Wetland Mitigation Banking Fund (WMBF) GRANT APPLICATION

Rick Snyder, Governor

Michigan Department of Environmental Quality (DEQ)

Dan Wyant, Director

http://www.michigan.gov/deq

Michigan Department of Treasury
Michigan Finance Authority (Authority)

R. Kevin Clinton, State Treasurer

http://www.michigan.gov/treasury

Administered by:

Department of Environmental Quality
Water Resources Division
Bill Creal, Chief

Department of Treasury
Michigan Finance Authority
Joseph Fielek, Executive Director

Mailing Addresses:

DEQ-WATER RESOURCES DIVISION
WETLANDS, LAKES, AND STREAMS UNIT
P.O. BOX 30485
LANSING MI 48909-7958

Surface Delivery Address/Overnight Express:

DEQ- WATER RESOURCES DIVISION
WETLANDS, LAKES, AND STREAMS UNIT
CONSTITUTION HALL, 3rd FLOOR SOUTH
525 W ALLEGANS ST
LANSING MI 48933

Completion of this application is mandatory for the applicant to be considered for Wetland Mitigation Banking Fund Program assistance.

The DEQ will not discriminate against any individual or group on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information or sexual orientation. Questions or concerns should be directed to the Quality of Life – Office of Human Resources, P.O. Box 30473, Lansing, MI 48909-7973.

WMBF Grant Application Instructions

The following information must be provided in the grant application:

Project Information: This portion of the grant application needs to be completed and returned for a complete application.

Authorizing Resolution and Grant Agreement Form: The resolution must be signed, dated, and submitted with the project information noted above. The grant agreement form must accompany the resolution, but does not need to be completed.

Project Proposal: All information listed in the project proposal must be provided, including the following:

1. Project Location and Service Area
2. Description of the Site and Surrounding Area
3. Conceptual Design
4. Project Need/Justification
5. Long Term Protection/Management

This information will be used to evaluate the suitability of the project for a successful wetland bank site in accordance with state and federal regulations.

PROJECT INFORMATION

Project Name _____

A. Legal Name of Applicant/Bank Sponsor _____

The legal name of the applicant may be different from the name of the project. For example, a county may be the legal applicant, while the project may be named for the particular village or township it will serve.

If applicant is not a City/County/Township/Village, provide Authorizing Statute (citation) to qualify as a municipality. _____

B. Mailing Address of Applicant

Street, P.O. Box _____

City, State & Zip _____

County(s) project is located in_____

_____

(Area Code and Telephone Number)

C. Designated Contacts for this Project

1. Authorized Representative (Name below must match the person named in the resolution)

Name _____

Title _____

Street, P.O. Box _____

City, State & Zip _____

_____

(Area Code and Telephone Number) (E-mail Address)

2. Applicant's Financial Advisor (if applicable)

Name _____

Firm _____

Street, P.O. Box _____

City, State & Zip _____

_____

(Area Code and Telephone Number) (E-mail Address)

3. Applicant's Consultant (if applicable)

Name _____

Firm _____

Street, P.O. Box _____

City, State & Zip _____

_____

(Area Code and Telephone Number) (E-mail Address)

THE FORM WILL NOT BE ACCEPTED IF IT HAS BEEN EDITED, ALTERED, RETYPED, OR CONVERTED TO ANY OTHER FORMAT.

4. Primary Contact (if different than authorized representative)
Name _____ Title _____

_____
(Area Code and Telephone Number) (E-mail Address)

D. Disclosure of Conditions Requiring Repayment of Grant

WMBF grant recipients are required to implement the wetland mitigation banking project for which grant funding was provided in accordance with this intent and provisions of Section 324.5204f (g) of Part 52 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended:

(g) The grant agreement shall contain terms established by the department and the authority and a requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if any of the following occur:

(*i*) The applicant fails to submit an administratively complete loan application for assistance from the wetland mitigation bank funding program or other source of financing for the project within 1 year of the date on which the grant expires.

(*ii*) The applicant declines the loan assistance for 2 consecutive years unless the applicant proceeds with funding from another source.

(*iii*) The applicant is unable to enter into a signed wetland mitigation banking agreement with the department within 2 years of the date on which the grant expires.

(*iv*) The applicant is unable to or decides not to proceed with constructing the project.

E. Project Need and Proposed Scope of Work

In order to promote wetland banking and improve water quality, the applicant can seek WMBF Grant Program assistance to cover the costs of: (1) Developing an approvable wetland mitigation banking proposal; (2) Notifying affected local units of government and adjacent property owners of the proposed wetland mitigation bank, and working to resolve objections to the project; (3) Planning and designing the wetland mitigation bank; (4) Completing the wetland mitigation bank funding program loan application or loan application requirements from other funding sources.

Describe the specific activities you will fund with WMBF grant assistance. Information provided will be used by the project manager to develop Attachment A of the Grant Agreement. Information shall include, but is not limited to, all of the following **(Attach as a separate document)**:

- *A broad project scope stating the purpose of the grant.*
- *A project description, which is a more detailed description of the type of work to be done with the grant.*
- *Work plan with specific tasks and products expected*
- *Timetable/schedule*
- *Budget*

F. Ownership of Proposed Wetland Bank Site

Is the legal entity that owns the proposed wetland bank site the same as the legal name of the applicant (see Item A)? ☐ YES ☐ NO

If NO, has the applicant obtained the necessary authority for implementing the activities associated with the proposed scope of work? (Certification of this legal relationship must be provided prior to the applicant receiving WMBF grant assistance). ☐ YES ☐ NO

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G. Funding Source for Associated Construction (if applicable)

Identify the anticipated funding source(s) for the construction of the proposed bank site.

☐ WMBF Loan ☐ Other (explain) _____

The applicant intends to seek WMBP loan(s) to construct the proposed project in fiscal year _____ (an October 1st to September 30th fiscal year).

If construction financing is anticipated to come from a source other than WMBF, identify the proposed construction year(s): _____.

H. WMBF Grant Agreement Period

Start date of grant-funded tasks: _____ (month/year).

Estimated date for completion of **all** grant-funded tasks: _____ (month/year).

I. Project Cost Worksheet

Read the instructions below before completing the Project Cost Worksheet.

Grant Budget Item	Cost Supporting Documents Attached?	Estimated Project Costs
1. Developing Banking Proposal	☐ YES	
2. Notification/Resolution	☐ YES	
3. Planning and Designing Bank	☐ YES	
4. Loan Application Development	☐ YES	
5. Cost Subtotal		
6. LESS Local Match		
7. Requested WMBF Grant Amount (Line 5 minus Line 6)		

1. Entering Cost Figures

   To complete the Project Cost Worksheet, enter estimated costs. **Use whole dollar amounts for all entries**. It is anticipated that typical grant applications will be in the $30,000 to $100,000 range.

2. Supporting Documentation

   Documentation must be attached to your application to support the costs included on the Project Cost Worksheet; validate by checking the box on each requested line item. Adequate supporting documentation means an engineer's estimate; a letter, or email from a vendor detailing the services to be rendered and their costs; or a ledger of anticipated billable force account hours, employee rates, and classifications.

3. Executed Contracts (required for reimbursement, not required for grant application)

   A contract between the applicant and the vendor must be executed for each service that is rendered. An executed copy of each contract, with a clear identification of the scope of the service(s) and a contract period, must be submitted prior to reimbursements of costs.

4. Line-By-Line Completion Guidance

   Line 1 – Developing Banking Proposal

   The costs associated with developing an approvable banking agreement. A sample banking agreement is included.

   Line 2 – Notification/ Resolution

   The administrative rules for Wetland Mitigation Banking require the Bank Sponsor to notify local unites of government and adjacent property owners. The Bank sponsor must do this notification and take steps to resolve issues that are brought forth.

   Line 3 – Planning and Designing Bank

   The costs associated with planning and designing of the proposed wetland bank. These costs include preparing water budgets, conducting soil borings, design of the wetland bank site, development of planting/seeding plans and conducting survey work required for the preparation of the conservation easement.

   Line 4 – Loan Application Development

   The costs associated with applying for a WMBF loan.

   Line 6 – Required Local Match

   WMBF grant assistance requires a 10-percent local match.

J. Covenants and Certifications

The applicant must abide by all of the covenants and certifications enumerated below:

1. The applicant has the legal, managerial, institutional, and financial capability to plan, design, build and manage the project, or cause the project to be built.
2. The applicant certifies that no undisclosed fact or event, or pending litigation, will materially or adversely affect the project, the prospects for its completion, or the applicant's ability to make timely repayments of the grant if the project does not proceed.
3. The applicant agrees to provide the local match for grant-eligible costs and disburse match funds to service providers concurrent with grant disbursements.
4. The applicant agrees to maintain complete books and records relating to the grant and financial affairs of the project in accordance with generally accepted accounting principles (GAAP) and generally accepted government auditing standards (GAGAS).
5. The applicant agrees that all municipal contracts related to the project will provide that the prime contractor and any subcontractor may be subject to a financial audit and must comply with GAAP and GAGAS.
6. The applicant agrees to provide any necessary written authorizations to the DEQ and the Authority for the purpose of examining, reviewing, or auditing the financial records of the project. The applicant

also agrees to require similar authorizations from all contractors, consultants, property owners, or agents with which the applicant negotiates an agreement.

7. The applicant agrees that all pertinent records shall be retained and available to the DEQ and the Authority for a minimum of three years and that if litigation, a claim, an appeal, or an audit is begun before the end of the three-year period, records shall be retained and available until the three years have passed or until the action is completed and resolved, whichever is longer.

8. The applicant agrees to ensure that planning and design activities of the project are conducted in compliance with the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; its Administrative Rules; and all applicable state laws, executive orders, regulations, policies, and procedures.

I certify that I am the authorized representative designated by the municipality, as defined by Section 324.5301(i) of Part 53 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, that will receive the grant for this project and that the application information being submitted is complete and accurate to the best of my knowledge.

I further certify that _____ *(legal name of applicant)* agrees to and will abide by the covenants and certifications stipulated above.

_____

Name and Title of Authorized Representative *(Please Print or Type)*

_____

Signature of Authorized Representative *(Original Signature Required)* Date

Required Documents

The following documents must be submitted with this application. This grant application will be deemed incomplete if the required documents are not attached.

(1) **Project Information:** This portion of the grant application needs to be completed and returned for a complete application. For a complete application, attach a separate **Scope of Work** supported by the additional information required under Section E on page 3. Also, include a **Project Cost Worksheet** supported with documentation consistent with the instructions on pages 5-6.

(2) **Authorizing Resolution and Grant Agreement Form:** The resolution must be signed and dated. Submit the resolution with the project information noted above. The grant agreement form must accompany the resolution.

(3) **Project Proposal.** All of the required information listed in the project proposal must be provided. This information will be used to evaluate the suitability of the project for a successful wetland bank site in accordance with state and federal regulations.

THE FORM WILL NOT BE ACCEPTED IF IT HAS BEEN EDITED, ALTERED, RETYPED, OR CONVERTED TO ANY OTHER FORMAT.

Please return the application and the specified attachments to:

WETLAND , LAKES AND STREAMS UNIT
WATER RESOURCES DIVISION
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

MAILING ADDRESS	***SURFACE DELIVERY ADDRESS***
P.O. BOX 30485	CONSTITUTION HALL, 3rd FLOOR SOUTH
LANSING MI 48909-7958	525 W ALLEGANS ST
	LANSING MI 48933

*A hard copy of the grant application must be submitted to the DEQ. Grant application may be submitted at any time beginning July 1, 2014. Grant awards will be issued quarterly based upon the date an application is administratively complete, until available WMBF funding has been exhausted.

THE FORM WILL NOT BE ACCEPTED IF IT HAS BEEN EDITED, ALTERED, RETYPED, OR CONVERTED TO ANY OTHER FORMAT.

Please Use the Attached Resolution "As Is"

(Do <u>Not</u> Substitute Your Own Form)

_____of_____
County of _____

Resolution Authorizing the Wetland Mitigation Banking Fund (WMBF) Grant Agreement

Minutes of the regular meeting of the _____ of the_____ of_____ County of _____, State of Michigan, (the "Municipality") held on _____.

PRESENT: Members: _____
_____

ABSENT: Members: _____
_____

Member _____offered and moved the adoption of the following resolution, seconded by Member_____.

WHEREAS, Part 52, Strategic Water Quality Initiatives, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), provides at MCL 324.5204f that the Michigan Finance Authority (the "MFA") in consultation with the Michigan Department of Environmental Quality (the "DEQ") shall establish a wetland mitigation banking fund program; and

WHEREAS, in accordance with the provisions of 1985 PA 227, as amended, Part 52, Strategic Water Quality Initiatives, of the NREPA and other applicable provisions of law, the MFA, the DEQ, and the Municipality that is a grant recipient shall enter into a grant agreement (the "WMBF Grant Agreement") that requires the Municipality to repay the grant under certain conditions as set forth in MCL 324.5204f, as amended; and

WHEREAS, the Municipality does hereby determine it wishes to establish a wetland mitigation bank site in _____watershed; and

WHEREAS, it is the determination of the Municipality that at this time, a grant in the aggregate principal amount not to exceed _____ ("Grant") be requested from the MFA and the DEQ to develop a wetland mitigation bank; and

WHEREAS, the Municipality shall obtain this Grant by entering into the WMBF Grant Agreement with the MFA and the DEQ; and

WHEREAS, the Municipality shall provide the local match for grant-eligible costs and disburse match funds to service providers concurrent with grant disbursements.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. _____(*title of the desginee's position*), a position currently held by_____ (*name of the designee*), is designated as the Authorized Representative for purposes of the WMBF Grant Agreement.

2. The proposed form of the WMBF Grant Agreement between the Municipality, the MFA and the DEQ (attached hereto as Appendix I) is hereby approved and the Authorized Representative is authorized and directed to execute the WMBF Grant Agreement with such revisions as are permitted by law and agreed to by the Authorized Representative.

3. The Municipality shall repay the Grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8 percent per year, to the Authority if the Municipality is unable to, or decides not to, proceed with wetland mitigation bank. Specifically, repayment shall take place if one of the following occurs:

(*a)* The applicant fails to submit an administratively complete loan application for assistance from the wetland mitigation bank funding program or other source of financing for the project within one year of the date on which the grant expires.

(*b*) The applicant declines the loan assistance for two consecutive years unless the applicant proceeds with funding from another source.

(*c*) The applicant is unable to enter into a signed wetland mitigation banking agreement with the department within two years of the date on which the grant expires.

(*d*) The applicant is unable to or decides not to proceed with constructing the project.

4. The Grant, if repayable, shall be a first budget obligation from the general funds of the Municipality, and the Municipality is required, if necessary, to levy ad valorem taxes on all taxable property in the Municipality for the payment thereof, subject to applicable constitutional, statutory and Municipality tax rate limitations.

5. The Municipality shall not invest, reinvest or accumulate any moneys deemed to be Grant funds, nor shall it use Grant funds for the general local government administration activities or activities performed by municipal employees that are unrelated to the project.

6. The Authorized Representative is hereby jointly or severally authorized to take any actions necessary to comply with the requirements of the MFA and the DEQ in connection with the issuance of the Grant. The Authorized Representative is hereby jointly or severally authorized to execute and deliver such other contracts, certificates, documents, instruments, applications and other papers as may be required by the MFA or the DEQ or as may be otherwise necessary to effect the approval and delivery of the Grant.

7. The Municipality acknowledges that the WMBF Grant Agreement is a contract between the Municipality, the MFA and the DEQ.

8. All resolutions and parts of resolutions insofar as they conflict with the provisions of this Resolution are rescinded.

YEAS: Members:

NAYS: Members:

RESOLUTION DECLARED ADOPTED

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the_____ of the _____ of _____, County of _____ , said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

_____
Name
_____of_____, Clerk
_____of_____ County of _____

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Michigan Finance Authority

Wetland Mitigation Banking Fund (WMBF)
GRANT AGREEMENT

This Grant Agreement ("Agreement") is made as of _____20___, among the Michigan Department of Environmental Quality, Water Resources Division (the "DEQ"), the Michigan Finance Authority (the "Authority") (the DEQ and the Authority are, collectively, the "State") and the _____ _____, *County of* _____ ("Grantee") in consideration for providing grant assistance to the Grantee.

The purpose of this Agreement is to provide funding for the project named below. The State is authorized to provide grant assistance pursuant to the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Legislative appropriation of funds for grant disclosure is set forth in 2013 Public Act 59.

The Grantee shall be required to repay the grant made under this Agreement (the "Grant"), within 90 days of being informed by the State to do so, under certain conditions, as set forth in Section XVIII. Program Specific Requirements: WMBF Repayable Grant.

Award of a Grant under this Agreement and completion of the activities identified in Attachment A does not guarantee loan assistance from the Wetland Mitigation Banking Fund.

GRANTEE INFORMATION:

_____
Name/Title of Authorized Representative

_____
Address

_____
Address

_____
Telephone number

_____
E-mail address

_____

GRANT INFORMATION:

Project Name: _____

Project #: _____

Amount of Grant: $_____

Amount of Match $_____

Project Total $_____ (grant plus match)

Start Date: _____ **End Date**: _____

DEQ REPRESENTATIVE:

_____
Name/Title

_____
Address

_____
Address

_____
Telephone number

_____
E-mail address

AUTHORITY REPRESENTATIVE:

_____
Name/Title

_____
Address

_____
Address

_____
Telephone number

_____
E-mail address

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SAMPLE

The individuals signing below certify by their signatures that they are authorized to sign this Grant Agreement on behalf of their respective parties, and that the parties will fulfill the terms of this Agreement, including the attached Attachment A, and use this Grant only as set forth in this Agreement.

GRANTEE

_____ _____
Signature of Grantee Date

_____
Name and title (typed or printed)

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

_____ _____
Its Authorized Officer Date

MICHIGAN FINANCE AUTHORITY

_____ _____
Its Authorized Officer Date

I. PROJECT SCOPE

This Agreement shall be in addition to any other contractual undertaking by the Grantee contained in the Resolution authorizing the Grant (the "Resolution").

This Agreement, including its Attachment(s), constitutes the entire agreement between the DEQ, the Authority, and the Grantee.

(A) The scope of this Grant is limited to the activities specified in Attachment A (the "Project"), and such activities as are authorized by the State under this Agreement. Any change in project scope requires prior written approval in accordance with Section III, Changes, in this Agreement.

(B) By acceptance of this Agreement, the Grantee commits to complete the Project identified in Attachment A within the time period allowed for in this Agreement and in accordance with the terms and conditions of this Agreement.

II. AGREEMENT PERIOD

This Agreement shall take effect on the date that it has been signed by all parties (the "Effective Date"). The Grantee shall complete the Project in accordance with all the terms and conditions specified in this Agreement no later than the End Date shown on page one. **Only costs incurred between the Start Date and the End Date shall be eligible for payment under this Grant.**

III. CHANGES

Any decreases in the amount of the Grantee's compensation, significant changes to the Project, or extension of the End Date, shall be requested by the Grantee in writing, and approved in

SAMPLE

writing by the State in advance. The State reserves the right to deny requests for changes to the Agreement including its Attachment A. No changes can be implemented without approval by the State.

IV. GRANTEE REQUIREMENTS

The Grantee shall submit deliverables and follow reporting requirements specified in Section XVIII and Attachment A of this Contract.

(A) The Grantee must complete and submit [quarterly] [financial and/or progress] reports according to a form and format prescribed by the State [and must include supporting documentation of eligible project expenses]. These reports shall be due according to the following*: **[Managers can alter the dates below for reporting other than quarterly]***

Reporting Period	**Due Date**
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	Before October 15*****
October 1 – December 31	January 31

*****Due to the State's year-end closing procedures, there will be an accelerated due date for the report covering July 1 – September 30. Advance notification regarding the due date for the quarter ending September 30 will be sent to the Grantee. If the Grantee is unable to submit a report in early October for the quarter ending September 30, an estimate of expenditures through September 30 must be submitted to allow the State to complete its accounting for that fiscal year.

The forms provided by the State shall be submitted to the State's contact at the address on page 1. [All required supporting documentation (invoices, proof of payment, etc.) for expenses must be included with the report.]

(B) The Grantee shall provide a final project report in a format prescribed by the State. [The Grantee must provide a draft final report 45 days prior to the end date of the contract.] [The Grantee shall submit the final status report, including all supporting documentation for expenses, along with the final project report and any other outstanding products within 30 days from the End Date of the Contract.]

[(C) The Grantee must provide [_____ copies of all products and deliverables in accordance with Appendix A.]

[(D) All products shall acknowledge that the project was supported in whole or in part by [Program Name], the DEQ, per the guidelines provided by the program.]

[(E) If 15 percent (15%)] or more of the grant amount is expended in a single quarter, payment requests may be submitted [once monthly during that quarter]]. The Grantee shall meet the reporting requirements specified in Section XVIII of this Agreement.

(F) The Grantee is expected to make significant progress towards a signed banking agreement and conservation easement by the end of the grant period or grantees may be required to repay the grant in accordance with XVIII. PROGRAM-SPECIFIC REQUIREMENTS: WMBF REPAYABLE GRANT A sample banking agreement (Attachment B) and conservation easement (Attachment (C) as of May 19, 2014 are included for reference.

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V. GRANTEE RESPONSIBILITIES

(A) The Grantee agrees to abide by all local, state, and federal laws, rules, ordinances and regulations in the performance of this Grant.

(B) All local, state, and federal permits, if required, are the responsibility of the Grantee. Award of this Grant is not a guarantee of permit approval by the state.

(C) The Grantee shall be solely responsible to pay all taxes, if any, that arise from the Grantee's receipt of this Grant.

(D) The Grantee is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by its subcontractors under this Agreement. The State will consider the Grantee to be the sole point of contact concerning contractual matters, including payment resulting from this Grant. The Grantee or its subcontractor shall, without additional grant award, correct or revise any errors, omissions, or other deficiencies in designs, drawings, specifications, reports, or other services.

(E) The DEQ's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Grantee of responsibility for the technical adequacy of the work. The DEQ's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(F) The Grantee acknowledges that it is a crime to knowingly and willfully file false information with the State for the purpose of obtaining this Agreement or any payment under the Agreement, and that any such filing may subject the Grantee, its agents, and/or employees to criminal and civil prosecution and/or termination of the Grant.

VI. ASSIGNABILITY

The Grantee shall not assign this Agreement or assign or delegate any of its duties or obligations under this Agreement to any other party without the prior written consent of the State. The State does not assume responsibility regarding the contractual relationships between the Grantee and any subcontractor.

VII. NON-DISCRIMINATION

The Grantee shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantee agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

VIII. UNFAIR LABOR PRACTICES

SAMPLE

The Grantee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq*.

IX. LIABILITY

(A) The Grantee, not the State, is responsible for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by the Grantee under this Agreement, if the liability is caused by the Grantee, any subcontractor, or anyone employed by the Grantee.

(B) All liability as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the State in the performance of this Agreement is the responsibility of the State and not the responsibility of the Grantee if the liability is materially caused by any State employee or agent.

(C) In the event that liability arises as a result of activities conducted jointly by the Grantee and the State in fulfillment of their responsibilities under this Agreement, such liability is held by the Grantee and the State in relation to each party's responsibilities under these joint activities.

(D) Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Grantee, the State, its agencies, or their employees as provided by statute or court decisions.

X. CONFLICT OF INTEREST

No government employee or member of the legislative, judicial, or executive branches or member of the Grantee's governing body, its employees, partner, agencies or their families shall have benefit financially from any part of this Agreement.

XI. AUDIT AND ACCESS TO RECORDS

See Section XVIII (C).

XII. INSURANCE

(A) The Grantee shall maintain insurance or self insurance that will protect it from claims that may arise from the Grantee's actions under this Agreement or from the actions of others for whom the Grantee may be held liable.

(B) The Grantee must comply with applicable workers' compensation laws while engaging in activities authorized under this Agreement.

XIII. OTHER SOURCES OF FUNDING

The Grantee guarantees that any claims for reimbursement made to the State under this Agreement shall not be financed by any source other than the State under the terms of this Agreement. If funding is received through any other source, the Grantee agrees to delete from Grantee's billings or to immediately refund to the State, the total amount representing such duplication of funding.

XIV. COMPENSATION

SAMPLE

(A) A breakdown of Project costs covered under this Agreement is identified in Attachment A. The State will pay the Grantee a total amount not to exceed the amount on page one of this Agreement, in accordance with Attachment A, and only for expenses incurred. All other costs over and above the Grant amount, necessary to complete the Project, are the sole responsibility of the Grantee.

(B) The Grantee is committed to the match amount on page one of this Agreement, in accordance with Attachment A. The Grantee shall expend all local match committed to the Project by the End Date of this Agreement.

(C) The State will approve payment requests after approval of reports and related documentation as required under this Agreement.

(D) The State reserves the right to request additional information necessary to substantiate payment requests.

(E) Expenses incurred by the Grantee prior to the Start Date or after the End Date of this Contract are not allowed under the Agreement.

(F) Payments under this Agreement may be processed by Electronic Funds Transfer (EFT). The Grantee may register to receive payments by EFT at the Contract & Payment Express Web Site (http://www.cpexpress.state.mi.us)

(G) An amount equal to 15 percent of the grant award, or final payment will be withheld by the State until the project is completed in accordance with Section XV, Closeout, and Attachment A.

XV. CLOSEOUT

(A) A determination of Project completion shall be made by the DEQ after the Grantee has met any match obligations and satisfactorily completed the activities and provided products and deliverables described in Attachment A.

(B) Upon issuance of final payment from the State, the Grantee releases the State of all claims against the State arising under this Agreement. Unless otherwise provided in this Agreement or by State law, final payment under this Agreement shall not constitute a waiver of the State's claims against the Grantee.

(C) The Grantee shall immediately refund to the State any payments or funds in excess of the costs allowed by this Agreement.

XVI. CANCELLATION

This Agreement may be canceled by the State, upon 30 days written notice, due to Executive Order, budgetary reduction, or other lack of funding upon request by Grantee or upon mutual agreement by the State and Grantee. The State reserves the right to provide just and equitable compensation to the Grantee for all satisfactory work completed under this Agreement.

XVII. TERMINATION

(A)This Agreement may also be terminated by the State for any of the following reasons upon 30 days written notice to the Grantee:

SAMPLE

(1) If the Grantee fails to comply with the terms and conditions of the Agreement or with the requirements of the authorizing legislation cited on page 1 or the rules promulgated thereunder, or with other applicable law or rules.

(2) If the Grantee knowingly and willfully presents false information to the State for the purpose of obtaining this Agreement or any payment under this Agreement.

(3) If the State finds that the Grantee, or any of the Grantee's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee, or agent of the State in an attempt to secure a subcontract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement.

(4) During the 30-day written notice period, the State shall also withhold payment for any findings under subparagraphs 1 through 3, above.

(5) If the Grantee or any subcontractor, manufacturer, or supplier of the Grantee appears in the register of persons engaging in unfair labor practices that is compiled by the Michigan Department of Licensing and Regulatory Affairs or its successor.

(B) The State may immediately terminate this Agreement without further liability if the Grantee, or any agent of the Grantee, or any agent of any subagreement, is:

(1) Convicted of a criminal offense incident to the application for or performance of a state, public, or private contract or subcontract;

(2) Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;

(3) Convicted under state or federal antitrust statutes;

(4) Convicted of any other criminal offense which, in the sole discretion of the State, reflects on the Grantee's business integrity; or

(C) If a grant is terminated, the State reserves the right to require the Grantee to repay all or a portion of funds received under this Agreement.

XVIII. PROGRAM-SPECIFIC REQUIREMENTS: WMBF REPAYABLE GRANT

(A) General Representations. The Grantee represents and warrants to, and agrees with, the Authority and DEQ, as of the date hereof as follows:

(1) Grant funds may only be expended to cover the costs of (i) developing an approvable wetland mitigation banking proposal, (ii) notifying local units of government and adjacent property owners of the proposed wetland mitigation bank, and working to resolve objections to the project, (iii) planning and designing the wetland mitigation bank, (iv) completing the wetland mitigation bank funding program loan application or loan application from other sources of financing.

(2) Grant funds used for administrative activities or activities performed by municipal employees shall be limited to work that is directly related to the Project and is conducted by employees of the Grantee.

SAMPLE

(3) The Grantee has full legal right, power and authority to execute this Agreement, and to consummate all transactions contemplated by this Agreement, the Resolution, and any and all other agreements relating thereto. The Grantee has duly authorized and approved the execution and delivery of this Agreement, the performance by the Grantee of its obligations contained in this Agreement, and this Agreement is a valid, legally binding action of the Grantee, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

(4) The Resolution has been duly adopted by the Grantee, acting through its executive(s) or governing body, is in full force and effect as of the date hereof, and is a valid, legally binding action of the Grantee, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

(5) The execution and delivery of this Agreement by the Grantee, and the fulfillment of the terms and conditions of, and the carrying out of the transactions contemplated by the Resolution and this Agreement do not and will not conflict with or constitute on the part of the Grantee a breach of, or a default under any existing law (including, without limitation, the Michigan Constitution), any court or administrative regulation, decree or order or any agreement, indenture, mortgage, obligation, lease or other instrument to which the Grantee is subject or by which it is bound and which breach or default would materially affect the validity or binding effect of the Grant, or result in a default or lien on any assets of the Grantee. No event has occurred or is continuing which with the lapse of time or the giving of notice, or both, would constitute a default by the Grantee under the Resolution or this Agreement.

(6) No consent or approval of, or registration or declaration with, or permit from, any federal, state or other governmental body or instrumentality, is or was required in connection with enactment by the Grantee of the Resolution, or execution and delivery by the Grantee of this Agreement which has not already been obtained, nor is any further election or referendum of voters required in connection therewith which has not already been held and certified and all applicable referendum periods have expired.

(7) Proceeds of the Grant will be applied (i) to the financing of the Project or a portion thereof as set forth in the Resolution and Attachment A or (ii) to reimburse the Grantee for a portion of the cost of the Project. The Grantee will expend the proceeds of each disbursement of the Grant for the governmental purpose for which the Grant was issued.

(8) Attachment A contains a summary of the estimated cost of the Project, which the Grantee certifies is a reasonable and accurate estimate.

(9) The Grantee reasonably expects (i) to fulfill all conditions set forth in this Agreement to receive and to keep the Grant, and (ii) that no event will occur as set forth in this Agreement which will require the Grantee to repay the Grant.

(B) Repayment of Grant. The Grantee shall repay the Grant, within 90 days of being informed to do so, with interest calculated from the date Grant funds are first drawn at a rate not to exceed 8% per year, to be determined by the Authority, to the Authority for deposit into the WMBF. Repayment shall take place if one of the following occurs:

SAMPLE

(*1)* The Grantee fails to submit an administratively complete loan application for assistance from the wetland mitigation bank funding program or other source of financing for the project within 1 year of the date on which the grant expires.

(*2*) The Grantee declines the loan assistance for 2 consecutive years unless the applicant proceeds with funding from another source.

(*3*) The Grantee is unable to enter into a signed wetland mitigation banking agreement with the department within 2 years of the date on which the grant expires.

(*4*) The applicant is unable to or decides not to proceed with constructing the project.

The Grantee must sign a banking agreement and conservation easement as part of approval of a wetland mitigation bank in accordance with the administrative rules for wetland mitigation banking. Samples as of May 19, 2014 are provided in Attachments B and C for reference.

(C) Covenants and Certifications.

(1) The Grantee has the legal, managerial, institutional, and financial capability to plan, design, and build the Project, or cause the Project to be built, and cause all facilities eventually constructed to be adequately operated.

(2) The Grantee certifies that no undisclosed fact or event, or pending litigation, will materially or adversely affect the Project, the prospects for its completion, or the Grantee's ability to make timely repayments of the grant if any of the two (2) conditions identified under Section XVIII(B) occur.

(3) The Grantee agrees to provide the minimum appropriate local match for grant-eligible costs and disburse match funds to service providers concurrent with grant disbursements.

(4) The Grantee agrees to maintain complete books and records relating to the grant and financial affairs of the Project in accordance with generally accepted accounting principles ("GAAP") and generally accepted government auditing standards ("GAGAS").

(5) The Grantee agrees that all municipal contracts related to the Project will provide that the contractor and any subcontractor may be subject to a financial audit and must comply with GAAP and GAGAS.

(6) The Grantee agrees to provide any necessary written authorizations to the DEQ and the Authority for the purpose of examining, reviewing, or auditing the financial records of the Project. The Grantee also agrees to require similar authorizations from all contractors, consultants, property owners or agents with which the Grantee negotiates an agreement.

(7) The Grantee agrees that all pertinent records shall be retained and available to the DEQ and the Authority for a minimum of three years after satisfactory completion of the Project and final payment. If litigation, a claim, an appeal, or an audit is begun before the end of the three-year period, records shall be retained and available until the three years have passed or until the action is completed and resolved, whichever is longer.

(8) The Grantee agrees to ensure that planning and design activities of the Project are conducted in compliance with the requirements of the Natural Resources and Environmental

SAMPLE

Protection Act, 1994 PA 451, as amended, its Administrative Rules; and all applicable state and federal laws, executive orders, regulations, policies, and procedures.

(9) The Grantee agrees that the Project shall proceed in a timely fashion and will exercise its best efforts to satisfy the program requirements as identified under Section XVIII(B) within the allotted time frame in accordance with Section 5204(f) of the Natural Resources and Environmental Protection Act 1994, PA 451, as amended.

(D) Grantee Reimbursements and Deliverables

The Grantee may request grant disbursements no more frequently than monthly, using the Disbursement Request Form provided by the DEQ. Upon receipt of a disbursement request, the DEQ will notify the Authority, which will in turn disburse grant funds equal to 90 percent of eligible costs, that have been adequately documented. The forms provided by the State will include instructions on their use and shall be submitted to the DEQ representative at the address on page 1. All required supporting documentation (invoices) for expenses must be included with the disbursement request form. The Grantee is responsible for the final submittal of all documents prepared under this Grant and included in the Project Scope identified in Attachment A.

(E) Miscellaneous Provisions.

(1) Applicable Law and Nonassignability. This Agreement shall be governed by the laws of the State of Michigan.

(2) Severability. If any clause, provision or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

(3) Execution of Counterparts. This Agreement may be executed in several counterparts each of which shall be regarded as an original and all of which shall constitute one and the same document.

XIX. USE OF MATERIAL

Unless otherwise specified in this Agreement, the Grantee may release information or material developed under this Agreement, provided it is acknowledged that the DEQ funded all or a portion of its development.

XX. SUBCONTRACTS

The State reserves the right to deny the use of any consultant, contractor, associate or other personnel to perform any portion of the project. The Grantee is solely responsible for all contractual activities performed under this Agreement. Further, the State will consider the Grantee to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Grant. All subcontractors used by the Grantee in performing the project shall be subject to the provisions of this Agreement and shall be qualified to perform the duties required.

XXI. ANTI-LOBBYING

If all or a portion of this Agreement is funded with state funds, then the Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the

SAMPLE

State of Michigan's lobbying statute, MCL 4.415(2). "'Lobbying' means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State. Further, the Grantee shall require that language of this assurance be included in the award documents of all subawards at all tiers.

XXII. IRAN SANCTIONS ACT

By signing this Agreement, the Grantee is certifying that it is not an Iran linked business, and that its contractors are not Iran linked businesses as outlined in Michigan Compiled Law 129.312

XXIII. DEBARMENT AND SUSPENSION

By signing this Agreement, the Grantee certifies to the best of its knowledge and belief that it, its agents, and its subcontractors:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or the state.

(2) Have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction as defined in 45 CFR 1185; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in subsection (2).

(4) Have not within a 3-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

(5) Will comply with all applicable requirements of all other state or federal laws, executive orders, regulations, and policies governing this program.

XXIV. AUDIT AND ACCESS TO RECORDS

The State reserves the right to conduct a programmatic and financial audit of the project, and the State may withhold payment until the audit is satisfactorily completed. The Grantee will be required to maintain all pertinent records and evidence pertaining to this Contract, including grant and any required matching funds, in accordance with generally accepted accounting principles and other procedures specified by the State. The State or any of its duly authorized representatives must have access, upon reasonable notice, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Grantee will provide proper facilities for such access and inspection. All records must be maintained for a minimum of [five] years after the final payment has been issued to the Grantee by the State.

SAMPLE

Project No. _____

WMBF Grant Program

Attachment A

Grantee: _____

Project Name: _____

Project Location:_____

DEQ Approved Grant Amount: $ _____; _____

_____Dollars

Time Period for Eligible Costs: Start Date _____ (month/year)

End Date _____ (month/year)

DEQ Approved Project Costs	
1. Developing Banking Proposal	
2. Project Notification/Resolution	
3. Planning and Designing Bank	
4. Loan Application Developments	

The following services have been determined to be ineligible for WMBF Grant assistance, for the reasons listed, and have been excluded from the approved project costs shown above:

_____

_____

Goals and Description of Approved Project Proposal:

_____

_____

Work plan, including tasks and deliverables:

_____

_____

Schedule:

_____

_____

THE FORM WILL NOT BE ACCEPTED IF IT HAS BEEN EDITED, ALTERED, RETYPED, OR CONVERTED TO ANY OTHER FORMAT.

SAMPLE

Detailed Budget:

SAMPLE

Attachment B

Sample Banking Agreement (for reference only)

SAMPLE

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

_____

AND

_____

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SAMPLE

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

_____

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

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

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

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

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

WHEREAS,
_____
_____
_____.

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

I. CONSERVATION AGREEMENT

In consideration of the benefits of this Agreement, in order to provide for the creation and maintenance of the conditions specified by this Agreement, the Bank sponsor and/or property owner hereby grants, pursuant to Part 21, Subpart 11, “Conservation and Historic Preservation Easement,” MCL 324.2101, et seq., of the Natural Resources and Environmental Protection Act, MCL 324.101, et seq., to the State of Michigan, Department of Environmental Quality, a conservation easement over the property described in Section II, binding upon them, their heirs, successors, and assigns,

SAMPLE

consisting of the acts required by this Agreement with respect to the aforementioned land and the limitations on the use of that land provided for in this Agreement.

II. BANK DESCRIPTION

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

Goals and Objectives:
_____
_____
_____
_____

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

III. BANK EVALUATION AND PERFORMANCE STANDARDS

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

III. A. Construction Complete

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

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

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

SAMPLE

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

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

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

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

_____
_____
_____

The growing season shall be defined as _____ through _____.

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

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

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

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

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

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

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

SAMPLE

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

No credits shall be approved until the MDEQ has determined that a minimum of 10 acres within the Bank have been constructed in accordance with plans, specifications, and meet performance standards for Construction Complete. Areas within existing easements will not be eligible for credit approval.

III. B. Fifty Percent of Design Cover Achieved

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

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

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

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

The total percent cover of wetland species in each plot shall be averaged for samples taken in the same wetland type to obtain a mean percent cover value for the each wetland type. Plots within identified extensive open water and submergent areas, bare soil areas, and areas without a predominance of wetland vegetation shall not be included in this average. Wetland species refers to species listed as Facultative and wetter on the U.S. Fish and Wildlife Service's "National List of Plant Species That Occur in Wetlands" for Region 3.

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

15 species within the forested wetland.
15 species within the scrub-shrub wetland.
15 species within the emergent wetland.

SAMPLE

20 species within the wet meadow wetland.
_____ species within the _____ wetland.

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

3. The wetland supports a minimum of:

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

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

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

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

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

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

III. C. Fully Functional

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

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

SAMPLE

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

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

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

_____
_____
_____

IV. OBLIGATIONS OF THE BANK SPONSOR

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

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

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

IV. A. Construction

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

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

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

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

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

SAMPLE

IV. B. Annual Reports

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

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

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

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

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

IV. C. Monitoring

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

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

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

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

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

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

SAMPLE

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

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

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

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

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

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

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

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

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

SAMPLE

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

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

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

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

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

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

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

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

IV. D. Credit Certification

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

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

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

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

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

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d. The title policy.

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

IV. E. Long-term Management

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

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

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

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

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

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

IV. F. Financial Assurance

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

The Bank sponsor shall provide financial assurance to ensure that each site develops into a fully functioning wetland as defined by the performance standards and this Agreement, to provide for monitoring and inspection of the site, and to provide remediation for damage or loss

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of vegetation, damage or failure of structures, or other impacts to the site from events including, but not limited to, flood events, storm damage, or vandalism. The Bank sponsor will provide an acceptable form of surety in the amount of _____ for the fully functional financial assurance prior to the approval of any credits by the MDEQ. This amount shall be maintained from the time the first credits are approved until:

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

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

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

IV. G. Tracking and Reporting of Credits

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

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

1. The number and type of credits proposed for the Bank.
2. The number and type of credits approved by the MDEQ for the Bank.
3. The total number and type of credits sold and/or used by the Bank sponsor.
4. For credit sale, information regarding:
    a. The number and type of credits sold from the Bank.
    b. The date the credits were sold from the Bank.
    c. The amount of the sale per acre and type.
    d. The name and other identifying information of the purchaser.
    e. The permit number authorizing the use of credits by the purchaser, if applicable.

The ledger system is attached as Appendix D.

IV. H. Assumption of Liability

SAMPLE

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

IV. I. Site Access

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

IV. J. Contact Person

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

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

V. OBLIGATIONS OF THE PROPERTY OWNER

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

VI. OBLIGATIONS OF THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

VI. A. Approval of Credits

The MDEQ may approve credits from the Bank in accordance with the schedule outlined in Section III above. Credits may be approved in less than 1 acre increments down to one-hundredth (0.01) of an acre. Areas within existing easements will not be eligible for credit approval.

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

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

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

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

VI. B. Registry

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

VI. C. Contact Information

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

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

VII. JOINT OBLIGATIONS

VII. A. Amendments

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

VII. B. Dispute Resolution

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

VII. C. Jurisdiction

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

SAMPLE

VII. D. Severability

In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this Agreement shall be construed as if it contained legal provisions(s) comparable to the rejected provision(s) but that accomplish the legitimate objectives of any such rejected provision(s).

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

SAMPLE

BANK SPONSOR:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

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

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

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

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

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

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

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

SAMPLE

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PROPERTY OWNER:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

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

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

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

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

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

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

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

SAMPLE

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LONG TERM MANAGEMENT:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

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

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

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

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

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

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

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

SAMPLE

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MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY:

Signature: _____

_____
Type/Print Grantor's Name exactly as signed

_____
Title (if signing on behalf of an organization)

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

_____
Date

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

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

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

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

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

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

My commission is in: _____ County, Michigan

Acting in: _____ County, Michigan

My Commission Expires: _____

SAMPLE

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Appendix A: Site Location Map and Baseline Conditions

SAMPLE

Appendix B: Site Development Plan

SAMPLE

Appendix C: Long-term Management Plan

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

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

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

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

Other Site Specific Plans: _____

_____
_____
_____
_____
_____
_____
_____
_____

SAMPLE

Appendix D: Accounting Procedures

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

Wetland Mitigation Bank Credit Sales Ledger

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

Wetland Mitigation Bank Credit Balance Sheet

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

SAMPLE

Appendix E: Disclosure Statement

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

Print Name, Title, and Organization_____

Signed By_____ **Date**_____

Property Owner

SAMPLE

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Attachment C

Sample Conservation Easement for Banks (for reference only)

SAMPLE

AGREEMENT FOR CONSERVATION EASEMENT FOR WETLAND BANKS

(This instrument is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

This CONSERVATION EASEMENT is created on _____, 20___, by and between

_____ (name) married/single (circle one), or corporation, partnership, municipality, or limited liability company (circle one), whose address

is_____ (Grantor) and the Michigan Department of Environmental Quality (MDEQ), whose address is, P.O. Box 30458, Lansing, Michigan 48909-7958; or Constitution Hall, 2nd Floor South, 525 West Allegan Street, Lansing, Michigan 48933 (Grantee);

The Grantor is the fee simple title holder of real property located in (circle one) the Township/City of

_____, _____ County, and State of Michigan, legally described in Exhibit A.

The MDEQ is the agency charged with administering Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and

The Grantor has entered into a Wetland Mitigation Banking Agreement (Banking Agreement) with the MDEQ and has agreed to grant the MDEQ a conservation easement that protects the wetland mitigation site and/or preserved wetlands on the property and restricts further development to the area legally described in Exhibit B. The conservation easement (Easement Premises) consists of approximately _____acres. A survey map depicting the Easement Premises is attached as Exhibit C. The MDEQ shall record the conservation easement with the county register of deeds.

ACCORDINGLY, Grantor conveys unto the Grantee, forever and in perpetuity, this Conservation Easement pursuant to Subpart 11 of Part 21, Conservation and Historic Preservation Easement, of the NREPA, MCL 324.2140 et seq., on the terms and conditions stated below.

COVENANTS, TERMS, CONDITONS AND RESTRICTIONS

1. The purpose of this Agreement is for the creation, maintenance, and protection of wetland functions and values existing or established on the property, and the benefits to the public derived from wetlands and integral habitat consistent with the banking agreement on the Easement Premises, and requires Grantor to maintain the Easement Premises in its natural and undeveloped condition.

2. Except as authorized under the Banking Agreement, or as otherwise provided in this Agreement, Grantor shall refrain from, and prevent any other person from altering or developing the Easement Premises in any way. This includes, but is not limited to:

SAMPLE

a) Alteration of the surface topography;
b) Creation of paths, trails, or roads;
c) The placement of fill material as defined in Part 303 of the NREPA, MCL 324.30301 et seq., as amended;
d) Dredging, removal, or excavation of any soil or minerals;
e) Drainage of surface or groundwater;
f) Construction or placement of any structure;
g) Plowing, tilling, mowing, or cultivating the soils or vegetation;
h) Alteration or removal of vegetation, including the planting of non-native species;
i) Ranching, grazing, farming;
j) Use of chemical herbicides, pesticides, fungicides, fertilizers, spraying with biocides, larvacides or any other chemical treatments, unless as part of an MDEQ-approved management plan;
k) Construction of unauthorized utility or petroleum lines;
l) Storage or disposal of ash, garbage, trash, debris, abandoned equipment or accumulation of machinery, bio-solids or other waste materials, including accumulated vegetative debris such as grass clippings, leaves, yard waste, or other material collected and deposited from areas outside the Easement Premises;
m) Use or storage of automobiles, trucks off-road vehicles including, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles;
n) Placement of billboards or signs, except as otherwise allowed in the Banking Agreement or this Agreement;
o) Use of the wetland for the dumping of untreated storm water or the directing of treated stomrwater to the easement at a volume that adversely impacts the hydrology of the wetland;
p) Actions or uses detrimental or adverse to water conservation and purity, and fish, wildlife or habitat preservation.

3. Cutting down, burning, destroying, or otherwise altering or removing trees, tree limbs, shrubs, or other vegetation, whether living or dead, is prohibited within the Easement Premises, except with the written permission of Grantee, expressly for the removal of trees or limbs to eliminate danger to health and safety, to reduce a threat of infestation posed by diseased vegetation, invasive non-native plant species that endanger the health of native species or as otherwise provided in the MDEQ Management Plan for the Easement Premises.

4. Grantor, Bank Sponsor, or its authorized agents may perform activities within the Easement Premises consistent with the Banking Agreement. Grantor shall provide 5 days notice of undertaking any mitigation activity, even if the mitigation activity has been conceptually approved. Any activities undertaken pursuant to the Banking Agreement, mitigation project or this Agreement shall be performed in a manner to minimize the adverse impacts to existing wetland or mitigation areas.

5. Grantor warrants that Grantor has good and sufficient title to the property described in Exhibit B.

6. Grantor warrants that any other existing interests or encumbrances in the Easement Premises have been disclosed to the MDEQ and subordinated as provided in Exhibit E.

7. The Grantor warrants that, to the best of Grantor's knowledge, no hazardous substances or hazardous or toxic wastes have been generated, treated, stored, used, disposed of or deposited in or on the property.

8. This Agreement does not grant or convey to Grantee or members of the general public any right to possession or use of the Easement Premises.

9. Grantor shall continue to be responsible for the upkeep and maintenance of the Easement Premises, to the extent it may be required by law.

10. Grantee and its authorized employees and agents, as shown in Exhibit D, may enter the Easement Premises to determine whether the Easement Premises are being maintained in compliance with the terms of this Agreement, mitigation project or other conditions of the Banking Agreement and for the

SAMPLE

purpose of taking corrective actions for failure to comply. If Grantee is entering the easement premises for purposes of taking corrective actions, Grantor shall be provided with 14 days notice to provide the opportunity to cure the failure to comply.

11. This Agreement shall be binding upon the successors and assigns of the parties and shall run with the land in perpetuity unless modified or terminated by written agreement of the parties.

12. This Agreement may be modified only in writing through amendment of the Agreement. Any modification shall be consistent with the purpose and intent of the Agreement.

13. In addition to the right of the parties to enforce this Agreement, it is also enforceable by others against the owner of the land, in accordance with Part 21, Subpart 11 of the NREPA, MCL 324.2140 *et seq*; as amended.

14. Grantor shall indicate the existence of this Agreement on all future deeds, mortgages, land contracts, plats, and any other legal instrument used to convey an interest in the Easement Premises.

15. A delay in enforcement shall not be construed as a waiver of the Grantee's rights to enforce the conditions of this Agreement.

16. This Agreement shall be liberally construed in favor of maintaining the purpose of the Conservation Easement.

17. If any portion of this Agreement is determined to be invalid by a court of law, the remaining provisions will remain in force.

18. This Agreement will be construed in accordance with Michigan law. All legal action related to this conservation easement must be filed and pursued in Michigan state courts.

19. In addition to the terms of the Banking Agreement, this document sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

20. Within 90 days after this Agreement is executed, Grantor shall place and maintain at Grantor's expense, signs, fences, or other suitable markings along the Easement Premises to clearly demarcate the boundary of the Easement Premises or as otherwise provided in the Wetland Banking Agreement.

21. The terms 'Grantor' and 'Grantee' wherever used in this Agreement, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and their successors and assigns.

22. The MDEQ shall release this easement upon written request of the Wetland Mitigation Bank Sponsor, and mutual termination of the banking agreement by the parties, at any time prior to approval of a credit from the Bank by the MDEQ.

SAMPLE

LIST OF ATTACHED EXHIBITS

Exhibit A: A legal description of the Grantor's property, inclusive of the Easement Premises.

Exhibit B: A legal description of the Easement Premises.

Exhibit C: A survey map depicting the Easement Premises that also includes identifiable landmarks, such as nearby roads, to clearly identify the easement site.

Exhibit D: A legal description that provides a path of legal access to the Easement Premises and a map that indicates this access site that MDEQ staff will use for ingress and egress to and from the Easement Premises; or if the Easement is directly connected to a publicly accessible point, such as a public road, a statement is required that authorizes MDEQ staff ingress and egress to and from the Easement Premises, with a map that clearly indicates the connection of the public access site to the Easement Premises.

Exhibit E: Documentation of ownership (warranty deed), title search, title insurance, and subordination documents as specified by Grantee.

SAMPLE

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written. In signing this Agreement, the Signatory warrants that he or she has the authority to convey the Conservation Easement on behalf of the Grantor.

GRANTOR:

Signature: _____

_____
Type/Print Grantor's Name

_____
Title (if signing on behalf of an organization

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

STATE OF MICHIGAN }
} ss
COUNTY OF _____}

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

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

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

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

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

Acting in: _____ County, Michigan

My Commission Expires: _____

My Commission is in: _____ County, Michigan

(OR) IF SIGNING AS AN INDIVIDUAL OR MARRIED PERSON, THIS MUST BE COMPLETED:

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

by _____, (name[s]) _____ (marital status).

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

Acting in: _____ County, Michigan

My Commission Expires: _____

THE FORM WILL NOT BE ACCEPTED IF IT HAS BEEN EDITED, ALTERED, RETYPED, OR CONVERTED TO ANY OTHER FORMAT.

SAMPLE

GRANTEE:

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION

_____
William Creal, Chief

STATE OF MICHIGAN}
} ss
COUNTY OF INGHAM}

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by William Creal, Chief, Water Resources Division, State of Michigan, on behalf of the Department of Environmental Quality.

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

Acting in: Ingham County, Michigan

My Commission Expires: _____

Form Drafted By:
The Honorable William Schuette, Attorney General
Department of Attorney General
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, Michigan 48909

AFTER RECORDING, RETURN TO:

Michigan Department of Environmental Quality
Water Resources Division
Constitution Hall, 3rd Floor South
P.O. Box 30458
Lansing, Michigan 48909-7958

(March 13, 2011)

THE FORM WILL NOT BE ACCEPTED IF IT HAS BEEN EDITED, ALTERED, RETYPED, OR CONVERTED TO ANY OTHER FORMAT.

SAMPLE

EXHIBIT E

ATTACHMENT TO THE AGREEMENT FOR CONSERVATION EASEMENT

CONSENT AND SUBORDINATION

_____ (Lender), mortgagee pursuant to a certain Mortgage executed by _____ (Mortgagor), dated _____, recorded _____, in the _____Land Records at Book/ Liber _____ Page/Folio _____, encumbering the property described in the foregoing Agreement for Conservation Easement, does hereby consent to the terms and conditions of the Agreement for Conservation Easement, and agrees that its interest as such mortgagee shall be subject and subordinate to the terms and provisions of the Agreement for Conservation Easement.

Dated: _____

WITNESSES

_____
(Lender)

_____
(Signature)

By _____
(Signature)

_____
(Name)

_____
(Signature)

_____
(Title)

State of Michigan)
) ss
County of _____)

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

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

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

_____
(Signature of Notary Public)

_____
(Typed or Printed name of Notary Public)

Acting in: _____ County, Michigan

My Commission Expires: _____

SAMPLE

THE FORM WILL NOT BE ACCEPTED IF IT HAS BEEN EDITED, ALTERED, RETYPED, OR CONVERTED TO ANY OTHER FORMAT.

PROJECT PROPOSAL

Below are the minimum requirements for a project proposal. The application must include a project proposal that meets these requirements. If the Bank Sponsor has submitted a banking pre-proposal prior to submittal of this grant application, the pre-proposal and any correspondence from the DEQ must also be attached.

1. Project Location and Service Area

   Provide a site location map and any other available maps or aerial photos of the property. Applicants should use the DEQ's Wetlands Map Viewer tool to identify the appropriate service area (watershed and ecoregion) of the proposed bank site. This tool should also be used to identify the restoration potential of the site using the Potential Wetland Restoration layer. Suitable sites must consist of hydric soils and meet all of the requirements under administrative rules for wetland banking under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

2. Description of the Site and Surrounding Area

   Provide a description of the proposed bank site including a description of existing soils, hydrology, vegetation and land use. The description should include a delineation of all existing surface waters. Also describe any potential encumbrances (easements, utilities, mineral rights, etc.) that could affect the integrity of the project. Describe surrounding land uses; including land cover type, buffers, and occurrence of invasive species, etc.

3. Conceptual Design

   Provide a conceptual design of the bank, including a plan view and description of the approximate acreage and types of wetlands to be created/restored. Suitable bank sites must result in a minimum of 10 acres of new wetland. Larger sites with multiple wetland types are desirable as they provide additional wetland habitat and other functions/values. The conceptual design should indicate the hydrological type of wetland design (groundwater, surface water) and potential sources of hydrology.

4. Project Need/Justification

   Provide a description of the need for the project, including answering the following questions. Are there other sites with credits available in the watershed/ecoregion? Is there a need for future credits? Will the site be used to meet requirements of local, state or federal agencies (list agencies)? Does the goals of the project address goals in available watershed plans (please provide reference to the existing watershed plan, if applicable)?

5. Long Term Protection/Management

   The administrative rules for wetland banking require the placement of a conservation easement on the bank site. Describe the willingness of the bank sponsor to provide a conservation easement that protects the site in perpetuity. A wetland buffer is desirable to maintain the ecological integrity of the bank site. Also, provide a brief description of the long term management that will be associated with the project and/or a potential third party steward that will be responsible for long term perpetual management.