



## **Umbrella Banking Agreement – Second Amendment**

Papio-Missouri River Natural Resources  
Omaha, Nebraska

*March 2011*

HDR Project No. 00000000092530

## **FOREWORD**

This is the second amendment of the Papio-Missouri River Natural Resources District (PMRNRD) Final Banking Instrument (hereafter entitled Umbrella Banking Agreement). The purpose of this amendment is to include the ability to develop stream mitigation banks under the Umbrella Agreement. In addition, this amendment updates the Umbrella Agreement based on the guidance set forth in the Compensatory Mitigation for Losses of Aquatic Resources: Final Rule (33 CFR Parts 325 and 332, April 10, 2008). All procedures for the establishment of mitigation banks shall adhere to the Final Rule. The original Banking Instrument, dated April 21, 2000, was executed by the U.S. Army Corps of Engineers, Omaha District, Nebraska Regulatory Office (Corps) on December 17, 2000. The first amendment to the Banking Instrument was executed by the Corps on April 16, 2009.

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- EXHIBIT B Crediting and Debiting Procedure for the Bank
- EXHIBIT C Financial Assurance
- EXHIBIT D GSA Checklist
- EXHIBIT E Nebraska Wetland Subclasses
- EXHIBIT F Bank Closure Plan

## Part I, Preamble

This Umbrella Banking Agreement pertains to the establishment, use, operation, and maintenance of mitigation banks developed and managed by the Papio-Missouri River Natural Resources District (PMRNRD). A mitigation bank is defined as "a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by Department of Army permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument."<sup>1</sup>

This Banking Agreement is made and entered into by and among:

- The PMRNRD (the Bank Sponsor),
- The U.S. Army Corps of Engineers (Corps),
- The Natural Resources Conservation Service (NRCS),
- The Nebraska Department of Environmental Quality (NDEQ),
- The Nebraska Game and Parks Commission (NGPC),
- The U.S. Environmental Protection Agency (EPA),
- The U.S. Fish and Wildlife Service (FWS), and

with reference to the following:

### I. PREAMBLE

**A. Purpose:** The purpose of this Banking Agreement is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of each bank. Each bank established under this agreement will be used for compensatory mitigation of unavoidable adverse impacts on waters of the United States from activities including those under:

- Section 404 of the Clean Water Act,
- Section 10 of the Rivers and Harbors Act,
- “Swampbuster” provisions of the Food Security Act,
- Other Federal programs, and
- State wetland regulatory programs, provided that such activities have met all applicable requirements and are authorized by the appropriate authority.

The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the U.S. authorized by Section 404 permits. In some cases, mitigation banks may be environmentally preferable solutions because they usually involve consolidating compensatory mitigation projects where ecologically appropriate, consolidating resources, providing financial planning and scientific expertise, recuing temporal losses of functions, and reducing uncertainty over project success. The PMNRD has five goals for each proposed bank:

- To provide mitigation opportunities, alternatives, and flexibility for the public;
- To support the national goal of “no net loss” of wetlands by providing wetland mitigation sites;
- To enhance the natural resource values of PMRNRD projects;

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<sup>1</sup> Compensatory Mitigation for Losses of Aquatic Resources: Final Rule (33 CFR Parts 325 and 332, April 10, 2008)

## *Part I, Preamble*

- To provide an opportunity to leverage part of PMRNRD project funds to maximize wetland and stream creation; and
- To provide stream mitigation opportunities in compliance with the Corps of Engineers Omaha District Operational draft of the Nebraska Stream Condition Assessment Procedure, or another approved Corps methodology.

**B. Location and Ownership of Parcels:** Whereas, the PMRNRD has several potential projects that incorporate wetland and stream features and therefore could be used to develop mitigation credits within a mitigation bank. Each bank established under this Umbrella Banking Agreement will consist of actual, on-the-ground wetland and stream mitigation sites that each are intended to generate banking credits for PMRNRD use (internal or for external sale). The properties established under this Umbrella Banking Agreement will be owned or managed by the PMRNRD. After each bank site has been developed, the long-term site management will be the responsibility of the PMRNRD.

Each bank site will operate by a geographic service area established specifically for each bank site (See Part IV, Section A of this Umbrella Agreement). The geographic service areas can include both rural and urban areas. The PMRNRD is sensitive to the value of wetland areas in an urban environment and has a track record of protecting and restoring wetlands within the urbanizing areas. Where possible, PMRNRD's tradition of identifying wetland restoration opportunities in the urban areas will be expanded upon as part of this Umbrella Banking Agreement.

**C. Project Description:** Whereas, under this Umbrella Banking Agreement, the PMRNRD will establish and maintain wetland and stream habitat in accordance with the provisions of this Umbrella Banking Agreement, and then shall maintain each bank in such condition for the operational life of the bank. The PMRNRD will develop compensatory mitigation credits for each bank site through restoration, creation, enhancement, and/or preservation of wetland or stream areas. This generally may occur in conjunction with other PMRNRD-sponsored projects. The PMRNRD intends each bank site to be a general public-use wetland or stream mitigation that provides a service to the public.

As a natural resources agency, the PMRNRD plans to develop each bank site to allow for the establishment of contiguous wetland or stream areas able to serve several functions and values of those that were lost through wetland or stream impacts. Stream function will be evaluated using the Corps of Engineer's Operational draft of the Nebraska Stream Condition Assessment Procedure or using another Corps approved methodology. Wetland credits and debits will be evaluated using the 1987 Corps of Engineers Wetlands Delineation Manual along with the applicable regional supplement, or any other Corps approved methodology. Bank sites will be of manageably large size, with a target size of at least 10 acres per site plus a buffer zone.<sup>2</sup> The PMRNRD considers an accumulation of aggregated wetlands to be more practical, from a management and maintenance standpoint, and potentially more desirable for wildlife habitat or floodwater retention, than small, "patchy" wetland mitigation sites.

In view of the philosophy underlying this Umbrella Banking Agreement, there are multiple potential mitigation bank sites available to the PMRNRD. Therefore, this Banking Agreement does not present site-specific information such as site locations, baseline conditions, or assumed as-built conditions. Instead, such information will be included in the Site Development Plan that the PMRNRD will prepare for each site it submits to the Interagency Review Team (IRT) for review (See Exhibit A, Typical Site Development Plan, in this Amendment No. 2 for the kinds of information to include in each Site Development Plan.)

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<sup>2</sup> This target size does not include Stream Mitigation Banks. Since each Bank site will be subject to the review and approval of the IRT, the PMNRD may seek approval of a site with less than 10 acres when, from an ecological standpoint, deviation from the 10-acre minimum is appropriate.

## Part I, Preamble

**D. Baseline Conditions:** Whereas, the Site Development Plan for each mitigation site established under this Umbrella Banking Agreement will include the baseline conditions at the site with respect to vegetation, soils and hydrology. A wetland site assessment, including a wetland delineation or other Corps approved methodology, will be the means of establishing the baseline conditions. Stream baseline conditions will be based on the Corps of Engineers Operational draft of the Nebraska Stream Condition Assessment Procedure or another Corps approved methodology.

**E. Establishment and Use of Credits:** Whereas, in accordance with the provisions of this Umbrella Banking Agreement, wetland and stream mitigation bank sites established under this banking agreement shall be approved by the IRT on a site-by-site basis. Credits for each site will be established based on site specific success criteria. To determine the number of wetland mitigation credits produced for a bank site, a site assessment will be conducted using the 1987 Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory, January 1987) along with the appropriate regional supplement or other methodology approved by Corps. The Corps Omaha District Operational draft of the Nebraska Stream Condition Assessment Procedure or another approved methodology shall be used to develop available stream mitigation banking credits.

Part of the cost of developing the mitigation projects will be recovered by selling compensatory credits. The PMNRD will develop the credits, which will become available as mitigation in accordance with all applicable requirements. Bank credits will be used to offset wetland or stream resource impacts, subject to the Section 404 permitting process. The Corps shall determine, on a case-by-case basis, when compensatory mitigation is appropriate.<sup>3</sup>

Before 100 percent of the credits for a wetland or stream mitigation site can be certified, and therefore used as compensatory mitigation, resulting in a debit (withdrawal of credits) from the a bank site, the PMNRD intends that on-the-ground site development will be essentially complete in accordance with the Site Development Plan. That is, the PMNRD does not intend to establish an in-lieu-fee arrangement.<sup>4</sup> Given the time required for site development and the need to be responsive to constituents with projects requiring mitigation, however, credits will become available, on a specific ratio and percentage basis, at established project milestones (see Part IV, Section F). Crediting will occur with approval of the IRT on a case-by-case basis. The PMNRD understands that a significant number of credits for each bank site cannot be released on a pre-certification basis until wetland and/or stream success criteria have been met (i.e. wetland are stream functions at the mitigation site are viable and measurable).

The PMNRD will have an accounting system for each bank site established under this Umbrella Banking Agreement. The accounting procedure for the use of credits to each bank site and debits for wetland or stream losses is presented in Exhibit B, Crediting and Debiting Procedure for the Bank. Also included in Exhibit B is a sample ledger. Each bank will maintain a positive credit balance (that is, it will have more credits than debits) and includes the use of pre-certified and certified credits as described in Part IV, Section F. If a deficit develops for some other, unforeseen reason, each bank site shall be temporarily suspended until a positive balance is attained. Each bank site is also eligible for partial certification. Partial certification of a bank site intends to make eligible (at a 1:1 ratio) those portions of a bank site meeting all success criteria established for the site, while withholding certification, and therefore availability for debiting, portions of a site not meeting success criteria. For example, if a distinct 10 acres of wetlands are

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<sup>3</sup> While the focus of compensatory mitigation is to offset losses permitted by the Corps under Section 404 of the Clean Water Act. The possibility exists, however, that the Bank could be used to offset a loss approved by the NRCS under a minimal effects agreement subject to the Food Security Act.

<sup>4</sup> In in-lieu-fee systems, "fees are charged in lieu of the direct implementation of individual mitigation projects by permittees and the fee-funded mitigation projects typically have not yet broken ground or may be incomplete." (U.S. Army Corps of Engineers, *National Wetland Mitigation Banking Study-Wetland Mitigation Banking: Resource Document*, IWR Report 94-WMB-2 Jan. 1994, p. 95.)

## *Part I, Preamble*

meeting success criteria at a site for which 20 acres of wetlands were designed for, than those 10 acres may be certified and released for debiting.

The operational life of the bank will begin when:

- The PMRNRD has established the initial wetland or stream mitigation site for the bank (see Part IV, Section E, Success Criteria); and
- The IRT has determined the amount of credit available for sale and has applied that amount as credit to the bank.

The operational life of each individual bank site will end when:

- Banking activity is voluntarily terminated with written notice from the PMRNRD, or
- Compensatory mitigation credits have been exhausted, and
- The IRT has determined that the Bank is functionally mature and/or self sustaining to the degree specified in this Banking Agreement and the Site Development Plan.

**F. Interagency Review Team:** Whereas, an IRT will be established. Its members will be representatives from:

1. The Corps,
2. The NRCS,
3. The NDEQ,
4. The NGPC,
5. The EPA, and
6. The FWS

The IRT will review and seek consensus on the Umbrella Banking Agreement and as well as Bank Site Development Plans for the restoration, creation, enhancement, and/or preservation of wetlands and/or streams. When the procedures established in this Umbrella Banking Agreement are in place, the primary role of the IRT will be to review Site Development Plans and review of monitoring and the certification of credits at each bank site.

The Chair of the IRT will be responsible for making final decisions regarding the terms and conditions of the Umbrella Banking Agreement where consensus cannot otherwise be reached in a reasonable time frame. A representative of the Corps, the authorizing agency, will serve as the Chair for actions under the Clean Water Act. A representative of the NRCS will serve as the Chair for actions under the Food Security Act.

**G. Disclaimer:** Whereas, this Umbrella Banking Agreement does not in any manner affect statutory authorities and responsibilities of the signatory parties.

**H. Exhibits:** Whereas, the following exhibits are incorporated as appendices to this Umbrella Banking Agreement.

1. EXHIBIT A Typical Site Development Plan

*Part I, Preamble*

2. EXHIBIT B Crediting and Debiting Procedure for the Bank
3. EXHIBIT C Financial Assurance
4. EXJOBOT D GSA Checklist
5. EXHIBIT E Nebraska Wetland Subclasses
6. EXHIBIT F Bank Closure Plan

## II. AUTHORITIES

### A. Federal:

1. Clean Water Act, Section 404 (33 U.S.c. 1251 et seq.)
2. Rivers and Harbors Act of 1899, Section 10 (33 U.S.c. 403)
3. Fish and Wildlife Coordination Act (16 U.S.c. 661 et seq.)
4. "Swampbuster" provisions of the Food Security Act of 1985 as amended
5. Endangered Species Act (16 U.s.c. 1531 et seq.)
6. National Environmental Policy Act (42 U.S.c. 4321 et seq.)
7. National Historic Preservation Act of 1966 (16. U.S.c. 470 et seq.)
8. Intermodal Surface Transportation Efficiency Act of 1991, Wetland Mitigation Banks, Sections 1006-1007,23 U.S.c. 103,133 (P.L. 102-240,105 STAT 1914)
9. Final Rule for Regulatory Programs of the Corps of Engineers (33 CFR Parts 320330)
10. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230) (Section 404(b)(1) Guidelines)
11. Memorandum of Agreement between the U.S. Environmental Protection Agency and the U.S. Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines, 1990
12. Federal Guidance for the Establishment, Use, Operation of Mitigation Banks (60 F.R. 58605 et seq.), effective December 1995
13. Revised NRCS Wetland Technical Assistance Policy (7 CFR Part 650, Nov. 7, 1997)
14. Compensatory Mitigation for Losses of Aquatic Resources: Final Rule (33 CFR Parts 325 and 332, April 10, 2008)

### B. State:

1. Nebraska Department of Environmental Quality Certification pursuant to Section 401 of the Federal Clean Water Act
2. Title 117, Nebraska Administrative Code, Nebraska Water Quality Standards for Surface Waters of the State
3. Laws enacted by the Nebraska Legislature in 1972 to combine 154 special-purpose entities into 23 Natural Resources Districts

### C. Tribal:

1. Authorities of the Winnebago and Omaha Tribes

NOW, THEREFORE, the parties agree to the following:

### III. ESTABLISHMENT OF THE BANK

**A. Work to Be Done:** The PMRNRD agrees to perform all necessary work, in accordance with the provisions of this Umbrella Banking Agreement and the individual Site Development Plans. Further, the PMRNRD agrees to establish and/or maintain the aquatic habitat at the wetland and/or stream mitigation bank sites until it is demonstrated to the satisfaction of the agencies represented on the IRT (acting through the Chair) that the mitigation bank sites comply with all conditions contained herein, or until all credits are used, whichever is later. Each bank site shall be planned and designed to be self-sustaining over time to the extent possible.

**B. Documentation and Authorizations:** The PMRNRD will obtain all appropriate environmental documentation, permits, or other authorizations needed to establish and maintain each bank. This Umbrella Banking Agreement does not fulfill or substitute for such authorization.

**C. Bank Sites:** Potential properties will be evaluated for the establishment of a wetland or stream bank site for PMRNRD use using the following criteria:

- Suitability of each bank site to meet the anticipated demand for compensatory mitigation for the region;
- Each bank site's location within the watershed and its ability to improve stream and wetland functions within that watershed;
- Physical, chemical, and biological characteristics (ability to support desired wetland resources and functions);
- Source and adequacy of hydrologic sources; Compatibility with adjacent land uses (both existing and in the foreseeable future); Presence and/or protection of cultural resources and threatened and endangered species;
- Technical feasibility; Method of establishing the site (restoration, creation, enhancement, and/or preservation); and potential inclusion of upland areas to act as buffer zones and to enhance overall ecological functioning of the site.<sup>5</sup>

For each mitigation bank site established under this Umbrella Banking Agreement, the Bank Site Development Plan shall include the following information (see Exhibit A, Typical Site Development Plan):

- Mitigation objective (e.g. Wetland or stream, restoration, establishment, enhancement, preservation);
- Mitigation site selection process;
- Site protection arrangements;
- Determination of credits, describing how the proposed mitigation offsets the impacts proposed in the application;
- Mitigation work plan, including construction methods, elevations and side slopes, dates work will start and be completed, water sources, site boundaries and buffers;
- Maintenance plan

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<sup>5</sup> The percentage of buffer required will vary with the specific site and therefore will be determined on a site specific basis. In some cases, upland buffer may be critical and should be included in the credits; in others, it may not be appropriate to include the upland buffer as part of the credits.

### *Part III, Establishment of Bank Sites*

- Performance standards, including criteria used to determine that the mitigation project offsets the requested impacts;
- Monitoring requirements describing how and when the performance standards will be measured and completed;
- Long-term management plan describing how the mitigation site will be managed after the monitoring period is completed;
- Adaptive management plan describing a management strategy to ensure adequate mitigation is provided in the even the site does not perform as expected
- Financial assurances
- Other site-specific information.

For the procedure for modifying a Site Development Plan, see Part V, Section A.

Mitigation sites will be developed as the need arises and as sites developed by the PMRNRD reach the project milestones and achieve the success criteria discussed in Part IV, Sections E and F).

**D. Financial Assurance Requirements:** The PMRNRD, as the sponsor for each bank site, will own, or be in full control of, each bank site and will be responsible for management of each bank and long-term maintenance of each bank site. The PMRNRD will be responsible for securing adequate funding for operation and maintenance of each bank site during its operational life, as well as for the long-term management of the wetlands and/or other aquatic resources, as necessary.

The PMRNRD is a governmental unit with taxing authority and the financial capability to implement mitigation banking. As such, the PMRNRD has access to the necessary financial resources to cover Bank needs, including long-term management and unforeseen events as determined by the IRT. (See Exhibit C, Financial Assurance.)

**E. Real Estate Provisions:** For each site established under this Umbrella Banking Agreement, the PMRNRD shall make real estate provisions as necessary to preserve the mitigation bank site land as wetlands and wildlife habitat in perpetuity. The PMRNRD shall submit draft documents to the Corps, shall record these provisions regarding the bank site land, and shall provide copies of the recorded documents to the Corps prior to authorization of any credits.

**F. As-Built Reports:** The PMRNRD agrees to submit an as-built report for each wetland mitigation site established under this Umbrella Banking Agreement within 90 days following completion of the site. The as-built report will describe any deviation from the individual Site Development Plan and will include a plan showing finished grades and surface and groundwater elevations, as appropriate.

#### **IV. OPERATION OF THE BANK**

**A. Service Areas:** As stated in the Preamble, the Bank will operate by geographic service area, each of which will have its own mitigation credit establishment and credit-accounting ledgers available. The geographic service area (GSA) is the geographic region in which a mitigation bank site is authorized to provide compensatory mitigation required by Corps permits. The GSA for each bank site established under this Umbrella Banking Agreement will be established on a site-by-site basis. The Hydrologic Unit Code (HUC) 8 watershed will be used as the basis for the initial GSA for each proposed mitigation bank site. In an effort to determine justification for a GSA other than the HUC 8, the anticipated type and nature of the biological, physical, and chemical properties associated with unavoidable impacts will be evaluated. These properties will be compared to the goals and objectives of the proposed mitigation bank site. Similarities and differences in these properties will be reviewed to aid in establishing a GSA for the proposed mitigation bank site.

Factors that may be used for justification of a GSA include:

- Watersheds – The location of the potential mitigation bank site within a HUC 8 watershed relative to adjacent HUC 8 or HUC 6 watersheds.
- Threatened and endangered species habitat ranges – Known ranges of Federally or State-listed (or proposed) threatened and endangered species and/or habitat types for such species. Ranges for species of concern will also be considered.
- Ecoregions of Nebraska – Ecoregions of Nebraska in accordance with the NGPC Nebraska Natural Legacy Project (NGPC, August 2005).
- Biologically Unique Landscapes – Biologically Unique Landscapes of Nebraska in accordance with the NGPC Nebraska Natural Legacy Project (NGPC, August 2005).
- 303(d) List for Impaired Water Bodies and/or Watershed Plans – Watersheds that have been negatively impacted and have been identified for improvements. Such watersheds will be identified through use of the 303(d) list, which identifies waters that do not support their assigned beneficial uses as listed in Title 117, Nebraska Surface Water Quality Standards, and/or watersheds identified for improvements in formal Watershed Plans.

No particular priority or importance will be placed on any one factor. Rather, each proposed mitigation bank site and the potential stream or wetland impacts to be mitigated at the bank site will be reviewed in light of all of these factors to provide the justification for the GSA. However, special effort will be made by PMRNRD to locate mitigation bank sites within biologically unique landscapes and watersheds that contain 303(d)-listed streams. The intent of this effort is to focus on regions and watersheds identified as having significance or that are impaired. A geographic service area checklist is included in Exhibit D to facilitate determination of the GSA for each bank site.

Mitigation outside of the geographic service area will be considered on a case-by-case basis and will follow guidelines established in the Final Rule in 33 CFR Parts 325 and 332.

**B. Access to Sites:** The PMRNRD will allow, or otherwise provide for, access to the site by all signatory parties, as necessary, for the purpose of inspection and compliance monitoring consistent with the terms and conditions of this Umbrella Banking Agreement. Inspecting parties shall provide reasonable notice, of not less than 24 hours to the PRMNRD, prior to the inspection of bank sites.

**C. Projects Eligible to Use Sites Established Under this Agreement:** For projects requiring authorization under Section 404 and Section 10, the Corps, in consultation with the other regulatory and resource agencies, will determine the eligibility of projects to use bank sites established under this Umbrella Banking Agreement on a case-by-case basis. For projects it deems eligible, the Corps

## *Part IV, Operation of the Bank*

will issue the appropriate permits. To the extent that the bank is authorized for use under other Federal, State, and tribal programs, the appropriate entity will determine the eligibility.

The activities typically eligible to use the wetland mitigation bank sites established under this Umbrella Banking Agreement will include transportation-related development, watershed improvements, flood protection projects, and other types of projects generally subject to the permitting provisions of Section 404. The Corps, as the permitting authority, is responsible for determining that a project has met the proper application of sequencing (see Part IV, Section G) and that mitigation through the use of the Bank is appropriate.

**D. Assessment Methodology :** Credits for bank sites established under this Umbrella Banking Agreement will be produced through restoration, creation, enhancement, and/or preservation of wetland areas and/or stream and riparian corridors. The following identifies the approach for credit and debit assessment: Similarly,

- Wetland Credits/Debits -To determine the number of wetland mitigation credits produced for each bank and, similarly, the debits required for compensatory mitigation, a site assessment will be conducted using the 1987 *Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory, January 1987) and the appropriate regional supplement or other methodology approved by USACE.
- Stream Credits/Debits - Stream mitigation credits and, similarly, debits required for compensatory mitigation, will be established using the Corps Omaha District 2011 Operational draft of the Nebraska Stream Condition Assessment Procedure or the most recent guidance on stream functional assessment by the Corps. .

Once credits have been established for a bank site using a methodology, that methodology shall be utilized for the life of the bank site unless a new system is mutually agreed upon by the PMRNRD and the Corps.

**E. Success Criteria:** The PMRNRD will be responsible for evaluating the success of the restoration, creation, enhancement, and/or preservation activities at the Bank on a site-by-site basis. Sites will be evaluated on an ongoing basis, beginning at the application stage and thereafter every year through annual monitoring.

The following performance standards will apply for all wetland mitigation bank sites, or other performance standards as developed on a site specific bases as other Corps approved assessment methods become available:

- Meet the Corps Wetlands Delineation Manual criteria.
- Achieve 80 percent canopy cover for emergent plant species.
- Not exceed 25 percent of total canopy cover with any given species.
- Monitor emergent wetlands for a minimum of three growing seasons prior to submission of approval of full credit.
- Monitor forested wetlands for a minimum of seven growing seasons prior to submission for approval of full credit.
- Achieve in-kind replacement of functions according to the wetland subclasses described in Exhibit E, Nebraska Wetland Subclasses.
- Control state-listed noxious weeds and pest species, as identified in individual Site Development Plans, to less than 1 percent of total canopy cover.

## Part IV, Operation of the Bank

- Achieve 80 percent survival of woody species after three years.
- Not exceed 10 percent of total canopy cover by any given state listed invasive.

The following general stream performance standards will apply to all stream mitigation Bank sites:

- Stream morphology – The mitigated stream channel will be reviewed for stability and aquatic function compared to the goals and objectives for the site.
- Riparian vegetation – Native species cover and richness will be determined as appropriate for the region.
- Upland buffer – Native species cover and richness will be determined as appropriate for the region.

In cases where authorization under Section 10 or 404 is necessary to establish the Bank, the Corps permit will be conditioned to ensure that the provisions of the Banking Agreement are enforceable by the appropriate agencies.

The Bank provides for contingency plans and remedial actions in the event that a site at some point fails to function within the performance standards. These actions will be taken promptly to correct the situation and allow the site to satisfy the success criteria (see Section V, E, below).

**F. Credit Availability:** Credits will be developed by the PMRNRD as opportunities arise. To enhance Bank flexibility, the credits will become available for debiting (that is, for use by the PMRNRD or for transfer to a third party) based on the stage and success of project development. Debiting will occur only after submittal of all appropriate documentation by the PMRNRD and subsequent approval by the Corps, in consultation with the other IRT members.

Table 1, Crediting Ratios, shows the ratios and credit percentages that will apply at certain stages of site development. These ratios and percentages will apply to mitigation of in-kind impacts after sequencing (see the discussion of sequencing in Part IV, Section G, Conditions on Debiting). The crediting ratios and percentages, as well as the project milestones, will vary with the type of project (wetland restoration versus creation). As Table 1 indicates, 100 percent of a bank's credits will not be available for use until the site is fully functioning and has achieved the success criteria. Using this gradational approach, the credit percentage will depend on the amount of risk involved. Until a wetland functional assessment or other corps approved methodology is applied to establish credits and debits, the credit ratios found in Table 1 will be applied.

**Table 1. Wetland Crediting Ratios**

Type of Mitigation	Ratio A	Ratio B
Restoration (re-establishment)	1:1	1.5:1
Restoration (rehabilitation)	1:1	2:1
Enhancement	3:1	4:1
Establishment	1:1	2:1
Protection/Maintenance	10:1	10:1
Buffer	4:1	4:1

Typically ratio determinations should be based on the following conditions:

Part IV, Operation of the Bank

**Condition 1 (Ratio A)**

- a. The Bank has met its success criteria (see Part B II for minimum evaluation criteria).
- b. The bank, in its entirety, can demonstrate overall watershed benefits.

**Condition 2 (Ratio B)** (for pre-certifications, out-of-kind or approved out of primary service area. Ratio is slightly higher to account for temporal loss except for Protection/Maintenance and buffer ratios).

- a. Bank has not met success criteria but IRT has approved the release of pre-certified credits (no more than 30% of the total bank) (See Table 2).
- b. Primary function of the bank's wetland is less or significantly different than impacted wetlands (i.e. out-of-kind or diminished functional capacity)

**Table 2 General Schedule of Credit Pre-Certification**

Status of Mitigation Bank Site	Percentage of Available Pre-Certified Credits Released	Cumulative Percentage of Available Credits Released
Site Development Plan approved	5% <sup>1</sup>	5%
Construction completed	10% <sup>1</sup>	15%
1987 Corps of Engineers Wetlands Delineation Manual criteria met/After year 1 goals are met	15% <sup>1</sup>	30%

Notes:

<sup>1</sup> Based on total anticipated credits for a mitigation bank site.

<sup>2</sup> Based on established performance standards.

<sup>3</sup> Based on total areas meeting established performance standards; partial certification is allowable.

The following credit availability shall be applied when using the Corps of Engineers Omaha District Operational draft of the Nebraska Stream Condition Assessment Procedure or another Corps approved methodology.

Where the Corps of Engineers Omaha District Stream Mitigation Guidance is used, one functional credit is worth one functional debit. Protection/maintenance and buffer credits are not available, as these factors are included as part of the stream functional assessment. Pre-certification of no more than 30 percent of the total Bank is allowed in accordance with the release of credit ratios as provided in Table 1 of Amendment No. 1.

Credits will be developed by the PMRNRD as opportunities arise. Crediting and debiting ratios and percentages shall be consistent with the Final Rule in 33 CFR Parts 325 and 332. Debiting shall occur only after submittal of all appropriate documentation by the PMRNRD and subsequent approval by the Corps, in consultation with the other IRT members.

**G. Compensation Ratios.** The Corps, in cooperation with the IRT, will determine if credits are certified and, when available credits can be used as compensatory mitigation and debiting can occur. The following debiting ratios will be applied:

Part IV, Operation of the Bank

Table 3. Wetland Mitigation Debiting Ratios

Mitigation Method	Wetland Compensation Ratio
In-Kind	1:1
Out-of-Kind – Cowardin	2:1
Out-of-Kind – Nebraska Subclass	1.5:1

Source: USACE, August 2005.

Compensation ratios will reflect one-for-one replacement of lost functions. Functions will be identified according to the list of Nebraska wetland subclasses in Exhibit E. However, other Corps approved methods for assessing functions may also be used. It will be assumed that the creation, restoration, enhancement, or preservation of any given wetland subclass will result in the replacement of functions of impacted wetlands in the same subclass. In the absence of quantitative information on the functions of specific wetland sites, a minimum of one-to-one acreage replacement will be reasonable. For example, impacts may be identified as 5 acres of riverine vegetated channel and wetland fringe along un vegetated channels (Subclass 1).

The amount of credit must meet or exceed the amount of debit based on Section 404 permit requirements, (see Part IV, Section F). Compensation ratios will be determined either by the Corps during the Section 404 permitting process or by the IRT at the time of a withdrawal from the Bank.

An applicant wanting to use credits from a bank will be required to negotiate the amount on a site-by-site basis. The Corps will have final approval of the withdrawal of credits for individual projects (if tied to a Section 404 authorization).

**H. Conditions on Debiting:** In accordance with the Clean Water Act Section 404 Guidelines (40 CFR 230.10 [a]), a mitigation sequence must be followed when a wetland is impacted. A project should “avoid, minimize, rectify, reduce, or compensate” for wetland losses. Unless this sequencing has been properly followed, no compensation of project wetland losses will be allowed through this Umbrella Banking Agreement. The Corps of Engineers is Responsible for determining whether the sequencing has been followed.

- I. Provisions for Uses of the Mitigation Bank Sites:** The PMRNRD shall:
1. Grant additional easements, right of way, or any other property interest in or to the project sites only for public benefit activities and only with the written consent of the Corps, in consultation with the IRT;
  2. Use or authorize bank sites only for purposes specified in the Site Development Plan; and
  3. Not authorize or use bank sites for any purpose that interferes with its conservation purposes.

## V. MAINTENANCE AND MONITORING OF THE BANK

**A. Maintenance Provisions:** The PMRNRD agrees to perform all necessary work to maintain each bank site consistent with the maintenance criteria established in each bank's Site Development Plans, which may include provisions for particular maintenance activities such as removal of invasive species and prescribed burning. The PMRNRD shall continue with such maintenance activities until closure of the bank. Upon closure of the bank, the PMRNRD shall implement the management requirements established in Part V, Section F.

Deviation from the approved individual Site Development Plans is subject to review and written approval by the IRT (acting through the Chair) and will follow guidelines established in Compensatory Mitigation for Losses of Aquatic Resources: Final Rule (33 CFR Parts 325 and 332, April 10, 2008) or the current guidance provided by the Corps. The procedure for modifying a Site Development Plan, if necessary, is as follows:

- The PMRNRD, on its own initiative or at the request of the IRT, will submit a modification to an approved Site Development Plan. The request will include a justification and a revised Site Development Plan; and
- The IRT will decide whether or not to approve the modification.

**B. Monitoring Provisions:** The PMRNRD agrees to perform all necessary work to monitor the Bank in order to demonstrate compliance with the success criteria established in this Banking Agreement. Monitoring will begin during the first growing season after completion of site construction. The monitoring will be conducted at time intervals specified in the Site Development Plan and appropriate for the particular project type. It shall continue until the Corps, in consultation with the IRT, is confident that the success criteria are being met. Typically, sites with forested wetlands will be monitored for a minimum period of ten years and other wetlands, including emergent and scrub-shrub wetlands will be monitored for a minimum period of five years. Monitoring will follow guidelines set forth in RGL 08-03 (Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources, October 2008).

Monitoring plans will provide information sufficient for the Corps to determine how the bank site is progressing towards meeting its performance standards. Monitoring reports may include as-built plans, maps and photographs to illustrate bank site conditions. Reports can also include any functional assessment or other assessment used to provide measure of functions of the bank site.

**C. Monitoring Reports:** The PMRNRD shall submit to the Corps, for distribution to the other members of the IRT, annual monitoring reports describing the conditions of each bank site and relating those conditions to the success criteria (that is, the attainment of prescribed performance standards). The reports may contain information such as the following:

1. A U.S. Geological Survey map showing bank site locations;
2. A narrative summarizing the condition of the bank site and all regular maintenance activities;
3. Appropriate topographic maps showing such information as the location of sampling plots, permanent photo points, and location of transects;
4. Hydrological survey results; and
5. Results of other surveys, as identified in the Site Development Plan.

Because the information needed by the IRT for review will differ by site, restoration method, and technique, each Site Development Plan will specify the information to be included in the monitoring report.

*Part V, Maintenance and Monitoring of Bank Sites*

**D. Accounting Procedure:** The PMRNRD shall maintain an accounting procedure that documents the activity of all mitigation bank site accounts. Each time an approved debit/credit transaction occurs, the PMRNRD will submit a statement to the Corps. For all mitigation bank site accounts, the PMRNRD will also generate an annual ledger report, which will be submitted to the IRT Chair for distribution. The annual ledger will contain the following information:

- Name and permit number of the applicant utilizing compensatory mitigation from the bank;
- Number of mitigation acres withdrawn for each transaction;
- Transaction date;
- Number of mitigation acres remaining in the bank; and
- Total number of wetland acres used in the bank as of the date of these transactions.

As stated in Part I, Section E, bank sites will maintain a positive balance, in accordance with Part IV, Section F.

**E. Contingency Plans/Remedial Actions:** The individual site plans shall include general contingency plans in the event that remediation should become necessary. The need for remediation will be determined by the Corps in consultation with the IRT and PMRNRD. In the event a bank site fails to achieve its success criteria, the PMRNRD shall develop plans for appropriate remedial actions and shall implement the plans in coordination with the IRT. The remedial actions will be based on information contained in the monitoring reports, as well as site inspections by the IRT.

Bank sites will not operate at a deficit (see Part IV, Section F). If the Corps determines that a bank has incurred a deficit apart from adherence to this schedule, debiting of credits will immediately cease. The Corps, in consultation with the IRT and the PMRNRD, will determine what remedial actions are necessary to correct the situation, and the PMRNRD will undertake those corrective measures.

At the PMRNRD's request, the IRT will perform a final compliance visit to determine whether all success criteria have been satisfied. This compliance inspection will occur within six months of completion of the remedial actions.

In the event the PMRNRD fails to implement necessary remedial actions within 30 days calendar days after notification by the Corps or other authorizing agency, or within an established time frame agreed upon by the Corps, the IRT (acting through the Chair) will notify the PMRNRD and the appropriate authorizing agency(ies) and will recommend appropriate remedial actions.

**F. Long-Term Management:** The PMRNRD will be the responsible agency and the source of funds for long-term management of all bank sites. The wetlands and/or other aquatic resources in banks established under this Umbrella Banking Agreement will be protected in perpetuity, and activities harmful bank sites (incompatible uses) will be restricted. Protection of the bank sites will extend beyond the duration of project impacts being compensated within the bank.

## **VI. RESPONSIBILITIES OF THE IRT**

The agencies represented on the IRT commit to the following responsibilities:

- A. Oversight:** Provide appropriate oversight in carrying out provisions of this Umbrella Banking Agreement;
- B. Review:** Comment on all project plans, annual monitoring reports, credit review reports, contingency plans, and necessary permits for bank sites in a timely manner and advise the district engineer in assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases and approving modifications to an instrument;
- C. Confirmation:** Review and confirm reports on the evaluation of sites for their achievement of the development milestones and success criteria prior to approving credits as a wetland mitigation bank;
- D. Compliance Inspections:** Conduct inspections, as necessary, as determined by the Corps in consultation with the PMRNRD, to verify credits available in each bank and to recommend corrective measures (if any), until conditions of the individual Site Development Plans have been determined to be fully satisfied or until all credits have been sold, whichever is later; and
- E. Auditing:** Audit the each bank ledger on an annual basis.

**VII. OTHER PROVISIONS**

**A. Force Majeure:** The PMRNRD will not be responsible for any bank failure attributed to natural catastrophes such as flood, drought, disease, regional pest infestation, etc. that the IRT, acting through the Chair, determines is beyond the control of the PMRNRD to prevent or mitigate.

**B. Dispute Resolution:** Resolution of disputes concerning the application of this Umbrella Banking Agreement shall be in accordance with those stated in 40 CFR 332.8, Mitigation Banks, for procedures for dispute resolutions.

**C. Validity, Modification, and Termination of the Banking Agreement:** This Banking Agreement will become valid on the date of the last signatory's signature. This Banking Agreement may be amended or modified with the written approval of all signatory parties. Any of the IRT members may terminate their participation upon written notification to all signatory parties. Participation of the IRT members will terminate 30 days after written notification.

**D. Controlling Language:** To the extent that specific language in this document changes, modified or deletes terms and conditions contained in those documents that are incorporated into this Umbrella Banking Agreement by reference, and that are not legally binding, the specific language within the Umbrella Banking Agreement shall be controlling.

## VIII. DEFINITION OF TERMS

### A. Abbreviations and Acronyms

CFR	Code of Federal Regulations
F.R.	Federal Register
EPA	U.S. Environmental Protection Agency
FHWA	Federal Highway Administration
FWS	U.S. Fish and Wildlife Service
MBRT	Mitigation Review Team
NDEQ	Nebraska Department of Environmental Quality
NDOR	Nebraska Department of Roads
NGPC	Nebraska Game and Parks Commission
NRCS	Natural Resources Conservation Service
NWR	National Wildlife Refuge
P.L.	Public Law
PMRNRD	Papio-Missouri River Natural Resources District
U.S.C.	U.S. Code
WPA	Wildlife Production Area

### B. Glossary

Applicant	Developer of a project that would potentially impact a wetland. Avoidance Prevention of an impact by not taking a certain action or parts of an action.
Bank	The wetland mitigation bank established by this Banking Instrument.
Bank management	The process of determining whether produced credits and proposed debiting projects meet the conditions established for use of the Bank.
Chair	The Chair of the MBRT.
Compensation	Creation, restoration, enhancement, and in some cases preservation of wetlands to compensate for any and all impacts that cannot be avoided or minimized.
Corps	U.S. Army Corps of Engineers.
Creation	Establishment of a functional wetland in an upland (non-wetland) site.
Credits	Physical wetlands commodity whose value is traded or sold by the Bank. These unit values may be used for compensation upon Corps authorization of a Section 404 permit and Corps determination that the Bank is functioning.
Credit valuation	The determination of the value of credits proffered to and impacts mitigated by the Bank.
Debits	Loss of wetland functions at a development (project) site; withdrawal of credits. These unit values can, as determined by the Corps, be withdrawn from the Bank for compensation of unavoidable wetland impacts at the development site.
Enhancement	Alteration of an existing wetland to add, or increase, particular wetland values and functions to levels not present under previous natural conditions, or to slow the natural impairment of existing values and functions.
Functions	Ecological (physical, biological, or chemical) processes or attributes of a wetland without consideration of societal importance (values). Examples include ecosystem diversity, flood-flow alteration, groundwater recharge and discharge, food chain support, water quality improvement, and soil stabilization.
In-kind mitigation	Provision of similar wetland types to replace (compensate) functional values of wetlands lost, where such substitute wetlands are physically, biologically, and chemically the same as or a close approximation of the impacted wetland.

*Part VIII, Definition of Terms*

In-lieu-fee system	Program in which a regulatory agency collects fees in lieu of requiring a developer to compensate for wetland losses through on-site mitigation or acquiring credits generated by a mitigation bank. The fees are accumulated for use in future mitigation projects by the agency.
Incompatible use	Activities that are harmful to the Bank and will be restricted during long. term management of Bank sites.
Ledger	Document used in the accounting of credits and debits, maintained by the Bank Sponsor, and reviewed by the Corps.
Minimization	Limitation of the degree or magnitude of an impact associated with an action and its implementation.
Mitigation Bank	System in which the creation, enhancement, restoration, and/or preservation of wetlands is recognized by a regulatory agency as generating compensation credits allowing the future development of other wetland sites.
Mitigation Bank site	Wetland compensation site containing wetland credit acres and types from Bank-developed wetland projects.
Off-site mitigation	Action taken on another tract of land or outside the property boundaries of (lie site where a wetland is being adversely affected.
On-site mitigation	Creation, enhancement, or restoration of wetlands on the same tract of land or within (lie property boundaries of the site where a wetland is being adversely affected.
Operational life	Period during which the terms and conditions of the Banking Instrument that relate to the banking transactions are in effect.
Preservation	Provision of legal protection to natural wetlands that would otherwise be lost to lawful activities.
Restoration	Reestablishment of a wetland on a site that was once a wetland or rehabilitation of a degraded wetland.
Section 10	Section 10 of the Rivers and Harbors Act of 1899, which prohibits the creation of any obstruction or alteration in a “navigable water of the United States” unless authorized by Congress or a Department of the Army permit.
Section 404	Section 404 of the Clean Water Act, as amended in 1977, which established a permit program to be administered by the Corps to regulate the point source discharges of dredged or fill material into waters of the United States.
Site Development Plan	The engineering design, vegetation plans, success criteria, maintenance and monitoring plans, and other information that the PMRNRD prepares for each potential wetland mitigation it submits to the MBRT for review.
Sponsor	Sponsor of the Bank (the PMRNRD).
Unavoidable Impact	An impact for which a practicable alternative cannot be found and which has been minimized to the extent appropriate and practicable.
Values	Wetland processes or attributes that provide societal values or benefits. Examples include support of commercial and sport fish and wildlife species, protection from flooding, water quality improvement, groundwater recharge and discharge, recreation, education, and aesthetic enhancement.
Watershed	A drainage area or basin that contributes surface and groundwater to a stream, river, lake or isolated wetland basin.
Wetlands “...	“...those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions” (Corps regulations, 33 CFR 323.2 Ic)].

**IX. SIGNATURE PAGE**

This agreement, entered into by the PMRNRD; list IRT agencies; and the US Army Corps of Engineers (COE), is for the purpose of establishing the Bank 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, Appendix 1 to this agreement.

The objective of the Bank is to list type of compensation approximately # acres and # linear feet. The goal of the bank is to create Name Cowardin classification and function assessment description. Water regime modifiers are list modifiers.

The primary geographical service area for this bank will encompass portions of list watershed and Hydrologic Unit(s) #. The upper elevation limit of the primary service area will be 6,000 feet. At the discretion of the COE, credits may be approved outside of the primary geographic service area.

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

Papio-Missouri River Natural Resource District

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

U.S. Environmental Protection Agency, Region #

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

Nebraska Department of Environmental Quality

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

U.S. Fish and Wildlife Service

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

Natural Resources Conservation District

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

Robert J. Ruch  
Colonel, U.S. Army Corps of Engineers  
District Commander

# *Exhibits*

EXHIBIT A Typical Site Development Plan

EXHIBIT B Crediting and Debiting Procedure for the Bank

EXHIBIT C Financial Assurance

EXHIBIT D GSA Checklist

EXHIBIT E Nebraska Wetland Subclasses

EXHIBIT F Bank Closure Plan

**Exhibit A**  
**Typical Site Development Plan**

**I. Project Information**

**A. PROJECT OVERVIEW AND OBJECTIVES**

1. Project Location
2. Project Summary
3. Factors for Site Selection
3. Goals and Objectives (Habitat types and functions to be restored or enhanced)
4. Establishment and Operation
5. Site Protection Arrangements
6. Schedule and Milestones (Implementation timetable)
7. Financial Assurances
8. Real Estate Provisions

**B. AUTHORITIES**

**C. BASELINE DESCRIPTION OF MITIGATION SITE (Narrative and mapping data)**

1. Brief Summary of Proposed Site and Purpose
2. Project Description (If known)
  - a. Location
    - i. Legal
    - ii. Directions to site using road and highway names
    - iii. Relative geographic location within HUC watershed
    - iv. Surrounding land use
    - v. Proximity to existing wetlands and streams
    - vi. Maps (U.S. Geological Survey (USGS) 7.5 foot quadrangle, National Wetlands Inventory (NWI), aerial)
  - b. Impacted wetland acreages and/or stream linear feet
  - c. Delineation report
  - d. Section 106, Endangered Species Act, or other documentation
3. Mitigation Site Information
  - a. Assessment methods
  - b. Wetland classification (Cowardin et al., December 1979)
  - c. Stream assessment
4. Vegetation and Soil Data (Indicate baseline sampling transects/points on site map)
  - a. Vegetation data
    - i. Gross community characterization
    - ii. Species list
    - iii. Relative abundance
  - b. Soil analysis (Type and profile)
5. Hydrology
  - a. Source
  - b. Surface water
6. Map and Photo Data

- a. USGS 7.5 foot quadrangle map (Indicate site location and area of hydrologic influence)
  - b. Soil survey map
  - c. NWI map
  - d. City/County blue line aerial photographs and/or Farm Services Agency (FSA) photographs (Previous 5 years)
7. Site Map
- a. Physical features
    - i. Current dimensions of aquatic resources as described by Cowardin classification system (Cowardin et al., December 1979).
    - ii. Topographic map
    - iii. Groundwater elevations
    - iv. Natural hydrologic features
    - v. Seasonal pool elevation
    - vi. Potential pollutant sources
  - b. Cultural features
    - i. Power lines
    - ii. Roads
    - iii. Fences, gates
    - iv. Houses, buildings
    - v. Drainage ditches, culverts, tile lines
8. Biological and Ecological Characteristics of Existing Property
- a. Areas amenable to restoration, enhancement, or creation
  - b. Existing aquatic habitat description
  - c. Wildlife species using existing habitat
  - d. Existing upland buffers
  - e. Existing disturbances (Man-made or otherwise)
  - f. Relation of existing wetlands and/or streams and/or riparian buffers to proposed mitigation

## **II. Wetland Mitigation Site Work Plan**

- A. SITE ANALYSIS
  - 1. Conceptual Design
  - 2. Post-Construction Restored Aquatic Resources (As described by Cowardin classification system)
  - 3. Upland Buffer
  - 4. Hydrologic Alterations
  - 5. Seasonal Pool Elevations
  - 6. Access Roads and Fencing
  - 7. Adjacent Land Use
- B. SITE CONSTRUCTION ACTIVITIES
  - 1. Water Control Measures
  - 2. Erosion Control Measures During and After Construction
  - 3. Grading Plan
  - 4. Plantings
  - 5. Schedule
- C. SITE MAINTENANCE

1. Vegetation Management Techniques
  - a. Restoration of failed plantings
  - b. Removal of non-target species (Exotics, pest species)
  - c. Grazing and mowing
  - d. Prescribed burning
2. Hydrologic Manipulation
  - a. Water control structures
  - b. Weirs
  - c. Spring seep maintenance

D. PERFORMANCE STANDARDS AND MONITORING REQUIREMENTS

1. Goals and Construction Phases
2. Short-term Objectives and Functions Desired
3. Long-term Objectives and Functions Desired
4. Assessment Methodology (Using best available methods)
5. Minimum Evaluation Criteria (In the absence of functional assessment)
6. Vegetation
  - a. Permanent plots/transects (Reference to baseline sampling)
  - b. Species composition and vegetative cover
7. Soils (Permanent sampling points)
8. Hydrology
  - a. Seasonal pool elevations
  - b. Seasonal groundwater levels (Permanent piezometer sampling points)
  - c. Water quality
9. Monitoring Schedule
10. Photographs
11. Reporting Schedule

E. CONTINGENCY AND REMEDIAL ACTION PLAN

F. LONG-TERM MANAGEMENT PROVISIONS

G. CREDIT PRODUCTION

1. Assessment Methodology
2. Schedule of Credit Production
3. Ratio of Credits

## **Exhibit B**

### **Crediting and Debiting Procedure for the Bank**

The wetland mitigation bank site will function essentially like and account at a conventional bank, with transactions posting to and deducted from it.<sup>6</sup> Key elements of the banking procedure are as follows:

- The IRT will assess the credits and debits for potential mitigation bank sites on a case-by-case basis (See Part IV, Section D). Upon completion of the assessment process, the mitigation credits will be “sold” to and deposited in the bank site. The mitigation credits are the “currency” in which each bank will trade.
- The PMRNRD will produce credits in the form of restoration, creation, enhancement, and/or preservation of wetland sites.
- Bank clients will withdraw credits from each bank site, as approved, resulting in a debit. The bank clients will be those “entities whose activities will create a wetland impact for which mitigation is being sought through the bank.” They can be “any private or public development entity whose project meets the permit requirement [and] any additional requirement for the use the ... Bank.”
- The IRT will be responsible for each bank site management, defined as “the process of determining whether produced credits and proposed debiting projects meet the conditions established for the use of the bank.”

Credit valuation is “basic to the implementation of this banking system. It determines the value of credits on proffered to and impacts mitigation by the Bank.” Potential sites will be assessed on a case-by-case basis using best scientific methods, analogously to the appraisal of properties in the commercial banking context.

This system is designed to ensure that total debits do not exceed total credits except in special situations where a pre-credit arrangement is allowed. The PMRNRD will keep a ledger to record each transaction and update the balance accordingly. The sample ledger on the following page illustrates how credits will be tracked.

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<sup>6</sup> This exhibit draws on information and text (as quoted) contained in the U.S. Army Corps of Engineers, *National Wetland Mitigation Banking Study: Wetland Mitigation Baking*, IWR Report 94-WMB-6. Feb. 1994.



**Mitigation Bank Ledger**

Mitigation Site Name:	IRT Site Visit Dates:
Construction Start Date:	Construction Complete Date:

WETLAND CREDITS								WETLAND DEBITS									
Permit No.	Location		Description			Date		Permit No.	Location		Description			Date	Compen. Ratio***	Balance (acres)	
	Site	Serv. Area**	Acres	Cowardin Class.	Other	Completed	Pre-Cred.*		Site	Serv. Area**	Acres	Cowardin Class.	Other	Debited			
															Subtotal		
															Subtotal		
															Subtotal		
															Total		
STREAM CREDITS								STREAM DEBITS									
Permit No.	Location		Description		Date		Permit No.	Location		Description		Date	Compen. Ratio***	Balance (lin.ft.)			
	Site	Serv. Area**	Linear Feet	Other	Completed	Credited		Site	Serv. Area**	Linear Feet	Other	Debited					
														Subtotal			
														Total			

Notes:

- \* Pre-credits available for debiting based on the stage and success of the site development.
- \*\*6-digit HUC, or other service area designation with ecological justification
- \*\*\* The ratio of credits to debits (for example, 1.5 acres of created wetland for every 1 acre of wetland lost)
- PEMA = Palustrine Emergent Temporarily Flooded
- PEMC = Palustrine Emergent Seasonally Flooded
- PSSA = Palustrine Scrub Shrub Temporarily Flooded
- PFOA = Palustrine Forested Temporarily Flooded

## **Exhibit C**

### **Financial Assurance**

The Papio-Missouri River Natural Resources District is one of the 23 Natural Resources Districts formed by laws enacted by the Nebraska Legislature in 1972. The PMRNRD is a local governmental unit and is governed by an elected board of directors. Like the other Natural Resource Districts in Nebraska, PMRNRD has broad responsibilities to protect natural resources within its district. As such, it has a taxing authority (much of its funding comes from local property taxes), the authority to spend revenues, and the capability to carry out programs.

The program to be established with this enabling agreement is consistent with the PMRNRD's mandate and authority. Consequently, the mitigation Bank can be funded as a valid PMRNRD natural resources program. The establishment, operation, and long-term maintenance of this program, as well as response to potential unforeseen events, will be backed by the financial assurance of this state-established unit of government.

---

General Manager, Papio-Missouri River Natural Resources District

Date

**Exhibit D**  
**GSA Checklist**

# Compensatory Mitigation GSA Checklist

## Factors For Ecological Justification

### Mitigation Site Information

<b>Name of Mitigation Bank Site</b>	
<b>County</b>	
<b>Township, Range, and Section(s)</b>	
<b>HUC-8</b>	
<b>Size of mitigation site</b>	
<b>Type of mitigation (wetland, stream, combination)</b>	
<b>Anticipated classes or types of wetlands</b>	
<b>Anticipated wetland acres and/or feet of stream channel</b>	
<b>Mitigation Method (Preservation, Re-establishment, Restoration, Rehabilitation, Creation)</b>	

Associated Figures:

Figure 1 – Location Map (General Location on USGS map)

Figure 2– HUC boundaries (boundaries of HUC watersheds with proposed mitigation site and other programmed project locations)

Figure 3 – 303 (d) listed streams with proposed mitigation site and other programmed project locations)

Figure 4 – T&E Habitat Ranges (Identified T&E habitat ranges with proposed mitigation site and other programmed project locations)

Figure 5 – Ecoregion/MLRA/Biological Unique Landscapes(with proposed mitigation site and other programmed project locations)

Figure 6 – Proposed GSA for mitigation site

# Compensatory Mitigation GSA Checklist

		Within HUC-8		Within Adjacent Watershed*			
<b>Watershed Review</b>		<b>Source</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Comments</b>
1	303(d) listed stream present with watershed or NDEQ Class A streams within Watershed?	<a href="http://www.deq.state.ne.us/">http://www.deq.state.ne.us/;</a>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2	Special Waters or other ecologically important aquatic habitats present within watershed (Wild and Scenic Rivers, National Recreational Rivers, Nationwide River Inventory)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3	Aquatic related goals within the region (e.g. water quality goals, floodplain management goals)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4	Potential for increase in development trends within the watershed		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Habitat Review</b>		<b>Source</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Comments</b>
1	Federally Threatened and Endangered Species Habitat Present within watershed	<a href="http://outdoornebraska.ne.gov/wildlife/programs/nongame/pdf/TandESpecies.pdf">http://outdoornebraska.ne.gov/wildlife/programs/nongame/pdf/TandESpecies.pdf</a>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2	Ecoregion compatibility in adjacent watershed	<a href="ftp://ftp.epa.gov/wed/ecoregions/ks/ks_ne_eco_pg.pdf">ftp://ftp.epa.gov/wed/ecoregions/ks/ks_ne_eco_pg.pdf</a>	NA	NA	<input type="checkbox"/>	<input type="checkbox"/>	
3	MLRA compatibility in adjacent watershed	<a href="http://www.cei.psu.edu/mlra/">http://www.cei.psu.edu/mlra/</a>	NA	NA	<input type="checkbox"/>	<input type="checkbox"/>	
4	Ecoregion of Nebraska compatibility in adjacent watershed	<a href="http://outdoornebraska.ne.gov/wildlife/programs/legacy/pdfs/appendix10.pdf">http://outdoornebraska.ne.gov/wildlife/programs/legacy/pdfs/appendix10.pdf</a>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5	Compatibility with biologically unique landscapes	<a href="http://outdoornebraska.ne.gov/wildlife/programs/legacy/pdfs/chapter3.pdf">http://outdoornebraska.ne.gov/wildlife/programs/legacy/pdfs/chapter3.pdf</a>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6	Nebraska landscape compatibility in adjacent watershed	<a href="http://www.dor.state.ne.us/environment/guides/roadside-plan/revision/region-b.pdf">http://www.dor.state.ne.us/environment/guides/roadside-plan/revision/region-b.pdf</a>	NA	NA	<input type="checkbox"/>	<input type="checkbox"/>	
7	Habitat restoration or protection goals within the region		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8	Habitat for state threatened or endangered species present		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

\*Adjacent watershed may include a HUC 8 within the same or adjacent HUC 6 watershed. See comment notes for site specific details.

**Exhibit E**  
**Nebraska Wetland Subclasses**

<b>Wetland Subclass<sup>1</sup></b>	<b>Description</b>
Riverine channel	Vegetated river or stream channels or vegetated wetland fringe along unvegetated river or stream channels.
Riverine Floodplain Rapid Permeability, w/minimal out-of-bank flooding	Wetlands (wet meadows) situated on floodplain soils with rapid permeability and receiving minimal out-of-bank flooding.
Riverine Floodplain Rapid Permeability w/regular out-of-bank flooding	Wetlands (wet meadows) situated on floodplain soils with rapid permeability and receiving minimal out-of-bank flooding.
Riverine Floodplain Moderate to slow Permeability, w/regular out-of-bank flooding	Wetlands situated on floodplain soils with moderate to slow permeability and receiving regular out-of-bank flooding.
Saline Depressions	Wetlands situated on floodplain soils with slow permeability and receiving inputs of saline groundwater.
Playa Depressions	Wetlands situated in wind-formed depressions that receive water predominately from surface runoff. They are episaturated with short or long duration ponding.
Floodplain Depressions	Wetlands situated in floodplain depressions with long duration ponding, such as oxbows.
Sandhill Depressions, episaturated	Wetland situated in Sandhill depressions located on episaturated soils (e.g. sand over clay).
Sandhill Depressions, endosaturated	Wetlands situated in Sandhill depressions located on endosaturated soils. This would include most Sandhill marshes.
Western Alkaline Floodplain Depressions	Wetlands situated on fine textured alkaline floodplain soils.
Sandhill Alkaline Depressions	Wetlands situated on coarse textured alkaline Sandhill soils.
Lacustrine Fringe	Vegetated wetland fringes situated around the edge of deep water (>6 ft.) lakes.
Mineral Soil Flats	Wetlands situated on flat endosaturated Sandhill mineral soils. This would include most Sanhill wet meadows.
Organic Soils Flats	Wetlands situated on flat endosaturated Sandhill organic soils. These wetlands are termed fens.
Slope Wetlands	Wetlands situated on slopes that receive water from springs and seeps discharging due to an aquatard (e.g., glacial till over clay).

<b>Wetland Subclass<sup>1</sup></b>	<b>Description</b>
Slope Wetlands, Canyon Springs	Wetlands situated on slopes that receive water from springs and seeps discharging due to an aquatard (e.g., sand over bedrock).
Slope Wetlands, Sandhill Springs	Wetlands situated on slopes that receive water from Sandhill springs.

<sup>1</sup>Subclass is based on hydro-geomorphic classification system.

## **Exhibit F Bank Closure Plan**

Bank closure will occur in two phases:

1. Closure of the crediting and debiting procedure established by this enabling agreement – The PMRNRD retains the option to close any bank site and stop selling credits. At such time, the PMRNRD will notify the IRT that it is no longer providing credits and will finalize the accounting on the existing bank balance books.
2. Closure of the sites – Once mitigation credits in each bank site have been exhausted and/or it has been determined that the bank site is functionally mature and/or self-sustaining to the degree specified in this Banking Agreement, the operational life of the bank will cease, with the exception of arrangements for long-term maintenance.

After each bank site closure, the mitigation properties will remain PMRNRD's and PMRNRD will be responsible for them.