WETLAND MITIGATION BANKING AGREEMENT
BETWEEN
THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AND

_____

AND

_____

TABLE OF CONTENTS

I. Conservation Agreement. 2

II. Bank Description 3

III. Bank Evaluation and Performance Standards 3
- A. Construction Complete
- B. Fifty Percent of Design Cover Achieved
- C. Fully Functional

IV. Obligations of the Bank Sponsor 7
- A. Construction
- B. Annual Reports
- C. Monitoring
- D. Credit Certification
- E. Long-term Management
- F. Financial Assurance
- G. Tracking and Reporting of Credits
- H. Assumption of Liability
- I. Site Access
- J. Contact Information

V. Obligations of the Property Owner 13

VI. Obligations of the Michigan Department of Environmental Quality 13
- A. Approval of Credits
- B. Registry
- C. Contact Information

VII. Joint Obligations 14
- A. Amendments
- B. Dispute Resolution
- C. Jurisdiction
- D. Severability

Appendix A. Site Location Map and Baseline Conditions
Appendix B: Site Development Plan
Appendix C. Long-term Management Plan
Appendix D. Credit Accounting Procedures
Appendix E: Disclosure Statement

WETLAND MITIGATION BANKING AGREEMENT
BETWEEN
THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AND

_____

WHEREAS,_____ seeks to sponsor, own, and manage a wetland mitigation bank (Bank) pursuant to the Administrative Rules for Wetland Mitigation Banking, AACS R 281.951 et seq. (Rules), effective December 25, 1997, promulgated under the authority of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and

WHEREAS, the overall goal of the Bank is to create, restore, and preserve wetlands in order to replace chemical, physical, and biological wetland functions that are unavoidably lost as a result of projects permitted under Part 303, and

WHEREAS, the Bank will generate wetland mitigation banking credits (credits) that the Bank sponsor can use or sell to others to offset the unavoidable loss of wetlands in accordance with permits issued by the State of Michigan, Department of Environmental Quality (MDEQ), pursuant to Part 303, subject to the approval of the MDEQ, and

WHEREAS, the Bank sponsor has developed a plan to_____(create and/or restore)_____ wetlands out of which evolved the specific site plans and standards that can be incorporated into an agreement, and

WHEREAS, the Bank sponsor has provided an executed conservation easement, all necessary subordination of property interests for the conservation easement, a title search, title insurance policy, and a written statement that there are no easements, encumbrances, or transfers of the property, in whole or in part, not disclosed in the title search and title insurance,

WHEREAS,
_____
_____
_____.

Now therefore, _____ (Bank sponsor) and the MDEQ and _____hereby enter into this wetland mitigation banking agreement (Agreement) to establish a Bank pursuant to the Rules, effective on the date this Agreement is signed by the MDEQ. The Rules will guide the interpretation of this Agreement and shall take precedence over its terms in case of any inconsistency.

I. CONSERVATION AGREEMENT

In consideration of the benefits of this Agreement, in order to provide for the creation and maintenance of the conditions specified by this Agreement, the Bank sponsor and/or property owner hereby grants, pursuant to Part 21, Subpart 11, “Conservation and Historic Preservation Easement,” MCL 324.2101, et seq., of the Natural Resources and

Environmental Protection Act, MCL 324.101, et seq., to the State of Michigan, Department of Environmental Quality, a conservation easement over the property described in Section II, binding upon them, their heirs, successors, and assigns, consisting of the acts required by this Agreement with respect to the aforementioned land and the limitations on the use of that land provided for in this Agreement.

II. BANK DESCRIPTION

Bank Name: _____
Bank Sponsor: _____
Property Owner: _____
Location: _(Town _ South, Range _West, Section _, _Township, _County)_
Total Wetland Acreage Proposed: _____
Wetland Acreage Proposed by Ecological Type:

_____
_____
_____
_____

Service Area: _____

Goals and Objectives:

_____
_____
_____
_____
_____

A site location map and description of baseline conditions for the site are included in Appendix A. Site development plans and cross-sections are specified in Appendix B.

III. BANK EVALUATION AND PERFORMANCE STANDARDS

The provisions of the Rules establish the schedule for certification and approval of credits based on achievement of performance standards (R281.957). In general, performance standards to be used in this schedule are defined below.

III. A. Construction Complete

Fifty (50) percent of the total credits that meet the performance standards will be approved after the MDEQ determines that construction has been completed in accordance with plans and specifications included in this Agreement and appendices and design hydrology has been achieved and maintained for at least 1 calendar year, based on the following performance standards being met:

1. Construction has been completed in accordance with plans and specifications included in this Agreement and appendices for at least 1 calendar year. Vegetative plantings must be conducted before credits are certified for construction complete.

2. The wetland is designed to have certain hydrological characteristics, such as water elevation, water depth, water level fluctuations, and frequency and duration of inundation, consistent with the ecological wetland types proposed as set forth in the site drawings. The MDEQ will consider design hydrology to be established when it determines that the following conditions are met for at least 1 calendar year, based on monitoring of the Bank:

   Forested, scrub-shrub, and wet meadow wetlands shall be consecutively saturated within 12 inches of the soil surface for at least 15 percent of the growing season. For purposes of assigning credits for construction complete, forested and scrub-shrub wetlands shall not be deeper than 2 inches above the surface for more than 30 percent of the growing season.

   Emergent wetlands shall be consecutively saturated within 12 inches of the soil surface for at least 30 percent of the growing season. Water depth in the emergent wetland shall not exceed 18 inches above the surface for the purposes of approving credits for construction complete, except that no more 15 percent of the emergent wetland may have water depths greater than 18 inches.

   Water levels in_____(wetland type)_____ wetlands shall be consecutively saturated within 12 inches of the soil surface for at least _____ percent of the growing season.
   (Describe minimum and maximum frequency, duration, and depth of inundation/saturation)

   Water levels in_____(wetland type)_____ wetlands shall be consecutively saturated within 12 inches of the soil surface for at least _____ percent of the growing season.
   (Describe minimum and maximum frequency, duration, and depth of inundation/saturation)

   _____
   _____
   _____

   The growing season shall be defined as _____ through _____.

3. A layer of high-quality soil, from the A horizon of an organic or loamy surface texture soil, exists over the entire restored wetland area at a minimum thickness of 6 inches.

4. The Bank shall be free of oil, grease, man-made debris, and all other contaminants.

5. A minimum of 6 habitat structures, consisting of at least 3 types, have been placed per acre of mitigation wetland. At least 50 percent of each structure shall extend above the normal water level. The types of acceptable wildlife habitat structures are provided below.

   a. Tree stumps laid horizontally within the wetland area. Acceptable stumps shall be a minimum of 6 feet long (log and root ball combined) and 12 inches in diameter.

   b. Logs laid horizontally within the wetland area. Acceptable logs shall be a minimum of 10 feet long and 6 inches in diameter.

c. Whole trees laid horizontally within the wetland area. Acceptable whole trees shall have all of their fine structure left intact (i.e., not trimmed down to major branches for installation) and be a minimum of 20 feet long (tree and root ball) and a minimum of 12 inches in diameter at breast height (DBH).

d. Snags which include whole trees left standing that are dead or dying, or live trees that will be flooded and die, or whole trees installed upright into the wetland. A variety of tree species should be used for the creation of snag habitat. Acceptable snags shall be a minimum of 20 feet tall (above the ground surface) and a minimum of 12 inches DBH. Snags should be grouped together so as to provide mutual functional support as nesting, feeding, and perching sites.

e. Sand mounds at least 18 inches in depth and placed so that they are surrounded by a minimum of 30 feet of water measuring at least 18 inches in depth. The sand mound shall have at least a 200 square foot area that is 18 inches above the projected high water level and oriented to receive maximum amounts of sunlight.

No credits shall be approved until the MDEQ has determined that a minimum of 10 acres within the Bank have been constructed in accordance with plans, specifications, and meet performance standards for Construction Complete.

III. B. Fifty Percent of Design Cover Achieved

An additional 25 percent of the total credits that meet the performance standards will be approved by the MDEQ upon its determination that the Bank wetland plant community has achieved 50 percent of design cover based on performance standards defined in this Agreement, if at least 1 calendar year has passed since the first 50 percent of credits have been approved. The MDEQ will determine wetland plant community development based on Section III. A. and the following performance standards:

1. Mean percent cover of native wetland species in the herbaceous layer across the wetland area to achieve 50 percent design cover is not less than:

   40 percent for forested wetland.
   40 percent for scrub-shrub wetland.
   30 percent for emergent wetland.
   40 percent for wet meadow wetland.
   _____ percent for _____ wetland.

   Credit for extensive open water and submergent vegetation areas with little or no emergent or floating vegetation shall not exceed 15 percent of the emergent wetland area. Extensive areas of bare soil shall not exceed 5 percent of the mitigation wetland area. For the purposes of these performance standards, extensive refers to areas greater than 0.01 acre in size. Credit for extensive open water and submergent vegetation areas shall be included in the credits for emergent wetland. No credit will be given for areas deeper than 6 feet.

   The total percent cover of wetland species in each plot shall be averaged for samples taken in the same wetland type to obtain a mean percent cover value for the each wetland type. Plots within identified extensive open water and submergent areas, bare soil areas, and areas without a predominance of wetland vegetation shall not be included in this average. Wetland species refers to species listed as

Facultative and wetter (FAC, FAC+, FACW-, FACW, FACW+, OBL) on the U.S. Fish and Wildlife Service's "National List of Plant Species That Occur in Wetlands" for Region 3.

2. The wetland supports a predominance of wetland vegetation (as defined in the United States Army Corps of Engineers January 1987 wetland delineation manual) in each vegetative layer and is represented by a minimum number of native perennial wetland species. The minimum number of native perennial wetland species per wetland type shall not be less than:

   15 species within the forested wetland.
   15 species within the scrub-shrub wetland.
   15 species within the emergent wetland.
   20 species within the wet meadow wetland.
   _____ species within the _____ wetland.

   The total number of native perennial wetland plant species shall be determined by a sum of all species identified in sample plots of the same wetland type.

3. The wetland supports a minimum of:

   300 individual surviving, established, and free-to-grow trees per acre in the forested wetland that are classified as native wetland species and consisting of at least 4 different tree species.
   300 individual surviving, established, and free-to-grow shrubs per acre in the scrub-shrub wetland, that are classified as native wetland species and consisting of at least 5 different shrub species.
   8 native wetland species of grasses, sedges, or rushes in the wet meadow wetland.

   The 30 foot radius plot data shall be averaged to obtain the number of individual surviving, established, and free-to-grow trees and shrubs per acre.

   For the purposes of this performance standard, Fraxinus pennsylvanica (Green Ash) and Populus spp. (Aspen) are not acceptable species.

4. The mean percent cover of invasive species including, but not limited to, *Phragmites australis* (Common Reed), *Lythrum salicaria* (Purple Loosestrife), *Phalaris arundinacea* (Reed Canary Grass), *Rhamnus frangula* (Glossy Buckthorn), and *Alliara petiolata* (Garlic Mustard) shall in combination be limited to no more than 10 percent within each wetland type. Invasive species shall not dominate the vegetation in any extensive area of the Bank.

   If the mean percent cover of invasive species is more than 10 percent within any wetland type or if there are extensive areas of the bank site in which an invasive species is one of the dominant plant species, the Bank sponsor shall submit an evaluation of the problem to the MDEQ. If the Bank sponsor determines that it is infeasible to reduce the cover of invasive species to meet the above performance standard, the MDEQ may approve an alternative invasive species standard. The Bank sponsor must submit an evaluation of the problem, a control plan, and the percent cover that can be achieved to the MDEQ for review. Any alternative invasive species standard must be approved in writing by the MDEQ.

Any plantings or replantings must be completed at least 1 calendar year before credits are requested for 50 percent of design cover.

III. C. Fully Functional

The final 25 percent of credits that meet the performance standards will be approved by the MDEQ upon its determination that the wetlands in the Bank are fully functional and meet performance standards defined in this Agreement, if at least 1 calendar year has passed since the wetland has been approved as meeting 50 percent design cover. The MDEQ will consider the wetlands fully functional when it determines that the wetlands are consistent with the standards in Sections III. A. and III. B., as well as:

1. Mean percent cover of native wetland species in the herbaceous layer across the wetland area to achieve fully functional cover is not less than:

   80 percent for forested wetland.
   80 percent for scrub-shrub wetland.
   60 percent for emergent wetland.
   80 percent for wet meadow wetland.
   _____ percent for _____ wetland.

   Credit for extensive open water and submergent vegetation areas with little or no emergent or floating vegetation shall not exceed 15 percent of the wetland area. Extensive areas of bare soil shall not exceed 5 percent of the mitigation wetland area. Credit for extensive open water and submergent vegetation areas shall be included in the credits for emergent wetland. No credit will be given for areas deeper than 6 feet.

2. (Other standards based on targeted Bank functions.)
_____
_____
_____

IV. OBLIGATIONS OF THE BANK SPONSOR

The Bank sponsor will own, establish, operate, maintain, and provide for protection of the Bank in perpetuity. Operation and maintenance of the mitigation wetlands in the Bank are the responsibility of the Bank sponsor, and not of a permit holder who has purchased a credit.

The Bank sponsor is responsible for obtaining all appropriate local, county, state, and federal approvals and authorizations needed to construct and maintain the Bank. This agreement does not fulfill or substitute for any such needed approvals or authorizations.

This Agreement shall be binding on the Bank sponsor, its successors, and assigns.

IV. A. Construction

The Bank sponsor shall notify the MDEQ in writing 5 days before construction of the Bank is commenced, and undertake construction in conformity with the terms and conditions specified in the plans, specifications, and appendices that are part of this Agreement.

If, during construction of the Bank, a previously unknown or unreported material and/or regulated condition, such as an archaeological or historic site, threatened or endangered species, waste, or contamination, is encountered, the Bank sponsor shall discontinue work, notify the MDEQ, and initiate contact with appropriate local, state, and federal agencies to determine what response the condition requires. The required responses may include modification or termination of this Agreement.

Construction methods, including water control structures, berms, and tile breaking, must be in accordance with the U.S. Department of Agriculture, Natural Resources Conservation Service's Engineering Field Handbook and Conservation Practice Standards for Wetland Restoration.

The Bank sponsor shall notify the MDEQ in writing within 20 days after construction of the Bank is complete.

Modification or adjustment of any water control structures, or manipulation of hydrology, may be made only with the written approval of the MDEQ.

IV. B. Annual Reports

The Bank sponsor shall submit an annual report to the MDEQ beginning 1 year after this Agreement is established until 5 years after the wetlands are approved by the MDEQ as fully functional and all credits are used. The report shall include:

1. A description of the status of the Bank and condition of the wetlands in the Bank. This shall include a description of the work completed since the previous report and the extent of work anticipated in the next year, if any, and any alteration of, or damage to, the site(s), failure of structures, reduction in the size of the wetlands, or any other changes in that would threaten the integrity of the wetlands in the Bank.

2. A summary of the use and availability of credits in the Bank as outlined in IV. G.

3. A description of any long-term management activities conducted during the reporting period.

Annual reports shall cover the period of January 1 through December 31 and be submitted prior to January 31 of the following year. After annual reporting is discontinued, the Bank sponsor shall notify the MDEQ in writing of any alteration of, or damage to, the site, failure of structures, reduction in the size of the wetlands, or any other changes which would threaten the integrity of the wetlands in the Bank.

IV. C. Monitoring

After construction is complete, the Bank sponsor shall commence monitoring according to this Agreement at least 1 calendar year before certification of credits and shall continue monitoring until the wetlands are approved by the MDEQ as fully functional, in accordance with the following:

1. Measure inundation and saturation at all staff gauges, monitoring wells, and other stationary points to assess the periods and degree of inundation and saturation, according to the following schedule.

    a. Beginning a minimum of 12 months prior to certification that hydrology has been established:

        i. During the Growing Season: For forested, scrub-shrub, and wet meadow types, measure water levels at all staff gauges and monitoring wells beginning _____and continuing on a daily basis until it has been established that target water levels have been achieved for at least 15 percent of the growing season. For emergent types, measure water levels at all staff gauges and monitoring wells beginning _____ and continuing on a weekly basis until it has been established that target water levels have been achieved for at least 30 percent of the growing season. After this has been demonstrated, continue to measure water levels weekly.

        ii. Before and After the Growing Season: Measure water levels at all staff gauges and monitoring wells monthly.

        iii. Measure water levels at all staff gauges and monitoring wells on at least 3 occasions during the growing season within 12 hours of a ½-inch rain event.

b. After the first 50 percent of the credits are approved and until all remaining credits are approved, measure water levels at all staff gauges and monitoring wells weekly between April 1 and September 30.

Based on the conceptual design, the number and locations of monitoring wells and staff gauges are indicated in Appendix B. Hydrology shall be measured at sufficient sample points to accurately depict the water regime of the wetland types. Staff gauges shall be installed in open water areas so that depth can be provided for monitoring plots located in open water.

Provide daily and weekly data of inches of inundation and saturation, and if available, the associated hydrograph.

2. Sample vegetation in plots located along transects shown in Appendix B once between July 15 and August 31. The Bank sponsor shall determine the number of sample plots necessary within each wetland type by use of a species-area curve or other approach approved by the MDEQ. The species area curves used to determine the number of sample plots must be provided. The minimum number of sample plots for each wetland type shall be no fewer than 5. Sample plots shall be located on the sample transect at evenly spaced intervals or by another approach approved by the MDEQ. If additional or alternative sample transects are needed to sufficiently evaluate each wetland type, they must be approved in advance in writing by the MDEQ.

   The herbaceous layer (all non-woody plants and woody plants less than 3.2 feet in height) shall be measured with a 3.28 foot by 3.28 foot (one square meter) sample plot. The shrub and tree layer shall be measured with a 30 foot radius plot. The data recorded for each herbaceous layer sample plot shall include a list of all living plant species, and an estimate of percent cover in 5 percent intervals for each species recorded, bare ground, and open water relative to the total area of the plot. (The total percent cover for the plot should not exceed 100 percent.) The number and species of surviving, established, and free-to-grow trees and surviving, established, and free-to-grow shrubs shall be recorded for each 30 foot radius plot.

   Provide plot data, the total percent cover of wetland species per plot, and the average percent cover of wetland species per wetland type. Provide a list of all the plant species identified in the plots and otherwise observed during monitoring. Data for each species must include common name, scientific name, wetland indicator category from the U.S. Fish and Wildlife Service's "National List of Plant Species That Occur in Wetlands" for Region 3, and whether the species is considered native according to the Michigan Floristic Quality Assessment (Michigan Department of Natural Resources, 2001). Nomenclature shall follow Voss (1972, 1985, and 1996) or Gleason and Cronquist (1991).

   The locations of sample transects and plots should be identified in the monitoring report on a plan view showing the location of wetland types. Sample transects shall be staked at a frequency sufficient to locate the transect in the field.

3. Delineate any extensive (greater than 0.01 acre in size) open water areas, bare soil areas, areas dominated by invasive species, and areas without a predominance of wetland vegetation and provide their location on a plan view.

4. Document any sightings or evidence of wading birds, songbirds, waterfowl, amphibians, reptiles, and other animal use (lodges, nests, tracks, scat, etc.) within the wetland noted during monitoring. Note the number, type, date, and hour of the sightings and evidence.

5. Inspect the site during all monitoring visits and inspections for oil, grease, man-made debris, and all other contaminants and report findings. Rate (e.g., poor, fair, good, excellent) and describe the water clarity in the mitigation wetland.

6. Provide annual photographic documentation of the development of the Bank during vegetation sampling from permanent photo stations located within the Bank that show a panoramic view of the wetlands. In addition, photo stations shall at a minimum be located on both ends of each transect. Photos must be labeled with the location, date photographed, and direction.

7. Provide one-time photographic documentation of at least 6 inches of high quality soil, from the A horizon of an organic or loamy surface texture soil, across the site during construction.

8. Provide the number and type of habitat structures placed and representative photographs of each structure type.

9. Provide a written summary of data from previous monitoring periods and a discussion of changes or trends based on all monitoring including a calculation of the acres of each wetland type established.

10. Provide a written summary of all the problems that have been identified and potential corrective measures to address them.

11. The Bank sponsor shall conduct all other measurements needed to document that performance standards are met.

Four (4) copies of a monitoring report which compiles and summarizes all data collected during the monitoring period shall be submitted annually by the Bank sponsor. Monitoring reports shall cover the period of January 1 through December 31 and be submitted to the MDEQ prior to January 31 of the following year.

IV. D. Credit Certification

To obtain the approval of credits by the MDEQ, the Bank sponsor will assess the establishment of wetlands based on monitoring data and certify the extent to which the wetland area(s) within the Bank have achieved the performance standards set forth in Section III. The Bank sponsor's request for the approval of credits should be made between April 1 and August 31, except as otherwise acceptable to the MDEQ. The request for approval of credits must include the following information:

1. A comparison of the state of the wetland to the site development plan, the performance standards, and the baseline condition of the property, including a delineation of the boundary of the wetland site with a calculation of the actual acres of each wetland type.

2. A list of the quantity and type of credits for which the Bank sponsor requests approval.

3. In addition, as a condition for the approval of credits, the Bank sponsor shall provide:

a. A survey of the boundary of the wetland area by type prepared by a registered surveyor, including acreage amounts.
b. As-built plans for the site that include grades, surface water and groundwater elevations, and locations of all staff gauges and monitoring wells.
c. Financial assurances as outlined in Section IV. F.
d. The title policy.

The appropriate monitoring requirements must be met by the Bank sponsor before credits will be approved by the MDEQ.

IV. E. Long-term Management

The Bank sponsor shall provide site maintenance and monitoring of wetland conditions and undertake corrective action needed to fully establish and maintain in perpetuity wetland conditions in accordance with this Agreement. The long-term management plan for the Bank is described in Appendix C. Management of the Bank shall include, at a minimum, periodic inspection of the site, removal of trash and other debris, remediation for failure of structures or damage to the site, and site-specific management practices.

The Bank sponsor shall notify the MDEQ in writing of any alteration of, or damage to, the site, failure of structures, reduction in the size of the wetlands, or any other changes which would threaten the integrity of the wetlands in the Bank within 7 days of the identification of the problem.

The Bank sponsor may delegate performance of these tasks, but not the responsibility for them, to a qualified outside contractor. Transfer or sale of the property subject to this Agreement, or any part or interest therein other than a credit, may occur to a party willing and financially able to abide by the terms and conditions of this Agreement entered into by the MDEQ and the Bank sponsor/owner, but only with the prior written approval of the MDEQ. The Bank sponsor/owner shall seek and obtain prior written MDEQ approval before any such transfer or sale. Any transferee or new sponsor/owner shall agree in writing to the terms of this agreement with the MDEQ prior to such transfer or sale.

All land that is a part of the Bank, including associated upland areas, is protected from future development by a permanent conservation easement granted to the MDEQ. The cutting or alteration of vegetation, the placement of any structures, and the use of chemicals is prohibited in the conservation easement area except with the prior written approval of the MDEQ. The Bank sponsor/owner shall not grant additional easements, rights-of-way, or any other property interest within the conservation easement area without the written consent of the MDEQ.

The conservation easement boundary shall be demarcated by the placement of signage along the perimeter of the Bank. The signage shall be placed at an adequate frequency, visibility, and height for viewing, made of a suitable material to withstand climatic conditions, and should be replaced as needed. The signage shall include the following language:

Wetland Mitigation Bank Conservation Easement
No Mowing, Dumping, Construction, Dredging, or Cutting Allowed
Michigan Department of Environmental Quality

IV. F. Financial Assurance

The Bank sponsor shall provide financial assurance to ensure that the wetlands in the Bank are fully functional and maintained. The financial assurance shall be provided using the MDEQ model(s).

The Bank sponsor shall provide financial assurance to ensure that each site develops into a fully functioning wetland as defined by the performance standards and this Agreement, to provide for monitoring and inspection of the site, and to provide remediation for damage or loss of vegetation, damage or failure of structures, or other impacts to the site from events including, but not limited to, flood events, storm damage, or vandalism. The Bank sponsor will provide an acceptable form of surety in the amount of _____ for the fully functional financial assurance prior to the approval of any credits by the MDEQ. This amount shall be maintained from the time the first credits are approved until:

1. The wetland is determined to be fully functional by the MDEQ.
2. The site is self-sustaining and permanent, non-adjustable water control structures are installed.
3. An adequate stewardship agreement and/or fund between the Bank sponsor and a land conservancy or other long term management organization has been established that provides for the long term maintenance and management of the bank including inspection of the sites and any structures, repair or replacement of structures, control of invasive species, and any long-term management tasks. The Bank sponsor has identified _____ as an entity that can provide long-term stewardship of the Bank.
4. The MDEQ issues its written approval to release the funds.

When a condition arises requiring corrective action and the Bank sponsor has not undertaken these actions, the MDEQ shall notify the Bank sponsor in writing of the required actions. The Bank sponsor shall then provide to the MDEQ a plan and schedule for undertaking the actions identified by the MDEQ within 14 days of notification. In the event that the Bank sponsor does not submit a plan to the MDEQ, or does not commence the necessary corrective action within 30 days after the MDEQ has approved the plan, the MDEQ may, in its sole discretion and in addition to any other appropriate remedies that may be available to it, draw on the financial assurance and undertake the corrective actions.

Once credits have been approved, any action taken by the Bank sponsor to remediate or repair wetlands in the Bank shall be approved by the MDEQ in writing.

IV. G. Tracking and Reporting of Credits

Within 60 days of the sale of credits, the Bank sponsor shall report the number and type of credits sold, the sale price, the sale date, and the name and other identifying information of the purchaser to the MDEQ.

The Bank sponsor will implement a ledger system to track the availability, use, and sale of credits generated by the Bank. The specific items of information that will be recorded in the ledger and submitted in the annual report will include the following:

1. The number and type of credits proposed for the Bank.
2. The number and type of credits approved by the MDEQ for the Bank.
3. The total number and type of credits sold and/or used by the Bank sponsor.
4. For credit sale, information regarding:

a. The number and type of credits sold from the Bank.
b. The date the credits were sold from the Bank.
c. The amount of the sale per acre and type.
d. The name and other identifying information of the purchaser.
e. The permit number authorizing the use of credits by the purchaser, if applicable.

The ledger system is attached as Appendix D.

IV. H. Assumption of Liability

This Agreement does not authorize any injury to the property or rights of others. The Bank sponsor shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, employees, agents, and representatives for any and all claims, actions, or liability associated with the design, construction, authorization, performance, modification of the project, or modification or revocation of this Agreement. The Bank sponsor assumes all liability associated with the construction, operation, and maintenance of the Bank.

IV. I. Site Access

Employees and agents of the MDEQ shall have access to the Bank site for inspections.

IV. J. Contact Person

The point of contact on behalf of the Bank sponsor will be:

Name: _____
Address:_____
_____
Telephone: _____
Facsimile: _____
E-mail: _____

V. OBLIGATIONS OF THE PROPERTY OWNER

The property owner has authorized the Bank sponsor to establish, operate, maintain, and protect the Bank in perpetuity. The property owner shall abide by the terms and conditions specified in this banking agreement and associated conservation easement.

VI. OBLIGATIONS OF THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

VI. A. Approval of Credits

The MDEQ may approve credits from the Bank in accordance with the schedule outlined in Section III above. Credits may be approved in less than 1 acre increments down to one-tenth (0.1) of an acre. Areas within existing easements will not be eligible for credit approval.

If normal climatic conditions do not exist for a given monitoring period, the MDEQ may elect not to approve credits until such conditions occur. Normal climatic conditions shall be determined through use of the National Oceanic and Atmospheric Administration precipitation data and/or a recognized drought index.

Once the Bank sponsor forwards certification to the MDEQ pursuant to Section IV. D. above, the MDEQ shall approve or disapprove the certification of the credits within 60 days of receipt of the certification. The MDEQ may determine that credits cannot be approved because the requirements of this Agreement have not been met, the wetlands have not achieved design wetland functions, or because of a lack of adequate information to evaluate wetland functions. The MDEQ's evaluation may include an on-site inspection of the Bank. If the MDEQ determines that wetland conditions have been established in accordance with the Agreement and makes all other determinations required by the Rules, then the MDEQ shall issue a letter to the Bank sponsor approving the number and type of credits that are available for use and shall list the approved credits in a Bank registry.

Bank credit approval may be revoked by the MDEQ for substantial failure to comply with this Agreement, or for not taking corrective actions, or for making false statements in the wetland mitigation banking proposal, this Agreement, or in monitoring reports, or for any violations of law which demonstrate the unfitness of the Bank sponsor to operate the Bank. The Bank sponsor shall receive written notice of a proposed revocation of credits, and shall have 30 days to respond prior to revocation of credits.

Entry into this Agreement and/or approval of credits does not constitute any representation or warranty that the MDEQ will authorize any project to use the credits. The determination whether credits from the Bank may be used to meet the requirements of Part 303 will be made on a case–by-case basis in response to permit applications and in accordance with applicable rules. If the Bank does not meet the performance standards in this Agreement at the time a permit applicant requests use of credits from the Bank, the MDEQ will not consider authorizing use of the credits.

VI. B. Registry

The MDEQ shall maintain a registry of established wetland mitigation banks and approved credits to track the generation and use of credits and to provide information to the public regarding the availability of credits.

VI. C. Contact Information

The point of contact on behalf of the MDEQ for the Bank is:

Wetlands, Lakes and Streams Unit
Land and Water Management Division
Michigan Department of Environmental Quality
P.O. Box 30458
Lansing, Michigan 48909-7958
517-373-1170

VII. JOINT OBLIGATIONS

VII. A. Amendments

Either the Bank sponsor or the MDEQ may propose amendments to this Agreement. All amendments must be agreed to by both parties in writing. Amendments shall be submitted in writing to the other party for approval. The party receiving the proposed amendment will review and provide a written response within 90 days.

VII. B. Dispute Resolution

The Bank sponsor and the MDEQ agree to pursue timely and good faith negotiations to resolve any dispute that arises out of this Agreement.

VII. C. Jurisdiction

In the event of the inability of the parties to resolve a dispute arising out of this Agreement in the manner described in Paragraph VI. B, either party may file an action in a court of competent jurisdiction to enforce the Agreement.

VII. D. Severability

In the event any one or more of the provisions contained in this Agreement 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 Agreement shall be construed as if it contained legal provisions(s) comparable to the rejected provision(s) but that accomplish the legitimate objectives of any such rejected provision(s).

The undersigned certify they are fully authorized by the party they represent to enter into this Agreement and to legally bind that party to this Agreement.

BANK SPONSOR:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

_____
Organization Name (if signing on behalf of an organization)

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

IF SIGNING ON BEHALF OF AN ORGANIZATION, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__

by _____, (name[s]) the _____, (title)

of _____, (Organization name) a _____, (state) corporation, partnership, municipality, or limited liability company (*circle one),* on behalf of the organization.

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

PROPERTY OWNER:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

_____
Organization Name (if signing on behalf of an organization)

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

IF SIGNING ON BEHALF OF AN ORGANIZATION, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__

by _____, (name[s]) the _____, (title)

of _____, (Organization name) a _____, (state) corporation, partnership, municipality, or limited liability company (*circle one),* on behalf of the organization.

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

LONG TERM MANAGEMENT:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

_____
Organization Name (if signing on behalf of an organization)

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

IF SIGNING ON BEHALF OF AN ORGANIZATION, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__

by _____, (name[s]) the _____, (title)

of _____, (Organization name) a _____, (state) corporation, partnership, municipality, or limited liability company (*circle one),* on behalf of the organization.

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

_____
Organization Name (if signing on behalf of an organization)

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

IF SIGNING ON BEHALF OF AN ORGANIZATION, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__

by _____, (name[s]) the _____, (title)

of _____, (Organization name) a _____, (state) corporation, partnership, municipality, or limited liability company (*circle one),* on behalf of the organization.

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

Appendix A: Site Location Map and Baseline Conditions

Appendix B: Site Development Plan

Appendix C: Long-term Management Plan

The Bank sponsor shall provide site maintenance and monitoring of wetland conditions and undertake corrective action needed to fully establish and maintain in perpetuity the wetland conditions in accordance with this Agreement. Management of the Bank shall include periodic inspection of the site, removal of trash and other debris or damage to the site. Trash and other debris will be removed from the Bank on an annual basis. Any mechanized removal will require prior written approval of the MDEQ.

The Bank sponsor shall provide monitoring and control of invasive species in and adjacent to the Bank to fully establish and maintain in perpetuity the wetland conditions in accordance with this Agreement. The removal and control of invasive species in the Bank shall be handled by hand removal, the use of select U.S. Environmental Protection Agency and Michigan Department of Agriculture approved chemicals, or other method approved by the MDEQ. Hand removal will be the preferred method. Chemicals will only be used after consultation and approval of the MDEQ, and obtainment of any applicable permits.

Beginning 5 years after the wetlands have been approved as fully-functional by the MDEQ and all credits have been used, the Bank sponsor will have the site inspected annually by a qualified individual and a brief report will be submitted to the MDEQ. The report will verify that there have been no significant changes to the site, that influences from adjacent properties are not present, and that wetland conditions persist at the site. If remedial actions are necessary to maintain the site as a wetland, the Bank sponsor will be responsible for completing such actions.

Because the control structure is an intricate part of the Bank design and function, it will be inspected annually and following major storm events.

Other Site Specific Plans: _____

_____

_____

_____

_____

_____

_____

_____

_____

Appendix D: Accounting Procedures

A hard copy of each transaction and the Bank balance of wetland credits will be maintained by the Bank sponsor as well as an electronic registry. The Bank sponsor shall report the sale and per credit sale price, in writing, to the MDEQ within 60 days of the sale of approved mitigation bank credits. The report of sale shall include an updated wetland credit-tracking ledger that depicts allocation of wetland mitigation credits and a balance sheet, as shown below.

Wetland Mitigation Bank Credit Sales Ledger

Date	Purchaser	Authorizing Permit No.	Credits Sold	Type	Amount/Acre	Total Amount
			0		$0.00	$0.00
			0		$0.00	$0.00
TOTALS			**0**		**$0.00**	**$0.00**

Wetland Mitigation Bank Credit Balance Sheet

Type	Proposed Credits	Approved Credits	Sold Credits	Remaining Credits
Wet Prairie		0	0	0
Emergent		0	0	0
Scrub-shrub		0	0	0
Forested		0	0	0
TOTALS	**0.00**	**0**	**0**	**0**

Appendix E: Disclosure Statement

The undersigned certifies that there are no easements, encumbrances, or transfers of the property, in whole or in part, not disclosed in the title search and title insurance.

Print Name, Title, and Organization_____

Signed By_____ **Date**_____

Property Owner