IN-LIEU FEE ENABLING INSTRUMENT

Name of Program

IN-LIEU FEE PROGRAM

This In-Lieu Fee Enabling Instrument (“Instrument”), dated this \_\_\_ day of \_\_\_\_\_\_\_\_, 2013 (“Execution Date”), is made by and between Name of Organization (“Program Sponsor”), the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), and the California Regional Water Quality Control Board, Region 8 (“RWQCB”). The USACE, USEPA, and RWQCB comprise and are referred to jointly as the Interagency Review Team (“IRT”). The Program Sponsor and the IRT members who have agreed to sign this Instrument are hereinafter referred to jointly as the “Parties.” This Instrument sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the Name of Program In-Lieu Fee Program (the “Program”).

RECITALS

1. The Program Sponsor is responsible for establishing and operating the Program.
2. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq*. Waters of the U.S. include jurisdictional wetlands.
3. RWQCB is charged with preserving, protecting, enhancing, and restoring water quality pursuant to section 401 of the Clean Water Act.
4. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Program.
5. The primary goal of the Program is to provide effective Compensatory Mitigation for the Functions and Services of Waters of the U.S. lost through authorized Impacts.
6. The objectives of the Program are (1) to provide an alternative to permittee-responsible Compensatory Mitigation by implementing In-Lieu Fee (“ILF”) Projects adequate to meet current and expected demand for Credits in the Service Area; (2) create a Program that has a level of accountability commensurate with mitigation banks as specified in 33 C.F.R. Part 332; (3) provide ILF Projects that meet current and expected demand for Credits; and (4) achieve ecological success on a watershed-basis by siting ILF Projects using the best available decision support tools, and by integrating ILF Projects with ongoing conservation activities being undertaken within the region.

**AGREEMENT**

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

SECTION I: PURPOSE AND AUTHORITIES

* 1. *Purpose*

The purpose of this Instrument is to establish guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the Program. The Program will be used for Compensatory Mitigation for (1) unavoidable Impacts to Waters of the U.S. that result from activities authorized under section 404 of the Clean Water Act and section 401 of the Clean Water Act water quality certifications or (2) completed enforcement actions under the auspices of section 404 and 401 of the Clean Water Act.

* 1. *Authorities*

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

* + 1. Federal Authorities
			1. Clean Water Act (33 U.S.C. § 1251 *et seq*.);
			2. National Environmental Policy Act (42 U.S.C. § 4321 *et seq*.);
			3. Endangered Species Act (16 U.S.C. § 1531 *et seq*.);
			4. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq*.);
			5. National Historic Preservation Act (16 U.S.C. § 470);
			6. Regulatory Program of the USACE (33 C.F.R. Parts 320-332); and
			7. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230).
		2. Authority of the USACE

The USACE will make the final decision regarding the amount and type of Compensatory Mitigation to be required of federal permittees, and determine whether and how use of Credits from the Program is appropriate to compensate for unavoidable Impacts.

SECTION II: DEFINITIONS

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

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Program Sponsor based upon annual report results and IRT review of overall Program performance and compliance.
2. “Advance Credits” means any Credits of the Program that are available for sale prior to being fulfilled in accordance with an approved Development Plan.
3. “Buffer” means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, stream, and lakes from disturbances associated with adjacent land uses.
4. “Catastrophic Event” shall mean an unforeseen event, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the ILF Project site(s), and over which the Program Sponsor has no control.
5. “Compensatory Mitigation” means the Restoration, Establishment, Enhancement, and/or in certain circumstances Preservation of aquatic resources for the purposes of offsetting unavoidable Impacts which remain after all appropriate and practicable avoidance and minimization measures have been achieved.
6. “Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, substantially in the form of **Exhibit H**.
7. “Credit” is a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at an ILF Project site(s). The measure of aquatic functions is based on the resources Restored, Established, Enhanced, or Preserved.
8. “Credit Release” means an action by the USACE to make specified Credits available for Transfer pursuant to this Instrument.
9. “Development Plan” is the document that formally establishes an ILF Project and stipulates the terms and conditions of its construction and habitat establishment activities required to be conducted on the ILF Project site to establish Credits. Each Development Plan will be bound by the terms and conditions of the Instrument by reference.
10. “Enhance” or “Enhancement” means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource Function(s). Enhancement results in the gain of selected aquatic resource Function(s), but may also lead to a decline in other aquatic resource Function(s). Enhancement does not result in a gain in aquatic resource area.
11. “Establish” or “Establishment” means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and Functions.
12. “Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, drought, lightning, earthquake, fire, landslide, disease, effects of climate change on habitat or hydrology, condemnation or other taking by governmental body. Other conditions beyond the Program Sponsor’s control will include: interference by third parties; condemnation or other taking by any governmental body; change in applicable law, regulation, rule, ordinance, or permit condition, or the interpretation or enforcement thereof; any order, judgment, action or determination of any federal, state or local court, administrative agency or governmental body; and/or suspension or interruption of any permit, license, consent, authorization or approval.
13. “Functions” mean the physical, chemical, or biological processes that occur in ecosystems.

14. “ILF Project” means Compensatory Mitigation implemented by the Program Sponsor under the Program.

15. “Impacts” mean adverse effects.

16.“Interim Management Period” means the period from the Program Establishment Date until all the Performance Standards in the Development Plan have been met.

17. “Interim Management Plan” means the document that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Program Sponsor during the Interim Management Period. Each Interim Management Plan will be bound by the terms and conditions of the Instrument by reference.

18. “Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which each ILF Project is to be managed, monitored and maintained pursuant to the Long-term Management Plan.

19. “Long-term Management Plan” means the document that identifies specific land management activities that are required to be performed at each of the ILF Project sites, including, but not necessarily limited to, biological monitoring, improvements to biological carrying capacity, enforcement measures, and other actions designed to protect or improve the habitat values of the ILF Project site. Each Long-term Management Plan will be bound by the terms and conditions of the Instrument by reference.

20. “Performance Standards” means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S.

21. “Phase I Environmental Site Assessment” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.

22. “Preservation” means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.

23. “Program Account” means an account established by the Program Sponsor at an institution that is a member of the Federal Deposit Insurance Corporation and that is used by the Program Sponsor for the purpose of providing compensatory mitigation for Department of the Army permits.

24. “Program Establishment Date” is the date determined pursuant to Section IV.D., when the Program is considered established and Transfer of Advance Credits may begin.

25. “Property Assessment” means the written ILF Project site evaluation signed by the Program Sponsor, using the form attached in **Exhibit I**.

26. “Remedial Action” means any corrective measures which the Program Sponsor is required to take to ameliorate any injury or adverse Impact to the ILF Project Site as Preserved, Restored or Enhanced or as a result of a failure to achieve the Performance Standards.

27. “Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area, Functions and services.

28. “Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource Function, but does not in a gain in aquatic resource area.

29. “Restore” or “Restoration” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

30. “RIBITS” means the Regulatory In-Lieu Fee and Bank Information Tracking System.

31. “Services” mean the benefits that human populations receive from Functions that occur in ecosystems.

32. “Service Area” means the geographic area(s) within which Impacts to Waters of the U.S. that occur may be compensated through Credits from the Program.

33. “Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the ILF Project site makes the lien or encumbrance subject to and of lower priority than the Conservation Easement or equivalent protection mechanism, even though the lien or encumbrance was recorded before the Conservation Easement or equivalent protection mechanism.

34. “Transfer” means the use, sale, or conveyance of Credits by the Program Sponsor.

35. “Unlawful Act” shall mean the unlawful act of any person or entity other than the Program Sponsor and shall include an event or series of events, such as the intentional release within the ILF Project site(s), or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the ILF Project site.

36. “Waters of the U.S.” mean waterbodies, including wetlands, over which there is federal jurisdiction under section 404 of the Clean Water Act.

SECTION III: STIPULATIONS

*A. Disclaimer*

This Instrument does not in any manner affect the statutory authorities and responsibilities of the Parties.

* 1. *Exhibits*

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

A - Prioritization and Compensation Planning Framework

B - Service Area

C - Instrument Modification Procedure

D - Development Plans

E - Interim Management Plans

F - Long-term Management Plans

G - Statement of Sale of Credit

H - Real Estate Instrument

I - Property Assessment Form

J - Credit Ledger Report Form

**SECTION IV: PROGRAM STRUCTURE**

* 1. *Framework*

This Instrument is intentionally broad and sets the framework under which Program sponsored ILF Projects will be identified, funded, operated, maintained and managed. The Instrument provides the authorization for the Program to provide Credits to be used as Compensatory Mitigation for Department of the Army permits and associated Clean Water Act section 401 water quality certifications or as a result of completed enforcement actions under the auspices of section 404 and 401 of the Clean Water Act. As ILF Projects are identified, the Program Sponsor will submit site-specific Development Plans, Interim Management Plans, and Long-term Management Plans to the USACE for review and approval as modifications to the Instrument through the process outlined in **Exhibit C**, and included in this Instrument as subparts of **Exhibits D-F**.

* 1. *Service Area*

The Service Area for the Program is defined as an area inside the Name watershed shown on **Exhibit B.** This specific Service Area was chosen based on environmental considerations and the Program Sponsor’s jurisdictional boundary.

* 1. *Program Account*
		1. Upon the Instrument being fully executed by all of the Parties and prior to accepting any fees from federal permittees, the Program Sponsor must establish a Program Account. The Program Account will collect deposits from the sale of Credits, and will be used only for the comprehensive costs associated with site selection, design, acquisition, implementation, and management of ILF Projects, and administrative costs for the Program Sponsor. Administrative costs equal to 15% of each Credit sale will be allowed for the Program Sponsor to manage the Program. All interest and earnings from the Program Account will remain in that account for the purpose of providing Compensatory Mitigation for impacts to Waters of the U.S. Funds for the operation of the Program may be obtained from other sources and repaid as Credits are sold.
		2. Complete budgets for individual ILF Projects will be approved as part of Development Plans.
		3. Annual accounting reports will be presented by September 30th for approval by the USACE. Reports will include detailed summaries of Program Account deposits and disbursements for each ILF Project made over the previous state fiscal year (July 1 – June 30) (Section VII). Any deviation in excess of ten percent from the approved budget will require USACE approval before additional funds are disbursed. The USACE may review Program Account records with 14 days written notice. When so requested, Program Sponsor shall provide all books, accounts, reports, files, and other records relating to the Program Account.
	2. *Program Establishment Date*

The Program Establishment Date will occur and Transfer of Advance Credits may begin only after (1) the Instrument has been fully executed by all of the Parties and (2) the Program Account has been established. Within 30 days of the Program Establishment Date, the Program Sponsor shall upload the final, signed Instrument including all of its Exhibits, to RIBITS and provide an electronic copy each member of the IRT.

* 1. *ILF Projects*

Program Sponsor will identify potential ILF Projects consistent with the Instrument and submit a Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan to the USACE along with a written request for an Instrument Modification (**Exhibit C**). Program Sponsor will implement the ILF Projects upon approval and report annually to the IRT (Section VII).

* 1. *Establishment and Use of Credits*

In accordance with the provisions of this Instrument and upon satisfaction of the Credit Release schedule described in Development Plans (contained herein as subparts of **Exhibit D**) and in Section VI.C, Credits are available for Transfer as Compensatory Mitigation in accordance with all applicable requirements for permits issued under section 404 of the Clean Water Act and associated Clean Water Act section 401 water quality certifications. The USACE, based on recommendations of the IRT, will determine the number of Credits available for each ILF Project based upon the approved design and the resulting habitats achieved, in accordance with the terms and conditions contained herein.

SECTION V: ILF PROJECT ESTABLISHMENT AND OPERATION

This section identifies the general framework in which individual ILF Projects will be established and operated. Each ILF Project will be approved individually, as detailed herein, and the specific requirements for its operation, monitoring, and management will meet the USACE standard operating procedures at the time of its approval. The Program Sponsor shall provide for access to the ILF Project site by members of the IRT or their agents or designees at reasonable times as necessary to conduct inspections and compliance monitoring with respect to the requirements of this Instrument. Inspecting parties shall not unreasonably disrupt or disturb activities on the ILF Project site, and will provide written notice within reasonable time prior to the inspection.

1. *Establishment*
	* 1. Project Site Selection

All individual ILF Projects will be located within the Program Service Area. Program Sponsor will seek ILF Projects based on the prioritization and compensation planning framework outlined in **Exhibit A**.

* + 1. Instrument Modifications

As ILF Projects are identified, Program Sponsor will prepare a Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan and submit a written request to the USACE to modify the Instrument. This process is outlined in **Exhibit C**.

* + 1. Permits

The Program Sponsor will obtain all applicable permits and authorizations needed to construct and maintain the ILF Project(s). This Instrument does not constitute or substitute for any such approval.

* + 1. Financial Assurances

Notwithstanding any other provision of this Instrument, the Program Sponsor’s financial obligation for the Program will be limited to funds in the Program Account. The Program Sponsor will take the following actions to ensure funds are available to meet mitigation requirements for Credits Transferred:

a. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account, and disbursed as work is accomplished to operate and monitor the individual ILF Projects.

b. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account to manage the individual ILF Project, including contingency and Remedial Actions.

c. A financial assurance for each ILF Project in accordance with 33 C.F.R. 332.3(n).

Each approved ILF Project will have an identified schedule for the release of the financial assurances as the ILF Project meets its approved Performance Standards.

1. *Operation*

1. Development Plans

Program Sponsor shall be responsible for preparing Development Plans in accordance with **Exhibit D**. The Development Plans shall outline measurable objectives, Performance Standards, and monitoring requirements. Pre- and post-ILF Project implementation jurisdictional determination and delineations (as appropriate) and functional assessments will be completed using USACE-approved techniques. Development Plans must include a survey or other document acceptable to the USACE, completed by a professional land surveyor or other qualified person or entity, defining the ILF Project site, and a Property Assessment using the Form in **Exhibit I**. Upon approval of the Development Plan by the USACE, the Program Sponsor shall be responsible for implementing the plan.

2. Interim Management and Monitoring

Program Sponsor shall be responsible for preparing Interim Management Plans in accordance with **Exhibit E**. Upon approval of the Interim Management Plan by the USACE, the Program Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan until completion of the Interim Management Period.

* + 1. Long-term Management and Monitoring

ILF Projects shall be designed, to the maximum extent practicable, to be self- sustaining once Performance Standards have been achieved. Program Sponsor shall be responsible for preparing Long-term Management Plans in accordance with **Exhibit F**. Once the Interim Management Period is completed, the Program Sponsor shall implement long-term management and monitoring of the ILF Project site(s) according to the Long-term Management Plan. Program Sponsor shall be obligated to manage and monitor the ILF Project site in perpetuity to preserve its habitat and conservation values in accordance with this Instrument, the real estate instrument (e.g., Conservation Easement), and the Long-term Management Plan. Such activities shall be funded through the Program Account, including, but not limited to, the potential transfer of long-term management funds to be managed by the steward in a separate endowment account pursuant to 33 C.F.R. § 332.8(u)(3). Program Sponsor and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the ILF Project site(s). During the Long-term Management Period, Program Sponsor shall be responsible for submitting annual reports to each member of the IRT in accordance with Section VII.A of this Instrument. The Program Sponsor shall upload annual reports into RIBITS.

* + 1. Remedial Action Plan

Prior to Program closure, if any Party discovers any failure to achieve the Performance Standards or any injury or adverse impact to the ILF Project site as Preserved, Established, Restored, or Enhanced, the Party making the discovery shall notify the other Parties. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section VIII.A, the IRT may require the Program Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section VII.A. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

1. Within 60 days of the date of written notice from the IRT, the Program Sponsor shall develop a Remedial Action plan and submit it to the IRT for approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the ILF Project site and set forth a schedule within which the Program Sponsor will implement those actions. The Program Sponsor shall implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT. In the event the Program Sponsor fails to submit a Remedial Action plan to the IRT in accordance with this section, the IRT will notify the Program Sponsor that the Program Sponsor is in default and may identify Remedial Action the IRT members deems necessary. If (a) the Program Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the IRT, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the IRT approved a Remedial Action plan or notified Program Sponsor of Remedial Actions the IRT
deemed necessary, then the USACE may direct funds from the Program Account to undertake Remedial Action on the ILF Project site.
2. If the USACE determines, in consultation with the IRT, that the Program is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this Instrument), then the USACE shall notify the Program Sponsor. Upon the USACE giving such notice, Program Sponsor shall immediately cease Transfer of Credits. The USACE, in consultation with the IRT, will determine what Remedial

Action is necessary to correct the Credit deficit, and Program Sponsor shall implement such Remedial Action, in accordance with this Section V.B.4.
	* 1. Long-term Ownership and Protection

Program Sponsor shall be responsible for ensuring long-term protection of each ILF Project through the use of real estate instruments in accordance with 33 C.F.R. 332.7(a). Program Sponsor will ensure that the real estate instrument is in place ***prior to*** ILF Project implementation, as stipulated in each Development Plan. The draft real estate instrument, substantially in the form of **Exhibit H**, shall be submitted to the IRT for review and USACE approval. The real estate instrument shall include, but is not limited to, assigning long-term management responsibility for the ILF Project and will, to the extent practicable, prohibit incompatible uses that might otherwise jeopardize the objectives of the ILF Project. A copy of the recorded real estate instrument shall be furnished to the USACE and become part of the official Program record. If any action is taken to void or modify an ILF Project real estate instrument, Program Sponsor must notify the USACE in writing.

**Section VI: CREDIT ACCOUNTING**

*A. Advance Credits*

Upon the Program Establishment Date, Program Sponsor is permitted to Transfer fifty (50) Advance Credits. The number of Advance Credits that are approved for Transfer was developed in coordination with the USACE and IRT and is based on (1) the percentage of the projected mitigation opportunities within the Service Area as outlined in the compensation planning framework in **Exhibit A**, (2) the Program Sponsor’s past performance for implementing Enhancement, Restoration, Establishment, and/or Preservation activities within the Service Area, and (3) the projected financing necessary to begin planning and implementation of ILF Projects. No more than 25%, or 12.5 Advance Credits, may be Transferred and later fulfilled as Preservation Credits. At least 75% of the Advance Credits must be fulfilled as Establishment, Enhancement, Buffer and/or Restoration Credits.

Once the Program Sponsor has sold all of its Advance Credits, no more Advance Credits may be sold until an equivalent number of Credits has been released in accordance with the approved Credit Release schedule outlined in an ILF Project-specific Development Plan. Once all Advance Credits are fulfilled, an equivalent number of Advance Credits may be made available for Transfer, at the discretion of the USACE and IRT.

Program Sponsor shall complete land acquisition and initial physical and biological improvements by the third full growing season after the Transfer of Advance Credits. If Program Sponsor fails to meet these deadlines, the USACE must either make a determination that more time is needed to plan and implement an ILF project or, if doing so would not be in the public interest, direct the Program Sponsor to disburse funds from the Program Account to provide alternative Compensatory Mitigation to fulfill those compensation obligations.

*B. Generation of Credits*

Each approved ILF Project Development Plan will include the method for determining the Credits generated by the individual ILF Project. Program Sponsor may only generate Credits from an ILF Project when there is a net benefit to aquatic resources at the site as determined by the difference between pre- and post-site conditions. Credit generation will be determined using the California Rapid Assessment Method or the functional assessment method as defined in the current USACE standard operating procedures. Preservation of existing waters of the United States that support a significant population of rare plant or animal species, or that are a rare aquatic resource type may be proposed to generate Credits. Credits may also be proposed for Preservation or improvements of riparian areas, Buffers and uplands if the resources in these areas are essential to maintain the ecological viability of a water of the United States. Credits generated for Preservation and Buffers will be determined on a case-by-case basis by the USACE, in consultation with the IRT, in accordance with 33 C.F.R. 332.3(h) and (i).

*C. Credit Release*

Each approved ILF Project Development Plan will include a Credit Release schedule referenced to Performance Standards. As milestones in an individual ILF Project’s Credit Release schedule are reached (i.e., Restoration, Establishment, Enhancement and/or Preservation is implemented), Advance Credits are converted to released Credits. At a minimum, Credits will not be released until the Program Sponsor has obtained USACE approval of the Development Plan for the ILF Project site, has achieved the applicable milestones in the Credit Release schedule, and has submitted a request for Credit Release to the USACE along with documentation substantiating achievement of the criteria for release to occur and Credit Releases have been approved by the USACE. If the ILF Project does not achieve the performance-based milestones, the USACE may modify the Credit Release schedule, including reducing the number of Credits.

 1. Establishment, Enhancement, Restoration Credits. In general, the Credits for Establishment, Enhancement, and Restoration areas may be released according to the following schedule:

 a. Up to 25% of anticipated Credits may be released upon approval of a Development Plan andrecordation of a real estate instrument for the purpose of implementing an ILF Project.

 b. Up to an additional 25% of anticipated Credits may be released upon completion of improvements per the approved Development Plan and USACE approval of the as-built report.

 c. Up to an additional 25% of anticipated Credits may be released incrementally upon achievement of short term (i.e., Years 2-4) Performance Standards.

 d. The remaining generated Credits may be released upon achievement of long-term (i.e., Year 5) Performance Standards.

 2. Preservation and Buffer Credits.In general, because Preservation and Buffers do not involve construction of improvements or meeting short term Performance Standards, up to 80% of anticipated Credits associated exclusively with Preservation and Buffers may be released upon acquisition and full legal protection of the lands to be Preserved. Up to an additional 20% of anticipated Credits may be released upon achievement of long-term Performance Standards, which, under normal circumstances, will be no later than five (5) years after the approval of the Development Plan for the site.

*D. Balance of Credits*

The Program will have available for Transfer the number of available Advance Credits for the Program, plus any released Credits generated by ILF Projects beyond those required to fulfill Advanced Credit Transfers.

*E. Fee Schedule*

The cost per unit of Credit must include the expected costs associated with the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources in the Service Area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as land acquisition (including, without limitation, options to purchase), project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the Program. This list is not meant to be exhaustive and may include other categories, as appropriate, as determined by the Program Sponsor on a case-by-case basis. The cost per unit of Credit must also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of Credit must also take into account the resources necessary for the long-term management, protection of the ILF Project, and enforcement of the long-term instrument or other protection mechanism. In addition, the cost per unit of Credit must include financial assurances that are necessary to ensure successful completion of ILF Projects. These fees shall be reviewed at least annually and updated as appropriate.

*F. Transfer of Credits*

1. All activities regulated under section 404 and 401 of the Clean Water Act may be eligible to use the Program as Compensatory Mitigation for unavoidable Impacts.
2. Credits purchased may only be used in conjunction with a USACE permit authorization or resolution of an unauthorized activity.
3. Deposits for such Credits shall be placed in the Program Account.
4. The USACE will make decisions about the most appropriate Compensatory Mitigation on a case-by-case basis, during evaluation of a Department of the Army permit application. This Instrument does not guarantee that the USACE will accept the use of Program Credits for a specific project, and authority for approving use of the Program for Compensatory Mitigation lies with the USACE.
5. The responsibility to provide Compensatory Mitigation remains with the permittee unless and until Credits are purchased from the Program. Upon USACE approval of purchase of Credits from the Program, the permittee may contact the Program Sponsor to secure the necessary amount and resource type of Credits, as outlined in Department of the Army permit conditions. Upon Transfer of Credits, the Program Sponsor shall enter the Transfer into RIBITS.
6. Program Sponsor assumes all legal responsibility for fulfilling Compensatory Mitigation requirements for USACE-authorized activities for which fees have been accepted. The transfer of liability is established by: 1) the approval of this Instrument; 2) receipt by the USACE of a Credit sale certificate that is signed by the Program Sponsor and the permittee and dated (see **Exhibit G**); and 3) the transfer of fees from the permittee to the Program Sponsor. A copy of each certificate will be retained in the administrative and accounting records for the Program Instrument. Other than what is described in this paragraph, no other legal responsibility for the permit will transfer to the Program Sponsor, unless a separate agreement is entered into between the Program Sponsor and the permittee.
7. Debits will be reflected in annual accounting reports as outlined in Section VII.
8. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section VIII.A, if a ILF Project site is damaged after the Program Establishment Date, and such damage materially impairs Waters of the U.S. or habitat values on such damaged ILF Project site, then the USACE, in consultation with the IRT, may, at its discretion, direct Program Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the ILF Project in proportion to such damaged area unless and until the Program Sponsor has reasonably restored such damaged area, if required, pursuant to a Remedial Action plan approved by the IRT.

SECTION VII: PROGRAM REPORTING

*A. Annual Report*

Program Sponsor shall upload an annual report to RIBITS and furnish a copy to each member of the IRT, in hard copy and in editable electronic format, on or before September 30th of each year following the Program Establishment Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Program Establishment Date for the first annual report) through June 30th of the current year (the “Reporting Period”). The annual report shall address the following:

1. ILF Project Development

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

1. Interim Management and Long-term Management

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

* + - 1. The time period covered, i.e. the dates “from” and “to”;
			2. A description of each management task conducted, the dollar amount expended and time required; and
			3. The total dollar amount expended for management tasks conducted during the reporting period.
1. Credit Ledger Report

The annual report shall include an updated Credit Transfer Ledger (**Exhibit J**,for each ILF Project site) showing the beginning and end balance of available Credits and permitted impacts for each resource type, all additions and subtractions of Credits, and any other changes in Credit availability (e.g., additional Credits released, Credit sales suspended).

1. Program Account

The annual accounting report in accordance with Section IV.C.3.

*B. Credit Transfer Reporting*

Upon the Transfer of each and every Credit, the Program Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

* + 1. A copy of the certification in the form provided at **Exhibit G** that identifies the permit number, a statement indicating the number and resource type of Credits that have been secured from the Program Sponsor, and that legal responsibility has transferred from the permittee to Program Sponsor; and
		2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit J**.

SECTION VIII: OTHER PROVISIONS

* 1. *Force Majeure*

1. The Program Sponsor shall be responsible to maintain the ILF Project site and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Program Sponsor shall bear the burden of demonstrating all of the following:

a. That the damage or non-compliance was caused by circumstances beyond the control of the Program Sponsor and any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants;

b. That neither the Program Sponsor, nor any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and

c. The period of damage or non-compliance was a direct result of such circumstances.

2. The Program Sponsor shall cease Transfer of Credits and notify the IRT within seventy-two (72) hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Program Sponsor and the IRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Program Sponsor shall continue to manage and maintain the ILF Project to the full extent practicable.

*B. Default*

 1. *Notice of Violation*. In the event that the Program Sponsor is in violation of the terms of this Instrument or that a violation is threatened, the USACE may demand the cure of such violation. In such a case, the USACE shall issue a written notice to the Program Sponsor (hereinafter “Notice of Violation”) informing the Program Sponsor of the actual or threatened violations and demanding cure of such violations.

 2. *Time to Cure*. The Program Sponsor shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the Program Sponsor shall, within the thirty (30) day period, submit to the USACE for review and approval a plan and time schedule to diligently complete a cure. The Program Sponsor shall complete such cure in accordance with the approved plan. If the Program Sponsor disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter “Notice of Dispute”) to the USACE within thirty (30) days of receipt of written Notice of Violation.

 3. *Failure to Cure*. If the Program Sponsor fails to cure the violation within the time period(s) described in Section VIII B. 2., the USACE may take appropriate action. Such actions may include, but are not limited to, suspending credit sales, adaptive management, decreasing available credits, directing funds to alternate locations, taking enforcement actions, or terminating the Instrument. The USACE cannot directly accept, retain, or draw upon funds in the Program Account in the event of a default. Any delay or failure of the Program Sponsor to comply with the terms of this Instrument or an approved Development Plan shall not constitute default if and to the extent that such delay or failure is primarily caused by any Force Majeure or other conditions beyond Program Sponsor’s reasonable control and significantly adversely affects its ability to perform its obligations hereunder. Program Sponsor shall give written notice to the USACE and IRT if the performance of its ILF Project is affected by any such event in accordance with Section VIII.A.2.

 4. *Notice of Dispute*.

 a. If the Program Sponsor provides the USACE with a Notice of Dispute, as provided herein, the USACE shall meet and confer with the Program Sponsor at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the USACE receive the Notice of Dispute. The USACE shall consider all relevant information concerning the disputed violation provided by the Program Sponsor and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the USACE is appropriate in light of the violation.

 b. If, after reviewing the Program Sponsor’s Notice of Dispute, conferring with the Program Sponsor, and considering all relevant information related to the violation, the USACE determines that a violation has occurred, the USACE shall give the Program Sponsor notice of such determination in writing. Upon receipt of such determination, the Program Sponsor shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the Program Sponsor shall, within the fifteen (15) day period, submit to the USACE for review and approval a plan and time schedule to diligently complete a cure. The Program Sponsor shall complete such cure in accordance with the approved plan.

*C. Dispute Resolution*

Resolution of disputes concerning the Parties’ compliance with this Instrument shall be in accordance with those stated in 33 C.F.R. 332.8. Disputes related to satisfaction of Performance Standards may be referred to independent review from government agencies or academia that are not part of the IRT. The IRT will evaluate any such input and determine whether the Performance Standards have been met.

D. *Modification, Amendment and Termination of Instrument*

 1. *Modification and Amendment*. This Instrument, including its Exhibits, may be amended or modified only with the written approval of the Parties. Instrument modifications, including the addition or expansion of ILF Projects, will follow the process outlined in **Exhibit C**. The USACE may use a streamlined modification review process for changes reflecting Adaptive Management of an ILF Project site, Credit Releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant (**Exhibit C**).

 2. *Termination/Program Closure*. Any Party to this Instrument may terminate its participation in this agreement by giving 60 days written notice to the other Parties. In the event that the Program operated by Program Sponsor is terminated (i.e., closed), Program Sponsor is responsible for fulfilling any remaining ILF Project obligations including the successful completion of ongoing mitigation projects, relevant maintenance, monitoring, reporting, and long-term management requirements. Program Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financing obligations have been met and the long-term ownership of all mitigation lands has been transferred to the party responsible for ownership and all long-term management of the project(s). Funds remaining in the Program Accounts after these obligations are satisfied must continue to be used for the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources within the Service Area. The USACE shall direct the Program Sponsor to use these funds to secure Credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of aquatic resource for which the fees were collected.

* 1. *Controlling Language*

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

* 1. *Entire Agreement*

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

* 1. *Reasonableness and Good Faith*

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

* 1. *Successors and Assigns*

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

* 1. *Partial Invalidity*

If a court of competent jurisdiction holds any term or provision of this Instrument to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this Instrument would be defeated by loss of the invalid or unenforceable provision.

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

Program Sponsor:

Name of Organization

Address

Attn: Name

Telephone:

Fax:

Name of Counsel

Address

Attn: Name

Telephone:

Fax:

IRT Members:

U.S. Army Corps of Engineers

Los Angeles District

915 Wilshire Blvd.

Los Angeles, CA 90017

Attn: Chief, Regulatory Division

Telephone: (213) 452-3406

Fax: (213) 452-4196

U.S. Environmental Protection Agency

Region IX

75 Hawthorne Street

San Francisco, CA 94105

Attn: Director, Water Division

Telephone: 415-947-8707

Fax: (415) 947-3549

California Regional Water Quality Control Board

Region 8

3737 Main Street, Suite 500

Riverside, CA 92501

Telephone: (951) 782-4130

Fax: (951) 781-6288

* 1. *Counterparts*

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

* 1. *No Third Party Beneficiaries*

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

* 1. *Availability of Funds*

Implementation of this Instrument by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this Instrument to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

* 1. *No Partnerships*

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

* 1. *Governing Law*

This Instrument shall be governed by and construed in accordance with the Clean Water Act, 33 U.S.C. § 1251 *et seq*., and other applicable federal and laws and regulations.

*P. Headings and Captions*

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

*Q. Right to Refuse Service*

USACE approval of Transfer of Credits from the Program does not signify Program Sponsor’s acceptance or confirmation of Program Sponsor’s offer to Transfer. Program Sponsor reserves the right to refuse to Transfer Credits from the Program for any reason.

SECTION IX: EXECUTION

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

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

Program Sponsor

Organization Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name Date
Title

U.S. Army Corps of Engineers, Los Angeles District

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
R. Mark Toy, P.E. Date
Colonel, US Army

Commander and District Engineer

U.S. Environmental Protection Agency, Region IX

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Director, Water Division Date

California Regional Water Quality Board

Region 8

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Executive Officer Date

**Exhibit A:** Prioritization and Compensation Planning Framework

Exhibit B: Program Service Area Map

**Exhibit C: Instrument Modifications**

**Instrument Modifications**

As ILF Projects are identified, Program Sponsor will submit a written request to the USACE to modify the Instrument according to the process outlined in this Exhibit (33 C.F.R. 332.8). Other forms of Instrument modifications, including expansion of approved ILF Projects, will also follow the process outlined herein.

Requests for Instrument modifications will be accompanied by the appropriate supporting documentation as determined by the District Engineer. The Parties expect that requests for addition of an ILF Project will include the following information:

The river basin and watershed (hydrologic unit code) of the site

The goals and objectives of the site related to the watershed compensation planning framework

Proposed service area

Site conditions and location

Proposed preliminary concept plan and/or feasibility study (if complete/available)

How the project meets the project selection criteria outlined in Exhibit A

Estimate of proposed acreage/linear footage and type of mitigation

Proposed protection and long-term management strategy

Other information as needed

Program Sponsor may elect to ask for a preliminary review and consultation of a modification request. In this case, the USACE will provide copies of the draft request to the IRT and will provide comments back to Program Sponsor within 30 days. Within 30 days of receipt of Program Sponsor’s formal request for an Instrument modification, the USACE will notify Program Sponsor whether the Instrument modification request is complete. Within 30 days of receipt of a complete modification request, the USACE will provide public notice of the request that summarizes the project documentation provided by Program Sponsor, and makes this information available to the public upon request. The comment period will be 30 days, unless otherwise determined and justified by the USACE. The USACE and IRT members may also provide comments to the Program Sponsor at this time. The USACE will provide copies of all comments to IRT members and Program Sponsor within 15 days of the close of the public comment period.

Program Sponsor will prepare a draft amendment and submit it to the District Engineer for a completeness review. The draft amendment will include the following information as required by 33 C.F.R. Part 332.4(c)):

Information included in the initial modification request.

 Development Plan with a legend and scale

Estimate of proposed acreage/linear footage and type of Compensatory Mitigation

Description of existing functions and services and how they will be improved or enhanced through specific mitigation measures

Project budget

Determination of Credits and the Credit Release plan

Interim and Long-term Management Plans

Performance Standards

Property Assessment

* Phase I Environmental Site Assessment of the ILF Project site
* Draft Site Protection Instrument
* Other information as needed

The USACE will notify Program Sponsor within 30 days of receipt of the amendment whether it is complete, or will request additional information. Once any additional information is received and the amendment is complete, the USACE will notify Program Sponsor. Program Sponsor will provide copies of the amendment for the USACE to distribute to the IRT for a 30 day comment period. This comment period begins 5 days after the copies of the amendment are distributed. Following the comment period, the USACE will discuss any comments with the appropriate agencies and Program Sponsor to seek to resolve any issues using a consensus based approach, to the extent practicable. Within 90 days of receipt of the complete amendment, the USACE must indicate to Program Sponsor whether the amendment is generally acceptable and what changes, if any, are needed. Program Sponsor will submit a final amendment to the USACE for approval, with supporting documentation that explains how the final amendment addresses the comments provided by the IRT. Program Sponsor will also provide copies directly to IRT members. Within 30 days of receipt of the final amendment, the USACE will notify the IRT members whether or not it intends to approve the amendment. If no IRT members object by initiating the dispute resolution process within 45 days of receipt of the final amendment, the USACE will notify Program Sponsor of his final decision, and if approved, arrange for signing by the appropriate parties.

Streamlined Review Process

The USACE may use a streamlined modification review process for changes to the Program reflecting Adaptive Management of the Program, Credit releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant. In this event, the USACE will notify the IRT members and Program Sponsor of this determination and provide them with copies of the proposed modification. IRT members and Program Sponsor will have 30 days to notify the USACE if they have concerns with the proposed modification. If IRT members or Program Sponsor notify the USACE of such concerns, the USACE will attempt to resolve those concerns. The USACE will notify the IRT members and Program Sponsor of his intent regarding the proposed modification within 60 days of providing the notice to the IRT members. If no IRT member objects, by initiating the dispute resolution process (33 C.F.R. 332.8) within 15 days of receipt of the notification, the USACE will notify the Program Sponsor of its final decision and, if approved, arrange for it to be signed by the appropriate parties.

**Exhibit D: Development Plans**

As individual ILF Projects are proposed and Development Plans approved by formal Instrument Modifications per Exhibit C, they will be incorporated into Exhibit D as subparts beginning with Exhibit D1 and continuing sequentially.

**Exhibit E: Interim Management Plans**

As individual ILF Projects are proposed and Interim Management Plans approved by formal Instrument Modifications per Exhibit C they will be incorporated into Exhibit E as subparts beginning with Exhibit E1and continuing sequentially.

**Exhibit F: Long-term Management Plans**

As individual ILF Projects are proposed and Long-Term Management Plans approved by formal Instrument Modifications per Exhibit C they will be incorporated into Exhibit F as subparts beginning with Exhibit F1and continuing sequentially.

**Exhibit G: Statement of Sale of Credit Form**

Name of Organization letterhead

[date]

U.S. Army Corps of Engineers

Los Angeles District – Regulatory Division

915 Wilshire Blvd.

Los Angeles, CA 90017

Subject: Statement of Sale for [Number] Credits from the Name of Program In-Lieu Fee Program to [Permittee Name]

The Name of Organization has an agreement with the U.S. Army Corps of Engineers – Los Angeles District to operate an In-Lieu-Fee Program. This letter confirms the sale of [Number of Credits] credits of [Resource Type A], and [Number

of Credits] credits of [Resource Type B]. These credits are being used as compensatory

mitigation for [Number of Acres] acres of impact to [Resource Type A], and [Number of Acres]

acres of impact to [Resource Type B] in the [Impact HUC] as authorized by DA permit [DA

permit number]. By selling credits to the above permittee, Name of Organization is the party responsible for fulfilling the mitigation aspect of Special Condition(s) \_\_\_\_\_\_ of the Permit(s) listed above.

Signed

**Exhibit H: Real Estate Instrument**

(Attached is a template Conservation Easement. Long-term protection of an ILF Project pursuant to Section V.B.5 of this Instrument may also be secured through the recording of a restrictive covenant drafted substantially in the same form as the Conservation Easement attached and as approved for each ILF Project by the IRT pursuant to V.B.5.)

**Exhibit I: Property Assessment Form**

**Exhibit J: Credit Ledger Report Form**