VIRGINIA AQUATIC RESOURCES TRUST FUND PROGRAM INSTRUMENT

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I. PREAMBLE

This Virginia Aquatic Resources Trust Fund Program Instrument ("Agreement" or "Instrument") among the U.S. Army Corps of Engineers, Norfolk District ("Corps") the Virginia Department of Environmental Quality ("DEQ") and the Nature Conservancy of Virginia (the "Conservancy") details the establishment and processes for the Virginia Aquatic Resources Trust Fund Program (the "Program" or the "Trust Fund"). This Agreement supersedes and replaces the Virginia Aquatic Resources Trust Fund Program dated December 18, 2003 (the "2003 Amendment"), which amended the Virginia Wetlands Restoration Trust Fund Program Memorandum of Understanding dated August 18, 1995 (the "1995 MOU"). On April 10, 2008, a "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule" (the "Final Rule") was published in the Federal Register, 33 CFR Parts 325 and 332. As a result of provisions in the Final Rule that relate to in-lieu fee arrangements, this Agreement is made.

A. PURPOSE AND GOALS

The purpose of the Program is to provide an additional mechanism for compensatory mitigation for impacts to aquatic resources authorized by the Clean Water Act (33 U.S.C. § 1251 *et seq.*) and/or the Virginia Water Protection Permit Regulation (9 VAC 25-210 *et seq.*) while maximizing the benefit to the aquatic environment and the public interest. The purpose of this Agreement is to establish guidelines, responsibilities and standards for the establishment, use, operation and maintenance of the Program in a way that brings the Program into compliance with revised regulations, as set forth in 33 CFR Part 332, governing compensatory mitigation for activities authorized by Department of Army ("DA") permits. The Corps, DEQ and the Conservancy agree to follow and comply with the procedures set forth in this Agreement. Although the in-lieu fee mitigation program proposed in this Agreement is referred to herein as the "Program" or the "Trust Fund" for the convenience of the parties, this Agreement shall not be deemed to establish or qualify as a "trust" under state or federal law. The parties intend to achieve no net loss of existing wetland acreage and functions pursuant to Va. Code § 62.1-44.15:21(B), and to accomplish mitigation projects in Virginia efficiently and at beneficial economies of scale to provide for a significant net gain of aquatic resource functions and values where possible.

The Program may be used for compensatory mitigation for unavoidable impacts to waters of the United States and State Waters that result from activities authorized under Section 404 and/or

401 of the Clean Water Act, the Virginia Water Protection Permit Regulation , and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403). More specifically, the Program may be utilized to provide compensatory mitigation for impacts permitted by the Corps or DEQ involving: (a) Corps General Permits; (b) DEQ General Permits; (c) Corps and DEQ Individual Permits and unauthorized activities impacting less than three (3) acres of waters (including wetlands) other than streams and/or less than two thousand (2,000) linear feet of streams; and (d) in other cases if agreed upon by the Corps, DEQ and the Conservancy. The Conservancy may elect to reject any payments for impacts greater than three (3) acres of wetlands, greater than two thousand (2,000) linear feet of streams, or payment from impacts to Heritage resources as defined by the Virginia Department of Conservation and Recreation, Division of Natural Heritage. In determining whether to accept a payment for any impact described in the preceding sentence, the Conservancy may consider various factors in its discretion, including but not limited to: (a) the effect of the impact(s) on the Conservancy's conservation priorities, and (b) the Conservancy's ability to mitigate for the impacts in the appropriate watershed.

It is the intent of the signatories that the standards of specific compensatory mitigation sites or projects authorized under the Program will be equivalent to the standards of mitigation banks. Where possible and appropriate, equivalent templates and policies will be used for the Program as are used for mitigation banks. This Agreement is intentionally broad and sets the framework under which the Conservancy-sponsored mitigation sites will be identified, funded, operated, maintained and managed.

B. EFFECTIVE DATE AND TERM

This Agreement shall be effective upon the date that it is executed by the Corps, DEQ and the Conservancy ("Effective Date"). The parties acknowledge that the agreement is valid until terminated pursuant to 9 VAC 25-210-116.D. DEQ's approval of this Agreement is not valid for a term beyond five (5) years. Therefore, if the term expires prior to DEQ's approval of a subsequent term, acceptance of payments for Advance Credits from permitted activities shall be suspended until DEQ has approved an additional term. The Conservancy shall be responsible for compliance with this Agreement and any subsequent Site Development Plans until each Mitigation Site is closed in accordance with the Program's closure procedures or until all Credits are sold, whichever is later.

C. DISCLAIMER

This Agreement does not warrant the viability of the Program as a methodology to achieve mitigation. In addition, this Agreement cannot guarantee that any permittee will choose to make a payment to the Program or that the Interagency Review Team ("IRT"), Corps or DEQ will approve any payments or contributions to the Program. Each permit will be considered on a case-by-case basis and each participating entity has discretion as to the mitigation it requires or will accept in relation to any particular permit.

II. DEFINITIONS

1. ADVANCE CREDITS - Credits that are not associated with a compensatory mitigation project and are available for sale prior to initiation of a mitigation project in accordance with this approved Agreement.

2. AGREEMENT – The Virginia Aquatic Resources Trust Program Instrument among the Conservancy, the Corps, and DEQ governing operation of the Virginia Aquatic Resources Trust Fund; the In-Lieu Fee program instrument described under Corps regulations at 33 CFR §332.8(a)(1).
3. AVAILABLE CREDITS - Credits that have been approved for use by the Corps and DEQ and have not been attributed to permits. Available Credits may be Advance Credits or Released Credits.
4. COMPENSATION – Actions taken which have the effect of mitigating for, or substituting some form of, aquatic resource lost or significantly disturbed due to a permitted activity; generally aquatic resource preservation, restoration, enhancement or creation.
5. CREDIT – A unit of measure representing the accrual or attainment of aquatic resource function, condition or other performance measure at a Mitigation Site. It is also used to represent the mitigation liability of the Program.
6. CREDIT AVAILABILITY VOUCHER – A verification provided by the Conservancy to potential Credit purchasers stating that Credits are available for a period of time and detailing the cost per Credit.
7. DEBIT – A unit of measure representing the reduction of available Credits corresponding to the loss of aquatic resource functions at an impact or project site.
8. FINANCIAL ASSURANCES – A mechanism used to guarantee some aspect of Mitigation Site performance. Financial Assurances may include a contingency account, escrow account, performance bond, insurance, letter of credit, or other mechanism acceptable to the IRT. Financial Assurances may be required for varying aspects associated with an in-lieu fee Program including: a) a mechanism to guarantee the initial release of Mitigation Credits from a Mitigation Site; b) a mechanism to ensure that monitoring and maintenance of the Mitigation Site is completed; and c) a mechanism ensuring financing is available to address catastrophic events and Long-Term Management.
9. FULL COST ACCOUNTING - The process of collecting and presenting information (costs as well as advantages) for each Mitigation Project. It is a conventional method of cost accounting that traces direct costs and allocates indirect costs. It includes all appropriate expenses such as land acquisition, planning and design, construction, planting, legal expenses, monitoring, maintenance, remediation, adaptive management, long-term management, administration and contingencies.
10. FUNCTIONS – The physical, chemical and biological ecosystem processes of an aquatic resource without regard to its importance to society.
11. HYDROLOGIC UNIT CODE – Divisions of the watersheds of the United States. For the purposes of this Agreement, Hydrologic Unit Code ("HUC") shall refer to those divisions as defined by the United States Geological Survey ("USGS").
12. IN-LIEU FEE PROGRAM ACCOUNT (THE "ACCOUNT") – An account at a financial institution which contains any and all monies, including any interest associated with the sale or transfer of Credits in accordance with this Agreement. Funds in this account can only be used to provide compensatory mitigation (including selection, acquisition, design, implementation, administration and management of Mitigation Projects).

13. IN-LIEU FEE MITIGATION PROGRAM (THE "PROGRAM") – The Virginia Aquatic Resources Trust Fund as proposed in this Agreement is referred to herein as the "Program."
14. INTERAGENCY REVIEW TEAM (or "IRT") – An interagency group of federal, state, tribal, and/or local regulatory and resource agency representatives that participates in the development of a Site Development Plan and oversees the establishment, use and operation of a Mitigation Site with the Corps and DEQ serving as Chair(s).
15. LEDGER – An accounting of mitigation credits and debits.
16. LONG-TERM MANAGEMENT AND MAINTENANCE PLAN – The plan that defines the goals and objectives of long-term stewardship of a Mitigation Site after Success Criteria monitoring (typically a monitoring period of 10 years following completion of grading) has been completed. The Long-Term Management and Maintenance Plan shall be binding on the Long-Term Steward.
17. LONG-TERM STEWARD – The party (landowner, easement holder or other party) responsible for Long-Term Maintenance and Management of the Mitigation Site. The Conservancy is the Long-Term Steward for a Mitigation Site unless another Steward has been designated and has accepted this responsibility. A different Long-Term Steward may be designated, however, the Conservancy is responsible for ensuring Success Criteria monitoring (typically a monitoring period of 10 years following completion of grading) until the Project has been closed.

18. MITIGATION – The process of sequentially avoiding impacts, minimizing impacts and compensating for impacts to aquatic resources that could not be avoided or minimized. "Mitigation" is often a euphemism for compensatory mitigation.

19. MITIGATION PLAN – A detailed portion of the Site Development Plan that identifies specifically how aquatic resources and associated upland buffers will be restored, created, enhanced, preserved, managed and maintained on the Mitigation Site.
20. MITIGATION PERFORMANCE – The outcome of applying success criteria to a Mitigation Site in terms of identified goals and objectives.
21. MITIGATION PROJECT – The entire compensatory mitigation project, including all activities described in the Mitigation Plan and undertaken on the Mitigation Site to generate Credits.
22. MITIGATION SITE ("SITE") – A site or sites where aquatic resources are restored, created, enhanced or preserved expressly for the purpose of providing compensatory Mitigation for authorized impacts to similar resources.
23. PROGRAM INSTRUMENT ("AGREEMENT") - the legal document governing the establishment, operation and use of an in lieu fee Program.
24. REAL ESTATE PROTECTION DOCUMENT- The document or instrument intended to protect, restrict or preserve the land associated with a Site and that will be recorded in local land records. The document may take the form of an easement, a declaration of restriction or other similar legal document.
25. RELEASED CREDITS – Credits associated with Mitigation Sites that have met their success criteria, as determined by the IRT.

26. SITE DEVELOPMENT PLAN ("SDP") – The overall plan governing establishment, restoration, creation, enhancement and/or preservation of aquatic resources and associated upland buffers on the Mitigation Site.
27. SUCCESS CRITERIA – The minimum standards required to meet the objectives for which the Site was established.

III. REGULATORY AUTHORITIES

The establishment, use and operation of the Program are carried out in accordance with the following authorities:

A. Federal:

1. Clean Water Act (33 USC §1251 *et seq.*);
2. Rivers and Harbors Act (33 USC §403);
3. Fish and Wildlife Coordination Act (16 USC §661 *et seq.*);
4. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-332);
5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230);
6. Endangered Species Act (16 USC §1531 *et seq.*);
7. Magnuson Stevens Fishery Conservation and Management Act (16 USC §1801 *et seq.*)
8. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990);
9. Regulatory Guidance Letter No. 05-01. U.S. Army Corps of Engineers, February 14, 2005.
10. Regulatory Guidance Letter No. 08-03. U.S. Army Corps of Engineers, October 10, 2008.

B. Commonwealth of Virginia:

1. Sections 62.1-44.15:20-23 of the Code of Virginia.
2. Virginia Water Protection Permit Regulation (9 VAC §25-210 *et seq.*); and
3. Guidelines for the Establishment, Use, and Operation of Tidal Wetland Mitigation Banks in Virginia (4 VAC §20-390-10 *et seq.*)

IV. PROGRAM OPERATION

A. MITIGATION PROGRAM AND RESOURCES

Resources of the Program shall consist of funds paid by permit applicants, permittees or other parties as approved by the Corps and DEQ to compensate for losses to aquatic resources in connection with issuance or verification of Corps or DEQ permits, resolution of unauthorized

activities or other cases as agreed upon by the Corps, DEQ and the Conservancy. Said funds shall be delivered to the Conservancy by certified check to be held in the Account and used by the Conservancy to accomplish Mitigation Projects as described herein. Subject to the terms of this Agreement, the Conservancy hereby agrees to receive and expend said funds in the manner and with the limitations described herein.

B. INTERAGENCY REVIEW TEAM ("IRT")

The Corps District Engineer ("District Engineer") and the DEQ Director of the Office of Wetlands and Water Protection will initiate the assembly of the IRT to review documentation for the establishment and management of the Program. Designated representatives of the District Engineer and DEQ shall serve as permanent Chairs of the IRT. All decisions, approvals, consents and other actions of the IRT are implemented by its Chairs, and all references in this Agreement to a decision, approval, consent or other action by the IRT shall be deemed to refer to its Chairs, unless the context clearly indicates otherwise. The Corps and DEQ, representatives from the U.S. Environmental Protection Agency ("EPA"), U.S. Fish and Wildlife Service ("FWS"), U.S. National Oceanic and Atmospheric Administration ("NOAA") , the U.S. Department of Agriculture, Natural Resources Conservation Service, Virginia Department of Game and Inland Fisheries, Virginia Department of Conservation and Recreation, Virginia Department of Forestry, and other state, local and federal agencies, as appropriate, may participate in the IRT as consulting members. The Corps and DEQ retain final authority over the IRT composition, but shall not unreasonably exclude any government agency with an interest in IRT matters.

Any of the IRT members may terminate participation upon written notification to all signatory parties. Participation of the IRT member seeking termination will end thirty (30) days after such written notification.

C. PROGRAM SERVICE AREAS

The proposed areas in which this Program is authorized to provide compensatory mitigation required by Corps and DEQ permits ("Service Areas") are the whole or partial watersheds or geographic areas of the: Atlantic Ocean, Chesapeake Bay, Chowan River, Lower James River, Middle James River, Upper James River, New River, Potomac River, Rappahannock River, Roanoke River, Shenandoah River, Tennessee River and York River basins. These Service Areas are further described and illustrated in the Compensation Planning Framework in Exhibit A. Program activities, including impacts, payments, Credits and projects will be tracked and reported by these Service Areas. Service Areas will be further refined and possibly limited in project-specific Site Development Plans as recommended and approved by the IRT . Impacts were received into the Fund from the Big Sandy River, but the Program no longer accepts funds related to, or as compensation for, impacts in this watershed.

If, within any Fourth Level (8-digit) hydrologic unit code ("HUC"), the cumulative amount of impacts, for which the Program was utilized in any given year, are less than 2,000 linear feet of stream or three acres of wetlands, the Conservancy may submit a proposal to the IRT to satisfy the mitigation obligation liability through the use of Released Credits or Bank Credits from within the same river basin, use of preservation, implementation of Best Management Practices ("BMPs"), deferring the mitigation liability to the next year, or other mitigation options as

approved by the IRT.

D. IN LIEU FEE PROGRAM ACCOUNT (THE ACCOUNT)

Prior to the effective date of this Agreement, pursuant to the 1995 MOU as amended by the 2003 Amendment, contributions or payments made by permit applicants, permittees or other parties, as approved by the Corps and DEQ, were deposited into a separate interest-bearing account (the "Account"). Such payments received after the effective date of this Agreement will be deposited into this existing Account. Funds that exist in the Account prior to the execution of this Agreement may be used to fund Projects approved pursuant to this Agreement, subject to the terms of this Agreement. All interest and earnings from the Account must remain in the Account until approved for use by the IRT. Monies from the Account shall be used to pay for selection, design, acquisition, implementation, monitoring, administration, management and protection of Mitigation Projects approved by the IRT. Funds expended may be charged to specific or multiple Mitigation Projects. Funds may be approved and expended for the benefit of multiple watersheds or for the Program itself. In any event, all funds expended reflect, and therefore help establish, the minimum cost of Credits in each watershed.

The Conservancy shall hold any funds collected pursuant to this Agreement in the Account, which shall be an interest-bearing account in a federally-insured financial institution to maximize the safety and preservation of the principal funds in the Account. Funds may not be invested without express written approval of the Corps and DEQ. The Conservancy shall account for the funds so held in accordance with generally accepted accounting principles, and the Account shall be subject to audit by the Corps and DEQ from time to time, as determined by the Corps and DEQ, at the expense of the party requesting such audit. Notwithstanding the foregoing, the Program shall be audited once each five years by an independent auditor, the cost of which shall be an administrative expense of the Program. The parties shall endeavor to cause such independent audit to occur prior to the expiration of the Agreement. Interest and any other earnings produced by the Program, and proceeds from the sale of Mitigation Site lands, shall remain in the Account until approved for use by the IRT.

Those approved funds received by the Program in excess of the amount needed for mitigation or restoration projects shall remain with the Program, and shall be disbursed in accordance with this Agreement for other Mitigation Projects or other uses approved by the IRT. The Conservancy shall be required to provide financial assurances by setting aside contingency funds from the Account sufficient to guarantee the success of each Mitigation Site undertaken in accordance with Corps and DEQ regulations, including remediation of catastrophic events and long-term management of each Mitigation Site). S*ee also* Section X of this Agreement.

All monies and fees collected prior to the Effective Date of this Agreement, and not allocated for expenditure for an approved Mitigation Site under the prior 1995 MOU as amended by the 2003 Amendment, shall be managed in accordance with this Agreement beginning on the Effective Date of this Agreement.

The Account may only be used, upon approval by the IRT, for selection, design, acquisition, implementation, monitoring, management and protection of compensatory Mitigation Projects, and other related uses, including administration of the Program. Requests to expend funds for the Long-Term Maintenance and Management of a Mitigation Project must be accompanied by a description of needs, annual cost estimates for these needs and a discussion of inflationary adjustments and

other contingencies, as appropriate.

The Conservancy shall receive an administrative fee amounting to 8% of the funds when the funds are deposited. The fee will come from the deposited funds, and is deemed to represent and reimburse reasonable overhead and related administrative costs of administering the Trust Fund to accomplish the Mitigation Projects described herein.

The IRT shall have oversight of the Account. Complete budgets for Mitigation Projects must be approved by the IRT. The Conservancy shall submit to the IRT an Annual Report by March 31 of each year. The Annual Report shall include detailed summaries of Account deposits and disbursements made for each Mitigation Project over the previous calendar year (January 1-December 31). Any increase in excess of ten percent (10%) from the total approved budget for a Mitigation Plan will require the IRT's approval before additional funds may be disbursed. The Corps and DEQ may review Account records with 14 days written notice. When so requested by the IRT, the Conservancy shall provide all books, accounts, reports, files, and other records relating to the Account.

E. PROGRAM ACCOUNTING PROCEDURES

The Conservancy shall establish and maintain a system for tracking the calculation of Credits in relation to Projects, the debit or sale of Credits and financial transactions in relation to Credits between the Conservancy and permittees. The adopted system shall be approved by the IRT. Credit production (the generation of an amount of Credits based on Projects), Credit transactions (purchase by permittees and debit by the Conservancy of Credits) and financial transactions (the exchange of money in relation to Credits) shall be tracked both on a programmatic basis (*i.e.*, the number of available Credits for the entire program that is across all of the service areas), within each basin, and separately for each individual compensatory Mitigation Project undertaken by the Program.

The sale, conveyance, or transfer of Credits includes all natural services, functions and values associated with the natural resources (*e.g.* wetlands, streams) from which Credits were derived. Credits may be used to compensate for environmental impacts under other programs (civil works, Superfund Program removal and remedial actions, supplemental environmental projects for state and federal enforcement actions, etc.), but Credits may not simultaneously serve as mitigation for more than one activity; *e.g.*, a Credit may be used to offset impacts under any Federal , State, or local program related to wetlands and streams, however that credit may only be counted against permitted impacts one time.

F. PROGRAM DEFAULT AND CLOSURE PROCEDURES

Should the IRT determine, in its sole discretion, that the Conservancy is in material default of any provision of this Agreement, the IRT shall provide the Conservancy with written notice of such material default. If the Conservancy fails to remedy such default within thirty (30) days after its receipt of such notice, or if such default cannot reasonably be cured within thirty (30) days, the Conservancy fails to commence and diligently pursue remediation of such default during such thirty (30) day period, then the IRT may, immediately upon written notice to the Conservancy, suspend the sale or transfer of any Credits and may suspend the expenditure or withdrawal of any funds from the Account until the appropriate deficiencies have been remedied to the satisfaction of the IRT. Upon notice of such suspension, the Conservancy agrees to

immediately cease all sales or transfers of Credits until the IRT informs the Conservancy that the IRT has approved the Conservancy's resolution of deficiencies and that sales or transfers may be resumed. Should the Conservancy remain in default, the IRT may terminate all future Credit transactions from the Mitigation Site in question.

The Corps, DEQ or the Conservancy may terminate this Agreement by giving thirty (30) days written notice to the other parties. Prior to termination by the Conservancy, it shall provide an accounting of funds and complete payment on contracts for projects approved by the IRT and any expenses incurred on behalf of the Program. Upon termination, after payment of all outstanding obligations, any remaining amounts in the Account shall be paid to any entities as specified by the IRT. In the event that the Program is closed, the Conservancy is responsible for fulfilling any remaining mitigation obligations, unless the obligation is specifically transferred to another entity as agreed upon by the Corps, DEQ and the Conservancy. Appropriate funds will be provided through the Account to meet the Conservancy's outstanding obligations. Where obligations are transferred to another entity, appropriate funds, as determined by the IRT, will be transferred so that said entity may fulfill its responsibility to bring the transferred obligation to completion. Monies or amounts remaining in the Account after these obligations are satisfied must continue to be used for restoration, enhancement and/or preservation of aquatic resources until such funds are depleted or expended.

V. MITIGATION PROJECT ESTABLISHMENT AND OPERATION

A. GENERAL MITIGATION SITE REVIEW PROCEDURES

1. The primary emphasis of the Program is on aquatic resource restoration and protection. The use of this Program for compensatory mitigation shall occur only after the relevant permitted activity has complied with Corps and DEQ regulations and policies regarding avoidance and minimization of impacts or as stated in Section A, "Purpose and Goals" or otherwise herein. The Conservancy, pursuant to the terms of this Agreement, will act as a recipient of mitigation funds that are required of permittees and other parties as identified by the Corps and/or DEQ. The Conservancy shall play no role in the Corps' or DEQ's decision to approve or deny a permit or whether mitigation is a necessary condition of any such permit.

   The Corps and DEQ will determine the number of Credits required to compensate for permitted impacts utilizing accepted procedures used in Virginia for evaluating compensatory mitigation credits. The Conservancy will determine the fee amount needed to provide mitigation credit. (See section V.D.). The Conservancy shall provide applicants requesting quotes with a Credit Availability Voucher providing the Credit availability, the type of Credit (Advance or Released), and cost per unit of Credit in a particular service area. The Credit Availability Voucher shall contain identifying information regarding the impact site and other information deemed necessary by the Corps, DEQ and the Conservancy.

   When a payment is provided to the Conservancy for mitigation Credits, the Conservancy shall record the payment and the associated Credits on the Credit Ledger

for that Service Area.

2. To offset impacts to aquatic resources that resulted in payments into the Account, the Conservancy shall submit proposals for funding approval in accordance with this Agreement. Mitigation Project proposals will be based on the Compensation Planning Framework (See Exhibit A and must include/address the 12 elements of mitigation plans at 33 CFR §332.4(c)(2)-(14). Each plan and associated funding requires approval by the IRT Chairs, in consultation with the IRT members (33 CFR §332.8(j); 33 CFR §332.8(i)) (9 VAC 25-210-116.D.3 *et seq.*)

3. The IRT shall meet on a regular basis with the Conservancy to review proposed Mitigation Projects and to discuss relevant issues with Program procedures. The IRT Chairs, after seeking comments from the IRT members, shall approve or deny specific Mitigation Project proposals for restoration, creation, enhancement, buffering, preservation of aquatic resources and their adjacent uplands, or the purchase of credits from an approved mitigation bank. Such approval or denial will be based on factors including site suitability, long-term sustainability, impacts to aquatic resources mitigated via the Program, the ratio of restoration to impacts of Program projects in particular watersheds, maximum return on expended funds, benefits to rare and endangered natural resources, and an acceptable Mitigation Plan.

4. Following general approval by the IRT of a proposed Mitigation Site, the Conservancy shall submit for approval a Site Development Plan. Site Development Plans should include, if applicable, a description of the proposed project and site specific plan including location, baseline conditions, Credit composition, assessment methodology, schedule of Credit availability, a site-specific Service Area, a schedule for conducting the project, monitoring, maintenance and reporting provisions, provisions for protection and management in perpetuity with appropriate real estate arrangements and performance standards for determining ecological success of Mitigation Projects. Site Development Plans shall also include specific provisions addressing Mitigation Project default and other provisions as recommended by the IRT including but not limited to, Force Majeure, Eminent Domain and transfer of Mitigation Site ownership (taking into account restrictions imposed by Section 170(h) of the Internal Revenue Code and the regulations promulgated thereunder, as appropriate).

   Site Development Plans may request funding approval for costs associated with accomplishment of Mitigation Projects including, but not limited to, labor, land acquisition, appraisals, project design, project management, restoration, creation, monitoring, stewardship, legal, closing, equipment and materials necessary to accomplish mitigation, and monitoring.

   In the event the Conservancy determines that modifications must be made in a Site Development Plan to ensure successful establishment of a Mitigation Project, the Conservancy shall submit a written request for such modification to the IRT for approval.

Within 90 days following the end of the 10-year monitoring period, or following a written request by the Conservancy no sooner than the end of the 5-year monitoring period, for each Mitigation Project and upon satisfaction of the Success Criteria, as determined by the IRT, the IRT shall issue written confirmation to the Conservancy and thereafter any remaining contingency funds in excess of that needed for use in long-term management of the Mitigation Project Site shall be made available to the general balance of the Fund. Approved Preservation projects may request closure once Success Criteria have been met.

Prior to closure of a Mitigation Project Site that has been approved subsequent to the Effective Date of this Agreement, the IRT may perform a final compliance inspection to evaluate whether all success criteria have been achieved. The IRT shall provide written confirmation promptly upon their determination, in consultation with the Conservancy, that:

(1) All applicable Success Criteria have been achieved;
(2) All Released Credits for that Mitigation Project Site have been debited;
(3) The Conservancy has reviewed and revised, if necessary, the Long-Term Management and Maintenance Plan, and the revised Long-Term Management and Maintenance Plan has been approved by the IRT;
(4) The Conservancy has prepared and submitted to the IRT a GIS shapefile or similar exhibit depicting the location and extent of the Mitigation Project;
(5) The Conservancy has either: (i) assumed responsibilities for accomplishing the Long-Term Management and Maintenance Plan, in which case the Conservancy will fulfill the role of Long-Term Steward, or (ii) has assigned those responsibilities to another Long-Term Steward; and
(6) The Mitigation Project has complied with the terms of this Agreement and the mitigation plan.

Then the Mitigation Project Site will close, and the period of Long-term Stewardship and Preservation will commence.

Mitigation Projects initiated prior to the Effective Date of this Agreement may be closed with IRT approval once applicable criteria have been met.

Funds to cover labor costs for Conservancy personnel for multiple projects and/or fixed periods of time require written consent of the IRT. The Conservancy shall track the time of any such personnel, and only labor (duties and tasks) directly related to accomplishing Trust Fund activities shall be charged to the Trust Fund. These costs shall be included in the cost of Credits in each watershed. The positions that were approved prior to the Effective Date of this Instrument shall be considered approved per the original terms of their respective budgets. The Conservancy may decide when to hire outside contractors, parties or consultants to accomplish Mitigation Projects and remediation via the normal approval process for mitigation proposals as stated herein. Primary considerations in all Mitigation Project proposals and approval decisions shall be: 1) the benefit to the waters of the Commonwealth of Virginia; 2) compliance with federal and state regulations; and 3) the most cost-effective approach to accomplishment of Mitigation Projects. All funds

shall be used solely for the delivery and accomplishment of compensatory mitigation as described herein and no Program funds may be expended except as provided for in this Agreement. Administrative fees do not require approval for expenditure.

B. COMPENSATION PLANNING FRAMEWORK

The purpose of compensatory mitigation is to offset impacts to waters of the U.S. and State Waters, including wetlands and streams. Therefore, priority is given to mitigation that replaces lost functions and values of waters, wetlands and streams, as determined by the IRT Chairs. No Credits will be approved unless and until the IRT determines that the mitigation does constitute compensatory mitigation for lost functions and values relevant to permitted impacts to waters, wetlands and streams. The IRT agrees that the Conservancy's Conservation by Design approach results in a watershed based compensatory mitigation. The Conservancy agrees to employ the Conservation by Design approach or other approved watershed management plan in the administration of the Program and compensatory mitigation. A complete compensation planning framework supporting the proposed Services Areas is hereby incorporated as a part of this Agreement as Exhibit A.

C. ADVANCE CREDITS

"Advance Credits," as used in this Agreement, are Credits that are not associated with a compensatory Mitigation Project and that are available for sale prior to initiation of a Mitigation Project in accordance with an approved Mitigation Site Development Plan. Specification of the amount of Advance Credits and the fee schedule for those Advance Credits is set out in Exhibit B. Advance Credits have been assigned to particular Service Areas as outlined in Exhibit B. These Advance Credits were based on the following considerations:

(a) The compensation planning framework;
(b) The Conservancy's past performance for implementing aquatic resource restoration, establishment, enhancement and/or preservation activities in the proposed service area or other areas;
(c) The projected financing necessary to begin planning and implementation of in-lieu fee projects; and
(d) The availability of mitigation bank credits in each service area.

Any debited Advance Credits must be fulfilled, or offset, by Released Credits associated with mitigation sites in a given service area before Released Credits are available for sale. Once the mitigation obligations associated with debited Advance Credits have been satisfied by Released Credits, that corresponding amount of Advance Credits is again available for use.

Because this Agreement modifies an existing in-lieu fee program, it is recognized that there may be Mitigation Projects that were approved or completed and funded by Program monies before the Effective Date of this Agreement that are not associated with a mitigation liability. Credits associated with that work may be released, if approved by the IRT, and may be available for sale, transfer or fulfillment of any Advance Credit Sales in the Service Area of the associated Mitigation Projects. These Credits may be released as milestones are achieved in the Credit Release schedule approved for each project. The Credit Release schedule is expected

to follow that provided in the Mitigation Banking Instrument Template unless otherwise approved by the IRT. Released Credits may be sold once the mitigation obligation associated with Advance Credits has been met. Released Credits generated by preservation will only be sold in conjunction with an equal number of Released Credits generated by restoration or creation unless otherwise approved by the IRT. Ratios shown in Exhibit C ("Standard Ratios") were used to calculate the amount of Released Credits.

Land acquisition and the initial physical and biological improvements associated with a Mitigation Project must be completed by the third full growing season after the first Advance Credit in that Service Area is sold or debited, unless the IRT determines that more time is needed to plan and implement a Mitigation Project in that Service Area. If the IRT Chairs, in consultation with the members, determine that there is a compensatory mitigation deficit in a specific Service Area by the third growing season after the first Advance Credit was secured, then the IRT may direct the disbursement of funds from the Account to provide alternative compensatory mitigation to fulfill those mitigation obligations. In that case, the mitigation liability to the Account shall be reduced accordingly and transferred to the receiving party. If such project or proposal will be accomplished by another organization, the Conservancy will transfer from the Account an amount of funds not to exceed the original amount paid for the impacts as directed by the IRT to that other organization.

In Service Areas where the Conservancy has met all mitigation obligations, any remaining monies that were paid into the Account because of impacts in those Service Areas may be used to establish additional mitigation sites, as approved by the IRT Chairs, in consultation with the IRT members, in advance of a mitigation liability. Such remaining monies may also be used in the same or other watersheds for projects not typically acceptable as compensation, but that have an ecological benefit (*e.g.* oyster reef establishment or submerged aquatic vegetation restoration). Such projects require approval by the IRT.

D. METHOD FOR DETERMINING PROJECT-SPECIFIC CREDITS AND FEES

The number of Credits allowed or assigned for each Mitigation Project shall be based on the compensation activity and must be included and approved in each Site Development Plan. Wetland Credits shall be determined using, and will generally follow, ratios that are considered to be "standard" for wetlands as indicated and set out in Exhibit C. Stream Credits shall be determined using the most recent version of the Unified Stream Methodology or another method approved by the IRT.

The price charged to permittees and others by the Conservancy for Credits is determined by the Conservancy and is shown for each Service Area in Exhibit D. The cost per unit of Credit must take into account the expected costs associated with the restoration, establishment, enhancement and/or preservation of aquatic resources in a particular Service Area. Such costs must be based on full cost accounting according to 33 CFR §332.8(o)(5)(ii)) and will reflect, as appropriate, expenses for land or property interest acquisition, Project planning and design, construction, plant materials, labor, legal fees, monitoring, remediation or adaptive management activities, long-term management, catastrophic events, as well as costs associated with the administration of the Program. The

cost per unit Credit shall also take into account contingency costs appropriate to the stage of Project planning, including uncertainties in construction and real estate expenses. In addition, the cost must also include the cost of providing financial assurances that are necessary to ensure successful completion of Projects, and may reflect other factors as deemed appropriate by the Conservancy, the Corps and/or DEQ.

The prices charged to permittees or others by the Conservancy for Credits shall be reviewed by the Conservancy and the IRT on at least an annual basis. This review will take place within three months after the completion of the Annual Report.

Each Site Development Plan shall be incorporated as an Appendix to this Agreement and following approval becomes a part of this Agreement (33 CFR §332.8(g)). Each party to this Agreement may delegate authority to approve Site Development Plans to an individual employed by such party who is qualified by education or experience to approve such plans. No party to this Agreement may delegate or assign its rights or obligations hereunder to another agency or entity without the prior written consent of the remaining parties.

The Director of DEQ hereby assigns the authority to approve and sign all subsequent Site Development Plans and their addenda or modifications to the Director of the Office of Wetlands and Water Protection. _____. (Initials)

The Corps District Engineer hereby assigns the authority to approve and sign all subsequent Site Development Plans and their addenda or modifications to the Chief of the Norfolk District Regulatory Branch, or his/her delegate or assignee. _____. (Initials)

E. PROTECTION OF MITIGATION SITES

When monies from the Program are used for Mitigation Projects, the land associated with that Mitigation Site must be protected by a recorded document that preserves the land in perpetuity with the protection "running with the land." Land protection documents must be approved by the Corps and DEQ and must be recorded in the appropriate real property records depository for the locality where such project is located. In appropriate circumstances, and upon approval by the IRT, portions of land not used for mitigation may be exempted from, and conveyed separately free and clear of, such easement or restriction(s). No Credits may be sold, debited or released until the Corps and DEQ have acknowledged that they have received proof that appropriate land protection documents are recorded. The Conservancy may engage in Mitigation Projects on land in which the Conservancy owns the fee simple interest provided that appropriate protection mechanisms are approved by the IRT, in accordance with Section 332.7(a) of the Final Rule and Virginia Administrative Code 9 VAC 25-210 *et seq.*

F. LEGAL RESPONSIBILITY FOR PROVIDING COMPENSATORY MITIGATION

Upon accepting payment from a permit applicant or permittee, the Conservancy assumes all legal responsibility for satisfying the mitigation requirements of the Corps/DEQ permit for which fees have been accepted (*i.e.*, the implementation, performance and long-term management of the compensatory Mitigation Project(s) approved under this Agreement and

subsequent mitigation plans). The transfer of liability is established by: 1) the approval of this Agreement; 2) approval by the Corps and DEQ for a permittee or other party to use the Program as a compensatory mitigation method, including the amount of Credits required for particular impacts; 3) receipt and approval by the Corps and DEQ of a Credit sale form/letter/certificate that is signed and dated by the Conservancy and the permittee; and 4) the transfer of fees from the permittee or other party requiring compensatory mitigation to the Conservancy, 5) and acceptance of those fees by the Conservancy.

Any delay or failure of the Conservancy to comply with the terms of this Agreement shall not constitute a default hereunder if and to the extent that such delay or failure is primarily caused by any act, event, or conditions beyond the Conservancy's reasonable control, as determined in the sole discretion of the IRT, and if such act, event or conditions significantly adversely affect the Conservancy's ability to perform its obligations hereunder, as determined in the sole discretion of the IRT. Such acts, events, or conditions may include: (i) acts of God, earthquake, fire, landslide or interference by third parties; (ii) condemnation or other taking by any governmental body or corporate entity with eminent domain authority (or voluntary sale under threat of eminent domain) except that in such a condemnation or taking the Conservancy must use the funds received through condemnation to replace the lost mitigation value to the extent practicable and as determined and approved by the Corps and DEQ and as described further herein; (iii) change in applicable federal or state law, regulation or court decision affecting Corps and/or DEQ's jurisdiction which affects compensation for permitted impacts to waters of the U.S. and State Waters; or (iv) the suspension or revocation of any permit, license, consent, authorization or approval which renders fulfillment of obligations under this Agreement impossible to perform. If the performance of, and compliance with, the terms of this Agreement are affected to a material extent by any such act, event, or condition, the Conservancy shall give written notice thereof to the IRT as soon as is reasonably practicable. The IRT shall have sole reasonable discretion to determine whether such an act, event or condition qualifies under this paragraph as being out of the Conservancy's control and whether or not it shall constitute a default.

G. LONG-TERM MANAGEMENT INCLUDING TRANSFER OF LONG-TERM MANAGEMENT

The Long-Term Management and Maintenance Plan for each Mitigation Project shall contain specific objectives that address the long-term management requirements of the site. The Conservancy or subsequently, the Long-Term Steward, shall provide the IRT with 60 days advance notice before any actions are taken to modify the Long-Term Management and Maintenance Plan. The Long-Term Management and Maintenance Plan may only be amended or modified with the written approval of all signatory parties. The Long-Term Steward shall document that it is achieving each objective or standard by submitting status reports to the IRT on a schedule approved by the IRT. A primary goal of the Mitigation Project is to create or restore a self-sustaining natural aquatic system that achieves the intended level of aquatic ecosystem functionality with minimal human intervention, including long-term site maintenance.

The Long-Term Management and Maintenance Plan shall include, at a minimum, the following provisions for:

(1) Periodic patrols of the site for signs of trespass and vandalism. Maintenance will include reasonable actions to deter trespass and repair vandalized features.

(2) Monitoring the condition of structural elements and facilities of the site such as signage, fencing, roads, in-stream structures and trails. The Long-Term Plan will include provisions to maintain and repair these improvements as necessary to achieve the objectives of the Mitigation Project and comply with the provisions of the real estate instrument providing protection to the site. Improvements such as access roads, berms or water control structures that are no longer needed to facilitate or protect the ecological function of the site may be removed or abandoned if consistent with the terms and conditions of the recorded Protection Document.

The Long-Term Steward may modify the Long-Term Management and Maintenance Plan, subject to review and written approval by the IRT and the Conservancy, if this responsibility has been transferred to another organization.

Once long term management responsibilities have been transferred to the Long-Term Steward, as evidenced by the signature of the Conservancy and the Long-Term Steward on the Long-Term Management and Maintenance Plan, said party is thereby responsible for meeting any and all long-term management responsibilities outlined in the project-specific Long-Term Management and Maintenance Plan.

If long-term stewardship responsibility is transferred to a Long-Term Steward other than the Conservancy, then the Conservancy shall, upon approval of the IRT, submit a written assignment assigning the Long-Term Management and Maintenance Plan to a Long-Term Steward. The Long-Term Steward shall be the assignee and responsible party of all associated requirements, terms and conditions of the Long-Term Management and Maintenance Plan, this Agreement and any other applicable project requirements approved by the IRT. The Conservancy is responsible for developing a Long-Term Management and Maintenance Plan for each Mitigation Project. Each Long-Term Management and Maintenance Plan will specify all anticipated management activities and the necessary capacity to accomplish those activities. The Conservancy shall report annually on the beginning and ending balances, including deposits and withdrawals from the account providing funds for long-term management for any Mitigation Projects.

H. FORCE MAJEURE

Force Majeure shall mean an irreparable material and detrimental impact on the site over which the Conservancy or any entity controlled by the Conservancy could not have anticipated or controlled.

The IRT has sole reasonable discretion to determine whether an event is a "Force Majeure" event as defined herein, and further defined in each Site Development Plan, and the Conservancy shall bear the burden of demonstrating to the IRT's satisfaction that:

(a) The Force Majeure event was caused by circumstances beyond the control or anticipation of the Conservancy and/or any entity controlled by the Conservancy, including its contractors and consultants;
(b) Neither the Conservancy nor any entity controlled by the Conservancy, including its contractors and consultants, could have reasonably foreseen and prevented such an event;
(c) Damage was caused by such circumstances; and
(d) Damage is irreparable by any practicable and reasonable means as determined in the discretion of the IRT.

I. EMINENT DOMAIN AND TAKINGS

If a Mitigation Site is taken in whole or in part through eminent domain, the Conservancy shall utilize funds it receives on account of the eminent domain or taking process: 1) to provide replacement compensation to offset the loss of the conservation functions, services and values to the extent practicable, as determined in the discretion of the IRT, or 2) in the case of a donated conservation easement, in a manner consistent with the conservation purposes of the original contribution, pursuant to Treas. Reg. § 1.170A-14(g)(6). This replacement compensation must be provided within the same Service Area as the affected Mitigation Site and must be approved by the IRT.

VI. PROGRAM REPORTING PROTOCOLS

On a quarterly basis, the Conservancy shall provide the Corps and DEQ with the statements it receives from all financial institutions or escrow agents holding funds accepted in relation to, or associated with, this Agreement. The quarterly report shall summarize all expenses and revenues associated with the Program during the previous quarter and shall include documentation associated with payments into, and expenditures from, the Program. If required by the Corps and/or DEQ, the financial reporting method must be modified.

The Conservancy shall submit an annual ledger report showing the beginning and ending balance of Available Credits, sold or debited Credits, permitted impacts for each resource type in each service area, all additions and subtractions of Credits, and any other Credit changes (*e.g.*, Credits released, Credits suspended), as well as monies paid into the Program, expended for Mitigation Projects and any remaining balances. The Corps and DEQ may require additional reporting, as necessary, consistent with the full cost accounting standards and the Mitigation regulations at 33 CFR §332.8(o) and (q); 9 VAC 25-210.116.

The Conservancy shall also maintain a separate ledger for each Mitigation Project. This ledger shall depict all Credit releases and Credit withdrawals by compensation resource type associated with the Mitigation Project. This ledger shall be maintained on the Regional Internet Bank Information Tracking System ("RIBITS") a web-based mitigation tracking system, once available. The Corps shall be responsible for creating a record in RIBITS for each Mitigation Project and for providing the service and access to RIBITS for loading Mitigation Project data.

VII. DISPUTE RESOLUION

Resolution of disputes between Federal IRT agencies and the Corps regarding the planning, approval and other aspects of Mitigation Projects approved under this Agreement shall be in accordance with Corps regulations at 33 CFR §332.8(e), as well as any other applicable federal regulations governing mitigation bank operation. Resolution of disputes between the Corps and DEQ regarding the planning, approval, and other aspects of plans approved under this Agreement shall be in accordance with current standard operating procedures developed for mitigation banks. Resolution of disputes between the Conservancy and the Chairs, or the IRT, related to satisfaction of Success Criteria will be resolved in the first instance by the IRT. If the Conservancy does not agree with the IRT, the Conservancy may request an independent review from government agencies or academia that is not part of the IRT. The IRT, in its discretion, may agree to such review, at the expense of the Conservancy. If such review is conducted, the IRT shall have sole discretion in evaluation of such review, conclusions or recommendations, and the IRT ultimately has sole discretion in determination of whether the success criteria are met.

VIII. VALIDITY, AMENDMENT, MODIFICATION, AND TERMINATION OF THE AGREEMENT

This Agreement may only be amended or modified with the written approval of all parties hereto. The IRT agrees to not unreasonably withhold or delay such approval. The Corps, DEQ or the Conservancy may terminate this Agreement by giving thirty (30) days written notice to the other parties and satisfactory demonstration of compliance with the requirements of Paragraph IV.F.

Any proposed modification to a Mitigation Project, including but not limited to addition of lands to a site, establishment of additional sites, additions of different types of mitigation Credit resources (*e.g.* stream or wetland Credits) or alteration of success criteria shall require review and approval of the IRT Chairs in consultation with the IRT members. Such modification shall require an amendment to the Site Development Plan to comply with Corps regulations at 33 CFR §332.8(g).

Any Site Development Plans approved under this Agreement may be considered null and void by the IRT Chairs, in consultation with the IRT members, if the physical improvements identified in the Site Development Plan have not been completed within five (5) years of the last date of signature or approval of the Site Development Plan. The Conservancy may reinitiate the process by submitting a new Site Development Plan for a Mitigation Site.

IX. THIRD PARTY RESALE OR BROKERAGE OF CREDITS

The resale, brokering, or transfer of Credits to any entity for resale or re-transfer from one permittee to another permittee is not authorized without the express written approval of the IRT. Advance Credits may not be sold unless associated with a permit or enforcement case. The permit number shall be placed on every Credit bill of sale. For bills of sale associated with bulk sales where there is no associated permit number, the Conservancy shall include a special provision in the bill of sale stating that those Credits cannot be utilized to satisfy a Corps or DEQ permit requirement unless the permittee provides a written "bank ledger allocation statement" to the Corps, DEQ, and the Conservancy. This bank ledger allocation statement shall state that the

associated Credit(s) was part of a bulk sale to a specific party and has been allocated for use with a named project and a specific permit number.

At the Conservancy's sole discretion, and with the approval of the IRT, the Conservancy may refund Credit purchases at the request of such purchaser, if the impacts for which the purchaser paid into the program have not occurred. If the refund is made, the Conservancy will no longer be responsible for mitigating for the impacts not taken.

X. OTHER PROVISIONS

A. Specific Language of Agreement Shall Be Controlling: To the extent that specific language in this Agreement changes, modifies or deletes terms and conditions contained in those documents that are incorporated into the Agreement by reference, the specific language within the Agreement and any associated Site Development Plans is controlling.

B. Notice: Any notice required or permitted hereunder shall be deemed to have been received when delivered by hand, transmitted electronically with verified receipt, after three days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or on the day received by Federal Express or similar next day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

The Nature Conservancy: 490 Westfield Road, Charlottesville, Virginia 29901, Attention: project attorney and director of land protection

Insert addresses of the Conservancy, the Corps and DEQ here. The addresses of all IRT members will be included in project-specific Site Development Plans as they may change.

C. Entire Agreement: This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

D. Invalid Provisions: In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

E. Headings and Captions: Any paragraph heading or captions contained in this Agreement shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Agreement.

F. Counterparts: This Agreement may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument.

G. Binding: This Agreement shall be immediately, automatically and irrevocably binding upon the parties and their heirs, successors, assigns and legal representatives upon execution.

H. Transfer of Mitigation Responsibility: For projects in the service area of this Program that require Department of the Army authorization pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, Sections 62.1-44.15:20-23 of the Code of Virginia, or the Virginia Water Protection Permit Regulations (9 VAC §25-210 *et seq.*), if such authorizations require compensatory mitigation, Credits from this Program may be used to satisfy those compensatory mitigation requirements if the Conservancy and the permittee reach a mutually acceptable financial agreement, subject to Corps and/or DEQ written approval on a case-by-case basis. **Notwithstanding anything in this Agreement, the Corps and DEQ have sole discretion over how many and what type of Credits are required for permits issued by such agency and whether Credits from this Program are acceptable as mitigation.**

In consideration of the Conservancy's agreement to be bound by the terms of this Agreement, the IRT acknowledges that upon approval of a proposal by the permittee to secure Credits through a contract with this Program to satisfy all or part of the compensatory mitigation requirements for a Department of the Army and/or DEQ permit, a fully executed bill of sale or other instrument transferring Credit(s) from the Conservancy to the permittee shall act to transfer to this Program the responsibility for the required compensatory mitigation to be provided by the Conservancy in accordance with the permit.

I. Approvals: For purposes of this Agreement, any approval required hereunder must be in writing and expressly approve the action or other matter for which approval is sought. Written approval may be transmitted by letter, electronic mail or facsimile transmission.

J. Severability: The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

XI. SIGNATURES

U.S. ARMY CORPS OF ENGINEERS

By: _____
Its: District Engineer, Norfolk District

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Its: Director

THE NATURE CONSERVANCY,
a District of Columbia non-profit corporation

By: _____
Its: Vice President