

UMBRELLA AGREEMENT

FOR THE ESTABLISHMENT AND OPERATION OF MITIGATION BANKS
WITHIN THE STATE OF MONTANA, OMAHA REGULATORY DISTRICT,
U.S. ARMY CORPS OF ENGINEERS

BETWEEN

SPONSOR – MONTANA MITIGATION PARTNERS, LLC

AND

U.S. ARMY CORPS OF ENGINEERS, ET AL.

October 6, 2008

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Umbrella Banking Agreement State of Montana

PREFACE

This Umbrella Banking Agreement (hereafter this “Agreement”) sets forth the general procedures and conditions for the establishment of mitigation bank sites (“Bank Sites”) by Montana Mitigation Partners, LLC (hereafter “the Sponsor”). Such Bank Sites may be utilized by permittees within a specified region, subject to the provisions and conditions of the permit, for the purpose of providing compensation for impacts associated with the discharge of dredged or fill material into wetlands, streams, and other special aquatic sites. This Agreement also provides for the Sponsor to accept fees paid by a permittee for “after-the-fact credits” to be drawn from a future Bank Site location as a form of Permittee-responsible mitigation under a watershed approach (33 CFR 332.3[b][4]).

After it has been determined that all appropriate impact avoidance and minimization has been considered, consistent with Clean Water Act Section 404(b)(1) guidelines (40 CFR 230), compensation may be required for the remaining impacts to the extent appropriate and practicable. Such compensatory mitigation may include the alternatives under this Agreement, which provide environmental benefits not available through traditional, project-specific approaches. For example, mitigation which utilizes this Agreement allows the consolidation of mitigation for impacts to many smaller, isolated, or fragmented habitats into a large, contiguous habitat unit that has greater benefit to the geographic region (watershed). Further, the Sponsor of this Agreement brings together the financial resources, and planning and scientific expertise not practicable for many projects that require on-site mitigation proposals.

SCOPE OF AGREEMENT

The Sponsor proposes to develop Bank Sites within the geographic boundaries of the State of Montana. Service areas for each specific Bank Site will be defined within one of the sixteen Major Basins of the Montana Watershed District map, which are based on the United States Geological Survey Hydrologic Unit Code (USGS HUC) watershed boundaries.

Crediting and debiting methodologies are defined, as are performance standards against which success can be measured for each Bank Site. The Sponsor will maintain appropriately defined financial assurances during the development of the Bank Site project (construction/planting, monitoring and maintenance), as well as monies in escrow during the long-term management period (following development phase, and continuing in perpetuity).

This Agreement, associated Bank Site Plans approved by the IRT and subsequent Agreement modifications, and applicable permits will serve as the legal instruments binding the Sponsor and the Corps of Engineers, et. al. The Sponsor has the legal responsibility to ensure enforcement of conservation easements on Bank Site lands, maintain and distribute current credit/debit accounting records for each Bank Site, monitor Bank Sites for performance and conduct remedial actions if warranted. Each Bank Site will be operated by the Sponsor, its designee or transferee through its operations phase and closure in accordance with the provisions of this Agreement and the specific prescriptions of an approved Bank Site Plan.

SPECIFIC PROVISIONS OF THE AGREEMENT**1. Authority and Regulatory Consistency.**

- a. Federal and State. Execution of this Agreement, and its implementation, are authorized under several regulatory authorities, and consistent with a number of others, including:
 - i. Clean Water Act {33 USC §§1251 et seq.; 1344(b); 1361(a)} as amended;
 - ii. National Environmental Policy Act {42 USC §§4321 et seq.};
 - iii. Executive Order 11990;
 - iv. Rivers and Harbors Act {33 USC §§403};
 - v. Endangered Species Act {7 USC 136, 16 USC §§1531 et. seq.} as amended;
 - vi. Fish and Wildlife Coordination Act {16 USC §§661 et seq.};
 - vii. National Historic Preservation Act {PL 89-665, 16 USC §§470 et seq.};
 - viii. National Forest Management Act {16 USC §§1600-1614} as amended;
 - ix. Federal Land Policy and Management Act {43 USC §§1702} as amended;
 - x. Energy Policy Act of 2005 {PL 109-58};
 - xi. Transportation Act of 2005 – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users {PL 109-59};
 - xii. Title XII, Subtitle C (Swampbuster Provisions) of the Food Security Act of 1985 {16 USC §§3801-3862};
 - xiii. The US Fish and Wildlife Service Mitigation Policy (January 23, 1981);
 - xiv. Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (73 FR No. 70, 19594 et seq., published April 10, 2008); 33 USC §§401 et seq.; 33 USC §§1344; and PL 108-136;
 - xv. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230);
 - xvi. Guidance for the Establishment, Use and Operation of Conservation Banks (May 2, 2003 Department of Interior, Fish and Wildlife Service Region 1–7);
 - xvii. Regulatory Guidance Letters 05-1 and 06-03;
 - xviii. Guidance for Compensatory Mitigation and Mitigation Banking in the Omaha District, August 2005;
 - xix. Montana Environmental Policy Act (MCA 75-1-101 et. seq.);
 - xx. Montana Water Quality Act (MCA 75-5-401);
 - xxi. Montana Nongame and Endangered Species Conservation Act (MCA 87-5-101);
 - xxii. Montana Stream Mitigation Process (February 2005, as modified for the Upper Clark Fork Stream Mitigation Bank).

- b. National Environmental Policy Act. Execution of this Agreement is, and approval of any supplemental Bank Site Plan(s) (BSP, defined below) shall be construed to be, in conformance with provisions, requirements, policies and guidance under the National Environmental Policy Act (NEPA), and further, with all NEPA requirements under the authorities listed above. Federal guidance on mitigation banking, implementing regulations for permitting/mitigation, and associated guidance have been subject to NEPA review, and permits issued pursuant to those regulations and guidance are subject to NEPA review before issuance, therefore transactions which allow use of

credits by private entities or local, state or federal (public) agencies under this Agreement shall not require a separate review under NEPA.

- c. **Modifications of Underlying Authorities.** The intent of this Agreement is to provide consistency in the application of various provisions of law, regulatory guidance and policy to the process of compensatory mitigation in Montana as executed by the Sponsor. It is agreed that revisions and/or modifications, including additions/deletions (collectively “changes”), to federal and state (Montana) provisions of law, regulatory guidance and policy shall be reflected in the application of this Agreement; provided, however, that any such changes shall apply only to those BSPs proposed after the effective date of the changes.
2. **Interagency Review Team (IRT).** The following shall serve as members of the Interagency Review Team for this Agreement:
 - a. US Army Corps of Engineers (Corps) – Chair
 - b. US Environmental Protection Agency (USEPA)
 - c. US Fish and Wildlife Service (USFWS)
 - d. Montana Department of Environmental Quality (MTDEQ)
 - e. Montana Department of Fish, Wildlife and Parks (MTFWP)
 - f. Montana Association of Conservation Districts designee (MACD)
 3. **Relationship to other Agreements.** This Agreement is unrelated to any other Agreements of similar purpose or scope, except as noted herein for reference under specific provisions of this Agreement.
 4. **Modifications to this Agreement.** Each Bank Site as further defined below, when approved by the IRT, shall be executed as a modification of this Agreement as provided for at 33 CFR 332.8[g]&[h]. In addition, Section 26 (Other Provisions), paragraph f. Validity, Modification and Termination, shall also apply.
 5. **Projects Eligible to Use the Bank.** The following types of projects may be eligible to use the bank sites established under this Agreement:
 - a. For projects in the service area of a Bank Site established under this Agreement that require authorization with an Individual Permit (IP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, the Corps, in coordination with other members of the IRT as necessary, may allow use of a Bank Site as compensatory mitigation for unavoidable impacts.

- b. For projects in the service area of a Bank Site established under this Agreement that require authorization with a Nationwide Permit (NWP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, Omaha District/State Program General Permits (SPGP), and/or a State permit for impacts to aquatic resources, and if said authorizations requires compensatory mitigation, credits from a Bank Site may be used to satisfy these compensatory mitigation requirements;
 - c. For environmental impacts under other programs (civil works, Superfund remediation/mitigation/natural resource damage compensation, supplemental environmental projects, State and Federal enforcement actions, etc.), credits from a Bank Site may be used to satisfy these compensatory mitigation requirements.
 - d. At the request of the Corps of Engineers, and upon execution of a letter of intent developed between the project applicant and Sponsor to use credits from a Bank Site, the Sponsor will produce the calculations necessary to determine debits resulting from the applicant's project.
6. **Debit-Credit Methodology – Wetlands.** It is necessary to create a debit and credit “denomination” that is comparable for both impacts (debits) and mitigation (credits). Ideally a functional assessment method would be applied to the calculation of both debits and credits; however, the current state of methodology development and related policy make this impracticable and so the following will be used:
- a. Debits – Debits will be calculated by using a one (1) acre of wetland impact is equivalent to one (1) debit. On a case-by-case basis, and at the Corps' discretion, a functional assessment may be used to calculate debits using the Montana Department of Transportation (MDT) Wetland Functional Assessment (2008). Wetlands have a “possible functional level” for various functions, but are not always currently “operating” up to that level. After an impact occurs, the functional level is generally reduced, typically to 0 in a fill impact. For example, if the possible functional level for a given wetland is 100%, and the actual/current functional level is 50%, and the post-impact/proposed functional level is 0%, we would take the product of the difference of these latter two categories of percents and the impact site acreage to calculate “debits”. Attached is an example table showing the calculation (Table 1).
 - b. Credits – The MDT Wetland Functional Assessment (2008) will be the only means for calculating credits at a Bank Site where ecological lift is proposed. Similar to the example above, for credits the opposite is true. The Bank Site chosen will generally be one which has poor quality wetlands operating far below the possible function level and, in the case of a non-wetland (eg. prior converted cropland) operating at 0% function. The goal is to “lift” the functional level significantly, thereby generating “credits”. Often times the Bank Site lift will not result in the wetlands operating at maximum possible functional level for every function, but something close to it. For example, if the possible functional level for a given wetland is 100%, and the actual/current functional level is 20%, and the post-restoration/proposed functional level is 90%, we would take the product of the difference of these latter two categories of percents and the Bank Site acreage to calculate “credits”. Attached is an example table showing the calculation (Table 1) .

For Bank Sites which propose to “create” or restore “non-wetland” areas (areas which have no wetland functions at all) there will be an assumed 100% increase in functions; in such cases, the number of wetland acres WILL BE the number of credits, since a baseline functional assessment is not applicable. Multipliers may be used when credits are to be issued as “early release” or as “after-the-fact” credits – see below for explanation

7. **Debit-Credit Methodology – Streams and Riparian Buffers.** The Montana Stream Mitigation Process will be the basis for debiting and crediting associated with stream impacts (debits) and stream and riparian buffer restoration (credits) (Tables 2a – 2c). To refine the process, a functional assessment method will be used to determine existing condition and as a means to measure performance.
 - a. Stream Mitigation Process (SMP) – the proposed SMP (February 24, 2005) for Montana, and any subsequent SMP revisions, will be the method for calculating debits at an impact site, and for calculation of credits at a Bank Site.
 - b. Functional Assessment method – the USDA-NRCS Montana Riparian Assessment Method (MT RAM, Environmental Technical Note MT-2, 2004) will be used to establish the “Existing Conditions” category for the stream to be impacted (impact site), with SMP categories of “Impaired”, “Somewhat Impaired” and “Fully Functional” equivalent to the MT RAM ratings of “Unsustainable”, “At Risk” and “Sustainable”, respectively. The MT RAM will be used at the Bank Site as the basis for establishing Net Improvement, with restoration that results in stream status increasing from Not Sustainable to Sustainable considered “Substantial”.
 - c. Multipliers may be used when credits are to be issued as “early release” or as “after-the-fact” credits – see below for explanation.

8. **Credit-Debit Methodology – Preservation and Upland Buffers.** Credits for “preservation” and “upland buffers” as defined in the Corps of Engineers, Omaha District mitigation guidance may be allowed and will be calculated using the ratios provided in that guidance; however, preservation and upland buffer credits can make up no more than 50% of total Bank Site credits. Wetland preservation may only be considered if the wetlands proposed are (1) regionally important and under demonstrable threat; (2) a minor component of the overall Bank Site Plan; and (3) in cases of after-the-fact credits, documented to be the only practicable alternative available. Creditable upland inclusions (ie. small upland areas within the Bank Site) may also be considered; however, they must be clearly shown to have a relationship to aquatic resource function, and total upland area (internal and surrounding) and related credits may not make up more than 10% of the total Bank Site credits. Creditable upland buffers may be up to 50 feet for slopes up to 5%, and up to 100 feet for sites with greater than 5% slopes or for buffers which have predominantly shrub and/or forest cover rather than grass. On a case-by-case basis, the Corps, in consultation with the IRT, may consider variations on this standard.

9. **In-Kind versus Out-of-Kind.** Impact mitigation will typically be on an in-kind basis. For wetlands, impacts to various Cowardin et. al. (1979) classes will be compensated from a Bank Site with the same Cowardin wetland classes; however, should an impacted wetland have less than 10% cover of any particular Cowardin class, compensation will not be

required for that Cowardin class at the Bank Site. For streams, in-kind replacement is defined and addressed in the Stream Mitigation Process and will include stream order and Rosgen classification. In all cases, credits produced by a Bank Site will be “blended credits” (ie. for a wetland bank site, credits will be the sum total of all credits for all wetland classes, and applied to debits regardless of class; the same holds true for stream banks).

Out-of-kind compensation may be acceptable to the Corps and IRT if: (1) it is determined to be more practicable than in-kind mitigation, in which case the Corps may assign a multiplier of up to 1.5 credits to 1 debit; (2) out-of-kind compensation would be environmentally preferable and/or of greater value to the watershed than in-kind compensation, with no penalizing multiplier. Decisions to use mitigation Bank Sites for out-of-kind compensation and/or for projects outside the service area of the Bank Site will be made on a case-by-case basis.

10. **Credit Release – Released, Early Release and After-the-fact Credits.** When Bank Site credits are secured by protective instruments and performing their natural functions according to performance standards established in the BSP, they are considered fully “released”. In most cases, given the time periods necessary to meet performance standards, only a small portion of a Bank Site’s credits would be performing at full function in the initial years of operation. In recognition of the Sponsor’s good faith effort to establish the Bank Site pursuant to this Agreement, a percentage of a Bank’s Site’s total credits will be available upon approval of the BSP. These “early release credits” will be based on the total number of credits to be produced over the entire Bank Site operational life period. See attached Table 3 for hierarchy of terms. As applied to this Agreement:
- a. *Released* credits are those for which there is an approved BSP and protective instruments have been established, which have been physically developed under the BSP through creation, restoration, enhancement and/or protection/maintenance, and which have been shown to meet performance standards through a prescribed monitoring protocol.
 - b. *Early release* credits are those for which there is an approved BSP and protective instruments have been established, and which are proposed to be developed under the BSP, but which have not yet been shown to meet performance standards through a prescribed monitoring protocol. Early release credits become Released credits following submittal to, and approval by, the IRT of a requisite monitoring report which shows the created, restored and/or enhanced wetlands are meeting performance standards to the degree specified in the BSP for “certification” of the early release credits.
 - c. *After-the-fact* credits may be authorized by the Corps as a form of Permittee-responsible mitigation under a watershed approach, provided by the Sponsor as the responsible party (332.3[k][2][i], 332.3[l][1]); these are credits for which there is no approved BSP. Conditions under which the Corps may authorize such credits are defined in Section 23. After-the-fact credits become early release credits following the approval by the IRT of a BSP and subsequent execution of an Agreement modification.
 - d. Preservation and Upland Buffer credits are released upon execution of the BSP and establishment of protective instruments (eg. conservation easement).

11. Credit Release – Schedule and Multipliers. See attached Table 3 for hierarchy of terms.

As applied to this Agreement:

- a. Released credits are available to be assigned to a permittee as compensatory mitigation on a 1 credit for 1 debit basis.
- b. Up to 30% of a proposed Bank Site's credits may be available as Early release credits at the discretion of the IRT; early release credits may be assigned to a permittee as compensatory mitigation, but using a multiplier of 1.25 (1 debit requiring 1.25 early release credits).
- c. After-the-fact credits may be authorized by the Corps and made available by the Sponsor (see Section 23). These credits, which are issued before the debiting project has proceeded AND before the Bank Site has been identified, the BSP approved, or the mitigation project started, are assigned to the permittee using an even greater multiplier of 1.5 (1 debit requiring 1.5 after-the-fact credits).
- d. Following completion of the prescribed monitoring, and successful attainment by the Bank Site of the established performance standards, all credits are considered fully released and available for assignment by the bank to permittees for compensatory mitigation. A letter to this effect will be issued by the IRT chair within 30 days of submittal and approval of the final monitoring report.

12. Conservation Easement Provisions. Bank Sites will be preserved in perpetuity using as a template the conservation easement language in the attached (Exhibit 1). Specifically, provisions for purpose and effect, rights conveyed, reserved rights and prohibited uses, prior notice, breach and restoration, costs, taxes, indemnities, assignment, documentation, and indemnities shall meet all requirements of the Omaha District Guidance, and easements shall run with a burden title to the Property in perpetuity and shall bind Grantor and all future owners and tenants.**13. Performance Standards – Wetlands.** Bank Sites must meet the following performance standards before release of all credits:

- a. Wetland Criteria – restored (rehabilitated/re-established), enhanced and preserved wetlands must meet the three standard criteria (soils, vegetation, hydrology) prescribed in the Corps' 1987 Delineation Manual; created wetlands must meet the vegetation and hydrology criteria only, which is presumed to lead to hydric soils over time.
- b. Floristic Quality Index – after Taft et. al. (1997), but to include cover weighted mean C values, with C values for vegetation provided in Jones (2005). Performance standard will be a cover-weighted mean C value for native species at a minimum of 4.0 on a scale of 1.0 – 10.0. A Floristic Quality Index performance standard will be established separately for each Bank Site, but will generally be between 25 and 35.
- c. Species richness – a minimum of 60% of vegetation must be native vegetation species (Omaha District mitigation guidance).
- d. Wetland Indicator metric of Jones 2005, assigning values of -5 (OBL) to +5 (UPL) as ordinate values then using a cover-weighted mean to characterize the plant community relative to hydrology (after Taft 1997).

- e. Less than 10% cover of exotic/noxious species as listed by the Montana Department of Agriculture, state noxious weeds list by the end of the third growing season and no more than 5% at the end of the prescribed monitoring period.
- f. Specific to scrub-shrub areas (eg. PSS) as defined by Cowardin et. al. 1979, to meet the performance standard of being mapped as scrub-shrub, the area must have a minimum cover of 174 stems per acre by the end of the five-year monitoring program. Failure to meet this standard may require supplemental planting and additional monitoring for as long as necessary to report three consecutive years of success. The density component of this standard may vary if the proposed species composition for the Bank Site is significantly different from the willow-, dogwood- and/or alder-dominated shrub communities common to wetlands in Montana.

14. Performance Standards – Streams and Riparian Buffers. Bank Sites must meet the following performance standards before release of all credits:

- a. Attain a cumulative rating score on the MT RAM form of “Sustainable” for two consecutive years. Since component criteria in Questions 1 – 3 and Question 10 can be somewhat qualitative, the following will be used as a refinement:
 - i. one cross-section per 1,000 feet of assessed reach, beginning at the edge of the floodplain as defined by the site plan, and extending perpendicular across the stream to the opposite floodplain edge. Evidence of active headcuts or low, vertical edge (scarp) at the toe of the stream bank, particularly on the inside of a meander, as determined by these cross-section will affect scoring negatively.
 - ii. the project must experience at least one observed bank-full event during the monitoring period to successfully complete this rating; should the project not experience a bank-full event during the five-year monitoring period, the IRT may require additional monitoring events before certifying all credits in the bank.

In addition, for Questions 8 – 9 regarding scoring the scrub-shrub component of the riparian buffer in a Bank Site where this is a component of the climax community, a calculation must be made to determine eventual cover/age class of the buffer at maturity:

- iii. Using the Cowardin et. al. (1979) classification for scrub-shrub areas of 30% cover at maturity, the standard will be 174 stems per acre of native shrub species of the following genera: *Salix*, *Alnus* and *Cornus*. Should other species be proposed for the community, a separate calculation will be required for this performance standard based on the estimated canopy cover at maturity of the proposed species assemblage.
- b. Buffers must remained undisturbed to the maximum extent practicable allowing for sound management practices.

15. Upland Buffers. Pursuant to 33 CFR 332.8[o][7] upland areas which occur within the Bank Site, or as buffers around the Bank Site, may be creditable under conditions described in Section 7. For this Agreement and subsequent BSPs, the following performance standards will be used to measure success of upland habitats in adding value to the Bank Site:

- a. Uplands must meet performance standards stated for wetlands with the exception of the Wetland Criteria and Wetland Indicator status;

- b. Buffers must remain undisturbed to maximum extent practicable allowing for sound management practices.

16. Bank Site Monitoring. To ensure success, the Sponsor shall conduct annual monitoring visits at each mitigation site to validate compliance with the terms of this Agreement. Monitoring shall be performed in accordance with the protocols listed below, which may be modified as needed and specified in a BSP. Following completion of the monitoring efforts each year, an annual report of findings will be submitted to the Corps by December 31, along with one copy to be made available to the IRT. The annual report will include a description of remedial actions needed, including replanting of vegetation or further hydrological modifications. Regulatory Guidance Letter 06-03 describes how information is to be reported. A combination of the following protocols will be employed, depending on the site, to generate the detailed data supporting the findings of each report:

- a. Montana USDA-NRCS Riparian Assessment Methodology (MT RAM)
- b. MDT Wetland Functional Assessment Methodology
- c. Greenline Method (Winward 2000) is used as a component of the MT RAM to describe stream-side vegetation communities
- d. Standard quantitative monitoring protocols (100 m² transects, 1 m² quadrats, 100 m² x 10 m² belt transects for woody species, permanent photo-stations, etc.)
- e. For wetland Bank Sites, Year 2 and Year 4 monitoring may use grid-point sampling system. As part of this sampling method, the entire Bank Site will be sub-divided with a 100 meter grid. Each intersection point of the grid is located with a GPS receiver with sub-meter accuracy. At each point, dominant vegetation and surface hydrology are recorded within a 0.01-ha plot. Specifically, the following parameters are recorded at each site:
 - i. Dominant species within the plot. For purposes of this methodology, all species within the plot that comprised at least 3 percent canopy cover are recorded.
 - ii. Wetland surface hydrology. Surface hydrology at each plot is recorded according to the Cowardin system (e.g. Permanently flooded, Intermittently Exposed, Semi-permanently flooded, Seasonally Flooded, Saturated, Temporarily Flooded, or Intermittently Flooded). In addition, saturated conditions are recorded as occurring either on the surface, within 0 – 6 inches of the surface, or within 6 – 12 inches of the surface.

These data will be used to supplement the permanent transect data collected in Years 1, 3 and 5 and are intended to characterize the entire Bank Site with wide-spread coverage of specific and characteristic data. The grid-point sampling method essentially creates a grid of large-scale transects across the entire area with each grid intersection analogous to the 1.0-meter plots located along the permanent transects. Grid-point data will be used to develop a more detailed wetland community type and surface hydrology map of the Bank Site. Further, since each plot occurs at a known coordinate, subsequent monitoring can be completed through quantitative data collection on a much larger portion of the Bank Site insuring that changes which may occur away from the permanent transects are not overlooked.

- f. Hydrology measurements using piezometers, staff gauges, etc.
- g. Scientific binomial nomenclature follows Dorn (1984)

A minimum of 1% of the project area shall be sub-sampled at the Bank Site. Transects and quadrats shall be strategically located to provide a representative sample of the Bank Site. Monitoring for Bank Sites shall be done annually for five consecutive years, with Year 1 monitoring to begin the first growing season after completion of the first phase of Bank Site construction and/or planting. Monitoring shall be suspended after the submittal of the Year 5 monitoring report, unless the Year 5 report indicates a need to continue monitoring due to (1) a need to evaluate remedial actions required in Year 4 or Year 5 monitoring reports, or (2) a component of the bank site plan (such as reforestation/aforestation) that would necessitate a longer monitoring period to gauge performance.

- 17. Monitoring Results – Effects on Credit Release.** Should the Year 5 monitoring report reveal a failure to meet fifth-year performance standards such as inability to achieve specified vegetative community quality within a specified timeframe, etc., release of additional credits, or withdrawal of any unsold credits, may be immediately suspended. The Corps will then coordinate with the Sponsor and the IRT to determine if remedial action is required. If remedial actions are found to be necessary, credits may remain suspended until such time as these actions are taken. If the required performance standard(s) are not met the following year as evidenced by an additional monitoring event, the Corps will convene a meeting with the Sponsor and IRT at the earliest opportunity to discuss a course of action, including but not limited to: (1) no further action and return to normal release of credits; (2) further corrective measures; or (3) termination of the Bank Site operation and related closure actions. If further corrective measures are taken and the Bank Site still does not meet performance standards within one year as evidenced by an additional monitoring event, the IRT may adjust the remaining credit balance to reflect the revised site potential or, if all credits are sold, require the Sponsor to offset mitigation shortfalls associated with the Bank Site's failure to perform.

Once a Bank Site has been established and determined by monitoring to be functioning as projected for two full years after initiation, any changes beyond the control of the Sponsor which may affect the function of the site will not reduce the credits already released; however, if at any time after initiation of the Bank Site an Act of God or human-induced activity adversely affects functioning of the Bank Site, release of additional credits will be suspended until such time as reevaluation of unreleased credits can be performed by the Corps in consultation with the IRT.

- 18. Geographic Service Areas (GSA).** Service areas for each specific Bank Site will be defined within one of the sixteen Major Basins illustrated by the Montana Watershed District map (Exhibit 2), which is based on the United States Geological Survey Hydrologic Unit Code (USGS HUC) watershed boundaries.

These watershed based boundaries are established with complete consistency with the USGS Hydrologic Unit Catalog mapping system, but group the 8-digit HUC watersheds into larger features sharing similar hydrologic characteristics. In addition, GSAs will not cross Eco-region or Major Land Resource Area boundaries. The proposed GSAs are currently used by the Montana Department of Transportation, and Upper Clark Fork Stream and Wetland Mitigation Banks.

- 19. Financial Assurance Requirements.** Sponsor agrees to be responsible for securing sufficient funds to cover initiation/establishment, monitoring, maintenance and remediation of the Bank Site. The Sponsor will establish a financial mechanism for each Bank Site to ensure that sufficient funds are available to perform the restorative and management activities as stipulated in the Bank Site Plan, and/or to perform subsequent corrective actions which may be needed to meet applicable performance standards and to monitor and maintain the Bank Site. Specific to this Agreement, those financial assurances will be:
- a. Contingency Fund – \$100,000 or 25% of estimated restoration costs per site, whichever is greater, to be established before release of any credits (typically within 60 days of BSP approval) and carried until all credits are released. Should all of the Bank Sites credits be released by the IRT sooner than the end of the five-year monitoring period, then the IRT, in its sole discretion, may release Sponsor from its obligation to continue providing the full value of the Contingency Fund. The Contingency Fund shall constitute the maximum aggregate liability of the Sponsor for failure to take remedial actions to repair conditions at the Bank Site during the five-year monitoring period.
 - b. Long-term Management Fund – \$25,000 cash-in-escrow in perpetuity, established concurrently with the Catastrophic Events Fund (see below). These monies are available to the long-term manager or other third party beginning at the end of the five-year monitoring period or upon release of all credits (whichever occurs first). These funds are to provide financial assurance that the Bank Site will be properly maintained as a conservation area pursuant to the protective instruments. At the discretion of the IRT, some or all of these funds may be drawn and used if any provision of such protective instruments are violated during the Long-term Management Period, defined as that period following the end of the five-year monitoring period or upon release of all credits (whichever occurs first) and continuing in perpetuity. The purposes for which Long-term Management Funds may be drawn and used are limited to repair or maintenance needs resulting from: (1) failure on the part of the Sponsor or others to maintain the Bank Site as a conservation area in accordance with the protective instruments; or (2) the occurrence of a catastrophic event as defined below. The Long-term Management Fund shall constitute the maximum aggregate liability of the Sponsor and long-term manager for failure to take remedial actions to repair conditions at the Bank Site during the long-term management period.
 - c. Catastrophic Events Fund – \$25,000 cash-in-escrow in perpetuity, established concurrently with the Long-term Management Fund (see above). These monies are available to the long-term manager or other third party beginning at the end of the five-year monitoring period or upon release of all credits (whichever occurs first). These monies shall be available to the Sponsor, long-term manager, or a third party in the event of damage to the Bank Site lands caused by “Catastrophic Events” (defined below).

Damages from catastrophic events are permitted to be repaired using the principal and interest accumulated in the Catastrophic Events Fund by either the Sponsor, long-term manager, or a third party, whichever entity has responsibility to repair the damages. Expenditures from the Catastrophic Events Fund shall be approved by the IRT. For purposes of this Agreement, “catastrophic events” means any event that

causes damage to the Bank Site and is beyond the reasonable control of the Sponsor or Long-term Manager to prevent, including without limitation the following events:

- i. Drought, insect damage, animal damage, or infection damages to planted vegetation that occurs at a magnitude such that the vegetation falls below the performance standards described in this Agreement following a quantitative monitoring effort that documents such conditions;
- ii. Erosion and/or sediment damages occurring after the site has been fully stabilized and applicable erosion and sediment control bonds have been released (if required);
- iii. Breach of any berms, embankments or spillway and/or damage to outlet structures from a storm event; and
- iv. Damage resulting from fire, flood, hurricane, and other natural disasters.

Without exception, the Catastrophic Events Fund represents the absolute, aggregate limit of the Sponsor's liability for any and all damages to the Bank Site (and associated repair costs) caused by catastrophic events.

Financial assurances may be in the form of a surety bond, irrevocable letter of credit, or cash-in-escrow account. If a performance/surety bond is used, the bond will follow that provided in Regulatory Guidance Letter 05-1 in form and format. Such bond shall normally be written by a surety company which is on the most recent US Department of the Treasury Financial Management list of approved bonding companies as published in the Federal Register. If an irrevocable letter of credit or a cash-in-escrow account is used, the letter or account must be provided by a federally insured depositor that is "well-capitalized" or "adequately capitalized" as defined in Section 38 of the Federal Deposit Insurance Act. The dollar amount of the contingency fund shall be determined based upon the Sponsor's projected cost to implement, manage and maintain the Bank Site, and the contingency fund must guarantee performance as identified in the Bank Site Plan, with payments to a third-party agency or non-profit conservation entity approved by the IRT in the event the Sponsor is unable or unwilling to fulfill the obligations as specified in this Agreement and the applicable Bank Site Plan.

20. Reporting Requirements. Reports routinely produced for each Bank Site include a semi-annual ledger of crediting/debiting (Exhibit 3), and an annual monitoring report of ecological characteristics and progress toward meeting performance standards.

- a. Semi-annual ledger – a semi-annual ledger will be submitted which comprehensively accounts for credits certified, released, delivered to a permittee (by permittee name, permit no., date) and balance remaining.
- b. Annual monitoring reports – format provided in RGL 06-03, including:
 - i. Project overview – purpose of project, size, types of aquatic resources, summary of findings;
 - ii. Requirements – performance standards, whether or not they've been met, or are trending toward success;
 - iii. Summary data – summarized findings from detailed monitoring; photo-documentation;
 - iv. Maps – site plan, planting plans, etc.;
 - v. Conclusions – project condition, performance standards not being met, problems, proposed remedial actions, further monitoring needs.

21. Long-term Management Plans. A third-party long-term manager acceptable to the IRT will be named which shall be responsible for managing the Bank Site in perpetuity in accordance with the terms of a long-term management plan and real estate provisions, including the terms of the deed of conservation easement. A general description of the long-term management goals is provided below. The agreement between the sponsor and long-term manager will specify that the long-term manager and its land stewards will provide oversight of management needs and ensure full implementation of all easement provisions. The agreement will further stipulate that costs associated with management of the Bank Site up to the limits of the financial assurances, will be borne by the Sponsor. Overall Management Goals:

- Maintenance in perpetuity of the property in a relatively natural state with significant ecological and open space values as defined in Section 76-6-104 et seq Montana Code Annotated (MCA) and so as to provide significant relatively natural habitat for native plants and wildlife;
- Protection of the property in perpetuity so as to contribute to the ecological integrity of the watershed, its tributaries, and including protection of values for aquatic habitat including trout and other native fish, riparian plant communities, diverse waterfowl and other birds, deer, elk and other wildlife;
- Identify, preserve and protect in perpetuity the open space character and related significant natural features and values;
- To enhance, upon mutual agreement, and in the event of their degradation or destruction, to restore the open space and significant relatively natural features and values of the property utilizing the financial resources from the Long-term Management Fund and, in the case of unforeseen negative influences, the Catastrophic Events Fund;
- To conserve important habitat for wildlife, to protect rare and unique native plants, to conserve and restore unique aquatic habitat for native fish, and to conserve the diverse riparian and/or other vegetation communities and the wildlife inhabiting those communities;
- Ensure full and complete implementation of all provisions of the over-riding “Deed of Conservation Easement” as applied to the entire property.

22. Adaptive Management Plans. For each Bank Site Plan the Sponsor shall develop an adaptive management plan, to be implemented in the event the Bank Site or a specific phase of the Bank Site fails to achieve performance standards. The Sponsor shall follow the adaptive management plans and implement appropriate remedial actions for the Bank Site or that phase of the Bank Site in coordination with the IRT. In the event the Sponsor fails to implement necessary remedial actions within one growing season (by November 1 of the following year) after notification by the Corps and/or MTDEQ of necessary remedial action to address any failure in meeting the performance standards, the IRT (acting through the Chair) will notify the Sponsor and the appropriate authorizing agency(ies) and recommend appropriate remedial actions including suspension/revocation of available bank credits.

23. Bank Site Plans (BSPs) and Bank Sites – Form, Format, Content and Approval. A Upon identification of a potential Bank Site, a BSP will be submitted to the IRT with an ultimate goal of IRT approval of the Bank Site, which approval shall take the form of IRT

execution of an Agreement modification (33 CFR 332.8[g]&[h]). The following specific information will be included in the Bank Site Plan to be submitted to the IRT for review. A “complete” BSP will contain all of this information in sufficient detail to allow members of the IRT to make a judgment as to the viability of the Bank Site to produce the credits proposed in the BSP. Generally, no information beyond that prescribed below will be required for a complete BSP; however, additional information may be requested by the IRT as a means to more thoroughly understand the proposed functions and associated benefits of the Bank Site. The time for submittal and review of additional information will not extend the IRT review period.

- a. Baseline Data shall include:
 - i. site selection criteria
 - ii. ecological site characterization
 - iii. MDT Functional Assessment (wetlands) and/or SMP (streams/riparian) when appropriate
 - iv. current aerial photography (< 2 years old)
 - v. current topographic information
 - vi. valid wetland delineation when appropriate
 - vii. water rights – documentation of water rights which supply water to the wetland or stream bank that are: (A) physically sufficient in and of themselves to provide for the sustenance of the wetland or stream bank; and (B) legally available to supply water to the wetland or stream bank; for aquatic systems which are groundwater driven, such water rights documentation is not required
 - viii. cultural resource review
 - ix. rare flora/fauna species review
- b. Site Development Plan shall include, but not be limited to:
 - i. boundaries of proposed treatments, including buffers
 - ii. construction methods, timing and sequence
 - iii. source of water supply and connectivity to other aquatic resources
 - iv. topographic/microtopographic requirements related to hydrology and vegetation establishment, including a water budget for the project
 - v. planting schedule
 - vi. any proposed reliance on natural revegetation
 - vii. noxious plant species management
 - viii. erosion/sedimentation control
 - ix. construction management considerations (temporary fencing, mulching, etc.)
 - x. long-term management considerations
- c. Proposed Credits and Credit Release Schedule
- d. Site-specific Maintenance, Long-term/Adaptive Management Plans
- e. Review and Execution by the IRT (including time-frames) shall be as follows:
 - i. the IRT shall have up to six months for review of a BSP, including field review of the site and all Sponsor-submitted information
 - ii. since each BSP, once approved, will be considered a modification of this Agreement, such modifications shall be consistent with all then-current federal and state rules, policy and guidance and review/execution of the BSP shall be consistent with 332.8[g][2]

- iii. execution of each Bank Site as an Agreement modification shall take the form of an individual signature page from each signatory member of the IRT submitted to the Corps within 30 days of approval of the BSP by the IRT, or the end of the six month review process, whichever comes first.
- f. Environmental Review and Permitting. NEPA compliance is inherent in this Agreement; however, for each Bank Site proposed Sponsor must obtain any and all local, state and federal permits and approvals needed to effect the site development plan. Receipt of such approvals and permits is not required before approval of the Bank Site by the IRT.

24. **After-the-fact Credits – Permittee-responsible Mitigation Under a Watershed**

Approach. In accordance with 33 CFR 332.3[c], and as applied herein, this Agreement allows for the issuance of “after-the-fact” credits from a yet to be identified Bank Site within a prescribed GSA. Given that the Bank Site’s habitat values will be developed concurrently with, or subsequent to, project impacts, a multiplier is applied to the required credits as described in Section 10 to compensate for temporal loss of habitat values.

A fee will be paid to the Sponsor by the permittee, with the Sponsor serving as a third party mitigation provider under the rigorous structure of this Agreement. The Corps of Engineers, in the Special Conditions of the permit, will formally recognize the Sponsor as having “responsibility” for mitigation through the designation of Sponsor as the “third party provider”. Sections 332.3[k][2][i] and 332.3[l][1] specifically provide for identification of the Sponsor as the “party responsible for providing the compensatory mitigation” and the “party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project”, respectively. While the phrase “third party provider” is not used in the rule, it is referenced in the Preamble as mitigation conducted by “a third party provider, mitigation bank, or in-lieu fee program” in which responsibility for success of the compensatory mitigation transfers from the permittee to the third party provider. This arrangement can be particularly useful for projects with impacts that cannot practicably be mitigated on site, or for linear projects that result in impacts scattered over a large geographic area, or for projects with impacts for which compensation is best accomplished in a watershed context at an off-site location but where no mitigation banks yet exist.

The following special provisions apply to the process of issuing after-the-fact credits under this Agreement. Since fees may be taken in by Sponsor from a permittee whose mitigation/debiting requirements are relatively small, Sponsor will typically identify a Bank Site with potential to develop additional credits substantially beyond those required by a single project; however, it is not required under this Agreement to do so. A maximum of 30% of a proposed GSA’s ten-year credit demand, as determined by the Corps in consultation with Sponsor and the IRT, may be issued as after-the-fact credits to satisfy the compensatory mitigation requirements for debiting project(s). Mitigation associated with a permittee’s project will be accomplished at a Bank Site within the GSA of that permittee’s project using a watershed approach, as defined below.

- a. Bank Site Selection Criteria – A variety of site selection criteria will be carefully considered by the Sponsor in identifying the location for the Bank Site where the fees paid to the Sponsor will be expended to accomplish the associated mitigation. Bank Site selection is at the sole discretion of the Sponsor, but will generally include:

- i. Nature of ownership (considered equally within a prescribed GSA):
 - 1) Develop resources on public land where a permanent easement is allowed;
 - 2) Develop resources on private land with public access;
 - 3) Develop resources on private land with public education and/or recreation benefit;
- ii. Location within the GSA;
- iii. Surrounding land use;
- iv. Ecological lift potential;
- v. Credit production – The Bank Site must propose production of at least 1.5x the debits presented to the Sponsor and for which the in-lieu fee was paid;
- vi. Potential for additional on-site benefits (eg. to wildlife);
- vii. Potential for additional off-site benefits (eg. water quality downstream).
- b. Bank Site Development Timelines – the following absolute guidelines are established to ensure the timely and effective establishment of in-kind habitats, and are necessary to reduce temporal loss of habitat values.
 - i. Site Selection and BSP Approval – the Bank Site will be selected by Sponsor and a complete BSP submitted to the IRT within 18 months of receiving the initial third party mitigation fee; in accordance with BSP review protocols established in Section 22, the IRT will then have six months to approve the BSP and 30 days to execute the associated Agreement modification, for a total of 25 months from receipt of fees to an executed Agreement modification.
 - ii. Project Initiation – Bank Site construction/planting will be initiated within 12 months of Agreement modification.
- c. Credit Release
 - i. All credits characterized as after-the-fact credits are assigned an appropriate multiplier (Section 10 and Table 3) until the BSP is approved and an Agreement modification is executed. Credits are then characterized as early release credits (Section 9) from the Bank.
- d. Financial Assurances
 - i. Initial Financial Assurances – Upon receipt of fees for after-the-fact credits, up to 25% of said fees will be placed in an escrow account acceptable to the Corps; the exact amount of the escrow fund will be determined by the Corps at its sole discretion but in consultation with Sponsor on the financial needs of the project, apparent availability of Bank Sites in the GSA, etc.
 - ii. After a Bank Site is selected, BSP approved, and Agreement modification executed, the escrow funds will be released in their entirety to Sponsor and standard Financial Assurances established (see Section 18. above).

25. **Initial Sites Established Under This Agreement.** Pursuant to 33 CFR 332.8[h], the initial sites established under Agreement with the IRT shall include the Upper Clark Fork Stream Mitigation Bank, and the Upper Clark Fork Wetland Mitigation Bank, both located in the Upper Clark Fork major watershed basin. Original Agreements for both Banks are incorporated into this Agreement by reference. In summary:

Upper Clark Fork Stream Mitigation Bank Site

The Upper Clark Fork Stream Mitigation Bank is established for the purpose of mitigating unavoidable stream and riparian impacts approved through the Corps, which 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 Upper Clark Fork Stream Mitigation Bank instrument, which is incorporated by reference as an initial site under this Agreement.

The objective of the Bank is to mitigate impacts to 1st, 2nd, and 3rd order streams and riparian corridors, compensating for approximately 35,849 stream debits and 24,255 riparian debits yielding 60,104 blended stream credits in accordance with the Stream Mitigation Process defined in the Bank instrument. The goal of the bank is to create/restore 12,511 feet of spring creek to a Rosgen E-5 classification (Riverine, Upper Perennial, Rock Bottom per Cowardin et. al. 1979).

The primary geographic service area for this bank will encompass the Blackfoot, Upper Clark Fork, and Flint-Rock watersheds (Hydrologic Units 17010203, 17010201, and 17010202 respectively) and a 10-mile radius from the Missoula, Montana city center. A secondary service area of a 50-mile radius from the confluence of the Blackfoot and Clarkfork Rivers is also hereby established. At the discretion of the Corps, credits may be approved outside of the primary geographic service areas.

Upper Clark Fork Wetland Mitigation Bank Site

The Upper Clark Fork Wetland Mitigation Bank is established for the purpose of providing compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands and special aquatic sites that result from activities authorized under Sections 401 and 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act. The creation, operation, and use of the Bank will be in accordance with the Upper Clark Fork Wetland Mitigation Bank Instrument, which is incorporated by reference as an initial site under this Agreement.

The objective of the Bank is restoration of 264.9 acres of farmed wetland pasture and riparian areas, all on hydric soils and their non-hydric inclusions. Restoration will result in development of high quality habitat in several categories, including rehabilitated & enhanced wet meadow (118.0 A), Nevada Creek riparian zone wetlands (59.3 A), emergent wetlands (15.8 A) scrub-shrub wetlands (43.3 A), riparian wetlands in the east meadow (28.5 A).

The primary geographic service area for this bank will encompass the Blackfoot, Upper Clark Fork, and Flint-Rock watersheds (Hydrologic Units 17010203, 17010201, and 17010202 respectively) and a 10-mile radius from the Missoula, Montana city center. At the discretion of the Corps, credits may be approved outside of the primary geographic service area.

26. **Other Provisions.** The following are standard provisions which shall apply to the establishment, operation and ultimate closure of all Bank Sites developed under this Agreement.
- a. Force Majeure – Except as provided for in the Catastrophic Events Fund, the Sponsor will not be responsible for Bank Site failure that is attributed to unexpected and disruptive forces that are beyond what would be considered as normal or natural disturbances. Sponsor's responsibility for natural catastrophes such as flood, drought, disease, regional pest infestation, etc., that are beyond the reasonable control of the

- Sponsor to prevent will be determined on a case-by-case basis by the Corps Project Manager with concurrence from appropriate District personnel. In no instance shall the Sponsor, long-term manager or a third party be required to take restorative actions or corrective measures which require expenditures in excess of the limits specified in the Catastrophic Events Fund.
- b. Dispute – Resolution of disputes about application of this Agreement shall be in accordance 33 CFR 332.8[e]. Disputes related to satisfaction of performance standards may be subject to independent review from government agencies or academia that are not part of the IRT. The IRT will evaluate this input and determine whether the performance standards are met.
 - c. Default – Should the IRT determine that the Sponsor is in material default of any provision of this Agreement, the IRT, acting through the Corps may notify the Sponsor that the sale or transfer of credits from any Bank Site will be suspended until the appropriate deficiencies have been remedied. Upon notice of such suspension, the Sponsor agrees to immediately cease all sales or transfers of mitigation credits until the IRT informs the Sponsor that sales or transfers may be resumed. Should the Sponsor remain in default, the IRT, acting through the Corps, may terminate this Agreement, the approval of any/all pending Bank Site Plans, and any subsequent Bank Site operations. Upon termination, the Sponsor agrees to perform and fulfill all obligations under this Agreement relating to credits that were sold or transferred prior to termination.
 - d. Bank Site Operational Life and Closure – For any Bank Site established under this Agreement, at the end of the 5-year monitoring period and upon satisfaction of the prescribed performance standards, the IRT shall issue a written certification of satisfaction to the Sponsor and any surety or escrow agent, and thereafter any remaining Contingency Fund monies will be released to the Sponsor. All credits associated with a specific Bank Site at that point shall be considered certified and shall be available for sale within the GSA. Bank Site closure is considered to occur following the sale of all certified credits, OR upon the decision on the part of the Sponsor to cease all sales of the Bank Site's certified credits. It is the responsibility of the Sponsor to submit in writing its intent to terminate Bank Site operations, thereby ending its obligations for annual reporting to the IRT on Bank Site credits/debits. Regardless of the date of Bank Site closure, the Long-term Management Fund and Catastrophic Events Fund shall remain in effect and available to the Sponsor or long-term manager of the Bank Site area, for use under conditions specified in Section 18. Should Bank Site closure occur during the five-year monitoring period, the Long-term Management Fund and Catastrophic Events Fund shall be established immediately and made available to the Sponsor or long-term manager for use under conditions specified in Section 18.
 - e. Transfer of Assets – Bank Site lands may be owned in fee title by Sponsor, or may be owned by a third party under agreement to the Sponsor for activities under this Agreement. In cases of the latter arrangement, this Agreement and the approved Bank Site Plan shall be made an irrevocable part of the agreement between the Sponsor and Bank Site landowner, which shall be obligated in every way and without exception to abide by the provisions of this Agreement and Bank Site Plan. Operation of a Bank Site under this Agreement may be transferred to a private entity

- or State or Federal resource agency upon approval of the IRT, which may not unreasonably withhold such approval. If operation of the Bank Site is transferred to a private entity, all management and administration of the Bank Site will be transferred to the new Bank Site operator, subject to all covenants, provisions, terms and conditions of this Agreement and the approved Bank Site Plan. If operation of the Bank Site is transferred to a State or Federal agency, the Bank Site may become part of the overall management of those lands, such as a wildlife management area, and some elements of this Agreement and/or the Bank Site Plan may change accordingly, provided such changes are approved by the IRT in advance. Upon transfer to the new operator, that operator will become the Sponsor which will fully assume all responsibilities and liabilities placed upon the Sponsor by this Agreement and the applicable Bank Site Plan. The transferring operator/Sponsor shall be relieved of all liabilities under this Agreement and the applicable Bank Site Plan.
- f. **Validity, Modification, and Termination** – This Agreement will become valid on the latter date of either the Sponsor's signature or the signature of the representative of the Corps. This Agreement may only 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 without invalidating the Agreement. Participation of the IRT member seeking termination will end 30 days after written notification. In the event the Sponsor determines that modifications must be made to any BSP under this Agreement to ensure successful establishment of habitat within the Bank Site, the Sponsor shall submit a written request for such modification to the IRT, through the Chair, for approval. The IRT, through the Chair, agrees to not unreasonably withhold or delay such approval. Documentation of implemented modifications shall be made consistent with this Agreement.
 - g. **Specific Language of Agreement Shall Be Controlling** – To the extent that specific language in this Agreement document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Agreement by reference, and that are not legally binding, the specific language within this Agreement and any associated attachments or exhibits shall be controlling.
 - h. **Notice** – Any notice required or permitted in this Agreement shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) sent by Federal Express or similar next day nationwide delivery system.
 - i. **Entire Agreement** – This Agreement will constitute the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.
 - j. **Invalid Provisions** – In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained therein.
 - k. **Headings and Captions** – Any paragraph heading or captions contained in this Agreement shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Agreement.

- l. Counterparts – This Agreement may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same Agreement.
- m. Binding – This Agreement shall be immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon execution by the Sponsor and the Corps, even though it may not, at that time or in the future, be executed by the other potential parties to this Agreement. The execution of this Agreement by USEPA, MTDEQ, USFWS, or other agency, city or county shall cause the executing agency to become a party to this Agreement upon execution, even though all or any of the other potential parties have not signed this Agreement. Execution does not signify the agencies' agreement with the use of credits in the Bank Site in connection with any specific permit or project.
- n. Liability of Regulatory Agencies – The responsibility for financial success and risk to the investment initiated by the Sponsor rests solely with the Sponsor. The regulatory agencies that are parties to this Agreement administer their regulatory programs to best protect and serve the public's interest in its waterways, and not to guarantee the financial success of Sponsor, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual Bank Site under this Agreement. Sponsors should not construe this Agreement as a guarantee in any way that the agencies will ensure sale of credits from any Bank Site or that the agencies will forgo other mitigation options that may also serve the public interest. Since the agencies do not control the number of mitigation banks proposed or the resulting market impacts upon success or failure of individual banks, in depth market studies of the potential and future demand for bank credits are the sole responsibility of the Sponsor.
- o. Other Uses – Notwithstanding any restrictions and allowances regarding use of the Bank Site as specified in an approved BSP, Sponsor reserves in its entirety the right to establish within the Bank Site a Habitat Conservation Bank for species as may be appropriately served by the habitat created as part of the Bank Site, and to sell credits developed therein consistent with applicable state and federal policy, guidance and law. Sponsor also reserves in its entirety the right to establish within an approved Bank Site a Water Quality Improvement Bank as may result from development (creation / restoration / enhancement) of the Bank Site, and to sell credits developed therein consistent with applicable state and federal policy, guidance and law.
- p. Agreement Update (5-year) – This Agreement shall be formally reviewed by the Sponsor and Corps, in consultation with the IRT, five years from the execution date of this Agreement for updating its provisions beyond those changes made pursuant to paragraph 1.c. Such review is to ensure consistency with then current policies, guidance, rules and laws which provide the authority for activities under this Agreement. The Corps, in consultation with the IRT, and Sponsor shall develop consensus on any requisite changes needed in this Agreement to maintain regulatory consistency, and will execute such changes as needed.
- q. Agreement Review and Termination (10-year) – This Agreement shall be formally reviewed by the Sponsor and Corps, in consultation with the IRT, ten years from the execution date of this Agreement for updating its provisions beyond those changes made pursuant to paragraph 1.c. Such review is to ensure consistency with then current policies, guidance, rules and laws which provide the authority for activities

under this Agreement. In addition, the ten-year review event will provide opportunity for the Corps or Sponsor to unilaterally terminate this Agreement by providing written notice one to the other of the intent to do so. Modification or termination of this Agreement may be effected during the intervening ten years only as provided for in the specific provision of this Agreement associated with Default (Section 26.c.).

IRT Binders

Regulatory/Guidance:

- Corps/EPA Final Mitigation Rule (33 CFR Parts 325 and 332)
- Regulatory Guidance Letter 05-1
- Regulatory Guidance Letter 06-03
- Omaha District Mitigation Guidance
- Montana Stream Mitigation Process

Example Umbrella Agreements:

- Mitigation Banking Program Agreement, Argyle, Inc., Sponsor, Vicksburg, MS District Corps of Engineers
- Umbrella Memorandum of Agreement, Great Dismal Swamp Restoration Bank, LLC Sponsor, Norfolk, VA District Corps of Engineers
- Neu-Con Umbrella Wetland Mitigation and Stream Restoration Bank, Environmental Banc & Exchange, LLC, Sponsor, Wilmington, NC District Corps of Engineers
- Wetland Mitigation Bank, Papio-Missouri River Natural Resources District, Sponsor, Omaha, NE District Corps of Engineers
- Umbrella Memorandum of Agreement for the Establishment, Development, and Operation of an Arkansas State-Sponsored Wetlands Mitigation Bank Program, State of Arkansas, Sponsor, Vicksburg, MS / Memphis, TN / Little Rock, AR Districts Corps of Engineers

Technical – Functional Assessment Methods:

- USDA-NRCS Riparian Assessment Method
- MDT Functional Assessment Method (2008)

Technical – Reference Studies:

- Taft 1997
- Jones 2005
- Winward 2000
- Andreas 2004

Maps:

- Ecoregions of the United States (Bailey 1994)
- Enlargement of NW US Major Land Resource Areas (NRCS)
- Description of MLRAs
- DEHNR Major Montana Watershed Basins overlay of 8-digit HUCs

Cover Sheet for Signature Pages

The following agencies and the sponsor have agreed to sign the

Umbrella Agreement for the
Establishment and Operation of Mitigation Banks Within the State of Montana,
Omaha Regulatory District, U.S. Army Corps of Engineers

Following are individual signature pages for each of the parties signatory to this
Agreement:

- ✓ Montana Mitigation Partners, LLC
- ✓ U.S. Environmental Protection Agency
- ✓ U.S. Fish and Wildlife Service
- U.S. Army Corps of Engineers, Omaha District
- ✓ Montana Department of Environmental Quality
- ✓ Montana Department of Fish, Wildlife and Parks

UMBRELLA AGREEMENT

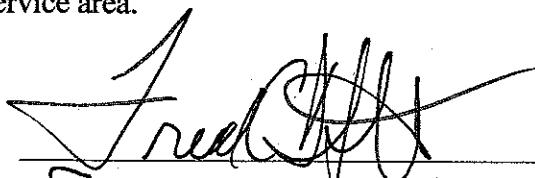
FOR THE ESTABLISHMENT AND OPERATION OF MITIGATION BANKS WITHIN THE STATE OF MONTANA, OMAHA REGULATORY DISTRICT, U.S. ARMY CORPS OF ENGINEERS

This Agreement, entered into by Montana Mitigation Partners, LLC; US Environmental Protection Agency; US Fish and Wildlife Service; Montana Department of Environmental Quality; Montana Department of Fish, Wildlife and Parks; and the US Army Corps of Engineers (COE), is for the purpose of establishing Mitigation Banks (Banks) throughout the State of Montana. The Banks 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 Banks will be in accordance with the **Umbrella Agreement**, dated October 6, 2008, Appendix 1 to this Agreement.

The objective of the Banks is to compensate for impacts to waters of the United States, and more specifically special aquatic sites such as wetlands and streams throughout the State of Montana. The goal of the Banks is to create highly functional wetlands (primarily Palustrine Emergent, Scrub-Shrub and Forested) and streams (primarily Riverine Streambed and associated Emergent and Scrub-Shrub wetlands).

The primary geographical service area for each Bank will be defined within one of the sixteen Major Basins of the Montana Watershed District map, which are based on the United States Geological Survey Hydrologic Unit Code (USGS HUC) watershed boundaries. Those boundaries are the same as those established for the Montana Department of Transportation and the Montana Fish, Wildlife and Parks In-Lieu Fee Program. At the discretion of the COE, credits may be approved outside of the primary geographic service area.

SIGN: _____



DATE: _____

1/8/09

PRINT: _____

FRED C. DANFORTH

TITLE: _____

MANAGING MEMBER

ORGANIZATION: . MONTANA MITIGATION PARTNERS, LLC .

UMBRELLA AGREEMENT

FOR THE ESTABLISHMENT AND OPERATION OF MITIGATION BANKS WITHIN THE STATE OF MONTANA, OMAHA REGULATORY DISTRICT, U.S. ARMY CORPS OF ENGINEERS

This Agreement, entered into by Montana Mitigation Partners, LLC; US Environmental Protection Agency; US Fish and Wildlife Service; Montana Department of Environmental Quality; Montana Department of Fish, Wildlife and Parks; and the US Army Corps of Engineers (COE), is for the purpose of establishing Mitigation Banks (Banks) throughout the State of Montana. The Banks 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 Banks will be in accordance with the **Umbrella Agreement**, dated October 6, 2008, Appendix 1 to this Agreement.

The objective of the Banks is to compensate for impacts to waters of the United States, and more specifically special aquatic sites such as wetlands and streams throughout the State of Montana. The goal of the Banks is to create highly functional wetlands (primarily Palustrine Emergent, Scrub-Shrub and Forested) and streams (primarily Riverine Streambed and associated Emergent and Scrub-Shrub wetlands).

The primary geographical service area for each Bank will be defined within one of the sixteen Major Basins of the Montana Watershed District map, which are based on the United States Geological Survey Hydrologic Unit Code (USGS HUC) watershed boundaries. Those boundaries are the same as those established for the Montana Department of Transportation and the Montana Fish, Wildlife and Parks In-Lieu Fee Program. At the discretion of the COE, credits may be approved outside of the primary geographic service area.

SIGN: Carol J. Campbell DATE: 11/26/08
PRINT: Carol Campbell
TITLE: ARA, Office of Ecosystem Protection & Remediation
ORGANIZATION: EPR

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SIGN: R. Mark Wilson DATE: 11-3-08
PRINT: R. Mark Wilson
TITLE: Field Supervisor
ORGANIZATION: U.S. Fish and Wildlife Service

UMBRELLA AGREEMENT

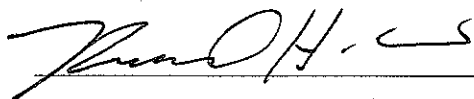
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SIGN:



DATE: 12/18/08

PRINT:

Richard H. Oppier

TITLE:

Director

ORGANIZATION:

Montana DEQ


UMBRELLA AGREEMENT

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SIGN:  DATE: 12/11/08
PRINT: JOE MAURIER
TITLE: FWP ACTING DIRECTOR
ORGANIZATION: _____

 11/26/08
Approved for Legal Content / Date

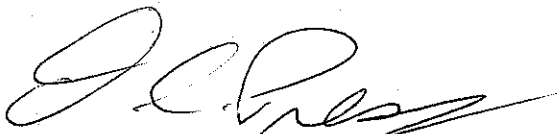
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SIGN:  DATE: 1/15/09

PRINT: David C. Press

TITLE: Colonel, Corps of Engineers, District Commander

ORGANIZATION: U.S. Army Corps of Engineers

Table 1. Crediting / Debiting Methodology – example calculations for wetlands.

IMPACT FACTOR				Impact Site acres: 12.5			Notes
Function & Value Variables	Possible Functional Points	Possible Functional Units	Current Rating	Current Functional Units	Proposed Rating	Proposed Functional Units	
A. Listed/Proposed T&E Species Habitat	1.0	12.5	0.7	8.75	0.0	0.0	
B. MT Natural Heritage Program Species Habitat	1.0	12.5	0.7	8.75	0.0	0.0	
C. General Wildlife Habitat	1.0	12.5	0.8	10.0	0.0	0.0	
D. General Fish/Aquatic Habitat							
E. Flood Attenuation	1.0	12.5	0.5	6.25	0.0	0.0	
F. Short and Long Term Surface Water Storage	1.0	12.5	0.5	6.25	0.0	0.0	
G. Sediment/Nutrient/Toxicant Removal	1.0	12.5	0.6	7.5	0.0	0.0	
H. Sediment/Shoreline Stabilization							
I. Production Export/Food Chain Support	1.0	12.5	0.7	8.75	0.0	0.0	
J. Groundwater Discharge/Recharge	1.0	12.5	0.6	7.5	0.0	0.0	
K. Uniqueness	1.0	12.5	0.3	3.75	0.0	0.0	
L. Recreation/Education Potential	1.0	12.5	0.4	5.0	0.0	0.0	
Totals:	10.0	125.0	5.8	72.5	0.0	0.0	
Mean Functional Level (MFL):	100%		58%		0%		Impact Factor: - 58%
Impact Site Debits:				<i>(Current MFL - Proposed MFL) x Ac</i>		-7.25	

LIFT FACTOR				Bank Site acres: 54.0			Notes
Function & Value Variables	Possible Functional Points	Possible Functional Units	Current Rating	Current Functional Units	Proposed Rating	Proposed Functional Units	
A. Listed/Proposed T&E Species Habitat	1.0	54.0	0.0	0.0	1.0	54.0	
B. MT Natural Heritage Program Species Habitat	1.0	54.0	0.0	0.0	1.0	54.0	
C. General Wildlife Habitat	1.0	54.0	0.3	16.2	1.0	54.0	
D. General Fish/Aquatic Habitat							
E. Flood Attenuation	1.0	54.0	0.5	27.0	0.9	48.6	
F. Short and Long Term Surface Water Storage	1.0	54.0	0.5	27.0	1.0	54.0	
G. Sediment/Nutrient/Toxicant Removal	1.0	54.0	0.4	21.6	1.0	54.0	
H. Sediment/Shoreline Stabilization							
I. Production Export/Food Chain Support	1.0	54.0	0.7	37.8	0.9	48.6	
J. Groundwater Discharge/Recharge	1.0	54.0	0.1	5.4	1.0	54.0	
K. Uniqueness	1.0	54.0	0.1	5.4	0.6	32.4	
L. Recreation/Education Potential	1.0	54.0	0.1	5.4	0.7	37.8	
Totals:	10.0	540.0	2.7	145.8	9.1	491.4	
Mean Functional Level:	100%		27%		91%		Lift Factor: 64%
Bank Site Credits:				<i>(Proposed MFL - Current MFL) x Ac</i>		34.56	

Table 2a. Crediting / Debiting Methodology – example calculations for streams.

ADVERSE IMPACT FACTORS

FACTORS	OPTIONS								
Stream Type p. 24	Ephemeral 0.2		Intermittent 0.3		>2nd Order Perennial 0.6		1st or 2nd Order Perennial 0.8		
Stream Status p. 23	Tertiary 0.1			Secondary 0.3			Primary 0.6		
Existing Condition p. 20	Impaired 0.1			Somewhat Impaired 0.7			Fully Functional 1.3		
Duration p. 20	Temporary (<1 yr.) 0.1			Short Term (1-2 yr.) 0.2			Permanent (>2 yr.) 0.3		
Dominant Impact p. 19	Shade/Clear 0.1	Utility Crossing 0.2	Culvert 0.3	Armor 0.4	Detention/Weir 0.7	Morpho-logic 1.5	Impound 2	Pipe 2.2	Fill 2.5
Cumulative Impact p. 19 (length)	0.0005 X total linear feet of stream impact (Σ LLi)								

Total Debits Worksheet

Factor	Area 1	Area 2	Area 3	Area 4	Area 5	Area 6
Stream Type	0.8	0.3	0.3			
Stream Status	0.6	0.3	0.1			
Existing Condition	1.3	0.7	0.1			
Duration	0.3	0.3	0.3			
Dominant Impact	2.5	2.5	2.5			
Cumulative Impact	0.85	0.85	0.25			
Sum of R Factors	R ₁ = 6.35	R ₂ = 4.95	R ₃ = 3.55	R ₄ =	R ₅ =	R ₆ =
Linear Feet Impact	LL ₁ = 1700	LL ₂ = 1700	LL ₃ = 500	LL ₄ =	LL ₅ =	LL ₆ =
R x LL =	10795	8415	1775			

Total Debits = Σ (R x LL) = 20985

Table 2b. Crediting / Debiting Methodology – example calculations for streams.

RIPARIAN CREDIT FACTORS						
Factors	Options					
Net Improvement p.23	Riparian Buffer Enhancement (Calculate Value from above Net Improvement Table) 0.05 * - 1.0 0.60					
Type of Protection p.25	Subdivided 0.00	Private-RC 0.05	Private-CE 0.15	POA-RC 0.10	POA-CE 0.15	Fee Title 0.20
Timing p.24	Schedule 5 0.00	Schedule 4 0.02	Schedule 3 0.05	Schedule 2 0.08	Schedule 1 0.10	
Kind p.21	Same Order 0.20		Order (+1) 0.10		Order (+2) 0.00	
Location p.21	Onsite 0.20		Offsite 0.10		Outside 0.00	

*Use this option to calculate credits when no restoration of buffer necessary

RIPARIAN CREDIT WORKSHEET						
Factors		NSC Phase 2	Reach 2	Reach 3	Reach 4	Reach 5
Net Improvement	Stream Side A	0.60				
Net Improvement	Stream Side B	0.60				
Type of Protection		0.15				
Mitigation Timing		0.02				
Kind		0.20				
Location		0.20				
Sum of Factors	M=	1.77				
Linear Feet	L=	10963				
Reach Multiplier	RM=	1.25				
Buffer one side = 0.75 Buffer both sides = 1.25						
M x L x RM		24255.6				
Total Riparian Credits = Σ (M x L x RM) =					24255.6	

Table 2c. Crediting / Debiting Methodology – example calculations for streams.

STREAM RESTORATION CREDIT FACTORS						
Factors	Options					
Net Improvement p.22	Minimal 1.20		Moderate 1.80		Substantial 2.50	
Stream Status p.23	Tertiary 0.05		Secondary 0.20		Primary 0.30	
Type of Protection p.25	Subdivided 0.00	Private-RC 0.05	Private-CE 0.15	POA-RC 0.10	POA-CE 0.15	Fee Title 0.20
Timing p.24	Schedule 5 0.00	Schedule 4 0.02	Schedule 3 0.05	Schedule 2 0.08	Schedule 1 0.10	
Kind p.21	Same Order 0.20		Order (+/-1) 0.10		Order (+/-2) 0.00	
Location p.21	Onsite 0.20		Offsite 0.10		Outside Watershed 0.00	

STREAM RESTORATION CREDIT WORKSHEET						
Factors	NSC Phase 2	Reach 2	Reach 3	Reach 4	Reach 5	
Net Improvement	2.50					
Stream Status	0.30					
Type of Protection	0.15					
Mitigation Timing	0.10					
Kind	0.20					
Location	0.20					
Sum of Factors	M=	3.45				
Linear Feet	L=	10963				
	M x L =	37822.4				
Total Stream Restoration Credits = $\Sigma (M \times L) =$						
						37822.4

Table 3. Credit Release and Assignment – hierarchy and multipliers.

CREDIT RELEASE BY CATEGORY AND MULTIPLIER (CREDITS REQUIRED PER DEBIT)			
Category	Type	Comments	Multiplier
Released		Credits which have been proven, through monitoring over sufficient time, to provide functional values greater than baseline, and which are available to be assigned to a permittee as compensatory mitigation	1.0
	<i>Creation/Establishment</i>	Non-wetland areas modified to meet wetland criteria (Corps Report Y-87-1)	
	<i>Restoration/re-establishment</i>	Re-establishment of wetland functional values on prior wetland area	
	<i>Restoration/rehabilitation</i>	Rehabilitation of wetland functional values on existing wetland area	
	<i>Enhancement</i>	Enhancement of wetland functional values in an existing wetland area	
	<i>Protection/maintenance</i>	Existing wetland to be preserved - 100% certified and released upon execution of the BSP; with Upland Buffer, can only make up 50% of total credits	
	<i>Upland Buffer</i>	Upland area to be preserved - 100% certified and released upon execution of the BSP; with Preservation, can only make up 50% of total credits	
Early Release		Credits which have not been proven, through monitoring over sufficient time, to provide functional values greater than baseline, and which are available to be assigned to permittees as compensatory mitigation; maximum of 30% of total proposed credits	1.25
	<i>Creation/Establishment</i>	Non-wetland areas modified to meet wetland criteria (Corps Report Y-87-1)	
	<i>Restoration/re-establishment</i>	Re-establishment of wetland functional values on prior wetland area	
	<i>Restoration/rehabilitation</i>	Rehabilitation of wetland functional values on existing wetland area	
	<i>Enhancement</i>	Enhancement of wetland functional values in an existing wetland area	
After-the-fact		Credits which are available to be assigned to permittees as compensatory mitigation; Approved BSP within 24 months, first phase constructed 12 months later	1.5
	<i>Creation/Establishment</i>	Non-wetland areas modified to meet wetland criteria (Corps Report Y-87-1)	
	<i>Restoration/re-establishment</i>	Re-establishment of wetland functional values on prior wetland area	
	<i>Restoration/rehabilitation</i>	Rehabilitation of wetland functional values on existing wetland area	
	<i>Enhancement</i>	Enhancement of wetland functional values in an existing wetland area	

EXHIBIT 1

DRAFT

(DATE)

(PROJECT NAME) CE

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 20_____, by OXBOW LAND MANAGEMENT, LLC, a Montana limited liability company, of c/o DAVID PATRICK, P. O. BOX 58, Helena, Montana 59624 (hereinafter together with its successors and assigns collectively referred to as "Grantor") and THE MONTANA LAND RELIANCE, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee");

R E C I T A L S:

WHEREAS, Grantor is the owner of certain real property in (INSERT) County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"); and,

WHEREAS, the Property has significant scenic, open space and natural habitat values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,

WHEREAS, the Property constitutes a valuable element of the (WATERSHED) and its scenic and open space lands and natural habitat (hereinafter the "Conservation Values") which are of great importance to Grantor and to the people of the State of Montana, and are worthy of preservation; and,

WHEREAS, the Property contributes to the ecological integrity of the (WATERSHED) and its tributaries, and conserves significant relatively natural habitat for wildlife and plants, presently including, but not limited to, aquatic habitat for west slope cutthroat trout and other native fish, riparian plant communities, diverse waterfowl and other birds, deer, elk, and other wildlife; and,

WHEREAS, it is the intent of this Easement to maintain the rural, agricultural and natural scenic qualities of the area by the retention of significant open space for a variety of uses including wildlife habitat, recreation and agricultural purposes; and,

WHEREAS, Grantor and Grantee intend to preserve the Conservation Values of the Property in their largely undeveloped condition to protect and preserve the natural scenery enjoyed by the general public; and,

WHEREAS, the Property is in the general vicinity of a number of conservation easement properties; and,

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be preserved and maintained by a continuation of land uses that will not substantially impair those Values; and,

WHEREAS, the State of Montana has recognized the importance of private efforts toward voluntary conservation of private lands in the state by the enactment of MCA Sections 76-6-101, et seq., and 76-6-201, et seq.; and,

WHEREAS, Grantee is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for scenic, open space and natural habitat purposes, and is an organization described in Section 170(h)(3) of the Internal Revenue Code of 1986 (hereinafter the "Code") qualified to receive and hold conservation easements;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and further, pursuant to MCA Section 76-6-201, et seq., Grantor does hereby convey to Grantee this Easement in perpetuity, consisting of the rights hereinafter enumerated on, over and across the Property.

SECTION I

Purpose and General Effect of Easement

A. Purpose. It is the purpose of this Easement to assure that the Conservation Values will be maintained forever and to prevent any use of, or activity on, the Property that will significantly impair those Values. It is further the specific purpose of this Easement to conserve important habitat for wildlife; to protect rare or unique native plants; to conserve and restore unique aquatic habitat for native fish, and to conserve the diverse riparian and meadow vegetative communities and the wildlife inhabiting these communities. In achieving these purposes, Grantor intends that this Easement will limit the use of the Property to such activities as are consistent with that purpose (including hunting, fishing and other recreational uses consistent with the terms hereof). Grantor and Grantee recognize that changes in economic conditions, in technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of land uses and practices related to the Property provided that such uses and practices are consistent with the purpose of this Easement.

B. Perpetual restrictions. This Easement shall run with and burden title to the Property in perpetuity and shall bind Grantor and all future owners and tenants.

C. Dedication. The Property is hereby declared to be open space and natural habitat and may not, except as specifically provided herein, be converted from open space and natural habitat.

SECTION II **Rights Conveyed**

The rights conveyed by this Easement are the following:

A. Identification and protection. To identify, preserve and protect in perpetuity the Conservation Values, subject, however, to Grantor's reserved rights as herein provided and further subject to all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

B. Access. Upon prior notice to Grantor, to enter upon the Property to inspect the same and to monitor Grantor's compliance with the terms of this Easement in a manner that will not unreasonably interfere with the use of the Property by Grantor. Aside from the rights of access granted in the preceding sentence of this paragraph B, this Easement does not grant to Grantee, nor to the public, any rights to enter upon the Property.

C. Injunction and restoration. To enjoin any activity on, or use of, the Property which is inconsistent with the purpose of this Easement and to enforce the reasonable restoration of such areas or features of the Property as may be damaged by such activity or use.

SECTION III **Reserved Rights and Prohibited Uses**

A. Reserved rights. Grantor reserves to itself and to its successors and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the terms of this Easement. Without limiting the generality of the foregoing sentence, those uses and practices described in Exhibit B, attached hereto and incorporated by this reference, are expressly permitted.

B. Prohibited uses. Any activity on, or use of, the Property that is inconsistent with the terms of this Easement is prohibited. Without limiting the generality of the foregoing sentence, the activities and uses described in Exhibit C, attached hereto and incorporated by this reference, are expressly prohibited.

SECTION IV
Prior Notice by Grantor and Approval of Grantee

Any enterprise, use or activity proposed to be done or undertaken by Grantor which requires the prior approval of Grantee pursuant to an express provision of this Easement (including any provision of Exhibit B or Exhibit C expressly requiring the prior approval of Grantee) shall be commenced only after satisfaction of the notice and approval conditions of this Section IV.

A. Grantor's written notice. Prior to the commencement of any enterprise, use or activity requiring Grantee's approval, Grantor shall send Grantee written notice of the intention to commence or undertake such enterprise, use or activity. Said notice shall inform Grantee of all aspects of such proposed enterprise, use or activity, including, but not limited to, the nature, siting, size, capacity, and number of structures, improvements, facilities, or uses.

B. Grantee's address. Said notice shall be sent by registered or certified mail, return receipt requested, or by a private delivery service and shall be addressed to Grantee at P.O. Box 355, Helena, MT 59624, or to such other address as Grantor from time to time may be informed of in writing by Grantee.

C. Grantee's response. Grantee shall have thirty (30) days from Grantee's receipt of such notice, as indicated by the registered or certified return receipt, or by the receipt records of a private delivery service, to review the proposed enterprise, use or activity and to notify Grantor of any objection thereto. Such objection, if any, shall be based upon Grantee's opinion that the proposed enterprise, use or activity is inconsistent with the purpose of this Easement. If, in Grantee's judgment, conformity with the purpose of this Easement is possible, said notice shall inform Grantor of the manner in which the proposed enterprise, use or activity can be modified to be consistent with this Easement. Except as provided in paragraph E of this Section IV, only upon Grantee's express written approval may the proposed enterprise, use or activity be commenced and/or conducted, and only in the manner explicitly represented by Grantor and approved by Grantee.

D. Grantor's address. Grantee's response to Grantor's notice shall be sent by registered or certified mail, return receipt requested, or by a private delivery service and shall be addressed to Grantor at c/o David Patrick, P. O. Box 58, Helena, Montana 59624, or to such other address as Grantee from time to time may be informed of in writing by Grantor.

E. Grantee's failure to respond. Should Grantee fail to post its response to Grantor's notice within thirty (30) days of the receipt of said notice, the proposed enterprise, use or activity shall automatically be deemed consistent with the purpose of

this Easement, Grantee having no further right to object to the enterprise, use or activity identified by such notice.

F. Acts beyond Grantor's control. Grantor shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to any person resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantor similar to those occurrences specified.

SECTION V

Breach and Restoration

A. Grantee's remedies. If Grantee determines that Grantor, or third parties under Grantor's authority and control or acting with Grantor's knowledge or approval, are in violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor:

(i) fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;

(ii) under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within thirty (30) days (or within thirty (30) days of Grantor's receipt of notice from Grantee, fails to agree with Grantee in writing on a date by which efforts to cure such violation will reasonably begin);

(iii) fails to continue diligently to cure such violation until finally cured.

Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by a temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this paragraph without waiting for the period provided for a cure to expire, and, in the case of a threatened violation, without waiting for actual injury or damage to occur to the Conservation Values which are protected by this Easement.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that

Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Costs of enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's reasonable costs of suit, including reasonable attorneys' fees, shall be borne by Grantee.

C. Grantee's discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any provision of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such provision or of any subsequent breach of the same or any other provision of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

D. Acts beyond Grantor's control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

SECTION VI **Costs and Taxes**

Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantor shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property, except any tax or assessment on this Easement herein granted. Any lawful tax or assessment on this Easement shall be paid by Grantee. Grantor shall also be responsible for and shall bear all costs associated with ensuring compliance with all federal, state and local laws, regulations, rules, and ordinances.

SECTION VII **Indemnities**

A. Control of risks associated with Property ownership. Grantor and Grantee acknowledge and agree that Grantor retains primary ownership of the Property and therefore Grantor controls day-to-day activities on, and access to, the Property, except for Grantee's limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Easement. Except as specifically provided in paragraph C of this Section VII, Grantor therefore agrees that general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's continued ownership, use and control of the Property shall remain with Grantor as a normal and customary incident of the right of Property ownership.

B. Grantor's obligation to indemnify. Grantor agrees to hold harmless and indemnify Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, Grantee's reasonable attorneys' fees and costs of defense, arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except as set forth in paragraph C below; (ii) the obligations specified in Section VI; and (iii) the obligations arising from past, present or future presence of any hazardous substance on the Property, and any obligation associated with the generation, discharge, transport, containment, or cleanup of any such hazardous substance.

C. Grantee's obligation to indemnify. Grantee shall hold harmless and indemnify Grantor from and against all liabilities, claims, penalties, costs, demands, or judgments, including reasonable attorneys' fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, while Grantee is on the Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

D. Definitions. For the purposes of this Section VII, Grantor's and Grantee's agreement to hold harmless and indemnify will extend to their respective directors, officers, employees, and agents and their heirs, personal representatives, successors, and assigns. The term "hazardous substance" shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state or local law, regulation or ordinance.

SECTION VIII **Assignment of Easement**

The benefits of this Easement shall be assignable, but Grantee may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization," within the meaning of Section 170(h)(3) of the Code. In the event assignment of this Easement becomes necessary, Grantee shall seek an assignee which is mutually acceptable to Grantee and Grantor. Any such qualified organization shall agree to enforce in perpetuity the conservation purpose of this Easement. Grantee agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization other than a governmental unit referred to in Section 170(c)(1) of the Code, which has conservation of scenic, open space and natural habitat as a substantial organizational purpose, and Grantee further represents to Grantor that its present intention is to assign its interest in this Easement only in connection with a dissolution of Grantee.

SECTION IX **Documentation**

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Conservation Values of the Property. The parties acknowledge that this information shall be compiled and developed into a final resource documentation report as soon as is practically feasible after the grant of this Easement. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that the information compiled prior to the time of the grant of this Easement, which shall be incorporated into the final resource documentation report, accurately represents the condition of the Conservation Values of the Property as of the date of the grant of this Easement in accordance with Treasury Regulation 1.170A-14(g)(5)(i). The parties intend that the documentation shall be used by Grantee to monitor Grantor's compliance with the terms and conditions of this Easement. The documentation shall be on file with Grantee.

SECTION X **Extinguishment: Grantee's Entitlement to Proceeds**

A. **Extinguishment.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement may only be terminated or extinguished (as provided for in Treasury Regulations Section 1.170A-14(g)(6)(i)), whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with paragraph B of this Section X. Grantee shall use any such proceeds in a manner consistent with the purpose of this Easement.

B. Compensation. This Easement constitutes a real property interest immediately vested in Grantee, which, for purposes of paragraph A of this Section X, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values referred to in the preceding sentence shall be those values established by Grantor's qualified appraisal (pursuant to Treasury Regulation 1.170A-13) for federal income, gift or estate tax purposes. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement, as established at the time of this grant, shall remain constant. Within one (1) year of completion of the qualified appraisal, Grantor, Grantee and Grantor's appraiser shall sign a written acknowledgment of the values thus established on a form similar to the sample attached hereto as Exhibit E. The original of said acknowledgment shall be held on file with Grantee at Grantee's normal place of business.

C. Eminent domain. If all or a portion of the Property is taken in exercise of eminent domain so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee may join in appropriate actions to recover the full value of the Property (or portion thereof) taken and all incidental or direct damages resulting from such taking. Any expense incurred by Grantor or Grantee in any such action shall be first reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between Grantor and Grantee in proportion to their interest in the Property, or portion thereof, as established by paragraph B of this Section X.

SECTION XI

Miscellaneous Provisions

A. Partial invalidity. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

B. "Grantor" and "Grantee". The terms "Grantor" and "Grantee," as used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors in interest and assigns, and The Montana Land Reliance and its successors and assigns, respectively.

C. Titles. Section and paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.

D. Subsequent transfers. Grantor agrees that reference to this Easement and reference to its dates and places of recording in the Public Records of Powell County will be made in any subsequent deed or other legal instrument by which they convey any interest in the Property, including any leasehold interest. Grantor agrees to incorporate the terms and conditions of this Easement by express recording reference to the Easement in any deed by which Grantor conveys title to the Property.

E. Governing law. In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Easement, the laws of the State of Montana shall govern resolution of such dispute.

F. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, within Grantee's operational policies and procedures, Grantor and Grantee may jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including MCA Section 76-6-101, et seq., and the Code. Any amendment must be consistent with the conservation purpose of this Easement, must not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in more than incidental private inurement or private benefit to any party as herein above mentioned. Any Easement amendment must be in writing, signed by both parties, and recorded in the Public Records of Powell County.

G. Conservation intent. Any ambiguities in this Easement shall be construed in a manner which best effectuates its Conservation Values.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands.

GRANTOR: OXBOW LAND MANAGEMENT, LLC
a Montana limited liability company

By: _____
[Name and title]

GRANTEE: THE MONTANA LAND RELIANCE,
a corporation

By: _____
[Name and title]

**EXHIBIT A
LEGAL DESCRIPTION**

EXHIBIT B PERMITTED USES AND PRACTICES

The following uses and practices, though not an exhaustive recital of consistent uses and practices, are hereby deemed to be consistent with the purpose of this Easement and are expressly permitted:

1. Agricultural activities. Except for grain plots for waterfowl and other wildlife, there shall be no planting, raising and harvesting of agricultural crops within the (PROJECT NAME) Restoration Area (hereinafter referred to as the "Restoration Area") described by and delineated in Exhibit F – Bank Site Plan (BSP), attached hereto and incorporated by reference. Further, if and when the area bordering the Restoration Area is used for livestock grazing, a fenced (temporary or permanent) buffer zone encompassing the Restoration Area shall be established and maintained at Grantor's expense. The purposes of the buffer zone are as follows: to promote plant and wildlife production and diversity; to improve stream bank stability; to reduce erosion and runoff; to improve water quality; and consequently, to enhance fish and wildlife habitat. Livestock grazing shall be limited within the buffer zone to appropriate seasons and duration of use. Limited stock watering on the Restoration Area is permitted using water gaps or other appropriate means of limiting livestock access if provided for in the BSP.

2. Hunting and fishing. To use the Property for commercial and non-commercial hunting of game animals and fishing. Grantor retains the right to use the Property, or enter into agreements with third parties to enable them to use the Property for commercial hunting and fishing purposes. Any agreement between Grantor and others pertaining to the use of the Property for commercial hunting and fishing activities must be made expressly subject to the terms and conditions of this Easement. Consistent with this paragraph, Grantor may use all existing or subsequently constructed structures and improvements expressly permitted by this Easement or replacements thereof. Grantor retains the right to erect temporary (e.g. seasonal use) tents which may be used for limited commercial hunting and fishing activities and overnight accommodations. Except as provided in the preceding sentence, in this Exhibit B, paragraph 4, and Exhibit F, Grantor and third parties may not construct any new facilities or structures on the Property to accommodate commercial hunting and fishing operation or for any other purposes.

3. Water resources. To maintain, enhance and develop water resources on the Property for permitted restoration uses, fish and wildlife uses, domestic needs, and private recreation, provided that such development is accomplished in a manner consistent with the maintenance and enhancement of water courses and wetlands in a reasonably natural condition and under the conditions described in this Exhibit B, paragraph 9. Permitted uses include, but are not limited to, the following: the right to restore, enhance and develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; and to develop and maintain stock watering facilities.

4. Maintenance and structures. To maintain, repair, remodel, and make limited additions to any existing or subsequently constructed structures and improvements expressly permitted by this Easement. However, no structures, except for those directly related to the maintenance, enhancement, restoration, enlargement, and creation of associated water courses and wetland areas within of the Restoration Area delineated in Exhibit F, and their related use by fish, waterfowl and other wildlife, and shooting blinds and hunting stands, shall be allowed. In the event of removal or destruction of any or all of said structures and improvements, to replace them with structures and improvements of a similar function and use, of the same approximate size and in the same general locations.

5. Transfer of land. To grant, sell, exchange, devise, gift, or otherwise convey or dispose of all or any portion of Grantor's right, title, estate, and interest in the Property. Whether conveyed as a single tract or whether conveyed as separate parcels, the Property shall be conveyed expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement. Furthermore, if Grantor elects to divide the Property, Grantor must comply with all federal, state and local laws, ordinances and regulations concerning subdivision, as applicable, including the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract to state and local review.

Grantor shall furnish Grantee with a copy of any document or conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

6. Timber removal. To remove select trees that present a hazard to persons or property only. Timber removal shall not include the removal of any standing dead trees or snags, except those that present a hazard to persons or property. All timber removed by Grantor pursuant to this paragraph 6 must be used or disposed of on the Property, and, such timber removal must protect and minimize impact on the Conservation Values. In connection with the upkeep, maintenance and repair of permissible structures, Grantor specifically reserves the right to clear brush, and prune, trim and remove trees, or to plant trees, shrubs, flowers, and other native species for landscape restoration purposes.

In the event of natural occurrences, such as disease, infestation, wildfire, or wind-throw, or the threat of such occurrences, which jeopardize the overall forest health and may require more than limited, selective harvest to control, Grantor and Grantee may, by mutual agreement, expand the provisions of this paragraph 8, for non-commercial or commercial timber harvest, to protect the Conservation Values of the Property in accordance with the terms and conditions of Section IV and in a manner consistent with Exhibit F.

7. Fences. To construct, maintain, repair, modify, and replace fences on the Property. New or reconstructed boundary or pasture-division fences may not exclude or prevent wildlife from moving through the Property, but other fencing may exclude wildlife from newly-seeded area, and temporary or permanent vegetative restoration areas.

8. Agrichemicals. Grantor shall have the right to use biological control agents and agrichemicals, including, but not limited to, fertilizers, pesticides, herbicides, insecticides, and rodenticides, but only in those amounts necessary to accomplish reasonable restoration objectives.

9. Restoration Area. The Restoration Area delineated in Exhibit F, may be maintained, enhanced, restored, enlarged, and created by mechanical and other means. The Restoration Area shall be dedicated for its primary use and function as a fishery and as habitat for wild waterfowl and other wildlife. Protection of the Restoration Area for this primary use and function is specifically provided for throughout this Easement. More specifically, provisions within this Exhibit B and following Exhibit C provide further protection of this primary use and function.

----- END EXHIBIT B -----

EXHIBIT C PROHIBITED USES AND PRACTICES

The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purpose of this Easement and are expressly prohibited:

1. Subdivision. The division, subdivision or de facto subdivision of the Property, except as provided in Exhibit B, paragraph 5.
2. Mineral exploitation. Exploration for, or the removal or extraction of any mineral or non-mineral substance by any surface or subsurface mining or extraction method.
3. Commercial facilities. The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Property expressly permitted by this Easement) including, but not limited to, guest ranching, commercial feed lot, any retail sales or service business, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility for the manufacture or distribution of any product (other than products to be grown or produced on the Property in connection with purposes expressly permitted in Exhibit B hereto).
4. Dumping. The dumping or other disposal of noncompostable refuse on the Property.
5. Construction. The construction of any structures except as provided in Exhibit B.
6. Billboards. The construction, maintenance or erection of any billboards. Roadside signs are permitted only for the purposes of posting the name of the Property, advertising activities permitted on the Property, controlling public access, providing public notification of this Easement, or advertising the Property for sale.
7. Roads. The construction of roads except in connection with access to existing facilities and structures permitted in Exhibit B, and roads necessary to carry out the restoration activities within the Restoration Area delineated in Exhibit F. Any road constructed shall be sited and maintained so as to minimize adverse impact to the Conservation Values.
8. Utilities. The granting of major utility corridor right-of-way easements. However, such right-of-way easements may be granted by mutual agreement of Grantor and Grantee in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee. Nothing in this paragraph is intended to preclude Grantor from installing utility structures, lines, conduits, cables, wires, or pipelines upon, over, under, within, or beneath the Property, outside of the Restoration Area delineated in Exhibit F, to existing structures and improvements expressly permitted by this

Easement, or from granting right-of-way easements for utility services to neighboring properties.

9. Mobile homes, etc. Except as provided in Exhibit B, the placing, use or maintenance of any trailer, mobile home or other moveable living unit (including any such unit placed on a permanent foundation); provided, however, that Grantor or Grantor's guests may park or use a recreational vehicle on the Property on a temporary basis in a manner consistent with the Conservation Values.

10. Game, fur or fish farms. The raising or confinement for commercial purposes of (i) "alternative livestock" and "game animals" as defined in MCA Section 87-4-406 or its successor statute, (ii) native or exotic fish, except that "private fish ponds," as defined by MCA Section 87-4-603, or its successor statute, may be maintained for recreational use, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other "wild animals" as defined in MCA Section 87-4-801, or its successor statute, and "non-game wildlife" as defined in MCA Section 87-5-102(6), or its successor statute.

11. Commercial timber harvest. Except as provided in Exhibit B, paragraph 6, the harvest of timber on the Property for commercial purposes. For the purposes of this Easement, the term "commercial timber harvest or thinning" is defined as any timber harvest in which the product of such harvest is sold, traded, exchanged, or used off of the Property.

----- END EXHIBIT C -----

EXHIBIT D
ACKNOWLEDGMENT OF DOCUMENTATION SITE VISIT

KNOW ALL MEN BY THESE PRESENTS, that OXBOW LAND MANAGEMENT, LLC, a Montana limited liability company, of c/o David Patrick, P. O. Box 58, Helena, Montana 59624, as Grantor of the Easement to which this Exhibit D is attached and into which it is incorporated by reference, and THE MONTANA LAND RELIANCE of Helena, Montana, as Grantee of said Easement, hereby mutually acknowledge, declare and agree as follows:

1. Grantor has made available to a representative of Grantee prior to the grant of this Easement, information sufficient to document the condition of the Conservation Values associated with the Property which shall be subject to this Easement.
2. A representative of Grantee has collected and compiled documentation sufficient to establish the condition of the Conservation Values of the Property as of the date of the grant of this Easement and has shared this documentation with Grantor.
3. The documentation was compiled by a representative of Grantee on a site visit to the Property on _____, and consists of mapping of physical features and resources, photographs of structures, developments and improvements, and gathering of other appropriate information to document the Conservation Values of the Property.
4. Grantor and Grantee mutually acknowledge and agree that this information constitutes an accurate representation of the Conservation Values of the Property to be subject to this Easement at the time of its grant.
5. Additional information and documentation will be gathered as historical, government and archival documents and aerial photographs are made available to Grantor and Grantee.
6. Grantor and Grantee further agree that a final resource documentation report shall be completed from the above mentioned information as soon as practicable after the grant of this Easement to Grantee. Upon its completion, the final resource

documentation report shall be reviewed and approved in final form by both Grantor and Grantee, and shall be on file with Grantee in Grantee's normal place of business.

DATED this ____ day of _____, 20____.

GRANTOR: OXBOW LAND MANAGEMENT, LLC
a Montana limited liability company

By:
[Name and title]

GRANTEE: THE MONTANA LAND RELIANCE,
a corporation

By:
[Name and title]

EXHIBIT E
SAMPLE OF FORM TO BE USED FOR
ACKNOWLEDGMENT OF VALUE OF PROPERTY
CONSERVATION EASEMENT

OXBOW LAND MANAGEMENT, LLC, a Montana limited liability company, of c/o David Patrick, P. O. Box 58, Helena, Montana 59624, Grantor of a Deed of Conservation Easement dated _____, 20____, and recorded on _____, 20____, at Book _____, Page _____, Records of _____ County, Montana; THE MONTANA LAND RELIANCE, of Helena, Montana, Grantee of said Conservation Easement; and, _____, appraiser of the property subject to the Conservation Easement, (hereinafter the "Property"), hereby acknowledge, declare and agree as follows:

1. That the value of the Property immediately prior to encumbrance by the grant of the Conservation Easement was _____, and the value of the Property immediately after the conveyance of the Conservation Easement to the Montana Land Reliance was _____.

2. Thus, the parties hereto agree that the grant of the Conservation Easement reduced the value of Grantor's interest in the Property by _____ percent (_____%).

The original of this Acknowledgment is to be retained in the files of The Montana Land Reliance, or its successors and assigns, at its normal place of business.

DATE

OXBOW LAND MANAGEMENT, LLC

DATE

THE MONTANA LAND RELIANCE

DATE

APPRAISER

EXHIBIT F
BANK SITE PLAN AND RESTORATION AREA MAP(S)

STATE OF MONTANA)
 : ss.
County of Lewis and Clark)

This instrument was acknowledged before me on this _____ day of
_____, 20_____, by _____ as
_____ of Oxbow Land Management, LLC.

(SEAL)

(Notary's Signature)

(Notary's Name, please print/type)

Notary Public for the State of

Residing at _____

My commission expires ___/___/20

STATE OF MONTANA)
 : ss.
County of Lewis and Clark)

This instrument was acknowledged before me on this _____ day of
_____, 20_____, by _____, as
_____ of The Montana Land Reliance.

(SEAL)

(Notary's Signature)

(Notary's Name, please print/type)

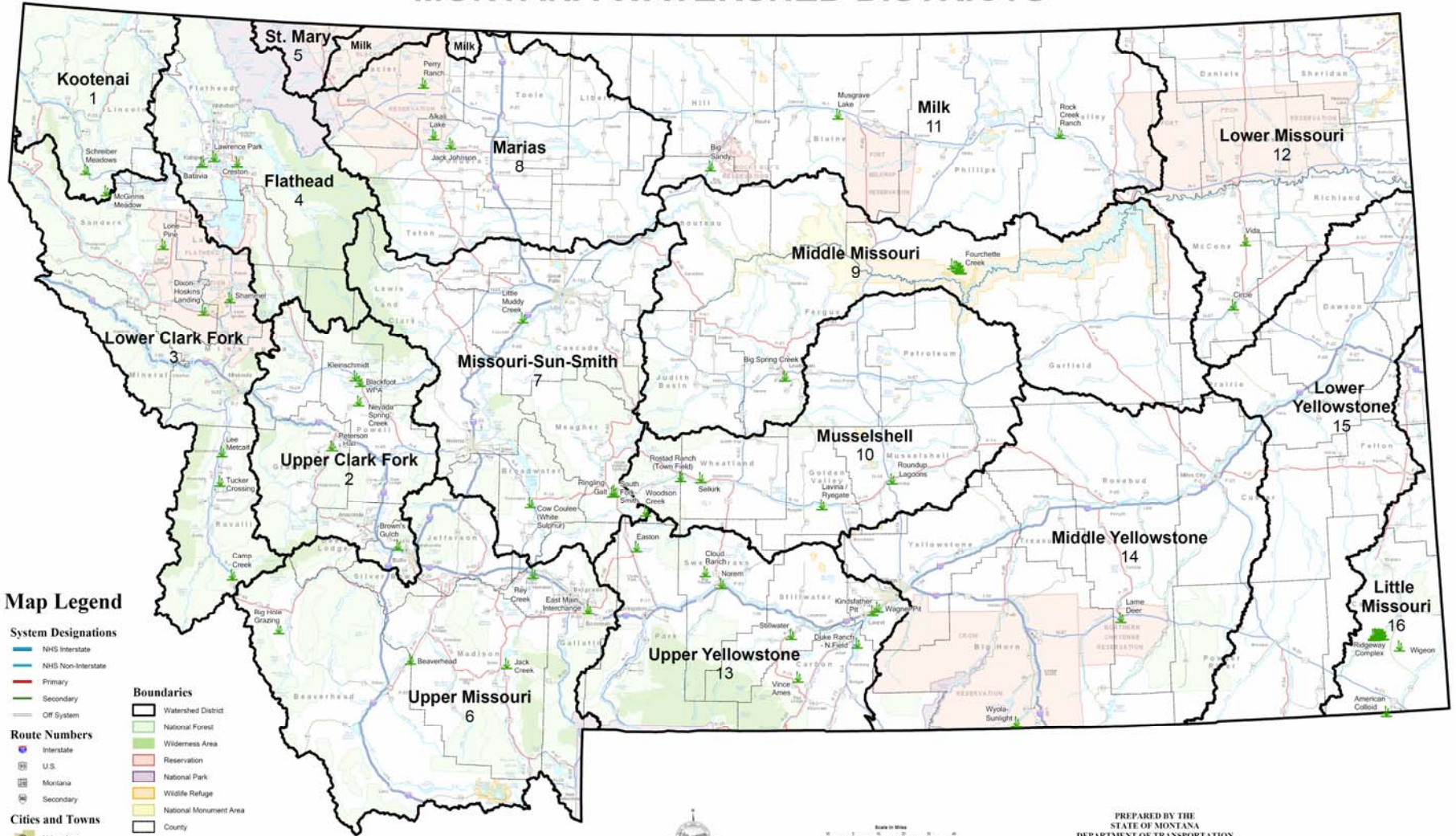
Notary Public for the State of

Residing at _____

My commission expires ___/___/20

EXHIBIT 2

MONTANA WATERSHED DISTRICTS



Map Legend

System Designations

- NHS Interstate
- NHS Non-Interstate
- Primary
- Secondary
- Off System

Route Numbers

- Interstate
- U.S.
- Montana
- Secondary

Cities and Towns

- Urban Area
- State Capital
- Incorporated City

Boundaries

- Watershed District
- National Forest
- Wilderness Area
- Reservation
- National Park
- Wildlife Refuge
- National Monument Area
- County

Other Symbols

- Constructed Wetland



PREPARED BY THE
STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION
ROAD INVENTORY AND MAPPING SECTION
Created October 2006 in ArcGIS 9.1 using ArcMap. ESRI, Inc.
NAD 1983 StatePlane Montana FIPS 2500
Lambert Conformal Conic



EXHIBIT 3

RIBITS

Regional Internet Bank Information Tracking System

Results of Search

[\[Back\]](#) [\[Home\]](#) [\[Search Again\]](#) [\[New Search\]](#)



Mitigation Concepts

Existing Banks

Credit Tracking

District MB POC

MBRT Contacts

Bank Establishment

Related Sites

Assessment Tools

Site Map

Service Area Counties:

Service Area HUC Codes:

Contact Information:

(Name & Address)

(Name & Address)

(Name & Address)

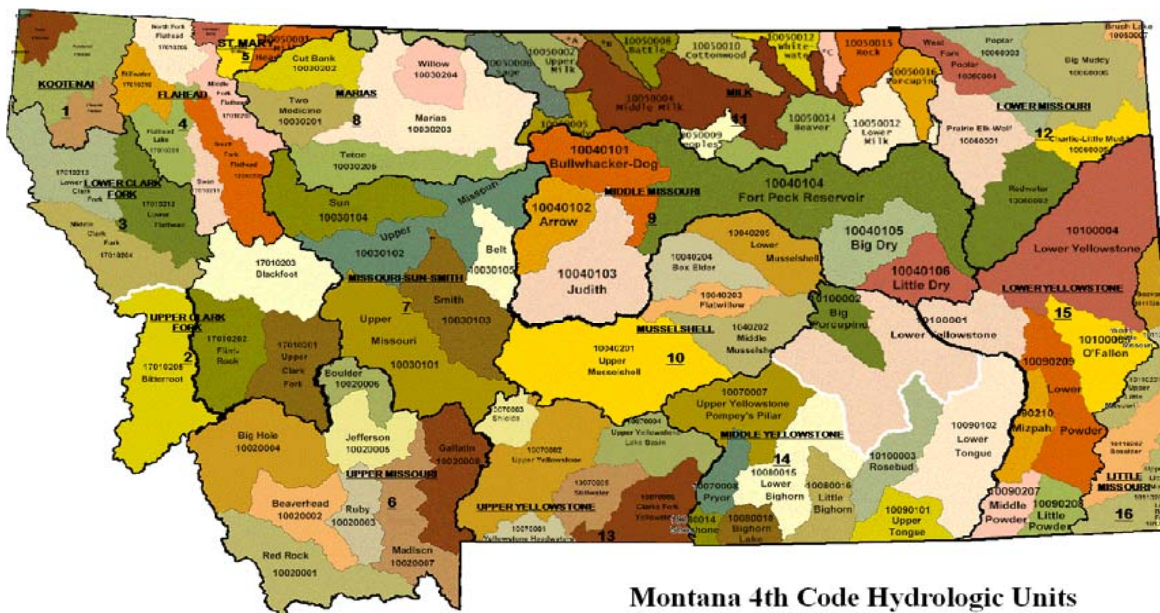
(Name & Address)

(Name & Address)

Total Site Acres:

Bank Type: (private/public/single-user)

Last Update:



Montana 4th Code Hydrologic Units
(NRIS Website)

	Total Potential Credits	Equivalent Acres or Linear Feet	Total Released Credits	Equivalent Acres or Linear Feet	Total Withdrawn Credits	Equivalent Acres or Linear Feet
WETLAND	0.0	0.0	0.0	0.0	0.0	0.0
STREAM	0.0	0.0	0.0	0.0	0.0	0.0

