

**AGREEMENT TO ESTABLISH THE MITIGATION BANK
IN COUNTY, WISCONSIN**

This Mitigation Banking Instrument (MBI) is made and entered into on _____, 20____, by _____, hereinafter the "Sponsor," and the U. S. Army Corps of Engineers (Corps).

WHEREAS, the purpose of this agreement is to establish a mitigation bank (the Bank) providing compensatory mitigation in appropriate circumstances for unavoidable impacts to wetland and stream resources *{remove either wetland or stream if not approved on this site}* separately authorized by Department of the Army permits issued pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 (DA permits);

WHEREAS, the Sponsor is *{choose one: the owner in fee simple of OR holds an easement for development of a mitigation bank over}* a parcel of land (the Bank Site) containing approximately _____ acres located in _____ County, Wisconsin, described in the Mitigation Plan (the Plan), attached as Appendix A, and as shown on the attached survey in Appendix B;

WHEREAS, the Corps, after consultation with the agencies comprising the Interagency Review Team (IRT), agrees that the Bank Site is a suitable mitigation bank site and that successful implementation of the Plan will result in creditable compensatory mitigation; and

THEREFORE, it is mutually agreed among the parties to this MBI that the following provisions are adopted and will be implemented upon signature of this MBI.

General Provisions

a. The goal of the Bank is to *(restore, enhance, create, preserve)* the functions of *{list the type(s) of wetland}* wetland systems and *(restore, preserve)* the functions of stream systems *{remove either wetland or stream if not approved on this site}*. In circumstances deemed appropriate by the Corps, credits from the Bank may be used as compensation for unavoidable wetland and stream *{remove either wetland or stream if not approved on this site}* impacts authorized by DA permits. In circumstances deemed appropriate by WDNR, credits from the Bank may be used as compensation for WDNR permits under 281.36.

b. Use of credits from the Bank to offset wetland and stream *{remove either wetland or stream if not approved on this site}* impacts authorized by DA permits must be in compliance with the Clean Water Act and implementing regulations, including but not limited to the Clean Water Act Section 404(b)(1) Guidelines, the National Environmental Policy Act, and all other applicable Federal legislation, laws and regulations.

c. The IRT shall be chaired by a representative of the U.S. Army Corps of Engineers, St. Paul District. The IRT shall also include a representative from the *{specifically identify the members of the IRT for the bank review. This should be done in consultation with the Corps representative who chairs the IRT. IRT members for bank reviews commonly include the U.S. Environmental Protection Agency (EPA) and Wisconsin Department of Natural Resources (WDNR), but may also include the Wisconsin Bureau of Aeronautics (BOA) or other agencies}*. The IRT shall review monitoring and account reports described below. In addition, the IRT will review proposals for corrective measures proposed by the Sponsor, or any of the agencies represented on the IRT. Participation on the IRT is voluntary.

Mitigation Plan

a. The Bank Site is a {provide general description of baseline conditions}. A more detailed description of the baseline conditions on the site is contained in the Plan.

b. The Sponsor shall perform the work described in the Plan, including *{provide a brief description of the wetland/acreage and stream restoration/linear feet {remove either wetland or stream if not approved on this site} work to be undertaken}*. The purpose of this work, and the objective of the Bank, is to *{restore, enhance, create, preserve}* the functions of _____ acres of *{Identify the Eggers and Reed wetland community type}* wetlands and (restore, preserve) linear feet of stream *{remove either wetland or stream if not approved on this site}*. *{add additional language if multiple types of wetlands, or if upland buffer. Specify which if any credits will be preservation credits. Summarize types and credits in table.}*

c. The Corps, at its sole discretion after considering comments from the IRT and the Sponsor, will determine the number of credits generated by this Bank. The projected yield of _____ wetland credits and _____ functional feet of stream *{remove either wetland or stream if not approved on this site}* from this Bank are summarized in the following table. *{Use the table below to summarize the projected credits generated by this bank.}*

Projected Wetland Credits

Type of Compensation	Number of Acres	Type of Wetland Credit	Final Projected Credits
(: ratio)		(Type)	
(: ratio)		(Type)	
(: ratio)		(Type)	
(: ratio)		(Type)	
(: ratio)		(Type)	
(: ratio)		(Type)	

Upland Buffer (25% credit, but may not contribute to more than 25% of total bank credits)		(Type) (Type) (Type) <i>{ upland buffer is credited as a wetland type based on the percent acreage of each wetland type projected to be restored, enhanced, created, or preserved. }</i>	
Total			

Projected Stream Credits

Type of Compensation	Stream Reach	Existing Linear Feet	Existing Condition Score	Proposed Linear Feet	Proposed Condition Score	Functional Feet (credits)
Restoration						
Restoration						
Restoration						
Restoration						
Total						

d. The acreage and linear foot *{remove either if not approved on this site}* amounts in the preceding table(s) are estimates based on the design completed for the Plan. Adjustments to the acreage and linear foot amounts in the table identified prior to construction or during the monitoring period that are the result of minor deviations accepted by the Corps as consistent with the terms and conditions agreed to in this MBI, including the approved design, may be incorporated into the final credit release for the site upon meeting final performance standards and the completion of the monitoring period. Deviations in the acreage and linear foot amounts in the table resulting from the execution of the conservation easement or as-built survey that are

determined by the Corps to be significant shall be reviewed in accordance with the Modification and Termination section of this instrument.

e. The Sponsor shall complete all construction and planting activities agreed to in the Plan within 3 years of the execution of this instrument. If the construction and planting activities for the site, or any phase of the site, are not completed within this timeframe, this instrument will be automatically suspended pending review in accordance with the Modification and Termination section of this instrument.

f. The Sponsor shall submit the first annual monitoring report to the Corps following the first full growing season after completion of all required construction and planting. Annual monitoring reports shall be submitted by January 30 following each growing season as specified in the Plan. The monitoring reports shall include all information specified in the Plan so that the Corps and IRT may evaluate the performance of the Bank Site against the performance standards contained in the Plan. The monitoring reports shall also include an accounting of credit sales made to date. The Corps, in consultation with the IRT, may shorten or extend the monitoring period based on whether the Bank Site is in compliance with the performance standards specified in the Plan.

g. The Sponsor is responsible for assuring the successful implementation of the activities specified in the Plan and for the overall operation and management of the Bank.

h. In the event the Sponsor determines that corrective measures may be necessary to achieve the required success criteria, it shall provide notice of such proposed corrective measures to all members of the IRT prior to undertaking any corrective measures beyond the adaptive management strategies described in the plan. No corrective measures shall be taken without the concurrence of the Corps, in consultation with the IRT.

i. The Corps shall review the monitoring reports, and may, at any time, after consultation with the Sponsor and the IRT, identify compliance issues and direct the Sponsor to take corrective measures at the Bank Site. Once directed, the sponsor must develop a corrective action plan and provide it to the Corps and IRT for review. The sponsor shall receive approval of the corrective action plan prior to implementing corrective measures. The purpose of the corrective measures shall be to achieve the success criteria specified in the Plan and ensure compliance with this MBI.

j. The Sponsor shall implement any corrective measures by the date specified by the Corps.

k. Representatives of the Corps and other IRT agencies shall be allowed reasonable access to the Bank Site for the purposes of inspection of the Bank Site and monitoring compliance with the Plan.

Use of Mitigation Credits

The Bank Service Area (BSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetland, stream or other aquatic resources. The BSA for this Bank is the *(BSA name)* Bank Service Area in Wisconsin.

For projects in the BSA of this Bank that require Department of the Army (DA) authorization pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 credits from this Bank may be used to satisfy compensatory mitigation requirements, subject to Corps approval.

The Corps will determine whether use of the credits from the Bank is appropriate for offsetting wetland or stream *{remove either wetland or stream if not approved on this site}* impacts authorized by a DA permit, and will also determine the number and type(s) of credits required to compensate for those impacts. The Corps will consider comments submitted by the IRT and the public as part of the permit review process before approving of the use of credits from the Bank. The use of wetland credits as compensation for stream impacts, or vice versa, is not approved.

Permit applicants may propose to use a particular mitigation bank to provide the mitigation to be required by a DA permit. Before the Corps will consider such a request, the Sponsor must provide the permit applicant with a statement of credit availability before the Corps will decide whether to approve the use of the Bank. The State's Purchase Agreement for Wetland Banking Credits form is acceptable for that purpose.

In accordance with the terms of this MBI, the Sponsor agrees that upon Corps approval of a proposal by an applicant to secure mitigation bank credits through a contract with this Bank, a fully executed affidavit of credit withdrawal, between the Sponsor and the permittee shall act to transfer to this Bank all responsibility for the compensatory mitigation requirement satisfied by the purchase of credits from this Bank. Credits, once sold to the permittee for a particular project, cannot be resold by the permittee.

Release of Credits

- a. Bank credits shall not be released for sale to meet compensatory requirements of Department of the Army permits until the release is approved in writing by the Corps. The Corps will not approve of the release of bank credits until after all of the following have occurred:
 - i. Execution of this MBI by the Sponsor, the Corps, and other agencies eligible for membership in the IRT who choose to execute this agreement;
 - ii. Approval of the as-built plan, which includes documentation of any woody plantings, delivery of seed tags, and documentation that conservation easement signage has been completed;
 - iii. Delivery of any financial assurance required by this MBI;
 - iv. Recording of the conservation easement required by this MBI;
 - v. Delivery of a copy of the title insurance policy (with Gap Endorsement) accepted by the State of Wisconsin; or proof of payment and a proforma policy accepted by the State of Wisconsin, with scheduled delivery of the final title insurance policy;
 - vi. Delivery of geospatial data for the recorded conservation easement;

vii. Recording of the easements for parcels for which the Sponsor is not the fee title holder. *[This is only required if the sponsor is not also the in-fee owner of all parcels and was required to obtain additional property interest. A copy of that interest/easement is required prior to release of credits. Remove this item if the sponsor is the in-fee owner of all parcels under conservation easement]*

b. The Sponsor may petition the Corps for the release of bank credits by submitting a request to deposit credits in accordance with the following schedule excerpted from the Plan:

Insert credit release schedule table(s)

c. The above schedule applies only to the extent the Sponsor documents that the Bank Site meets the applicable performance standards. The IRT will have 15 days to provide comments once the Corps has provided notification that the Sponsor has requested a release of credits. If the Corps determines that a site visit is necessary in order to respond to the request, the Corps will schedule the site visit and the IRT shall have 15 days from the date of the site visit to provide comments.

d. After full consideration of any comments received, the Corps will determine whether the Bank Site has achieved the relevant performance standards and how many credits should be released. The number of credits approved by the Corps for release, if any, is dependent upon whether the applicable success criteria are met and whether the Sponsor has satisfactorily completed required monitoring and other actions. If the Corps determines that the Bank is not meeting performance standards, the Corps may reduce the number of credits available for sale or suspend credit sales entirely. The Corps may also require corrective measures or direct the use of financial assurances for remediation.

e. If, upon meeting all performance standards as specified in the Plan, the Sponsor finds that the Bank has developed aquatic resource functions substantially in excess of those upon which the original credit totals and release schedule were based, the Sponsor may submit a written request for approval and release of the excess credits. This request must include detailed documentation of the aquatic resources functions provided by the Bank Site, a final delineation report, an explanation of how those aquatic resource functions substantially exceed the functions upon which the original credit totals were based, an explanation of the basis for calculating the additional credits, and any other information deemed necessary by the Corps. To be considered, this request, along with all supporting documentation, must be submitted as part of the final credit release request. Once the Corps has approved the final credit release, no future additional credit release requests will be considered or approved.

Accounting, Ledger Reports and Sale of Credits

The Corps has the responsibility for tracking federally-approved mitigation bank credits in the State of Wisconsin. The Sponsor will comply with all rules imposed by the Corps for tracking the availability and sale of credits. The Sponsor shall establish and maintain a ledger to account for all credit transactions. Each time an approved credit transaction occurs, the sponsor shall provide electronic notice to the Corps project manager and save an electronic copy of the transaction information in the Cyber Repository for the mitigation bank. The notification can take the form of an updated copy of the ledger that shows the new credit transaction, or can be a copy of the executed contract to purchase credits. The notification must include information on

the purchaser of credits (permittee), impact location (county, section, township, and range, and latitude and longitude in decimal degrees), acres and type of wetland impact, amount and type of credit(s) sold, and associated state and federal permit numbers. In addition to documenting individual sales of credits, the Sponsor shall provide annual ledger reports to the IRT for this Bank. Annual ledger reports must include the beginning and ending balances of available credits by credit type, all credit releases and withdrawals, and other changes in credit availability, such as the release of additional credits or the suspension of credit sales. The Corps will maintain a public, web-based copy of the ledger for the Bank on the Regulatory In-Lieu Fee Bank Information & Tracking System (RIBITS). Once a credit is debited, its value cannot change and the credit cannot be resold.

Closure Procedures

Upon the sale of the last credit in the Bank, such that no credits are available for sale, the Sponsor shall provide a written certification to the Corps stating that all credits are sold and the bank is closed to future sales. The Certification shall state the total number of credits of each type that were sold.

Bank Site Preservation

Choose one of the following:

The Sponsor, and the fee owner of the Bank Site if different from the Sponsor, shall grant a conservation easement to the State of Wisconsin, in a form acceptable to the WDNR and the Corps, sufficient to protect the Bank Site in perpetuity. The conservation easement must provide protection equivalent to, or more stringent than, the model WDNR conservation easement (attached as Appendix C). Sponsors are encouraged to utilize the model WDNR conservation easement to expedite the review process. Deviations from the model should be highlighted in the version submitted for agency review. The conservation easement shall be perpetual, preserve all natural areas, and prohibit all use of the property inconsistent with its use as mitigation site, including any activity that would materially alter the biological integrity or functional value of wetlands within the Bank Site, consistent with the Plan. The property shall be free and clear of any encumbrances that would conflict with its use as mitigation, including, but not limited to, any liens that have priority over the recorded preservation mechanism.

Or

The Sponsor, and the fee owner of the Bank Site if different from the Sponsor, shall grant a conservation easement to the State of Wisconsin, in a form acceptable to the WDNR and the Corps, sufficient to protect the wetland mitigation portion of the bank Bank Site in perpetuity. The Sponsor, and the fee owner of the Bank Site if different from the Sponsor, shall grant a conservation easement to *[enter name of proposed conservation easement holder for the stream. Must be a natural resource non-profit or governmental entity.]*, in a form acceptable to the Corps, sufficient to protect the stream mitigation portion of the Bank Site in perpetuity. The conservation easements must provide protection equivalent to, or more stringent than, the model WDNR conservation easement (attached as Appendix C). Sponsors are encouraged to utilize the model WDNR conservation easement to expedite the review process. Deviations from the model should be highlighted in the version submitted for agency review. The conservation easement shall be perpetual, preserve all natural areas, and prohibit all use of the

property inconsistent with its use as mitigation site, including any activity that would materially alter the biological integrity or functional value of wetlands within the Bank Site, consistent with the Plan. The property shall be free and clear of any encumbrances that would conflict with its use as mitigation, including, but not limited to, any liens that have priority over the recorded preservation mechanism.

Or

The Sponsor, and the fee owner of the Banks Site if different from the Sponsor, shall grant a conservation easement to *[enter name of proposed conservation easement holder for the stream. Must be a natural resource non-profit or governmental entity.]*, in a form acceptable to the Corps, sufficient to protect the stream mitigation portion of the Bank Site in perpetuity. The conservation easements must provide protection equivalent to, or more stringent than, the model WDNR conservation easement (attached as Appendix C). Sponsors are encouraged to utilize the model WDNR conservation easement to expedite the review process. Deviations from the model should be highlighted in the version submitted for agency review. The conservation easement shall be perpetual, preserve all natural areas, and prohibit all use of the property inconsistent with its use as mitigation site, including any activity that would materially alter the biological integrity or functional value of wetlands within the Bank Site, consistent with the Plan. The property shall be free and clear of any encumbrances that would conflict with its use as mitigation, including, but not limited to, any liens that have priority over the recorded preservation mechanism.

The Sponsor shall establish and maintain signage at prominent locations along the boundary of the Mitigation Bank Easement Area. Signage must be at least 4 feet high and notably visible on the landscape and minimally contain the words “Boundary of Perpetual Conservation Easement”. Said signage must be made of nondegradable material.

Financial Assurances

Prior to the release of any state or Federal credits for sale, the Sponsor shall provide the following financial assurance(s):

If the Sponsor is providing a construction financial assurance then use the following paragraph.

a. Construction. The Sponsor shall provide a performance bond, irrevocable escrow agreement, or other assurance acceptable to the Wisconsin Department of Natural Resources (WDNR) in the amount of \$*{ }*. The construction assurance shall be available to the WDNR to undertake the construction, including seeding and planting, of the mitigation project as described in the Plan. Once the Sponsor has provided documentation to the WDNR and the Corps verifying that all work has been satisfactorily completed, the WDNR, after consulting with the Corps, may authorize the release of any remaining funds to the Sponsor. *{The amount shall be sufficient to cover the costs of all construction, including seeding and planting, as well as monitoring and management costs for within the monitoring period. Documentation of the sufficiency of this amount is a required part of the Plan.}*

Or, if the Sponsor elects not to provide a construction financial assurance or receive credits ahead of construction then use the following paragraph.

- a. Construction. Financial assurances for construction are not required for the Bank because the Corps, in consultation with the IRT, has determined that the credit release schedule in the Plan ensures that the Bank will be successfully constructed in accordance with applicable performance standards.
- b. Maintenance. The Sponsor shall provide a performance bond, irrevocable escrow agreement, or other assurance acceptable to the Wisconsin Department of Natural Resources (WDNR) in the amount of \${ }. The maintenance assurance shall be available to the WDNR to undertake the monitoring and maintenance of the mitigation bank site as required in the Plan. Once the Sponsor has provided documentation to the WDNR and the Corps verifying that the final performance standards have been satisfactorily met, that no additional monitoring is required and that the final release of credits has been authorized by the Corps, the WDNR, after consulting with the Corps, may authorize the release of any remaining funds to the Sponsor. At the request of the Sponsor, the WDNR, after consulting with the Corps, may also authorize a partial release of the maintenance funds during the required monitoring phase of the project for the portion of the work that has been satisfactorily completed.
- c. Template versions of financial assurances are available on the WDNR and Corps websites. Use of the WDNR approved templates is strongly encouraged to reduce review timeframes.
- d. The final form and content of the Sponsor's financial assurance(s) shall be submitted to the WDNR for approval prior to execution.
- e. The Sponsor shall provide a copy of the executed financial assurance(s) to the Corps and WDNR.
- f. The Sponsor shall be solely responsible for any fees associated with the financial assurance.
- g. Neither the Sponsor nor any other person or entity shall have any right or access to the financial assurance funds except as described herein or provided by Federal law. If the Corps and WDNR determines that (1) the Sponsor has not proven that the Bank meets the success criteria and (2) the Sponsor (or its performance bond surety) is not taking adequate corrective measures or any corrective measures have failed, then all or any part of the funds, as specified by the Corps, plus any accrued interest shall be paid to the WDNR or other third party beneficiary identified in the financial assurance for the purpose of conducting compensatory wetland mitigation.
- h. The financial assurance must ensure that the Corps receives notification at least 120 days in advance of any termination or revocation.
- i. Upon Corps approval of the as-built and release of the associated credits, the construction financial assurance may be released back to the Sponsor.
- j. Upon written certification by the Corps and WDNR that the Bank Site meets the success criteria in the Plan at the end of the monitoring period, the remaining balance of the financial assurance shall be released to the Sponsor.
- k. If the Corps and/or the WDNR determine that the Sponsor has failed to meet their obligations for construction or maintenance contained in the Mitigation Plan, the WDNR and/or

Corps will consult with the IRT regarding any corrective actions that may be necessary to address the Sponsor's non-compliance with the Mitigation Plan. Following consultation with the Corps and the IRT, the WDNR may decide to withdraw all or any part of the assurance, upon written request of the Secretary of the WDNR, to ensure that the site is constructed or maintained in accordance with the Mitigation Plan. The final decision on whether to draw upon the assurance to address non-compliance with the Plan rests with the WDNR in consultation with the Corps in accordance with the terms and conditions of the assurance.

Long-term Management

The Sponsor is responsible for long-term management, and shall implement the long-term management measures described in the Plan. The long-term management measures shall include sufficient monitoring and corrective measures to ensure that the Bank continues to meet the performance standards for the foreseeable future. The Sponsor may request to transfer the long-term management responsibilities to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager. Any such transfer must be approved in writing by the Corps.

The following paragraph is required if the Corps and IRT have determined that long-term management funds are required for this bank.

A long-term management fund is required as part of the Mitigation Plan to ensure there are funds available to manage the Bank Site after the monitoring period. Prior to the Corps approval of the final release of a credit for sale, the Sponsor shall fund an interest-bearing account in the amount of \${ }. *{The amount shall be sufficient to cover the costs of long-term management post-monitoring period. Documentation of the sufficiency of this amount, the proposed fund manager and the proposed funding mechanism is a required part of the Plan. 332.7(d)(3) states that financing mechanisms include non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial arrangements. Public entities /government agencies must provide a plan for long term financing. }* The account must be accessible by the entity responsible for long-term management of the Bank. The entity responsible for long-term management of the Bank shall submit yearly reports to the Corps by December 31 of each year documenting each withdrawal from the account, what the funds were used for, and the remaining balance of the account.]

Modification and Termination

a. This MBI may be modified only by the written agreement of all parties to the MBI at the time of the modification. Modifications will be processed following the appropriate procedures specified in 33 CFR 332.8(g).

b. The Sponsor is responsible for compliance with the terms of this MBI and the Plan. Should the Sponsor choose to convey the Bank or the underlying property to another party, the successor in interest must sign this MBI in order to transfer responsibility for compliance with the terms of this MBI from the Sponsor to the successor in interest. Furthermore, the terms and restrictions set forth in the Bank's conservation easement shall be inserted in any subsequent conveyance of any interest in the Bank Site. To ensure that the proposed successor in interest has all necessary rights to allow for the transfer, the Sponsor shall notify the Corps of any such conveyance of the Bank Site, or establishment of any other legal claim over the Bank Site, in writing and by certified mail at least 60 days prior to the conveyance.

c. If the Sponsor wishes to terminate its responsibilities under this MBI without transferring those responsibilities to a third party, the Sponsor shall submit a written request to the Corps. The Bank shall be closed and the sale of credits shall be suspended indefinitely. The Corps in consultation with the IRT shall determine what, if any, remedial measures will be necessary to ensure that functions provided by previously sold credits will be maintained or otherwise compensated for. Such remedial measures may include using the financial assurance or long-term management fund to provide alternative compensatory mitigation. The conservation easement on the Bank Site shall remain in effect in perpetuity unless an amendment of the easement is agreed to in writing by both the Corps and the State of Wisconsin.

d. Any agency participant may terminate its participation in the IRT with notice in writing to all other parties to this MBI. Termination shall be effective seven (7) days from placing said notices in the United States mail. Member withdrawal shall not affect any prior sale of credits and all remaining parties shall continue to implement and enforce the terms of this MBI.

Miscellaneous

a. Any obligation of the United States Government set forth in this MBI is subject to and dependent on the appropriation and allocation of sufficient funds for that purpose.

b. The Sponsor shall ensure that any and all real property taxes and assessments levied by competent authority on the Bank Site are paid in full.

c. If the Sponsor is unable to meet any of the requirements under this MBI, it shall provide written notification to the Corps within 30 days of the failure to meet any of the requirements, stating the reason for the failure. If the Corps determines that the failure to meet the requirement was primarily caused by an act, event or condition beyond the Sponsor's reasonable control, the Corps may excuse the failure, and require corrective measures if necessary. If the Corps determines that the failure to meet the requirements was not reasonable, the Corps may suspend the sale of credits, reduce the number of credits available for sale, require corrective measures, or take other remedial actions as appropriate.

d. No third party shall be deemed a beneficiary of this MBI and no one except the signatories of this MBI, their successors and assigns, shall be entitled to seek enforcement of this MBI.

e. In the event any one or more of the provisions contained in this MBI 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 MBI shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

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

g. This MBI shall be governed by and construed in accordance with the laws of Wisconsin and the United States as appropriate.

h. In the event of a disagreement involving the Corps, members of the IRT, and/or the Sponsor, the Corps will make the final decision after considering all opinions.

i. All notices and required reports shall be sent by regular mail to the parties and following IRT agencies at their respective addresses, provided below, unless a different address is specified in writing:

Sponsor:

Name

Title

Address

Corps:

Chief, Regulatory Division

St. Paul District

U.S. Army Corps of Engineers

332 Minnesota Street, Suite E1500

St. Paul, MN 55101-1323

EPA:

USEPA, Region 5

77 West Jackson Boulevard

Chicago, IL 60604-3590

Wisconsin DNR:

Wisconsin Dept. of Natural Resources

101 S. Webster St. - WT/3

Madison, WI 53707-7921

IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled "Agreement To Establish The _____ Mitigation Bank In _____ County, Wisconsin"

Sponsor:

By: _____ Date: _____
Name: _____

U.S. Army Corps of Engineers:

By: _____ Date: _____
Chad Konickson
Chief, Regulatory Division

IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled "Agreement To Establish The Mitigation Bank In County, Wisconsin"

U.S. Environmental Protection Agency:

By: _____ Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled "Agreement To Establish The Mitigation Bank In County, Wisconsin"

Wisconsin Department of Natural Resources :

By: _____ Date: _____

Transfer of Responsibility

As referenced in paragraph b. of the Modification and Termination section, responsibility for compliance with the terms of this MBI has been transferred from the original Sponsor to a successor in interest. By its signature below, the successor in interest accepts responsibility for compliance with the terms of this MBI and acknowledges that it is now the Sponsor of the referenced Mitigation Bank.

{Do not complete this section until coordination of the proposed transfer has been completed and approved by the Corps}

Signature of representative of original Sponsor: _____

Typed name of representative of original Sponsor: _____

Date: _____

Signature of representative of successor in interest Sponsor: _____

Typed name of representative of successor in interest Sponsor: _____

Date: _____

List of Appendices

Appendix A: Mitigation Plan

Appendix B: Property Survey and Legal Description

Appendix C: Conservation Easement

Appendix D: Financial Assurance

Appendix E: Long-Term Management Fund *{when one is required by the Corps}*

Appendix F: Sponsor Held Easement for parcels for which the Sponsor is not the fee title owner *[This is only required if the sponsor is not also the in-fee owner of all parcels and was required to obtain additional property interest. A copy of that interest/easement is required prior to release of credits. Remove this item if the sponsor is the in-fee owner of all parcels under conservation easement. This is not the same as the WDNR held conservation easement]*