

Conservation Bank Agreement

[BANK NAME] CONSERVATION BANK

This Conservation Bank Agreement (“CBA”), dated this _____ day of _____, 20____, is made by and among [Bank Sponsor’s full legal name(s)] (“Bank Sponsor”), [Property Owner’s full legal name(s)] (“Property Owner”), and the U.S. Fish and Wildlife Service (“USFWS”). The Bank Sponsor, Property Owner, and the USFWS are hereinafter referred to jointly as the “Parties”. This CBA sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the [Bank name] Conservation Bank (the “Bank”).

RECITALS

- A. The Bank Sponsor is responsible for establishing and operating the Bank.
- B. The Property Owner is the owner of real property containing approximately _____ acres (the “Property”), located at _____ [insert address and county], State of Texas, designated Assessor’s Parcel No(s). _____. The Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit D**) attached hereto.
- C. [Choose one: Bank Sponsor’s name(s), as Bank Sponsor and Property Owner or Bank Sponsor and Property Owner] desire(s) to create the Bank over [add if applicable: a _____-acre portion of] the Property (the “Bank Property”). The Bank Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Conservation Easement (**Exhibit D-4**) attached hereto. The Bank Property is to be conserved in perpetuity by the Conservation Easement, which shall be recorded as provided in Section V.
- D. USFWS, an agency within the U.S. Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Federal Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f), *et seq.*, and other provisions of Federal law.
- E. USFWS may seek review of this document by other Federal agencies and state and local agencies as appropriate.
- F. The goals and objectives for the Bank are set forth in the Bank Management and Monitoring Documents (**Exhibit C**).
- G. Initially-capitalized terms used and not defined elsewhere in this CBA are defined in Section II.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section I: Purpose and Authorities

A. Purpose

The purpose of this CBA is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Bank to compensate for unavoidable impacts to, and conserve and protect, Covered Species. The Bank Sponsor [*if property owner is different from Bank Sponsor, add: and Property Owner*] shall preserve, restore, create, and/or enhance and then manage and maintain Covered Species in accordance with this CBA, the Interim Management Plan, and the Long-term Management Plan.

B. Authorities

The establishment and use of the Bank for off-site compensatory mitigation or conservation is governed by one or more of the following statutes, regulations, policies, and guidelines:

1. Federal

- a. Endangered Species Act (16 U.S.C. § 1531 *et seq.*) (“ESA”), particularly including impacts to federally listed threatened or endangered species under § 7 and 10 of ESA and/or occupied habitat;
- b. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*);
- c. Guidance for the Establishment, Use and Operation of Conservation Banks (U.S. Department of Interior Memorandum, dated May 2, 2003).
- d. Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, dated January 10, 2001.

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this CBA are defined as set forth below.

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the USFWS in discussion with the Bank Sponsor

- and/or the Property Owner, as appropriate, based upon Bank monitoring and annual report results, and USFWS review of overall Bank performance and compliance.
2. “Bank Establishment Date” is the date determined pursuant to Section V, when the Bank is considered established and Transfer of Credits may begin.
 3. “Buffer Credits” [*if applicable*] are units of measure representing non-habitat areas that increase the overall ecological functioning of the bank, or buffer the bank property against edge effects from adjacent land use. One Buffer Credit is equivalent to two acres (0.5 credits/ acre), or as otherwise defined in **Exhibit E-1**.
 4. “Catastrophic Event” shall mean an unforeseen event, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the Bank Property, and over which neither the Bank Sponsor nor the Property Owner has control.
 5. “Conservation Easement” means a perpetual conservation easement, as defined by Texas Natural Resource Code § 183, in the form of **Exhibit D-4** attached hereto.
 6. “Conservation Values” means ecological values which serve as habitat (including, without limitation, food, water and proper vegetative mix and canopy cover) necessary to support occupancy, survival, and reproduction of the Covered Species.
 7. “Covered Species” means the species for which the Bank has been established and for which Credits have been allocated as set forth in **Exhibit E-1**.
 8. “Credits” are units of measure representing the accrual, attainment, restoration, or protection of the Covered Species and Conservation Values on the Bank Property. One Credit is equivalent to one acre, or as otherwise defined in **Exhibit E-1**.
 9. “Credit Release” means an action by the USFWS to make specified Credits available for Transfer pursuant to this CBA.
 10. “Endowment Deposit” is the deposit or series of deposits made or required to be made by the Bank Sponsor to fully fund the initial Endowment Principal.
 11. “Endowment Fund” is a sum of money, held by the Endowment Fund Manager, to provide income to fund perpetual management, maintenance, monitoring, and other activities on the Bank Property consistent with the Long-term Management Plan. The term “Endowment Fund” as used in this CBA shall refer to the Endowment Deposit and all interest, dividends, other earnings, additions and appreciation thereon.
 12. “Endowment Fund Manager” means an independent third party conservation organization (non-profit), or such other similarly qualified entity, selected by the

Bank Sponsor and the USFWS, responsible for holding, managing, and disbursing the Endowment Fund in accordance with Section VIII. E.

13. “Endowment Principal” means that portion of the Endowment Fund that is non-wasting and that is to be maintained and managed in perpetuity to generate earnings and appreciation in value for use in funding perpetual management, maintenance, monitoring, and other activities as required by the Long-term Management Plan. Endowment Principal shall consist of the Endowment Deposit and any additions to the principal that are made from earnings, appreciation in value or subsequent deposits for the purpose of compensating for inflation and ensuring the real value of the principal does not decline over time.
14. “Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the Bank or the Bank Property and over which neither the Bank Sponsor nor the Property Owner has control; *provided, however*, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Bank Property and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where “flood” refers to a runoff event; (iii) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the Bank Property and its immediate locale; and (iv) governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of Remedial Action.
15. “HCP” means a Habitat Conservation Plan prepared pursuant to § 10(a)(2)(A) of the ESA (16 U.S.C. § 1539(a)(2)(A)).
16. “Interim Management Period” means the period from the Bank Establishment Date until the first anniversary of the full funding of the Endowment Fund has occurred and all the Performance Standards in the Bank Management and Monitoring Documents have been met.
17. “Interim Management Plan” means the document attached as **Exhibit C-3** that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Bank Sponsor during the Interim Management Period.

18. “Interim Management Security” is the financial assurance specified in Section VI A and **Exhibit C-1**, to be provided by the Bank Sponsor to guarantee the implementation of the Interim Management Plan.
19. “Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which the Bank Property is to be managed, monitored and maintained pursuant to the Long-term Management Plan.
20. “Long-term Management Plan” means the document attached as **Exhibit C-4** that is intended to ensure the Bank Property is managed, monitored and maintained in perpetuity to conserve and protect its Covered Species and Conservation Values.
21. “Performance Standards” means the minimum standards set forth in the Bank Management and Monitoring Documents to define the successful preservation, restoration, and enhancement of Covered Species and Conservation Values.
22. “Phase I Environmental Site Assessment” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.
23. “Preservation” means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.
24. “Property Assessment and Warranty” means the written Property evaluation and assurance signed by the Property Owner and attached as **Exhibit D-2**.
25. “Property Owner” means the owner(s) of fee simple title to the Bank Property.
26. “Remedial Action” means any corrective measures which the Bank Sponsor or Property Owner is required to take to ameliorate any injury or adverse impact to the Bank Property as preserved, restored or enhanced or as a result of a failure to achieve the Performance Standards.
27. “Service Area” means the geographic area(s) within which impacts to Covered Species that occur may be mitigated or compensated through Credits from the Bank. Service area will conform to the recovery strategy for the species or the Conservation Banking guidance.
28. “Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank Property makes the lien or

encumbrance subject to and of lower priority than the Conservation Easement, even though the lien or encumbrance was recorded before the Conservation Easement.

29. “Transfer” means the use, sale, or conveyance of Credits by the Bank Sponsor.
30. “Unlawful Act” shall mean the unlawful act of any person or entity other than the Bank Sponsor or Property Owner and shall include an event or series of events, such as the intentional release within the Bank Property, or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the Bank Property.

Section III: Stipulations

A. Baseline Condition

The current condition of the Bank Property is described in the Biological Resources Survey (**Exhibit G**).

B. Disclaimer

Nothing contained in this Agreement shall be deemed to limit the USFWS' jurisdiction over impacts and applicable mitigation of endangered, threatened, and sensitive species and biological resources, or to restrict the ability of the USFWS to fully discharge its responsibilities under applicable law, including, without limitation, the ESA.

C. Exhibits

The following Exhibits are attached to and incorporated by this reference into this CBA:

1. “Exhibit A” - Bank Location Maps
 - A-1 General Vicinity Map
 - A-2 Map of property, including the Bank Property
2. “Exhibit B” - Service Area Map(s) and Description(s)
 - B-1 Map(s) of the Bank’s Service Area(s)
 - B-2 Narrative description(s) of the Bank’s Service Area(s)
3. “Exhibit C” - Bank Management and Monitoring Documents
 - C-1 Interim Management Security Analysis and Schedule
 - C-2 Endowment Fund Analysis and Schedule
 - C-3 Interim Management Plan

- C-4 Long-Term Management Plan
- C-5 Bank Closure Plan
- 4. “Exhibit D” - Real Estate Records and Assurances
 - D-1 Preliminary Title Report, Legal Description, and Parcel Map(s)
 - D-2 Property Assessment and Warranty
 - D-3 Plat Maps
 - D-4 Conservation Easement Deed or Grant Deed
- 5. “Exhibit E” - Bank Crediting and Credit Transfers
 - E-1 Credit Evaluation and Credit Table
 - E-2 Credit Purchase Agreement Template
 - E-3 Credit Transfer Ledger Template
- 6. “Exhibit F” - Phase I Environmental Site Assessment
- 7. “Exhibit G” - Biological Resources Survey

Section IV: Bank Evaluation and Development

A. Bank Site Assessment by the USFWS

Representatives of the USFWS have inspected and evaluated the Bank’s Covered Species and Conservation Values and have agreed upon the assignment of Credits set forth in **Exhibit E-1**.

B. Bank Sponsor’s Responsibilities for Bank Management and Monitoring

The Bank Sponsor agrees to perform all necessary work, in accordance with the provisions of this CBA, to establish, monitor, and maintain the Covered Species and Conservation Values, as described in the Bank Management and Monitoring Documents, on the Bank Property until the Bank Sponsor has demonstrated to the satisfaction of the USFWS that the Bank complies in all respects with all requirements contained in this CBA, and all Exhibits, pertaining to Bank management and monitoring.

C. Phase I Environmental Site Assessment

Bank Sponsor or Property Owner has provided a current Phase I Environmental Site Assessment of the Bank Property, attached hereto as **Exhibit F**, showing that the Bank Property is not subject to any recognized environmental conditions as defined by the

American Society for Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (i.e., the presence or likely presence of any Hazardous Substances or petroleum products). If the Phase I Environmental Site Assessment identified any recognized environmental conditions, the Bank Sponsor and Property Owner represent and warrant to the USFWS that all appropriate assessment, clean-up, remedial or removal action has been completed.

D. Permits

The Bank Sponsor will obtain all appropriate permits and other authorizations needed to establish and maintain the Bank. This CBA does not constitute or substitute for any such approval.

E. Subsequent Phases

If the Bank is to be established in phases, the Bank Sponsor or Property Owner shall submit a written request to the USFWS for approval of each phase. Subsequent phases will need to comply with USFWS documentation requirements in effect on the date of submission of the complete documentation for the proposed phase. Establishment of each phase must be approved by the USFWS. In general subsequent phases will either meet the minimum establishment criteria or be adjacent to prior phases of the bank.

F. Property Assessment and Warranty

Property Owner shall notify the USFWS of any errors or discrepancies in the Property Assessment and Warranty (**Exhibit D-2**) discovered subsequent to Property Owner’s signing of this CBA. The USFWS shall evaluate any impacts of the errors or discrepancies on the Bank Property and the Conservation Easement, and may reduce the number of available Credits as a result of such impacts according to the policies of the USFWS in effect at the time of notice to the USFWS.

Section V: Bank Establishment Date

- A. The Bank Establishment Date will occur and Transfer of Credits may begin only when all of the following actions have occurred:
1. The CBA has been fully executed by all of the Parties,
 2. The Conservation Easement has been accepted by a Grantee approved by the USFWS and recorded in the Official Records of the county in which the Bank Property is located, and;
 3. The Bank Sponsor has complied with its obligation to furnish financial assurances in accordance with Section VI.
- B. Within 30 days of the Bank Establishment Date, the Bank Sponsor shall provide an

electronic copy of the final, signed CBA including all of its Exhibits, to the USFWS.

- C. If the Bank Sponsor or Property Owner has not completed the actions in Section V.A to establish the bank within one year of USFWS signature to this agreement then the Bank Sponsor or Property Owner may only establish the bank with written approval from the USFWS. The USFWS, at its discretion, may require amendment of the CBA, including but not limited to, updated Exhibit documents to ensure conservation values on the property remain unchanged and to promote consistency with current conservation banking standards.

Section VI: Financial Assurances

The Bank Sponsor is responsible for providing financial assurances for the performance and completion of Bank construction, management, monitoring, and Remedial Action in accordance with this CBA, as set forth in this Section VI. The financial assurances shall be held in accordance with Section VIII.E. The Bank Sponsor shall notify USFWS in accordance with Section XII.K upon furnishing each of the following financial assurances:

- A. Interim Management Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish an Interim Management Security in the amount specified in **Exhibit C-1**. The amount of the Interim Management Security shall be equal to the estimated cost to implement the Interim Management Plan during the first year of the Interim Management Period, as set forth in the Interim Management Security Analysis and Schedule (**Exhibit C-1**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars. The Interim Management Security shall be in the form of an irrevocable standby letter of credit or in the form of a cash deposit held by the manager of the Endowment Fund. The Bank Sponsor shall ensure that the full amount of the Interim Management Security shall remain in effect until the end of the Interim Management Period.

- B. Letters of Credit

When letters of credit are used, they shall be submitted to and approved by the holding entity before they satisfy any financial assurance requirement. Any letter of credit shall be issued for a period of at least one year, and shall provide that the expiration date will be automatically extended for at least one year on each successive expiration date unless, at least 120 days before the current expiration date Bank Sponsor and the holder have received notice from the issuing institution of its decision not to extend the expiration date, as evidenced by the return receipts. The letter of credit shall provide that any unused portion shall be available for 120 days after the date Bank Sponsor and the holder have received such notice, as shown on the signed return receipts. If the issuer fails to extend the expiration date of any letter of credit, Bank Sponsor shall provide the holder with replacement security in the form of a letter of credit or cashier's check, as determined by the holder, within 60 days after receiving notice of the issuer's failure to extend. If Bank

Sponsor does not provide such replacement security on or before the expiration of the 60-day period, then the holder shall have the right to immediately draw upon the letter of credit for which the replacement security was required.

C. Endowment Fund

1. The Endowment Fund shall be in an amount sufficient to fully provide for the financial requirements of the long-term management of the Bank in accordance with the Long-term Management Plan and the Endowment Fund Analysis and Schedule (**Exhibit C-2 and C-4**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars.
2. The Bank Sponsor shall fund the Endowment Principal either at the time of bank establishment or through proportional Endowment Deposits made to the Endowment Fund immediately upon the sale of each credit. Bank Sponsor shall sell each credit using an established escrow company which shall be directed in writing to convey the Endowment Deposits to the Endowment Fund upon closing of the sale until the Endowment Fund is fulfilled. Full funding of the Endowment Principal will occur no later than four years after the Bank Establishment Date.
3. Until the Endowment is fully funded, the amount of the Endowment Principal shall be adjusted by the Bank Sponsor annually, on January 2 of each year following the Bank Establishment Date (each such date is referred to as an “Adjustment Date”), by a percentage equal to the percentage increase, if any, in the Consumer Price Index, All Items (1982-1984 = 100), as published from time to time by the U. S. Bureau of Labor Statistics. Adjustment of the Endowment Principal is the percentage increase of the CPI published most immediately preceding the Adjustment Date, as compared to the CPI published most immediately preceding the date of this CBA. The adjustment shall be applied to the amount of the initial Endowment Principal.
4. Bank Sponsor shall notify USFWS of each Endowment Deposit made, within 30 days of such deposit.

Section VII: Credit Release

Each Credit Release must be approved in writing by USFWS.

A. Covered Species Credit Release

1. Credits for Covered Species shall be determined and released as described in this Section VII.A and the Credit Table (**Exhibit E-1**). Anticipated Credits have been assigned to the Bank based upon Credit methodologies developed by the USFWS.
2. Upon submittal of all documentation required under this CBA by the Bank Sponsor, and approval by the USFWS, the USFWS will release Credits for Covered Species as described below. The actual number of Credits released shall be determined by USFWS based upon attainment of the Performance Standards (if applicable) and

upon funding of the Endowment Principal in accordance with Section VI.C. No Credit Transfer shall occur until the applicable Credit Release has occurred.

- a. Preservation Credits described in the Credit Table (**Exhibit E-1**) for Covered Species shall be released in their entirety upon submittal of all documentation required under this CBA by the Bank Sponsor, and approval by the USFWS.
 - b. Restoration Credits described in the Credit Table (**Exhibit E-1**) for Covered Species shall be released upon demonstrated occupation of the restored habitat by a Covered Species and attainment of the applicable Performance Standards.
3. Failure to meet Performance Standards may reduce the number of Covered Species restoration Credits available for release as determined by USFWS. The Bank Sponsor shall revise the Credit Table in **Exhibit E-1** as directed by USFWS, to reflect any reduction in the available Covered Species Restoration Credits.

Section VIII: Operation of the Bank

A. Service Area

The Service Area is described and shown in **Exhibit B**.

B. Transfer of Credits

1. The Transfer of Credits may begin only upon or after the Bank Establishment Date. Bank Sponsor shall have the exclusive right to determine the price for any and all Bank Credits it offers for sale. The minimum Credit unit that may be Transferred is 0.1 Credit.
2. In no case shall the number of Credits of any particular type Transferred or obligated exceed the total number of Credits of that type which have been released for Transfer, as evidenced by written approval of the USFWS.
3. Use of Credits at the Bank to mitigate or compensate impacts to Covered Species must be authorized by USFWS on a case-by-case basis.
4. Bank Sponsor shall notify USFWS upon any Credit Transfer in accordance with Section IX.C. of this CBA.
5. If the Bank Property is damaged after the Bank Establishment Date, and such damage materially impairs Conservation Values on such damaged Bank Property, then the USFWS may, at its discretion, direct Bank Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the Bank in proportion to such damaged area unless and until the Bank Sponsor has reasonably restored such damaged area pursuant to a Remedial Action plan approved by the USFWS.

6. Credit modifications due to expansion, restoration or other means that have been approved in writing by the USFWS, shall be set forth in an amendment to this CBA according to Section XII.D.1.
7. Each Credit Transfer shall be made pursuant to a written purchase agreement in the form of **Exhibit E-2**.

C. Interim and Long-term Management and Monitoring

1. Interim Management and Monitoring

Bank Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan (**Exhibit C-3**) until all of the Performance Standards are met and the Endowment Fund has been fully funded for one year.

2. Long-term Management and Monitoring

Once the Performance Standards have been met and the Endowment Fund has been fully funded for one year, the Property Owner shall implement long-term management and monitoring of the Bank Property according to the Long-term Management Plan. Property Owner shall be obligated to manage and monitor the Bank Property in perpetuity to preserve its habitat and conservation values in accordance with this CBA, the Conservation Easement and the Long-term Management Plan (**Exhibit C-4**). Such activities shall be funded through the Endowment Fund according to Section VIII.E.2. Property Owner and the USFWS shall meet and confer upon the request of either one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the Bank Property. During the Long-term Management Period Property Owner shall be responsible for submitting annual reports to USFWS in accordance with Section IX.B of this CBA.

D. Bank Closure Plan

1. Upon Bank closure, no further Credit Transfer shall occur.
2. The Bank closure shall be deemed to take place upon occurrence of all of the following:
 - a. All Performance Standards have been met; and
 - b. Either:
 - 1) The last authorized Credit has been Transferred; or
 - 2) The Bank Sponsor requests bank closure by written notice to the USFWS and USFWS provides written approval of the closure; and
 - c. All financial responsibilities of the Bank Sponsor have been met,

including 100% funding of the Endowment Fund for not less than one year.

E. Financial Operations

All financial transactions shall be reported in accordance with Section IX.

1. Interim Management Security

- 1) The holder shall be entitled to draw upon the Interim Management Security if any Transfer of Credits has been made and the USFWS determines that during any 12-month period the Bank Sponsor has not performed all tasks as required under the Interim Management Plan.
- 2) In the event that the Interim Management Security is drawn upon pursuant to this section, the Bank Sponsor shall replenish the Interim Management Security to the amount specified in **Exhibit C-1** within 90 days after written notice from the holder.
- 3) Provided that the Bank Property has been managed in accordance with the Interim Management Plan, the Interim Management Security (or any portion of such security then remaining) shall be released to the Bank Sponsor one year after the Endowment Fund has been fully funded and all Performance Standards in the Bank Management and Monitoring Documents have been met.

2. Endowment Fund

a. Endowment Fund Management

- 1) The Endowment Principal amount should not decrease in value through expenditure or investment strategy. The Endowment Principal amount is intended to increase in value to keep up with inflation. Therefore a portion of the interest and earnings on the Endowment Principal balance shall be reinvested into the Endowment Fund as required to adjust the Endowment Principal using the same CPI adjustment formula as set forth in Section VI.C.3. After the Endowment Principal is fully funded, even if interest earnings are insufficient to increase the Endowment Principal to keep up with inflation, no additional Endowment monies will be required from the Property Owner or the Bank Sponsor.
- 2) Interest earnings beyond those necessary to provide for Endowment Principal growth commensurate with inflation will be made

available to fund annual management of the Bank Property in accordance with the terms of this CBA and the Long-term Management Plan.

- 3) Any Endowment Fund revenues (including earnings and interest) remaining after the Endowment Principal is adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property shall be retained in the Endowment Fund and may be made available to fund unexpected expenses and Adaptive Management needs.
- 4) If there is not sufficient funding available from the Endowment Fund interest and earnings or if Long-term Management expenses exceed those estimated in the Endowment Fund Analysis and Schedule (**Exhibit C-2**), the Bank Sponsor or Property Owner shall consult with the USFWS to identify the most effective means to implement the management measures and tasks with the resources available. After consultation with the USFWS, the Bank Sponsor or Property Owner shall submit the resulting proposal in writing to the USFWS within 60 days after completion of its consultation with the USFWS. Upon written approval of the USFWS, the Bank Sponsor or Property Owner shall implement the approved management measures and tasks.

3. Financial Records and Auditing

The Bank Sponsor and/or Property Owner, as appropriate, shall maintain complete and accurate records relating to the financial operation of the Bank using generally accepted accounting methods, principles and practices consistently applied. The financial operation of the Bank includes all financial assurances received or expended during the establishment and operation of the Bank. At the request of the USFWS, no more frequently than annually, the Bank Sponsor and/or Property Owner, as appropriate, shall have records relating to the financial operation of the Bank audited by an independent, licensed Certified Public Accountant and shall submit the auditor's report to the USFWS upon completion.

USFWS or their designated representatives shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this CBA. Bank Sponsor and Property Owner agree to maintain such records for possible audit for a minimum of three years after Bank Closure, or three years after the date of performance, whichever is later. Bank Sponsor and Property Owner agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably have information related to such records. Further, Bank Sponsor and Property Owner agree to include a similar right of State and Federal auditors to audit records

and interview employees and representatives in any contract related to the performance of this CBA.

F. Remedial Action Plan

Prior to Bank closure, if a Party discovers any failure to achieve the Performance Standards or any injury or adverse impact to the Bank Property as preserved, restored, or enhanced, the Party making the discovery shall notify the other Party. The USFWS may require the Bank Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section IX.B. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

1. Within 60 days of the date of written notice from the USFWS, the Bank Sponsor shall develop a Remedial Action plan and submit it to the USFWS for approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the Bank Property and set forth a schedule within which the Bank Sponsor will implement those actions. The Bank Sponsor shall, at Bank Sponsor's cost, implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the USFWS. In the event the Bank Sponsor fails to submit a Remedial Action plan to the USFWS in accordance with this section, the USFWS will notify the Bank Sponsor that the Bank Sponsor is in default and may identify Remedial Action the USFWS deems necessary. If (a) the Bank Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the USFWS, in accordance with this section, or (b) conditions have not improved or continue to deteriorate one year after the date that the USFWS approved a Remedial Action plan or notified Bank Sponsor of Remedial Actions the USFWS deemed necessary, then the holder of the Performance Security may draw upon that security to undertake Remedial Action on the Bank Property.
2. If the USFWS determines that the Bank is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this CBA), then the USFWS shall notify the Bank Sponsor. Upon the USFWS giving such notice, Bank Sponsor shall immediately cease Transfer of Credits. The USFWS will determine what Remedial Action is necessary to correct the Credit deficit, and Bank Sponsor shall implement such Remedial Action, in accordance with this Section VIII.F.

Section IX: Reporting

A. Annual Inflation Adjustments to Endowment Fund Report

On January 2nd of each year following the Bank Establishment Date and until the Endowment Fund is fully funded, the Bank Sponsor shall report to the USFWS, in hard

copy and in editable electronic format, the following values:

1. The adjusted Endowment Principal, determined in accordance with Section VI.C.3; and
2. The resulting adjusted Endowment Deposit amounts.

B. Annual Report

Bank Sponsor or Property Owner, as appropriate, shall submit an annual report to USFWS, in hard copy and in editable electronic format, on or before August 15th of each year following the Bank Establishment Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Bank Establishment Date for the first annual report) through June 30th of the current year (the “Reporting Period”). The Bank Sponsor shall be responsible for the reporting tasks described below until Bank closure. After Bank closure, the [**Property Owner, Manager, Easement Holder as appropriate**] shall be responsible for such reporting, annually, as per the Long-term Management Plan. The annual report shall address the following:

1. Bank Development

The annual report shall document the degree to which the Bank is meeting the Performance Standards. The annual report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If Remedial Action has been completed, the annual report shall also evaluate the effectiveness of that action.

2. Interim Management and Long-term Management

The annual report shall contain an itemized account of the management tasks conducted during the reporting period in accordance with the Interim Management or Long-term Management Plan, including the following:

- a. The time period covered, i.e. the dates “from” and “to”;
- b. A description of each management task conducted, the dollar amount expended and time required; and
- c. The total dollar amount expended for management tasks conducted during the reporting period.

3. Transfer of Credits

The annual report shall include an updated Credit Transfer Ledger (**Exhibit E-3**) showing all Credits transferred since the Bank Establishment Date and an accounting of remaining Credits.

4. Financial Operation

The annual report shall set forth an itemized account of any and all activity of Bank Sponsor and/or Property Owner regarding the Interim Management Security and the Endowment Fund.

C. Credit Transfer Reporting

Upon the Transfer of each and every Credit the Bank Sponsor shall submit to the USFWS:

1. A copy of the fully executed Credit Purchase Agreement in the form provided at **Exhibit E-2**; and
2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit E-3**.

Section X: Responsibilities of the Bank Sponsor and Property Owner

1. Without limiting any of its other obligations, including without limitation, under the Conservation Easement, Bank Sponsor and Property Owner each hereby agrees and covenants that:
 - a. Bank Sponsor and Property Owner shall, prior to the execution of the Conservation Easement at **Exhibit D-4** hereof, provide the USFWS with satisfactory evidence that the entity proposed to hold the Conservation Easement (Grantee) is authorized to do so pursuant to Texas Natural Resource Code § 183, and has agreed to hold said Conservation Easement.
 - b. Bank Sponsor shall be responsible for all activities and costs associated with the establishment and operation of the Bank, including but not limited to construction, planting, Remedial Action, documentation, maintenance, management, monitoring, and reporting, until the Endowment Principal has been fully funded for one year and all Performance Standards have been met.
 - c. Bank Sponsor agrees to assume responsibility for compensatory mitigation requirements of USFWS biological opinions and permits for which it Transfers Credits. Once a permittee has secured the appropriate number and type of Credits from the Bank Sponsor, Bank Sponsor will provide USFWS with documentation that confirms that the Bank Sponsor has accepted the responsibility for providing the required compensatory mitigation.

Notwithstanding the Bank Sponsor's assumption of responsibility for compensatory mitigation requirements, Federal action agencies with biological opinions and non-federal Section 10 permit holders that use conservation bank credits are still responsible for ensuring that the

incidental take authorized in those biological opinions and Section 10 permits is not exceeded and that all actions required to mitigate and minimize take are accomplished.

d. It shall not discharge or release to or from the Bank Property, or permit others to discharge or release to or from the Bank Property, any material, waste or substance designated as hazardous or toxic or as a pollutant or contaminant under any Federal, state, or local environmental law or regulation (each a “Hazardous Substance”).

e. Property Owner shall not create or suffer any lien or encumbrance upon the Bank Property other than as set forth in the Property Assessment and Warranty approved by the USFWS, and Property Owner shall not execute, renew, or extend any lien, lease, license, or similar recorded or unrecorded right or interest in the Bank Property without the prior written consent of the USFWS.

f. It shall not construct or install any structure or improvement on, or engage in any activity or use of, the Bank Property, including mineral exploration or development, excavation, draining, dredging, or other alteration of the Bank Property that is not consistent with and in accordance with this CBA and its Exhibits.

g. Bank Sponsor shall ensure that the Bank Property is managed and maintained in accordance with this CBA and its Exhibits.

h. Property Owner shall allow, or otherwise provide for, access to the Bank Property by Bank Sponsor, Grantee, and the USFWS, as described in the Conservation Easement.

i. The Property Owner shall grant to Bank Sponsor all rights and authority necessary to carry out, and shall not limit the Bank Sponsor in performing, its responsibilities and obligations on and affecting the Bank Property in accordance with this CBA.

2. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this CBA, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this CBA or extensions for the performance of the requirements of this CBA.
3. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates. The Bank Sponsor or Property Owner must show cause for any or every delayed step or requirement for which an extension is sought.

Section XI: Responsibilities of the USFWS

A. USFWS Oversight

The USFWS agrees to provide appropriate oversight in carrying out provisions of this CBA.

B. USFWS Review

The USFWS will make a good faith effort to provide comments on the annual reports and Remedial Action plans within 60 days from the date of complete submittal. If the USFWS is unable to review Remedial Action plans within the time specified, this fact will be reflected in any schedule established for performance of Remedial Action and any evaluation of timely performance of Remedial Action by Bank Sponsor or Property Owner.

C. Compliance Inspections

The USFWS shall conduct compliance inspections as necessary:

1. To verify the Credits currently available in the Bank; and/or
2. Recommend Remedial Action as needed; or
3. For any other purpose determined by the USFWS as necessary to assess compliance with this CBA.

Section XII: Other Provisions

A. Force Majeure

1. The Bank Sponsor and Property Owner shall be responsible to maintain the Bank Property and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Bank Sponsor and Property Owner shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Bank Sponsor, Property Owner, and any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants;
 - b. That neither the Bank Sponsor, Property Owner, nor any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of

such circumstances.

2. The Bank Sponsor and Property Owner shall notify the USFWS within 24 hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Bank Sponsor, Property Owner, and the USFWS shall meet to discuss the course of action in response to such occurrence. In the meantime, Bank Sponsor and Property Owner shall continue to manage and maintain the Bank Property to the full extent practicable.

B. Dispute Resolution

1. The USFWS, the Bank Sponsor, and the Property Owner agree to work together in good faith to resolve disputes concerning this CBA, but any of the Parties may seek any available remedy. Unless any of the Parties has initiated legal action, any Party may elect to employ an informal dispute resolution process whereby:
 - a. The electing Party shall notify the other Parties of the dispute, the position of the aggrieved Party (including, if applicable, the basis for contending that a violation has occurred), and the remedies the electing Party proposes;
 - b. The notified Parties shall have 30 days (or such other time as the Parties may mutually agree) to respond. During this time, any such other Parties may seek clarification of the initial notice;
 - c. Within 30 days after such notified Parties' response was provided or due, whichever is later, the Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution.
 - d. The dispute resolution process may be terminated by any Party upon written notice to all other Parties.

C. Conveyance of Bank Property or Other Interests

1. All transfers of any interest in the Bank Property or the Conservation Easement are subject to the applicable provisions of the Conservation Easement.
2. The Property Owner shall have the right to sell, assign, transfer or convey (each a "transfer") its interest in the Bank Property at any time; *provided, however*, that any such transfer on or after the execution date of this CBA must be made in accordance with this CBA and the Conservation Easement, and shall be subject to written concurrence by the USFWS and Bank Sponsor. Such concurrence shall be subject to the requirement that the transferee assumes and agrees in writing to observe and perform all of the Property Owner's obligations pursuant to this CBA and the Conservation Easement. From and after the date of any transfer by Property Owner

of its interest in the Bank Property, the transferor shall have no further obligations hereunder and all references to Property Owner in this CBA shall thereafter refer to such transferee, except that the transferor's liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owner's interest in the Bank Property made without the prior written concurrence of the USFWS may, at the discretion of the USFWS, result in the termination of this CBA according to Section XII.D.2.c.

3. The Bank Sponsor may sell or convey its interest in the Bank at any time, provided that Bank Sponsor is in full compliance with all requirements of this CBA (including all financial assurance requirements), and subject to the prior written approval of the USFWS. If any of the financial assurances required under this CBA are not completely funded at the time the Bank Sponsor requests USFWS approval of a sale or conveyance, then the USFWS shall not approve such sale or conveyance unless and until either the current Bank Sponsor, or the proposed replacement Bank Sponsor, shall have provided all required financial assurances. In addition, prior to sale or conveyance, the Bank Sponsor shall provide to the USFWS a written agreement signed by the replacement Bank Sponsor in which the Bank Sponsor assigns to the replacement Bank Sponsor, and the replacement Bank Sponsor assumes and agrees to perform, all of the responsibilities and obligations of the Bank Sponsor under the CBA. Any such sale or conveyance made without the prior written concurrence of the USFWS may, at the discretion of the USFWS, result in the termination of this CBA according to Section XII.D.2.c.

D. Modification and Termination of the CBA

1. Amendment and Modification

This CBA, including its Exhibits, may be amended or modified only with the written approval of the Parties. Amendments and modifications to this CBA will require re-evaluation and coordination of this CBA in accordance with USFWS banking guidance. As part of this process all proposed amendments and modifications must be consistent with current USFWS banking guidance and guidance for conservation of the species in effect at the time of the amendment. All amendments and modifications shall be fully set forth in a separate document signed by all Parties that shall be appended to this CBA. Modifications resulting in the alteration of the number or type of available credits may result in the temporary suspension of credit sales for the duration of the CBA re-evaluation process.

2. Termination

- a. The Bank Sponsor and Property Owner may jointly withdraw the entire Bank Property and terminate this CBA at any time prior to any Credit Transfer.

b. In the event this CBA is terminated or the Bank is closed prior to the Transfer of all authorized Credits, any remaining Credits shall be extinguished and will no longer be available for Transfer.

c. The USFWS may terminate this CBA if the Bank Sponsor or Property Owner sells or conveys the Bank or the Bank Property without the prior written concurrence of the USFWS, as required by Section XII.C.

d. The USFWS may terminate its participation in this CBA upon 30 days' notice to the other Parties, on the condition that each of the following has occurred:

- 1) Bank Sponsor or Property Owner has breached one or more covenants, terms or conditions set forth herein;
- 2) Bank Sponsor or Property Owner, as applicable, has received notice of such breach from the terminating USFWS in accordance with paragraph XII.B., if applicable, and XII.K.; and
- 3) Bank Sponsor or Property Owner, as applicable, has failed to cure such breach within 30 days after such notice; provided that in the event such breach is curable in the judgment of the USFWS, but cannot reasonably be cured within such 30 day period, the USFWS shall not terminate this CBA so long as Bank Sponsor or Property Owner has commenced the cure of such breach and is diligently pursuing such cure to completion.

e. Nothing in this Section XII.D.2 is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the USFWS in the event of a threatened or actual breach of this CBA.

E. Default

The Bank Sponsor and/or Property Owner shall be in default if that Party fails to observe or perform any obligations or responsibilities required of it by this CBA. In the event the Bank Sponsor and/or Property Owner realizes it is in default, it shall promptly notify the other Parties. Once the Parties receive notification or otherwise become aware that the Bank Sponsor and/or Property Owner is in default, the Parties may elect to either pursue dispute resolution consistent with Section XII.B or may cause the holder to draw upon and expend the appropriate financial security as necessary to continue Bank development, management, or operation, as provided in Section VI and VIII.E. In the event the informal dispute resolution process is invoked, the holder of the financial securities shall not draw upon the financial securities until such time as the informal dispute resolution process has been terminated. This Section XII.E shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this CBA or any remedy available under applicable State and/or Federal Law.

F. Controlling Language

The Parties intend the provisions of this CBA and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this CBA conflicts with specific language in any document that is incorporated into this CBA by reference, the specific language within the CBA shall be controlling. The captions and headings of this CBA are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This CBA, and all exhibits, appendices, schedules and agreements referred to in this CBA, constitute the final, complete and exclusive statement of the terms of the agreement between and among the USFWS and the Bank Sponsor and Property Owner pertaining to the Bank, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this CBA, shall be binding or valid. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section XII.D.1. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this CBA, whenever this CBA requires Bank Sponsor, Property Owner, or the USFWS to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If the Bank Sponsor, Property Owner, or the USFWS disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

I. Successors and Assigns

This CBA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this CBA.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this CBA to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the

remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this CBA would be defeated by loss of the invalid or unenforceable provision.

K. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this CBA shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section XII.K.

Bank Sponsor:

[NAME]

[ADDRESS]

Telephone:

Fax:

Property Owner:

[NAME]

[ADDRESS]

Telephone:

Fax:

U.S. Fish and Wildlife Service

_____ Office

[FIELD OFFICE ADDRESS]

Attn: Field Supervisor

Telephone:

Fax:

L. Counterparts

This CBA may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

M. No Third Party Beneficiaries

This CBA shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this CBA. The duties, obligations and responsibilities of the Parties to this CBA with respect to third parties shall remain as otherwise provided by law in the event this CBA had never been executed.

N. Availability of Funds

Implementation of this CBA by the USFWS is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this CBA may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury.

O. No Partnerships

This CBA shall not make or be deemed to make any Party to this CBA an agent for or the partner or joint venturer of any other Party.

P. Governing Law

This CBA shall be governed by and construed in accordance with the Federal Endangered Species Act, 16 U.S.C. § 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) *et seq.*, and the laws of the State of Texas, including but not limited to the Texas Natural Resource Code, and other applicable Federal and State of Texas laws and regulations.

Q. Attorneys' Fees

If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, then each Party shall pay its own attorney's fees and costs.

Section XIII: Execution

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this CBA. This CBA shall be deemed executed on the date of the last signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed this CBA as follows:

Bank Sponsor

By: _____

Name: _____

Title: _____

Date: _____

Property Owner

By: _____

Name: _____

Title: _____

Date: _____

U.S. Fish and Wildlife Service

By: _____

Name: _____

Title: Assistant Regional Director- Endangered Species, Southwest Regional Office

Date: _____

Appendix 1 –Required Exhibits

1. **“Exhibit A” - Bank Location Maps**
 - A-1. General Vicinity Map**

This map should show the Bank location in relation to cities, towns, or major roads, and other distinguishable landmarks.
 - A-2. Map of Property including Bank Property**

This map should illustrate Property and Bank Property boundaries on a topographic map.
2. **“Exhibit B” – Service Area Map(s) and Description(s)**
 - B-1. Map(s) of the Bank’s Service Area(s)**

Include Service Area map(s) showing the area within which each type of Credit (Covered Species) may be sold or obligated.
 - B-2. Narrative description(s) of the Bank’s Service Area(s)**

Include a detailed description of the area within which each type of Credit may be sold or obligated
3. **“Exhibit C” – Management and Monitoring Documents**

Any and all standard required forms to be used for the submission of financial information shall be included in this **Exhibit C** in template form.

 - C-1. Interim Management Security Analysis and Schedule**

This analysis and schedule shall consist of a table and/or spreadsheet that shows all of the tasks (management, monitoring, reporting); task descriptions; labor (hours); cost per unit; cost, frequency, timing or scheduling of the tasks; the total annual funding necessary for each task; and any associated assumptions for each task required by the Interim Management Plan. The total annual expenses should include administration and contingency costs.
 - C-2. Endowment Fund Analysis and Schedule**

This analysis and schedule shall consist of a table and/or spreadsheet that shows all of the tasks (management, monitoring, reporting); task descriptions; labor (hours); cost per unit; cost, frequency, timing or scheduling of the tasks; the total annual funding necessary for each task; and any associated assumptions for each task required by the Long-term Management Plan. The total annual expenses should include, but are not limited to, administration, contingency, and the USFWS-approved annual capitalization rate.

C-3. Interim Management Plan

The Interim Management Plan identifies the short-term management, monitoring and reporting activities to be conducted from the time the Bank is established until the Endowment Fund has been fully funded for one year and all the Performance Standards in the Development Plan have been met.

C-4. Long-term Management Plan

The Long-term Management Plan identifies the perpetual management, monitoring and reporting activities to be conducted after the Interim Management Period, and should include at minimum:

- 1) Purpose of Bank Establishment and Purpose of Long-term Management Plan;
- 2) A baseline description of the setting, location, history and types of land use activities, geology, soils, climate, hydrology, habitats present (once Bank meets Performance Standards) and species descriptions;
- 3) Overall management, maintenance and monitoring goals; specific tasks and timing of implementation; and a discussion of any constraints which may affect goals;
- 4) The Endowment Fund Analysis and Schedule (**Exhibit C-2**);
- 5) Discussion of Adaptive Management actions for reasonably foreseeable events and possible thresholds for evaluating and implementing Adaptive Management;
- 6) Rights of access to the Bank Property and prohibited uses of the Bank Property as provided in the CE; and
- 7) Procedures for Bank Property transfer, land manager replacement, amendments, and notices.

C-5 Bank Closure Plan

Provide Bank closure plan.

4. **“Exhibit D” - Real Estate Records and Assurances**

The Property Owner shall provide to the USFWS the following, with the understanding that the Bank will not be deemed established and authorized to sell Credits until the Bank Property has been protected in perpetuity by acceptance and recording of the Conservation Easement and all of the other requirements for Bank establishment have been met:

D-1. Preliminary Title Report, Legal Description, and Parcel Map(s)

Parcel map(s) and a legal description, as well as a Preliminary Report which includes pertinent exceptions (e.g., excepted or reserved easements

or rights, liens, encumbrances and other matters affecting title), of the Bank Property.

D-2. Property Assessment and Warranty

The Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the Bank Property including each exception listed in the Preliminary Title Report. The Property Assessment will include a narrative explaining each lien, encumbrance or other exception to title and the manner in which it may affect the conservation easement.

D-3. Plat Maps

Plat maps supporting the Property Assessment and Warranty which illustrate the physical extent of the title exceptions and identify the locations of all structures, roads, fences, and other physical improvements.

D-4. Conservation Easement Deed or Grant Deed

The Conservation Easement approved as to form by the Grantee and third-party beneficiaries.

5. **“Exhibit E” - Bank Crediting and Credit Transfers**

E-1. Credit Evaluation and Credit Table

A “Credit Evaluation” is an explanation of the evaluation undertaken to formulate the value of each type of Credit and the total number of each type of Credit. The “Credit Table” should show the number and type of Credits approved by the USFWS to Transfer as mitigation or compensation for agency-approved Projects and other impacts in the Service Area(s). The table should distinguish between the following categories of Credits: Covered Species Preservation; Covered Species Restoration.

E-2. Credit Purchase Agreements Template

E-3. Credit Transfer Ledger Template

Credit Transfer Ledger shall include at a minimum:

- 1) Bank name;
- 2) Total number of each type of Bank Credit;
- 3) Initial Credit purchaser name, address and phone number;
- 4) Project name;
- 5) Project applicant name, address, and phone number;
- 6) Agency project file numbers;
- 7) Date of Credit Transfer;
- 8) Type(s) of Credit(s) sold or obligated;

- 9) Number of Credits sold or obligated;
- 10) Number of Credits applied; and
- 11) Balance of each type of Credit remaining.

The Credit Transfer Ledger requirements may be amended at the discretion of the USFWS to assist with electronic tracking through a database, such as the Regulatory In-lieu fee and Bank Information Tracking System (RIBITS), or other such database. The USFWS will notify each Bank Sponsor of any new database requirements, and will instruct them on how to implement it for Credit Transfers and tracking purposes.

6. “Exhibit F” - Phase I Environmental Site Assessment
7. “Exhibit G” - Biological Resources Survey

The Biological Survey of the Bank Property shall include a general description of geographic location and features, topography, soils, vegetation (assessment of native vs. exotic species), past and present land use including grazing practices, species present and potentially present, and a quality assessment of all habitat types (i.e. life history requirements of Covered Species, habitat diversity, connectivity to other habitats and protected areas), and species presence based on the results of protocol surveys.