

# WELCOME TO THE OMAHA DISTRICT!



This Sponsor packet (divided into 2 parts) is designed to guide you as you navigate the Mitigation Banking or In Lieu Fee Programs within the Omaha District. **BUT** the Omaha District staff will assist you if you have questions or should you need further assistance.



**DID YOU KNOW?** The six states of the Omaha District include a variety of ecosystems ranging from prairies to mountains.

## **Sponsor Packet - Part 1**

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### **Phone Numbers by State:**

COLORADO: 303-979-4120

**MONTANA: 406-441-1375**

NEBRASKA: 402-896-0896

**NORTH DAKOTA: 701-255-0015**

SOUTH DAKOTA: 605-224-8531

**WYOMING: 307-772-2300**

MITIGATION COORDINATOR/DISTRICT OFFICE: 402-995-2463

## Definitions unique to the Omaha District

### GENERAL

**Active Bank:** A Bank is considered active when the Instrument/Agreement is signed by the Sponsor and the Corps. Credits (pre-certified or certified) can be sold from an Active Bank once the financial and site protection obligations have been met.

**Bank Operational Life:** The period during which the terms and conditions of the enabling Instrument/Agreement are applicable and Sponsor(s) of the Instrument/Agreement are responsible for carrying out its provisions. With the exception of arrangements required for the long-term management and protection of the aquatic resource(s) in the Bank, the Bank's operational life terminates at the point when:

- (1) Bank credits have been exhausted or banking activity is voluntarily terminated<sup>1</sup> with written notice by the Sponsor provided to the Corps and any other signatories to the Agreement, **AND**
- (2) It has been determined by the Corps that the aquatic resource(s) fully debited from the Bank are functionally mature (i.e., self-sustainable).

**Long Term Management (LTM) Phase:** LTM Phase begins once the Bank's Operational Life has been terminated. As part of the termination of the Bank, a LTM and Long Term Plan needs to be approved to the Corps in consultation with the Interagency Team (IRT). At this time, the Long Term Management funds would become available.

### TYPES OF CREDITS

**1) Advance Credits** – For In Lieu Fee Programs (ILF) ONLY. Defined in the 2008 Mitigation Rule (Rule)<sup>2</sup>.

**2) Pre-certified credits** are the credits the Omaha District will release after an Active Bank Site has secured their financial and site protection obligations, but performance standards have not yet been met. No more than 30% of the Bank's approved proposed credits may be released/sold as pre-certified credits. Some states will allow all 30% released upfront while other states may release incrementally.

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<sup>1</sup> In other words, no more credits will be sold.

<sup>2</sup> Advance credits means any credits of an approved in-lieu fee program that are available for sale prior to being fulfilled in accordance with an approved mitigation project plan. Advance credit sales require an approved in-lieu fee program instrument that meets all applicable requirements including a specific allocation of advance credits, by service area, where applicable. The instrument must also contain a schedule for fulfillment of advance credit sales.

Pre-certified credits have a temporal loss<sup>3</sup> component and typically have a ratio<sup>4</sup> associated with them as the site is developing (per approved performance standards). Each state within the Omaha District will determine appropriate ratios based on the aquatic resources. NOTES: (1) Protection/preservation credits, which by nature are already certified, do not fall within the 30% pre-certified limit. (2) For consistency in Colorado, the use of 'administration credits' and the ratio associated with it will be applied.

**3) Certified Credits** are credits that have met performance measures. Performance measures are “met” when it can be demonstrated the site is achieving that measure long enough to suggest the site will continue to meet that measure after monitoring requirements have ended. NOTE: Performance measures can be achieved incrementally.

**4) Bulk Credits (new)** are credits that an applicant can purchase in excess of current need, knowing they will be required to fulfill compensatory mitigation in the near future. RIBITS will reflect the bulk purchase and track as the credits are used. Purchasing bulk credits does not guarantee a permit as each 404 application must go through the permitting process. NOTE: For the Omaha District, an applicant cannot purchase bulk advance credits from an ILF Program.

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<sup>3</sup> Definition on page 19672 of the Rule “Temporal loss is the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site. Higher compensation ratios may be required to compensate for temporal loss. ...”

<sup>4</sup> Page 19675 of Rule “(2) The district engineer must require a mitigation ratio greater than one-to-one where necessary to account for the method of compensatory mitigation (e.g., preservation), the likelihood of success, ..., temporal losses of aquatic resource functions, the difficulty of restoring ....”



## Omaha District Regulatory Program General Approval Process for Mitigation Banks

**Notice of Intent** – Mitigation bank sponsor (Sponsor)\* contacts the Corps ^ regarding their intention to submit a Prospectus and/or organize a meeting to brief the Interagency Review Team (IRT). The Corps will contact the IRT to let them know of the sponsor's intent and, when appropriate, set a date/time for a briefing by the Sponsor.

### PHASE I: PRELIMINARY REVIEW

**STEP 1:** (Optional) Sponsor/agent submits a proposed draft Prospectus. Corps will review and answer questions from the Sponsor/agent. It is optional whether the Corps involves IRT members in this phase.

**STEP 2: Complete Draft Prospectus** – Sponsor will provide a proposed draft Prospectus to the Chair and/or Corps' Mitigation Coordinator. The Corps will work with the sponsor until there is enough information for the document to be considered complete and ready for a Public Notice.

### PHASE II: PROSPECTUS

**STEP 3: Public Notice** –The Corps accepts comments from the IRT and the public during this 30 day period.

**STEP 4:** Corps will provide the sponsor and the IRT copies of the public notice comments.

**STEP 5:** The Corps will provide the sponsor with an initial evaluation letter regarding any information still needed or if the sponsor may proceed with a proposed Draft Instrument.

**STEP 6:** Sponsor prepares and submits proposed Draft Instrument after working through public notice comments.

### PHASE III: DRAFT INSTRUMENT

**STEP 7:** Based on the Public Notice comments and evaluation letter, the sponsor will submit a proposed draft Instrument. The Corps will work with the sponsor until there is enough information for the document to be considered complete.

**STEP 8:** A complete draft Instrument will be submitted to the IRT and Corps for review. This is also when any outstanding issues are addressed. The Corps will make the final decision if there are disputes on issues.

### PHASE IV: FINAL INSTRUMENT

**STEP 9:** Sponsor will prepare a Final Instrument. Corps will take one final review. If no significant issues have been found, the Corps will also submit to their Office of Counsel for review who will determine if the document is legally sufficient.

**STEP 10:** The Corps will notify the IRT members of intent to approve/no approve the Instrument. IRT will have time to initiate the dispute resolution process.

**STEP 11: Signatures** – Once the Corps has notified the Sponsor they can gather agency signatures; the (actual) sponsor will sign the final draft Instrument then submit to the IRT agencies for signatures.

**STEP 12: Packet to the Corps' District Engineer (DE)** - Once the Mitigation Coordinator receives the fully signed draft Instrument, a Decision Packet will be completed. The final documents will be routed internally for final DE or designee's signature and authorization.

**STEP 13: Bank becomes Active** - Once the DE or designee has signed the bank's Instrument it is active. Mitigation Coordinator will notify the Chair that the Instrument has been signed and the bank is now active. The Chair will notify the IRT members and the Sponsor. For pre-certified credits to be released in addition to the signed Instrument, a sponsor needs to provide financial assurances and site protection.

\*The term sponsor includes the actual mitigation bank sponsor or the consultant unless specified.

^ In cases where there are conservation credits, then the USFWS will co-lead the process.

## '12 COMPONENTS' FROM THE RULE

**Components of a mitigation plan** [Page 19677 (c)]: "...**(iii)** Mitigation banks and in-lieu fee programs must prepare a mitigation plan including the items in paragraphs (c)(2) through (c)(14) of this section for each separate compensatory mitigation project site. For mitigation banks and in lieu fee programs, the preparation and approval process for mitigation plans is described in § 332.8..."

**(c)(2) Objectives.** A description of the resource type(s) & amount(s) that will be provided, the method of compensation (i.e., restoration, establishment, enhancement, and/or preservation), and the manner in which the resource functions of the compensatory mitigation project will address the needs of the watershed, ecoregion, physiographic province, or other geographic area of interest.

**(c)(3) Site selection.** A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site. [See § 332.3(d)]

**(c)(4) Site protection instrument.** A description of the legal arrangements and instrument, including site ownership that will be used to ensure the long-term protection of the compensatory mitigation project site. [See § 332.7(a)]

**(c)(5) Baseline information.** A description of the ecological characteristics of the proposed compensatory mitigation project site and, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site. A prospective permittee planning to secure credits from an approved mitigation bank or in-lieu fee program only needs to provide baseline information about the impact site, not the mitigation bank or in-lieu fee project site.

**(c)(6) Determination of credits.** A description of the number of credits to be provided, including a brief explanation of the rationale for this determination. [See § 332.3(f)] **(i)** For permittee-responsible mitigation, this should include an explanation of how the compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity. **(ii)** For permittees intending to secure credits from an approved mitigation bank or in-lieu fee program, it should include the number and resource type of credits to be secured and how these were determined.

**(c)(7) Mitigation work plan.** Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures. For stream compensatory mitigation projects, the mitigation work plan may also include other relevant information, such as plan-form geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.

**(c)(8) Maintenance plan.** A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.

**(c)(9) Performance standards.** Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives. [See § 332.5]

**(c)(10) Monitoring requirements.** A description 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 district engineer must be included. [See § 332.6]

**(c)(11) Long-term management plan.** A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management. [See § 332.7(d)]

**(c)(12) Adaptive management plan.** A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect compensatory mitigation success. [See § 332.7(c)]

**(c)(13) Financial assurances.** A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards [See § 332.3(n)]

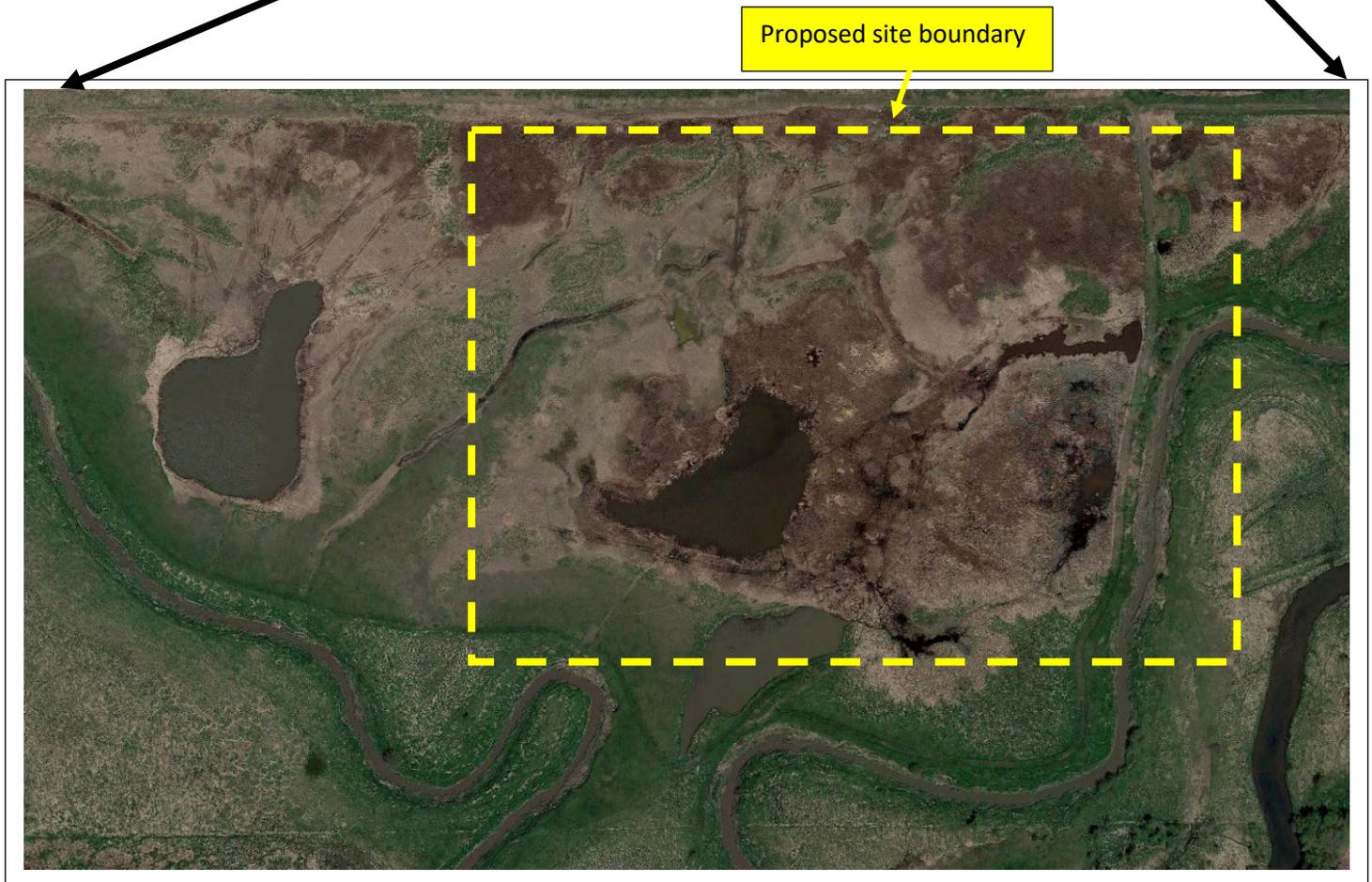
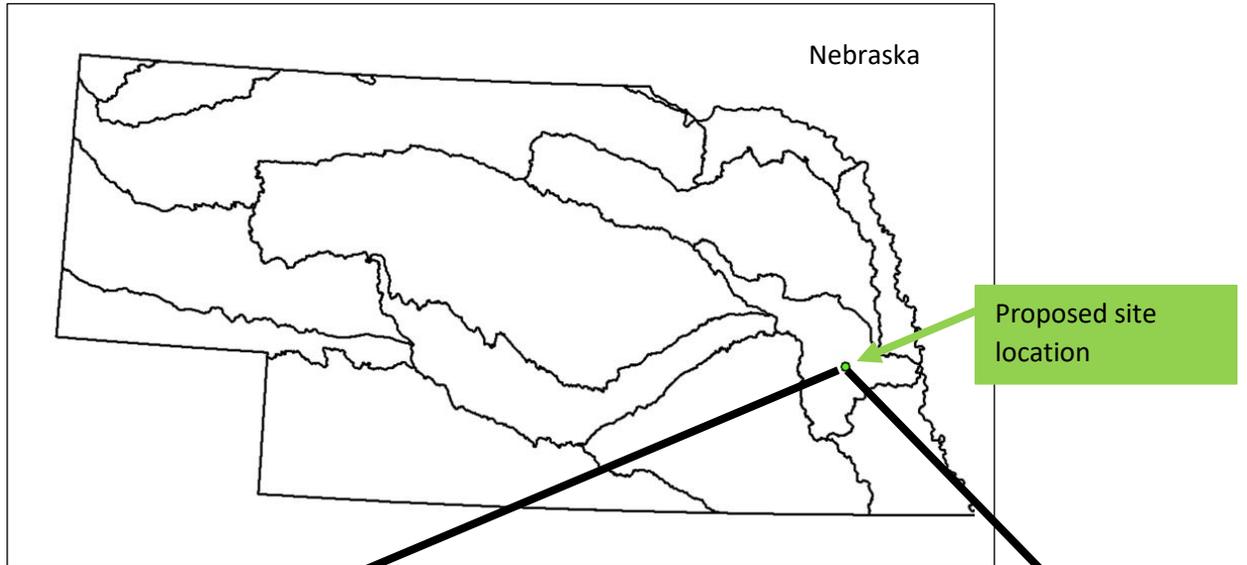
**Other information.** The district engineer may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the compensatory mitigation project.

### Example location map

**NAME:** Used portion of Jack Sinn State Wildlife Management area for this example

**LAT/LONG:** 41.043789, -96.577405

**STATE:** Nebraska



## - Omaha District - Prospectus Outline

**Prospectus:** [Page 19681(d)] ‘The prospectus must provide a summary of the information regarding the proposed mitigation bank or in-lieu fee program, at a sufficient level of detail to support informed public and IRT comment...’ A complete prospectus includes, at a minimum, the following information:

**Title Page** should include (but not limited to):

Identify the Proposed Bank Site name, the Bank Sponsor, the Landowner, the Agent, and the Date (include day, month, and year)

### SECTION 1: Objective

For the purpose of a Bank, identify the proposed mitigation method(s), aquatic resource types and acres of each type to be restored, rehabilitated, enhanced, established, and/or preserved within the bank. Also, briefly describe the acreage of the proposed area and how it will be modified and protected to accomplish the proposed compensatory mitigation. If conservation banking is also proposed, provide similar information for those resources.

*Example: The proposed bank will consist of restoration and enhancement of approximately 20 acres of wetlands. Restoration areas (10 ac) will be excavated to remove silt. These wetlands were classified as PEMCs. Enhancement areas will include minor excavation with a focus on enhancing vegetation to a more native complex and will remain temporally flooded (PEMA) seasonal wetlands.*

### SECTION 2: Established and operated

Briefly describe how the site will be established, operated and maintained. This should include how the site was selected and why it will be successful. Identify the work necessary to accomplish site restoration/enhancement and describe how the proposed work will meet identified goals and objectives. Include anything unique to the site or if there will be berms/structures, etc. Describe the proposed ownership arrangements and long-term management strategy, and any phases planned (include description of phases, boundaries, and target habitat/species). Provide a general location map and address or location information latitude/longitude, and PLSS) of the proposed bank property. Provide an accurate map of the proposed bank boundaries on a current aerial image showing surrounding environment, surface hydrology, properties and land uses. Identify and describe access to (and within, as necessary) the proposed bank property as well as any features that may be a benefit or detriment to the purposes of the bank, such as facilities, fences, wells, diversions, dams, hunting camps, etc.

Note: the Omaha District’s goal is to have self-sustaining sites so that long-term maintenance is not needed, but should it be determined a berm/structure is needed, briefly describe the structure, the need, the long-term aspects, and show its proposed location within the bank boundaries. Identify any other significant activities that may result in the discharge of fill.

### SECTION 3: Proposed service area

Some of the states within the Omaha District have established service areas. In those cases, briefly describe the service area and note that it is ‘pre-set’. IF proposing something different than ‘pre-set’ service areas, please describe, along with a map, what is being proposed and provide a clear explanation for consideration. The rest of the states are either using a HUC/EcoRegion level IV approach or some other custom method. It is recommended to discuss with the state’s Chair before submitting a Prospectus.

## **SECTION 4: Need and Feasibility**

Briefly describe the need for compensatory mitigation (credits) at the proposed location and the likelihood of mitigation success. This section should utilize parts of Section 2. The discussion should include how the site will be self-sustaining after success criteria are met with the use of proven designs and techniques, etc. Discuss potential conflicts and compatibility with any conservation plans, other land use plans, policies, or regulations. Identify all known encumbrances, including mortgages, liens, right-of-ways, servitudes, covenants, easements, etc. A title report may be provided or one may be requested by the Corps.

## **SECTION 5: Ownership, Long-Term Manager**

Provide contact information and background for the landowner (identify surface and subsurface (mineral) ownership) and Sponsor (not always the same). Describe the process for selection of a long-term manager. If the long-term manager will not be selected until closer to the time of Site closure or has not been assigned at the time of submittal, provide a timeline showing when a selection will occur.

## **SECTION 6: Qualifications of sponsor**

Describe the mitigation banking experience of the Sponsor. If a Sponsor has limited experience with mitigation banking, or mitigation banking within the Omaha District, Corps staff would spend more time describing the process and timelines compared to a Sponsor with more experience within the district. If a Sponsor has already worked on Banks but not in the Omaha District, please provide an example of previous site(s) with a brief description/state.

## **SECTION 7: Ecological suitability**

This section might seem similar to Section 4, except this section requires a brief discussion on the ecological aspects of the site to achieve the objectives. This should include a brief discussion on the physical, chemical and biological characteristics of the site (pre and post mitigation).

Things to consider:

- \* Describe ecological suitability of the site to achieve the objectives of the mitigation bank (e.g., watershed/hydrology analysis, soils, topography, compatibility with adjacent land uses, watershed management plans).
- \* Describe the presence of any special or unique resources such as threatened, endangered or species of concern or habitats.
- \* Describe the presence of noxious and invasive species, abundance of non-native vegetation, as well as past and present land uses including grazing.
- \* Describe any existing hydrologic disturbances on and adjacent to the site over which the sponsor may or may not control.
- \* Describe water source(s) and loss(es) (precipitation, surface runoff, groundwater, and stream).

## **SECTION 8: Water Rights**

Provide brief description of what kind of water right is needed and assurance that there is sufficient water rights to support the long-term sustainability of the site. Water rights in some states within the Omaha District are determined by the “doctrine of prior appropriation” while other states are govern by “First in Time, First in Right”. It is important be familiar with the water rights policies of the state in which the proposed Site is located. Official external review of water needs and rights may be requested by the Corps.

**- Omaha District -  
Draft Instrument outline**

**Draft Instrument:** [Page 19682(6)] ‘...After considering comments from the district engineer, the IRT, and the public, if the sponsor chooses to proceed with establishment of the mitigation bank or in-lieu fee program, he must prepare a draft instrument and submit it to the district engineer...’

**Title Page:** Title of the Draft Mitigation Bank Instrument, Sponsor, and Date (include day, month, and year)

**Approvals:** The Signature Pages should go after the cover page once all parties have signed and the project has been approved (considered Active).

**SECTION 1a: Introduction**

a. Location

Describe the location and acreage of the site, provide latitude/longitude or similar legal description. Map(s) should show the general location within the state and a specific site location map. Additional maps should be located in an appendix. (See Sample location map.)

b. Sponsor

Provide a brief write up about the Sponsor, including type of business (can add on to the write up from the Prospectus). Is there an LLC or similar and how it was established. Determine who the main point(s) of contact will be for the Bank. If the Sponsor is not the landowner, include the landowner’s information as well.

c. Interagency Review Team:

Include a list of the agencies and their office/unit. Do not include individuals’ names as those can change.

**SECTION 1b: Authorities** (Recommended but not required by the Rule)

a. Federal:

b. State:

**SECTION 2: Establishment**

a. Proposed service area.

A description of the proposed geographic service area of the Mitigation Bank (map in Appendix). The basis for the proposed service area must be documented in this document and can be an expansion of Section 3 of the Prospectus document. Make sure to include any new information requested by the Corps and the Inter Agency Review Team’s (IRT) review.

b. Accounting procedures

Even though the Corps now has a credit tracking database (RIBITS) which is the official accounting system for tracking Banking and ILF credits, the Rule requires the Sponsor to establish provisions on

how they will establish and maintain their ledgers. These ledgers will be used to verify that all transactions have been recorded in RIBITS.

c. Legal responsibility.

A provision stating that legal responsibility for providing the compensatory mitigation lies with the Sponsor once a permittee secures credits from the sponsor.

d. Default and closure provisions

NOTES: **(1)** A Bank's operational life terminates at the point when: Bank credits have been exhausted or banking activity is voluntarily terminated with written notice by the Sponsor provided to the Corps and any other signatories to the Instrument/Agreement, AND it has been determined by the Corps that the aquatic resource(s) fully debited from the Bank are functionally mature (i.e., self-sustainable). **(2)** Once (1) conditions have been met, then and only then can the site enter long term management and utilize associated funds.

e. Reporting protocols and any other information deemed necessary by the district engineer.

### SECTION 3: Mitigation Plan (12 components)

a. Objective:

Name or describe the kind of mitigation that is being proposed. Is it restoration, enhancement, establishment and/or rehabilitation, or a combination (describe)? Describe if it is wetland or stream mitigation or a combination.

b. Site Selection:

Briefly explain how this Bank Site was chosen for consideration.

c. Site Protection:

Describe any legal arrangements. The Rule provides several options. Provide which option the Sponsor is proposing for this particular Bank Site.

d. Baseline Information:

Describe the site as it is before the proposed mitigation work is conducted (current conditions). Include the following (but not limited to) as part of the discussion:

- \* Historic, existing, and source of **hydrology**  
(Classify hydrology regime(s). Example: slope, riverine, depressional etc.).  
Note: In states where HGM is used, please include any additional HGM classification
- \* Historic and existing **plant** communities  
(Describe how communities were determined)
- \* Delineation of the proposed site
- \* **Soil conditions** (normal or disturbed, explain)
- \* Site characteristics appropriate for the type of resources being proposed.
- \* If project will require a 404 permit, provide information about the impacted area

e. Determination of Credits & Credit Release Schedule:

Up to 30% of the proposed credit number will be released as pre-certified credits (admin credits in CO) with the remaining credits released (certified credits) as performance measures are met and sustainable.

f. Mitigation Work Plan:

Describe, in detail, the proposed mitigation work. Things to consider when writing up this section but not limited to the following:

- Provide detailed specifications and work description
- Provide geographic boundaries (legal and map depiction)
- Construction method and timing
- Source(s) of water, including connections to existing waters and uplands;
- Methods for establishing the desired plant community; plans to control invasive plant species;
- The grading plan, including elevations and slopes of the substrate;
- Soil management; and erosion control measures.
- For stream compensatory mitigation projects, the mitigation work plan should also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.”

g. Maintenance Plan:

Describe how the site will be maintained to ensure proper function during the timeframe between full credit release and the long-term management phase. This plan should be specific and detail expected costs.

h. Performance Standards:

In detail, describe how proposed performance standards are measureable and verifiable. If using an approved assessment method, such as HGM, can utilize a more abbreviated write up but needs to clearly state which assessment method and year.

i. Monitoring Requirements:

Describe how and when the Performance Standards will be measured and completed.

j. Long-term Management Plan:

Describe how the mitigation site will be managed in-perpetuity after the maintenance period is completed.

k. Adaptive Management Plan:

Describe conditions which would initiate the implementation of identified adaptive management strategies.

l. Financial Assurances:

Which option the Sponsor is proposing? Provide an example in an appendix.

## SECTION 4: Other Provisions

### a. Force Majeure

**Example language for Force Majeure:** Unexpected and disruptive forces that are beyond what would be considered as normal or natural disturbances. Typically, damages caused by floods, droughts, muskrat/geese and storms are not considered disruptive forces, but will be determined on a case-by-case basis by the Project Manager with concurrence from appropriate District personnel.

### b. Dispute Resolution

### c. Validity, Modification and termination of the Instrument/Agreement.

### d. Disclaimer/Sunset Clause:

**Example language for disclaimer:** This Instrument/Agreement does not in any manner affect statutory authorities and responsibilities of the signatory parties. The district engineer's approval of this Instrument/Agreement constitutes the regulatory approval required for the Instrument/Agreement to be used for providing compensatory mitigation for the Department of the Army permits pursuant to 33 C.F.R. 332.8 (a)(1). This Instrument/Agreement is not a contract between the Sponsor or Property Owner and U.S. Army Corps of Engineers (Corps) or any other federal agency. Any dispute arising under this Instrument/Agreement will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument/Agreement to the contrary.

**Example language for sunset clause:** Once the Instrument/Agreement has been signed by the Sponsor and approved by the district engineer, the Sponsor has one year to provide the site protection and financial assurances otherwise the Instrument/Agreement will be terminated. NOTE: credits will not be released until Instrument/Agreement is signed, the site is secured and the appropriate financial assurances have been established and filed appropriately.

## SECTION 5: References (optional)

List any reports or scientific articles used within the Instrument/Agreement.

## SECTION 6: Appendices

Note: Write-ups should still be incorporated into the document. Appendices should include, but not be limited to the following:

- Maps (include maps of projected resource types and credit generating areas).
- Technical reports from Prospectus, as needed (water rights verification, environmental clearance, etc.
- Baseline reports,
- Detailed construction plans
- Real estate documents
- Financial assurance documents

**- Omaha District -  
Final Instrument notes**

**Final Instrument:** (Pg 19683(8)) “The sponsor must submit a final instrument to the district engineer for approval, with supporting documentation that explains how the final instrument addresses the comments provided by the IRT....”

Before the Draft Instrument is considered the Final Instrument, it must:

- Describe the project sufficiently so all parties understand what is to be accomplished.
- Answer pertinent public and IRT comments and concerns to the Corps’ satisfaction.
- Be found sufficient by the Corps’ Office of Counsel.

If the Instrument is determined by the Corps to be the “Final”, the Corps will notify the IRT and Sponsor of its intent to sign. The Sponsor will provide final copies to the IRT members.

Within 15 days of receipt of the Final Instrument and Corps’ notice of intent to sign, any IRT member may initiate the dispute resolution process<sup>1</sup>.

**Signature Pages:** The Omaha District has a template for the Signature Page language.

- The Corps must receive all the signed signature pages from the IRT and the Sponsor. After all the signature pages have been received, the Corps will be the final signature which activates the Instrument/Agreement.
- All signatures can be on one (1) page OR each IRT agency may have a separate page (still using the template language) The Sponsor and the Corps **must** be on the same page.

**The very last thing:**

The Chair for the project will notify the Sponsor that the Corps has signed and will provide a copy of the signature page to the Sponsor. The Mitigation Coordinator will update RIBITS.

**The Bank is now Active!**

**Note:** pre-certified credits/Administration credits (in CO) will not be released until site protection and financial assurances are also in place.

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<sup>1</sup> “(e) Dispute resolution process. (1) Within 15 days of receipt of the district engineer’s notification of intent to approve an instrument or amendment, the Regional Administrator of the U.S. EPA, the Regional Director of the U.S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service, and/or other senior officials of agencies represented on the IRT may notify the district engineer and other IRT members by letter if they object to the approval of the proposed final instrument or amendment. This letter must include an explanation of the basis for the objection and, where feasible, offer recommendations for resolving the objections. If the district engineer does not receive any objections within this time period, he/she may proceed to final action on the instrument or amendment.”

# Mitigation Bank Signature Page Template

(Template language and Sponsor/Corps signatures need to be on the same page)

This agreement, entered into by the **Name of Bank/Sponsor/landowner**, and the US Army Corps of Engineers (COE), is for the purpose of establishing the **Name Mitigation Bank** (Bank). The Bank will be used to mitigate for unavoidable **wetland and stream** impacts approved through the COE, who is responsible for administering Section 404 of the Clean Water Act. The creation, operation, and use of the Bank will be in accordance with the Bank name Bank instrument, attached to this agreement.

The Interagency Review Team (IRT) that provided technical support to the Corps includes the following agencies: **[LIST OUT IRT AGENCIES (not individuals)]**, etc. These agencies sign in support of the creation of this Mitigation Bank.

The objective of the Bank is to **list type of compensation approximately # acres and/or # linear feet**. The goal of the bank is to create **Name Cowardin classification and function assessment description**. Water regime modifiers are **list modifiers**. **May add a brief description of the project here as long as all information and signature remain on this page.**

The primary geographical service area for this bank will encompass portions of **list watershed and Hydrologic Unit(s) #**. At the discretion of the COE, credits may be approved outside of the primary geographic service area.

Corps approval of this Instrument constitutes the regulatory approval required for the **Bank/Sponsor/landowner** 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 Owners and the Corps or any other agency of state or federal government which may be signatory hereto. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owners for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

\_\_\_\_\_  
**{Bank Sponsor, company/LLC name}**

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
**Full Name**, Chief, Operations Division,  
U.S. Army Corps of Engineers, Omaha District

Date Signed: \_\_\_\_\_

When using for IRT agencies, delete the Sponsor and Corps' signature lines and replace with the following:

\_\_\_\_\_  
**AGENCY NAME, Region #**

Date Signed: \_\_\_\_\_