicable, include a description of how the buffer requirements are met and their necessity.*

*For Missouri, address the requirements/considerations of page 16 of the MWMM.*

*For Kansas, Upland buffers adjacent to wetlands, providing habitat connectivity and ecological functions, may generate compensatory mitigation credits due to their contribution to the ecological functions of the aquatic resources and the mitigation site. The USACE, in consultation with the IRT, will determine on a case-by-case basis when buffers are essential for maintaining the ecological viability of adjoining aquatic resources, and thus eligible to produce compensatory mitigation credits, calculated based on a percentage of land area, habitat connectivity, and ecological functions. The buffer area (percentage of total area and buffer width) and its functions for the aquatic resource project must be described in the overall work plan, with buffers considered necessary to maintain the ecological viability of the aquatic resources to generate credits.*

- v. **Tables/credit worksheet(s) and corresponding figures:** *For Missouri, include the appropriate credit worksheets from the MWMM. This section must also include the reasoning for each of the factors used in the MWMM. Many of the factors will be the same for all Wetland Net Benefit Areas and therefore would only need to be described once, though factors specific to each wetland net benefit area should be described separately (e.g. each wetland will need its own description of which Aquatic Resource Type was used and why).*

*For Kansas, include a table detailing the following information for each wetland: wetland mitigation activity type, acreage, associated ratio, and credits generated. The table should also include acreage and credit totals for each mitigation activity (restoration, enhancement, etc.) and include acre and credit grand totals.*

## b. Streams

- i. **Credit determination method:** Stream credit determination will adhere to the current version of the [\[Kansas/Missouri\]](#) Stream Mitigation Method in effect at the time of instrument review and approval. Should a new stream mitigation method be approved after instrument approval and all stream credits have not yet been sold, all unsold stream credits will be grandfathered under the methodology used during approval, or at the sponsor's discretion, updated to the current method.

- ii. **In-stream improvements:** *A description and justification for each mitigation activity should be provided. This should be done by providing a figure showing each area generating credit with a corresponding description in this section describing the mitigation activities. For example, “In-Stream Net Benefit 1 – Substantial/Excellent credit is generated at this location by grading and removing an existing levee within the 100-year floodplain which will reconnect the floodplain to the stream channel.”*
- iii. **Riparian buffer:** *A description and justification for each mitigation activity should be provided. This should be done by providing a figure showing each area generating credit with a corresponding description in this section describing the mitigation activities. An example could be “Riparian Net Benefit 1 – Establishment at this area is generated by the prepping, planting, and seeding of 25 acres of upland agricultural row crop field in order to establish a fully functional riparian buffer, where one did not previously exist, along the right ascending bank of Intermittent #1.” Please note that enhancement of existing functioning buffer may require additional information to describe the environmental lift that is occurring.*
- iv. **Address preservation requirement:** *If applicable, address how stream preservation meets the Mitigation Rule’s requirements for preservation (33 CFR 332.3(h)).*

Credit worksheet(s) and corresponding figures: *Include the appropriate credit worksheets from the Missouri/Kansas Stream Mitigation Method. This section must also include the reasoning for each of the factors used in the MSMM/KSMM. Many of the factors will be the same for all Stream Net Benefit Areas and therefore would only need to be described once, though factors specific to each stream net benefit area should be described separately (e.g. each stream will need its own description of which existing condition was used and why).*

## 7. Credit Release Schedule

- a. **Credit Releases:** All credit releases must be approved by the USACE, in consultation with the IRT, based on a determination that required milestones have been achieved. The USACE, in consultation with the IRT, may modify the credit release schedule, including but not limited to reducing the number of available credits or suspending credit sales or transfers altogether, where necessary to ensure that all credit sales remain tied to compensatory mitigation projects with a high likelihood of meeting performance standards.
- b. **Credit Release #1:** Totaling 20% of all credits, will occur after the completion of the below requirements.
  - i. Final Mitigation Banking Instrument and/or Final Mitigation Plan is approved.
  - ii. Conservation easement, or other accepted method of legal site protection, is recorded with the County Recorder of Deeds
  - iii. Short-term financial assurances are established.
  - iv. Approval of Baseline Conditions Verification Statement. *The Baseline Condition Verification Statement is a formally executed document provided by*

*the sponsor, affirming that the baseline conditions remain consistent with those initially submitted and approved. In the event of any modifications, these changes must be comprehensively described and documented within the verification statement, accompanied by a clear justification for their occurrence. Furthermore, any crediting modifications resulting from these changes must be submitted concurrently with the Baseline Conditions Verification Statement for review and approval.*

- c. Credit Release #2: Totaling 20% of all wetland credits and/or stream credits, will occur after completion of the requirements listed below. If determined appropriate by the USACE, the amount of credits released during Credit Release #2 may be adjusted to retroactively correct Release #1, based upon any difference between the potential credit generation proposed in the Site Plan and the conditions shown in the as-built survey.
  - i. Completion or substantial completion (to be determined by the USACE) of initial site construction, restoration, revegetation techniques, and all other mitigation activities.
  - ii. Submittal and USACE approval of initial as-built survey(s). *After construction is complete, the sponsor must submit an as-built report to the USACE for approval. The as-built report must provide a detailed account of the completed work, including any deviations from the original plan. It should include survey-grade data for features like stream channels and wetland boundaries to verify the constructed conditions against the design plans and to calculate the revised credit generation.*
  - iii. Submittal and USACE approval of revised credit generation totals (based upon as-built survey), if applicable.
- d. Credit Release #3: Totaling 10% of all wetland credits and/or stream credits, will occur after the completion of the below requirements:
  - i. One growing season or a significant portion of a growing season has occurred after site construction. This applies to non-vegetated mitigation activities as well in order for enough time and rain events to have occurred to determine success or lack thereof.
  - ii. The USACE, in consultation with the IRT, approves the first monitoring report.
  - iii. All wetland and/or stream performance standards have been met.
- e. Credit Release #4: Totaling 10% of all wetland credits and/or stream credits, will occur after the completion of the below requirements:
  - i. The USACE, in consultation with the IRT, approves the second monitoring report.
  - ii. All wetland and/or stream performance standards have been met.
- f. Credit Release #5: Totaling 10% of all wetland credits and/or stream credits, will occur after the completion of the below requirements.
  - i. The USACE, in consultation with the IRT, approves the third monitoring report.
  - ii. All wetland and/or stream performance standards have been met.

- g. Credit Release #6: Totaling 10% of all wetland credits and/or stream credits, will occur after the completion of the below requirements.
  - i. The USACE, in consultation with the IRT, approves the fourth monitoring report.
  - ii. All wetland and/or stream performance standards have been met.
  
- h. Credit Release #7 (Final): Totaling 20% of **ALL** credits, will occur after the completion of the below requirements.
  - i. The USACE, in consultation with the IRT, approves the fifth monitoring report.
  - ii. **ALL** performance standards have been met.
  - iii. The initial endowment principal, adjusted for inflation, has been deposited for at least one calendar year.
  - iv. Submittal and USACE approval of final as-built survey(s).
  - v. Submittal and USACE approval of final revised credit generation totals (based upon final as-built survey), if necessary.

**Table 1 Credit Release Schedule**

Credit Release Schedule – Credit releases will be based on performance standard criteria and specific milestone fulfillments.

Credit Release Type	Percent Release	Credits Released (wetland/stream)	Performance Standards Listed	General Description
Initial (1)	20%	X	X,X,X	MBI and/or Plan Approved, Approved Site Protection Instrument recorded, Short-term financial assurances established, Approval of Baseline Conditions Verification Statement
Interim (2)	20%	X	X,X,X	Completion of site construction, As-builts approval by Corps, Corps approval of revised credit generation totals
Interim (3)	10%	X	X	Year 1 Monitoring
Interim (4)	10%	X	X	Year 2 Monitoring
Interim (5)	10%	X	X	Year 3 Monitoring
Interim (6)	10%	X	X	Year 4 Monitoring
Final (7)	20%	TBD*	X,X,X	Final Monitoring report approved, All performance standards met, Initial endowment principal deposited for one year, Submittal and Approval of Final As-built Survey, Submittal and approval of final revised credit generation totals

\* The actual quantity of credits for Final credit release would be based on monitoring results and total number of credits produced at the mitigation site, minus any previously released credits.

8. **Mitigation Work Plan:** *Mitigation work plans must provide project specifications and descriptions, as outline below, these plans must be supplemented with supporting figures. These figures should visually represent the information outlined in the descriptions below, enhancing clarity and facilitating a thorough understanding of the proposed mitigation strategies. Any pertinent figures, plan sheets, project designs, etc. that are not included within this section should be included in Appendix C.*
  - a. **Mitigation Work Plan - Wetland Credits:** *If applicable, provide a detailed work plan encompassing specifications and descriptions that directly reflect the project's goals and objectives. This plan must include the project's geographic boundaries, construction methods, timing, water source(s) and connections, methods for establishing the desired plant community, invasive species control plans, proposed grading plan; Furthermore, the plan should either adhere to established best practices or justify any deviations in approach as appropriate for the specific mitigation site, and it must identify and address the presence of existing infrastructure or easements.*
  - b. **Mitigation Work Plan - Stream Credits:** *If applicable, provide a detailed work plan encompassing specifications and descriptions that directly reflect the project's goals and objectives. This plan must include the project's geographic boundaries, construction methods, timing, water source(s) and connections, methods for establishing the desired plant community, invasive species control plans, proposed grading plan, planform geometry, channel form, watershed size, design discharge, and riparian plantings. Furthermore, the plan should either adhere to established best practices or justify any deviations in approach as appropriate for the specific mitigation site, and it must identify and address the presence of existing infrastructure or easements.*
    - i. **Stream Channel Restoration (If Applicable)**
      1. *Centerline Alignment Variance Defined*
      2. *Cross Section Variance Defined.*
9. **Operation and Maintenance Plan:** *Provide a detailed description and schedule of maintenance requirements, encompassing both ecological and infrastructure aspects, to ensure the resource remains viable from the point of construction and throughout the monitoring period. This description should identify all regular or recurring maintenance actions needed to guarantee the project's continued functionality and ecological health.*
10. **Ecological Performance Standards**
  - a. **Wetland Performance Standards**
    - i. **Hydrology:** Each sample point subject to this performance standard must meet the wetland hydrology criteria as described in most recent Regional Supplement to the Corps of Engineers Wetland Delineation Manual appropriate for the location of the site, or any future replacement of that document. Each permanent sample point located in proposed wetland areas will be reviewed and the presence or absence of the hydrology indicators will be recorded. On a case-by-case basis, water monitoring devices may be utilized or required depending on site conditions.

- ii. **Hydric Soils:** Each sample point subject to this performance standard must show evidence of hydric soils by meeting the criteria described in the most recent Regional Supplement to the Corps of Engineers Wetland Delineation Manual for the location of the site or replacement of that document, or by meeting the duration requirement for flooding/inundation or for soil saturation as outlined in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual and the Technical Standard for Water-Table Monitoring of Potential Wetland Sites (<https://erdc-library.erdc.dren.mil/items/81b728f7-654a-4ef8-e053-411ac80adeb3>). Areas of permanent or nearly-permanent inundation meet the duration requirement for flooding/inundation and therefore may be described to meet the definition of a hydric soil. As a result, soil profile descriptions are not required in those areas and they will be assumed to meet this performance standard.
- iii. **Hydrophytic Vegetation:** Each sample point subject to this performance standard must meet the hydrophytic vegetation criteria as described in most recent Regional Supplement to the Corps of Engineers Wetland Delineation Manual appropriate for the location of the site, or any future replacement of that document.
- iv. **Desirable Vegetative Cover:**
  - 1. The average of all wetland sample points within planted/seeded areas will reach a minimum of 45% absolute desirable vegetative cover in Year 1 of monitoring, 55% absolute desirable vegetative cover in Year 2 of monitoring, 65% absolute desirable vegetative cover in Year 3 of monitoring, and 80% absolute desirable vegetative cover every year thereafter; except in areas that are constantly or near-constantly inundated or those areas with significantly fluctuating inundation because of the effect of the inundation on plant establishment and growth. Plant species listed as introduced per the USDA Plants Database (<https://plants.usda.gov/>) or species defined as invasive per the invasive species performance standard will not count as desirable cover. The absolute vegetative cover is measured within a 5-foot sample radius by counting existing vegetative cover. Thatch from native species from the current growing season can be counted towards this criterion. Additionally, the cover crop (if used) may be counted towards meeting this performance standard during Years 1 and 2 only.
  - 2. Contiguous Open Water Wetland Areas shall not exceed more than 30% of the total of each wetland mitigation area.
    - a. Open water wetland areas will be defined as wetland areas less than two meters deep that have less than 5% rooted vegetation. Note that areas that meet the requirements of desirable vegetative cover whether from true aquatic plants or not, should not be counted towards the amount of contiguous open water even if the plant growth is entirely subsurface.

v. Diversity:

1. In newly planted/seeded areas, the minimum native herbaceous species within each habitat zone (as defined in the monitoring plan) shall reach a minimum of 8 species in Year 1 of monitoring, 12 species in Year 2 of monitoring, 16 species in Year 3 of monitoring, and 20 species every year thereafter. *Habitat Zones will be defined and submitted for approval within the sites monitoring plan*
2. Native status will be determined using the USDA Plants Database, (<https://plants.usda.gov/>) and the species must be listed within the state. Plant species listed as introduced per the USDA Plants Database or species defined as invasive per the invasive species performance standard will not count towards this diversity performance standard.

vi. Invasive Species in Wetland Credit Generating Areas

1. Invasive species shall not cover more than 7% in aggregate of the area generating wetland credits.
  - a. Invasives plants will be determined by the Missouri Invasive Plant Assessment list of known and potentially invasive plants found at: <https://moinvasives.org/moip-assessment/>, the Kansas Noxious Weed List found at : <https://www.agriculture.ks.gov/divisions-programs/plant-protection-weed-control/noxious-weed-control-program/kansas-noxious-weed-list>, the Kansas Native Plant Societies list of invasive species found at: <https://www.kansasnativeplantsociety.org/wp-content/uploads/2021/03/InvasivePlantFactSheet.pdf> or any other species determined appropriate by the USACE, including but not limited to cattails (*Typha spp*) and American lotus (*Nelumbo lutea*).
2. No one “stand” of invasive species may exceed 0.5 acre. A “stand” is a contiguous area with at least 90% cover of invasive species. All “stands” greater than 0.40 acre must be delineated and a figure showing those boundaries must be provided with the monitoring report. This criterion may be reassessed on a case-by-case for projects smaller than 20 acres.

vii. Forested Wetland Plantings:

1. Once planted, trees and shrubs in currently unforested portions of wetland areas will achieve a minimum density of 82 live stems per acre. This minimum live stem density is equivalent to a 75% survival rate of trees and shrubs planted on 20-foot centers.
  - a. Living recruits of native late successional/climax species that are at least 1 meter tall may count towards this standard.

- b. Living recruits of native early successional/pioneer species (examples include but are not limited to cottonwood [*populus deltoides*], willows [*Salix spp.*]) that are at least 1 meter tall may count toward this standard, however, these species cannot count for more than 20% of this criterion.
    - c. No one species can count for more than 30% of this criterion. However, with USACE approval, this criterion may be waived or modified on a site-by-site basis if determined appropriate.
  2. Within the forested wetland tree planting areas, a minimum of 7 native woody species must be present within each habitat zone. In some cases, with USACE approval, where a unique habitat is proposed, fewer species can be accepted as the minimum present, based upon the habitat planting plan. *Habitat Zones will be defined and submitted for approval within the sites monitoring plan*
- viii. Scrub-Shrub Plantings:
  1. Scrub-Shrub plantings will have the same performance criteria as the forested wetland plantings unless otherwise outlined in the site's mitigation plan.
  2. Within the scrub-shrub wetland plantings areas, a minimum 6 native woody species must be present within each habitat zone. In some cases, with USACE approval, where a unique habitat is proposed, fewer species can be accepted as the minimum present, based upon the habitat planting plan. *Habitat Zones will be defined and submitted for approval within the sites monitoring plan.*
- ix. Upland Buffers:
  1. Desirable Vegetative Cover: The average of all wetland upland buffer sample points within planted/seeded areas will reach a minimum of 45% absolute desirable vegetative cover in Year 1 of monitoring, 55% absolute desirable vegetative cover in Year 2 of monitoring, 65% absolute desirable vegetative cover in Year 3 of monitoring, and 80% absolute desirable vegetative cover every year thereafter; except in areas where plant establishment and growth has been impacted by constant, near-constant, or significantly fluctuating inundation. Plant species listed as introduced per the USDA Plants Database (<https://plants.usda.gov/>) or species defined as invasive per the invasive species performance standard will not count as desirable cover. The absolute vegetative cover is measured within a 5-foot sample radius by counting existing vegetative cover. Thatch from the current growing season can be counted towards this criterion. Additionally, the cover crop (if used) may be counted towards meeting this performance standard during years 1 and 2 only.

2. Diversity:

- a. In newly planted/seeded areas, the minimum native herbaceous species shall reach a minimum of 8 species (at least 2 grasses/sedges/Rushes) in Year 1 of monitoring, 12 species (at least 4 grasses/sedges/Rushes) in Year 2 of monitoring, 16 species (at least 6 grasses/sedges/Rushes) in Year 3 of monitoring, and 20 species (at least 6 grasses/sedges/Rushes) every year thereafter.
- b. Native status will be determined using the USDA Plants Database (<https://plants.usda.gov/>) and must be listed within the state.
- c. Habitat zones will be defined and submitted for approval within the site's monitoring plan.

b. Riparian Buffer Performance Standards

- i. Desirable Vegetative Cover: The average of all Riparian Buffer and Stream Restoration sample points within planted/seeded areas will reach a minimum of 45% absolute desirable vegetative cover in Year 1 of monitoring, 55% absolute desirable vegetative cover in Year 2 of monitoring, 65% absolute desirable vegetative cover in Year 3 of monitoring, and 80% absolute desirable vegetative cover every year thereafter; except in areas where plant establishment and growth has been impacted by constant, near-constant, or significantly fluctuating inundation. Plant species listed as Invasive or Undesirable per the invasive and undesirable performance standard will not count as desirable cover. The absolute vegetative cover is measured within a 5-foot sample radius by counting existing vegetative cover. Thatch from the current growing season can be counted towards this criterion. Additionally, the cover crop (if used) may be counted towards meeting this performance standard during years one and two only.
- ii. Diversity:
  1. The minimum native herbaceous species shall reach a minimum of 8 species (at least 2 grasses/sedges/Rushes) in Year 1 of monitoring, 12 species (at least 3 grasses/sedges/Rushes) in Year 2 of monitoring, 16 species (at least 6 grasses/sedges/Rushes) in Year 3 of monitoring, and 20 species (at least 6 grasses/sedges/Rushes) every year thereafter.
  2. Native status will be determined using the USDA Plants Database (<https://plants.usda.gov/>) and must be listed within the state.
  3. Habitat zones will be defined and submitted for approval within the sites monitoring plan.

- iii. Invasive Species in Stream Credit Generating Areas
  - 1. Invasive species shall not cover more than 7% in aggregate of the area generating stream credits.
    - a. Invasives plants will be determined by the Missouri Invasive Plant Assessment list of known and potentially invasive plants found at: <https://moinvasives.org/moip-assessment/>, the Kansas Noxious Weed List found at : <https://www.agriculture.ks.gov/divisions-programs/plant-protection-weed-control/noxious-weed-control-program/kansas-noxious-weed-list>, the Kansas Native Plant Societies list of invasive species found at: <https://www.kansasnativeplantsociety.org/wp-content/uploads/2021/03/InvasivePlantFactSheet.pdf> or any other species determined appropriate by the USACE, including but not limited to cattails (*Typha spp*) and American lotus (*Nelumbo lutea*).
- iv. No one “stand” of invasive species may exceed 0.5 acre. A “stand” is a contiguous area with at least 90% cover of invasive species. All “stands” greater than 0.40 acre must be delineated and a figure showing those boundaries must be provided with the monitoring report. This criterion may be reassessed on a case-by-case for projects smaller than 20 acres.
- v. Riparian Buffer woody plantings:
  - 1. Once planted, trees and shrubs in currently unforested portions of riparian areas will achieve a minimum density of 82 live stems per acre. This minimum live stem density is equivalent to a 75% survival rate of trees and shrubs planted on 20-foot centers.
    - a. Living recruits of native late successional/climax species that are at least 1 meter tall may count towards this standard.
    - b. Living recruits of native early successional/pioneer species (examples include but are not limited to cottonwood [*populus deltoides*], willows [*Salix spp.*]) that are at least 1 meter tall may count toward this standard, however, these species cannot count for more than 20% of this criterion.
    - c. No one species can count for more than 30% of this criterion. However, with USACE approval, this criterion may be waived or modified on a site-by-site basis if determined appropriate.
  - 2. Within the riparian buffer tree planting areas, a minimum 7 Native Woody Species must be present within each habitat zone. *Habitat Zones will be defined and submitted for approval within the sites monitoring plan*

c. In-Stream Performance Standards

- i. Bank Stabilization Structures: Bank stabilization structures will remain functionally in place throughout the monitoring period without structural damage or loss of structural media following a minimum two high flow events.
  1. For the purpose of this performance standard, a high flow event will be considered a bankfull or greater event.
  2. If at the end of the monitoring period two high flow events have not occurred, the USACE, in consultation with the IRT, can determine this performance standard successful if it is determined it is likely the structure would remain functionally in place after high flow events based upon the flow events that did occur.
  3. Any evidence of erosional undercutting, erosion occurring around a structure, or any other erosion that would likely lead to future structure failure will be considered structural damage, even if the in-stream structure is in place without any current structural damage.
- ii. Grade Control Structures:
  1. Shall not have a downstream slope greater than 8.33% (12:1).
  2. Shall remain functionally in place without structural damage or loss of structural media following a minimum two high flow events.
    - a. For the purpose of this performance standard, a high flow event will be considered a bankfull or greater event.
    - b. If at the end of the monitoring period two high flow events have not occurred, the USACE, in consultation with the IRT, can determine this performance standard successful if it is determined it is likely the structure would remain functionally in place after high flow events based upon the flow events that did occur.
    - c. Any evidence of erosional undercutting, erosion occurring around a structure, or any other erosion that would likely lead to future structure failure will be considered structural damage, even if the in-stream structure is in place without any current structural damage.
- iii. Other Permanent In-stream Structures: In-stream structures other than bank stabilization measures and grade control structures that are intended to remain in place for many years will remain functionally in place without structural damage or loss of structural media following a minimum two high flow events.

1. For the purpose of this performance standard, a high flow event will be considered a bankfull or greater event.
  2. If at the end of the monitoring period two high flow events have not occurred, the USACE, in consultation with the IRT, can determine this performance standard successful if it is determined it is likely the structure would remain functionally in place after high flow events based upon the flow events that did occur.
  3. Any evidence of erosional undercutting, erosion occurring around a structure, or any other erosion that would likely lead to future structure failure will be considered structural damage, even if the in-stream structure is in place without any current structural damage.
- iv. Restored Stream Channels: Restored stream channels will not deviate from the intended alignment, slope, and cross section variance determined in the site mitigation plan, and there will be no obvious headcuts / knickpoints, excessive incision, and/or excessive erosion (as determined by the USACE, in consultation with the IRT).
1. The centerline of the stream thalweg must be surveyed annually for inclusion in each monitoring report
    - a. A plan view figure of the surveyed thalweg centerline with each year overlain shall be provided in each monitoring report.
    - b. A profile figure of the surveyed thalweg with each year overlain shall be provided in each monitoring report.
  2. Cross sections of the stream channel must be surveyed annually demonstrating the stream is maintaining the intended cross section variance, as determined in the site mitigation plan, and that there is no excessive erosion (as determined by the USACE, in consultation with the IRT).
    - a. Figures showing each surveyed cross section with each year overlain shall be provided in each monitoring report.
    - b. Cross section locations will be submitted for approval with the sites monitoring plan.
    - c. Cross sections will be placed at the locations with the greatest risk of erosion/failure.
    - d. Additional cross sections, to be determined and approved in the monitoring plan, will also be placed in random locations in order to get an overall view of the stream rather than just high risk areas.

#### 11. Adaptive Management Plan:

- a. General Guidelines: *Provide general guidelines addressing potential unforeseen circumstances, a coordination strategy involving the USACE and the IRT, a clear process*

*for adjusting the project's design and implementation if initial plans prove unfeasible, and a detailed strategy for managing the project should it fail to meet its performance standards or long-term management goals.*

- b. Force Majeure Statement: *Nothing contained in this Instrument shall be construed to impose upon the parties any liability arising from circumstances beyond the parties' control, including unauthorized actions by third parties, natural disasters such as drought, fire, storm, and earth movement, or from any prudent action taken in good faith by the parties under emergency conditions to prevent, abate, or mitigate significant injury to protected property resulting from such causes.*

12. Monitoring Reports: *Provide descriptions of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the USACE must be included (See §332.6.). Credit Release requests must be supported by meeting all pertinent performance standards for the specific monitoring year. Credit release requests must be clearly stated with justification of request and include the number of credits, type of credits and percentage of credits being requested. Credit release requests must state under which credit release schedule number it is being submitted.*

- a. A monitoring plan shall be submitted for USACE approval prior to the initial monitoring period. The monitoring plan shall provide sample locations, photo locations, habitat zones, and all other pertinent information related to the monitoring plan and the monitoring of the performance standards and mitigation site. The selection of transect and sample point locations will be based upon the guidance outlined in Part IV: Section E of the *1987 Corps of Engineers Wetlands Delineation Manual*, which can be downloaded at <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4532/>.
- b. Habitat zones will consist of contiguous like habitats and must be submitted with the monitoring plan for USACE approval prior to initiation of site monitoring.
- c. Monitoring Reports will follow the most recently approved monitoring report template.

13. Long Term Management Plan:

- a. Detailed Long Term Management Plan: *Describe the detailed long-term management plan (LTMP). This should include a complete itemization of long-term management tasks to be conducted periodically or on a more regular basis (annually or more often).*
- b. Parties Responsible:
  - i. Ownership: *State the entity(s) that own the property and provide the contact information for each entity.*
    - 1. Process for transfer of ownership: *Describe the process that will be followed should ownership change.*
  - ii. Long-term steward

1. Long-Term Steward: *State who the long-term steward is with a statement that that they are a qualified approved long term steward. Include the long-term steward qualifications in Appendix F.*
2. *State Long Term Steward is recipient of endowment disbursements*
3. Process for transfer of long-term stewardship responsibilities: *Describe the process for transferring the long-term stewardship responsibilities to a different entity.*
4. Endowment: *State that the use of an endowment will be the funding source for long term management.*

#### 14. Financial Assurances

- a. Short Term Financial Assurances – *Describe the short-term financial assurances for the period of construction, monitoring, and initial maintenance activities. Include an itemized list of work associated with construction, monitoring, and maintenance provided in support of the financial assurance estimated. The itemized list should include all the component parts associated with the project and should account for inflation during the construction, monitoring, and initial maintenance activities. Include specific conditions for reduction/release of financial assurances. Identify a non-federal beneficiary in the event that a claim is made on the assurances. Describe any potential conflicts of interest the beneficiary may have. Include notification to the USACE at least 120 days before expiration/revocation of the assurances. Specify the Sponsor will provide a financial assurance mechanism prior to an initial release of credits.*
- b. Long-Term Financial Assurances
  - i. Endowment:
    1. Endowment Holder/Management: *State who the endowment holder is with a statement that that they are a qualified approved endowment holder. Include the endowment holder qualifications in Appendix F.*
    2. Long Term Management needs and costs. *Describe the long-term management needs and associated costs as outlined in the Long-Term Management Plan and the Long-Term Stewardship Calculator. Please provide a detailed breakdown of each line item included in these plans. For each cost, please provide a brief justification for the dollar amount assigned. Also, please include all additional line items included in the Long-Term Stewardship Calculator, such as Record Retention and Legal and Contractual Support. Finally, please specify any other associated costs not explicitly mentioned above, such as endowment holder or manager annual fees, accounting fees, or any other anticipated expenses related to the long-term stewardship of this project.*

3. Endowment initial principal amount and summary of The Nature Conservancy Long-Term Stewardship Calculator or equivalent information. *The initial endowment principal should be stated here along with the summary page from the Nature conservancy or equivalent long-term stewardship calculator. All stewardship sheets/pages must be submitted as Appendix E for review and approval.*
4. Endowment will have a capitalization rate of 3.5% *(assuming endowment management fees are 1% or less).*
5. The total amount required for the endowment to be considered "fully funded" will increase by a minimum of 3% annually. This yearly adjustment begins on the anniversary of the date the instrument was signed and will continue until the endowment reaches its funding target.
6. Endowment must be fully funded for a minimum of 1 calendar year prior to final credit release and site management transferred to the long term steward.
7. Process for disbursement of funds:
8. Process for transferring recipient of funds. *Generally describe the criteria necessitating a change in stewardship then describe process for transferring the recipient of annual endowment funding This should include how the new recipient will be chosen and how the endowment will be modified. State that any new long-term steward must be a USACE approved steward, that the transfer to a new long-term steward must require written approval from the USACE, and require a minimum 60 day notice to USACE prior to transfer.*
9. Process for addressing insufficient funding: If the sponsor and long-term steward determine the endowment yields insufficient funds to fulfill the agreed-upon activities, the sponsor and long-term steward must collaborate to develop a comprehensive plan to address the shortfall. This plan may involve strategies such as, but not limited to, foregoing payouts for designated periods or reducing annual payouts to cover only critical maintenance activities for a defined timeframe, allowing the endowment to accumulate sufficient interest to fully fund long-term needs. The plan must clearly articulate the actions to be taken, the rationale behind them, and the expected timeline for restoring full funding capacity. This detailed plan must be submitted to the USACE for review and approval. Implementation of the plan must require written approval from the USACE and require a minimum 60-day notice to USACE.
10. Process for addressing long-term overabundance of principal: *Describe the process for addressing a long-term overabundance of principal.*

*Determining an overabundance of principal in an endowment typically involves an annual review of the fund's performance against its original conservation goals and projected future needs. An overabundance is identified when the endowment's principal significantly exceeds the amount required to sustain the mitigation in perpetuity, based on the long-term management costs. The amount of the overabundance is then calculated by projecting the fund's income needs over a defined period (e.g., 50 years) and subtracting that total from the current principal. Proposed actions with identified overabundance funds will prioritize enhancing the original mitigation site through additional restoration activities or expansion. If the original site's needs are fully met, consideration will be given to creating a new mitigation site within the same service area or donating to non-profit conservation entities with a demonstrated track record in similar ecological restoration projects. No distribution of overabundance funds will occur until the principal exceeds a pre-defined threshold, such as 125% of the originally projected long-term needs. Furthermore, implementation of any overabundance plan requires written approval from the U.S. Army Corps of Engineers (USACE) and necessitates a minimum 120-day written notification to USACE prior to the commencement of any activities.*

11. Process for a transfer of assets should the endowment need to be moved to a different holder: *Describe the process that will take place should a different holder be determined necessary. Process should include the notification and require approval written approval from the Corps.*

## 15. Default & Closure Provisions

- a. If the USACE determines that the Sponsor is not complying with the banking instrument, or that the Bank site is not meeting ecological performance standards that are expected to be achieved at the Bank's current level of development and the Sponsor is not taking reasonable action to remedy the situation, appropriate actions will be taken. The USACE, in consultation with the IRT, will determine which actions are necessary to resolve or address the deficiency. Example provisions may include suspending credit sales, adaptive management actions, reduction in credit availability, directing the use of financial assurances, or termination of the instrument.
- b. If the USACE, in consultation with the IRT, determines that a mitigation project, or portion of a project, fails to meet the performance standards specified in the instrument and/or site plan, the USACE shall give written notice to the Sponsor, describing the deficiency and seeking remedial corrective action(s) necessary to resolve the matter. In the event that an injury to a mitigation site is found to result in the use of, or physical conditions, inconsistent with the purpose, objectives, or functions of the approved site plan, the Sponsor will be required to restore the site to its approved condition to the extent that the deficiency(s) is resolved to the USACE satisfaction.

- c. If the USACE determines that the bank is operating at a credit deficit, the Sponsor will be notified that credit sales and/or debits shall cease immediately.
  - d. The Sponsor shall resolve deficiencies through remedial actions within 60 days of notification from the USACE. For remedial actions that require more than 60 days to resolve the deficiency, the Sponsor shall commence remedial actions within 60 days and provide periodic updates, not to exceed 60 days, until such time that the deficiency is cured.
  - e. In the event that the Sponsor fails to cure the deficiency(s) as described above, the USACE will notify the Sponsor that credit debiting from the bank is suspended indefinitely and will authorize “[3rd Party Oversight Entity Identified Here]” to draw upon the financial assurances to implement the necessary remedial actions.
  - f. Bank closure will occur when the terms and conditions of an instrument have been determined by the USACE, in consultation with the IRT, to be fully satisfied or until all credits have been debited, whichever is later. Subsequent to bank closure, management will remain the responsibility of the Sponsor unless transferred to a Long-Term Management entity, per the long-term management plan.
16. Credit Sales Notification: Credit sales will be reported to the USACE as soon as practicable after completion of a transaction. The sponsor is responsible for reporting all credit sales (withdrawals) within their ledgers and the USACE is responsible for recording the transaction within RIBITS. All [transactions](#) will be reported with the use of the most recently approved Credit Sales Notification and Receipt Transmittal Template which must be signed and dated by the permittee and the mitigation sponsor.

Appendices:

- Appendix A – Baseline Information Figures
  - EPA Waters GeoViewer Report
  - NRCS Documentation *(if applicable)*
  - Baseline/Plant Community Photo Log
  - Onsite Geology and Soils Figure *(if applicable)*
  - Property Title and any easements, rights-of-way, other legal encumbrances, or property restrictions
  - Additional Figures *(if applicable)*
- Appendix B – Wetland Delineation Report
- Appendix C – Plan Sheets, Project Design, etc. *(If Applicable)*
- Appendix D – Long-term site protection mechanism
- Appendix E – Long-term Stewardship Calculator sheets/pages
- Appendix F – Long-term Steward and Endowment Holder Qualifications
- Appendix G – Responses to comments