



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: October 7, 2015  
Comment Deadline: November 6, 2015  
Corps Action ID Number: SAW-2012-00468

The Wilmington District, Corps of Engineers (Corps) has received a modification request for the City of Charlotte Umbrella Stream and Wetland Mitigation Bank instrument which is used to establish stream and wetland compensatory mitigation banks sponsored by the City of Charlotte and which provides compensatory credits required by Federal and State permits as described below:

Bank Sponsor:  
City of Charlotte Storm Water Services  
Mr. Isaac Hinson  
Mitigation Administrator

This public notice does not imply, on the part of the Corps of Engineers or other agencies, either favorable or unfavorable opinion of the work to be performed, but is issued to solicit comments regarding the factors on which final decisions will be based. The modified mitigation banking instrument is described below and the full instrument is included as an attachment. This Public Notice and all attached plans are also available on the Wilmington District Web Site at <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>. The complete document is also available at the Wilmington District, Asheville Regulatory Field Office. Please contact 828-271-7980 extension 231, to request a copy.

WATERWAYS AND LOCATION OF THE PROPOSED WORK: The proposed modified The umbrella mitigation bank (Umbrella Bank) would be the basis for the establishment of multiple future proposed bank site all of which, would be generally located within the city limits of Charlotte but may extend to other areas within the limits of Mecklenburg County in North Carolina. The geographic service area (GSA) for this Umbrella Bank includes lands containing warm water streams and non-tidal wetlands in the Santee and Pee Dee watersheds (Hydrologic Unit Codes (HUCs) 03050103, 03050101, and 03040105) in North Carolina. Use of a Bank site should compensate for impacts that occur in the same HUC as the impacts. Use of the Bank to compensate for impacts beyond the GSA may be considered by the Corps or the permitting agency on a case-by-case basis.

PROPOSED WORK AND PURPOSE: The changes to the MBI include the following:

- 1) The authorization for the sponsor to sell credits to anyone seeking them. The previous MBI allowed the release of credits only to compensate for impacts undertaken by the City of Charlotte and Mecklenburg County public projects located within the jurisdictional limits of Mecklenburg County.

- 2) The updates additionally ensure that the MBI complies with 40 CFR Part 230, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule;

As stated by the sponsor, the goal of the Umbrella Bank is “to restore, enhance, create and/or preserve non-tidal stream and wetland systems and their functions and values to compensate in appropriate circumstances for unavoidable stream and wetland impacts authorized by Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act permits in circumstances deemed appropriate by the USACE after consultation, through any applicable permit review process, with members of the IRT.”

Oversight of Umbrella Bank will be by a group of Federal and State agency representatives collectively referred to as the Interagency Review Team (IRT). The IRT shall be chaired by the Wilmington District, U.S. Army Corps of Engineers and is comprised of representatives from the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, N.C. Division of Water Quality, and the N.C. Wildlife Resources Commission.

The actual approval of the use of a mitigation site under the Umbrella Bank for a specific project is the decision of the Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The Corps provides no guarantee that any particular individual or general permit will be granted authorization to use this wetland compensatory mitigation bank to compensate for unavoidable wetland impacts associated with a proposed permit, even though mitigation from this bank may be available.

AUTHORITY: A Public Notice regarding proposed mitigation banks is required pursuant to the rules published in the Code of Federal Regulations (CFR) for Compensatory Mitigation for Losses of Aquatic Resources (33 CFR 332.8(d)(4)).

FEDERAL EVALUATION OF PROPOSAL: The Corps of Engineers is soliciting comments from the public; Federal, state, and other interested parties in order to consider and evaluate this proposed mitigation bank. Any comments received will be considered by the Corps in evaluating this proposal. Comments are used to assess impacts on endangered species, historic properties, conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (in accordance with Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

Written comments pertinent to the proposed work, as outlined above, will be received in this office, Attention: Crystal Amschler, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801, until 5:00 p.m., November 4, 2015.

**AMENDMENT ONE TO THE AGREEMENT TO ESTABLISH  
THE CITY OF CHARLOTTE  
UMBRELLA STREAM AND WETLAND MITIGATION BANK  
IN MECKLENBURG COUNTY, NORTH CAROLINA**

This Amendment to the Agreement to establish a Mitigation Bank (hereinafter called the “Mitigation Banking Instrument” or “MBI”, is made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Charlotte (“Sponsor”), and the U. S. Army Corps of Engineers (“USACE”), the Environmental Protection Agency (“USEPA”), the U.S. Fish and Wildlife Service (“USFWS”), the North Carolina Wildlife Resources Commission (“NCWRC”), and the North Carolina Division of Water Resources (“NCDWR”). The USACE, together with the State and Federal agencies that execute this MBI, are hereinafter collectively referred to as the Interagency Review Team or “IRT.”

WHEREAS this Amendment modifies the previous MBI, which was executed on July 16, 2004; and

WHEREAS the purpose of this Agreement is to establish an Umbrella Mitigation Bank (Umbrella Bank) providing compensatory mitigation for unavoidable stream and wetland impacts separately authorized by Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act permits in appropriate circumstances; and

WHEREAS the Sponsor retains legal rights to establish and/or maintain stream and wetland mitigation banks including warm water stream and non-tidal emergent, scrub-shrub, and forested wetland communities (“Bank Sites”). This MBI provides that Bank Sites shall become a part of the Umbrella Bank upon written approval of the Site Specific Mitigation Plan for such site by the IRT, acting through the USACE; and

WHEREAS the Sponsor will be the record owner of conservation easements of certain parcels of land described in the Mitigation Plan and MBI Modifications; and

WHEREAS the agencies comprising the IRT agree that the Umbrella Bank and its general provisions are suitable for future inclusion of mitigation bank sites, and that implementation of Site Specific Mitigation Plans is likely to result in net gains in stream and wetland functions at the Bank Sites, and have therefore approved the use of this MBI; and

THEREFORE, it is mutually agreed among the parties to this Agreement that the following provisions are adopted and will be implemented upon signature of this MBI.

**General Provisions**

1. The goal of the Umbrella Bank is to restore, enhance, create and/or preserve non-tidal stream and wetland systems and their functions and values to compensate in appropriate circumstances for unavoidable stream and wetland impacts authorized by Section 404 of the

Clean Water Act and Section 10 of the Rivers and Harbors Act permits in circumstances deemed appropriate by the USACE after consultation, through any applicable permit review process, with members of the IRT.

2. Use of credits from the Umbrella Bank to offset stream or wetland impacts authorized by Clean Water Act permits must be in compliance with the Clean Water Act and implementing regulations, including but not limited to the 404(b)(1) Guidelines; the National Environmental Policy Act and all other applicable Federal and State legislation, rules and regulations. This agreement has been drafted following the guidelines set forth in "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule," 33 C.F.R. Parts 325 and 332, April 10, 2008 ("Rule").

3. The IRT shall be chaired by the representative of the USACE, Wilmington District. The IRT shall review Site Specific Mitigation Plans, and monitoring and accounting reports as described below. In addition, the IRT will review proposals for remedial actions proposed by the Sponsor, or any of the agencies represented on the IRT. The IRT's role and responsibilities are more fully set forth in Section 332.8(b) of the Rule. The IRT will work to reach consensus on its actions.

4. The USACE, after consultation with the appropriate Federal and State review agencies through the applicable permit review process, shall make final decisions concerning the amount and type of compensatory mitigation to be required for unavoidable, permitted wetland or stream impacts, and whether or not the use of credits from the Umbrella Bank is appropriate to offset those impacts. In the case of permit applications and compensatory mitigation required solely under the Section 401 Water Quality Certification rules of North Carolina, the N.C. Division of Water Resources (NCDWR) will determine the amount of credits that can be withdrawn from the Umbrella Bank.

### **Mitigation Plan**

5. The Sponsor agrees to perform all necessary work, in accordance with the provisions of the Mitigation Banking Instrument and approved Site Specific Mitigation Plans, to establish and/or maintain the Bank Sites, until (i) credits have been exhausted or banking activity is voluntarily terminated with written notice by the Bank Sponsor provided to the USACE and other members of the IRT, in compliance with Paragraph 7, below and (ii) it has been determined that the debited Bank has satisfied all the conditions herein and in the Site Specific Mitigation Plans.

6. Site Specific Mitigation Plans shall be submitted to the IRT for review and written approval for each stream and/or wetland Bank Site proposed as part of the Umbrella Bank. A Preliminary Site Specific Mitigation Plan may be submitted for review and comment by the IRT following a feasibility study or at the 30% design milestone at the discretion of the Sponsor. Site Specific Mitigation Plan approval shall follow the Streamlined Review Process in 332.8(g)(2) of the Rule. The Site Specific Mitigation Plan shall include a discussion of the goals and objectives of the site, site selection information, site protection instrument, baseline information, determination of credits, mitigation work plan, maintenance plan, performance standards, monitoring requirements, long-term management plan, adaptive management plan, financial assurances and other relevant information.

7. In the event the Site Specific Mitigation Plan is not approved, the IRT shall provide the Sponsor with specific reasons or rationale for not approving the site. Subsequently, the Sponsor may resubmit the Site Specific Mitigation Plan with specific modification or justification that addresses the IRT concerns. In the event of approval, in the form of a letter from the USACE, acting on behalf of the IRT, the Bank Site shall be deemed a portion of the Bank and credits shall be released consistent with the schedule of credit availability in the Site Specific Mitigation Plan. Due to fluctuations in credit demand, certain sites may be left undeveloped or withdrawal of the site from the Bank may be permissible without penalty if no pre-sale or other credits have been debited from the site. The Sponsors must provide written notice to the IRT proposing to withdraw from the Umbrella Bank either entire Bank Sites, or approved phases of Bank Sites, from which credits have not been debited and where the removal of such phases does not detract or have any adverse effect on the existing or remaining phases. Withdrawal of a Bank Site or a portion of a Bank Site may be permissible, even if pre-sale or other credits have been debited from the site, if an unavoidable impact, loss or failure occurs to a Bank Site or a portion of the Bank Site (Paragraph 35). In the case of such a withdrawal, the Sponsor shall be required to offset all credits pre-sold or debited from the portion of the Bank Site proposed for withdrawal using credits from the Umbrella Bank, purchasing credits from a mitigation bank, purchasing credits from an in-lieu fee program or establishing a new site to mitigate for the loss. All withdrawals must be approved by the IRT. Regardless of any termination, the sponsor remains responsible for any work, including construction, monitoring, and remedial action (if necessary) on those remaining phases or portions where debits have occurred.

8. The sponsor agrees to perform all necessary work to monitor the Bank Sites and to demonstrate compliance with the Performance Standards established in the Site Specific Mitigation Plans. Members of the IRT may conduct, at their own expense and in coordination with other Federal and State resource agencies, field investigations to determine the functions and values of the Bank Sites. The IRT's best professional judgment shall be used to determine wetland, stream, upland, and habitat functions, and values. Any written reports resulting from such investigations will be promptly provided to the Sponsor and its designated agents.

9. The Sponsor shall monitor Bank Sites as described in the Site Specific Mitigation Plans, until such time as the IRT determines that the performance criteria described in the Mitigation Plans have been met.

10. The Sponsor is responsible for assuring the success of the restoration, creation, enhancement and preservation activities at the Bank Sites, and for the overall operation and management of the Umbrella Bank.

11. The Sponsor shall submit to each member of the IRT, annual monitoring reports describing the condition of Bank Sites and relating the conditions of the Bank Sites to the Site Specific Mitigation Plan Performance Standards. The Sponsor shall provide to each member of the IRT the reports described in each Site Specific Mitigation Plan as well as an accounting of each Bank Site. The Bank Ledger shall track all credits and debits from each project independently.

12. The USACE shall review said reports according to the process outlined in 332.8(o)(9) of the Rule, and may, at any time, after consultation with the Sponsor and the IRT, direct the Sponsor to take remedial action at the Bank Sites. Remedial action required by the USACE shall be designed to achieve the performance criteria specified above. All remedial actions required under this paragraph shall include a work schedule and monitoring criteria that will take into account physical and climatic conditions.

13. The Sponsor shall implement any remedial measures required pursuant to the above.

14. Should the Sponsor determine remedial action is required to achieve performance criteria, the Sponsor shall provide notice and obtain approval of such proposed remedial action with the USACE in consultation with the IRT. It should also be noted, that any proposed remedial action undertaken by the Sponsor could result in a reduction of credits.

15. The members of the IRT will be allowed reasonable access to the Bank Sites for the purposes of inspection of the Bank Sites and compliance monitoring of the Site Specific Mitigation Plans.

#### **Use of Mitigation Credits**

16. The Geographical Service Area (GSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to streams and/or wetlands or other aquatic resources. The GSA for this Umbrella Bank shall include lands containing warm water streams and non-tidal wetlands in the Santee and Pee Dee watersheds (Hydrologic Unit Codes (HUCs) 03050103, 03050101, and 03040105) in North Carolina. Use of a Bank site to compensate for impacts beyond the GSA may be considered by the Corps or the permitting agency on a case-by-case basis. This agreement does not preclude the sponsor from adhering to other applicable State mitigation banking laws.

17. Site Specific Mitigation Plans are intended to result in specific forms, amounts and types, in acres (wetlands) or linear feet (streams) of compensatory mitigation. Each Site Specific Mitigation Plan will detail the anticipated mitigation credits categorized by form and type anticipated to be generated at the site.

18. It is anticipated by the parties to this agreement that use of mitigation credits shall be “in-kind;” that is, that non-tidal wetland credits will be used to offset non-tidal wetland impacts and warm water stream impacts will be used to offset warm water stream impacts. Out-of-kind mitigation may be allowable with approval by the IRT on a case-by-case basis, unless a programmatic approach is approved by the IRT.

19. It is anticipated by the parties that in most cases in which the USACE, after consultation with the IRT, has determined that mitigation credits from the Umbrella Bank may be used to offset stream and wetland impacts authorized by Section 404/Section 10 permits, compensation ratios shall generally follow the guidelines provided in the North Carolina Stream Mitigation Guidelines (April 2003) or Wilmington District’s most current guidance available and posted on

the USACE Wilmington District's website or the Regional In-Lieu Fee and Bank Information Tracking System (RIBITS) and detailed in the Site Specific Mitigation Plan. Deviations from this may be authorized by the USACE on a case-by-case basis.

20. Notwithstanding the above, all decisions concerning the appropriateness of using credits from the Umbrella Bank to offset impacts to waters, streams and wetlands, as well as all decisions concerning the amount and type of such credits to be used to offset water, stream, and wetland impacts authorized by Department of the Army permits, shall be made by the USACE, pursuant to Section 404 of the Clean Water Act and implementing regulations and guidance, after notice of any proposed use of the Umbrella Bank (or Bank site) to the members of the IRT, and consultation with the members of the IRT concerning such use. Notice to and consultation with the members of the IRT shall be through the applicable permit review process.

21. As general guidance for the Umbrella Bank, the first release of credits from each Bank Site shall be available for sale immediately upon completion of all of the following:

- a. The MBI and Site Specific Mitigation Plan have been approved;
- b. The mitigation Bank Site has been secured;
- c. Appropriate financial assurances have been established; and
- d. Any other requirements determined to be necessary by the District Engineer, as specified in the Site Specific Mitigation plan for each site, have been fulfilled.
- e. Issuance of any DA permit required for construction of the mitigation site.

22. Additionally, implementation of the approved mitigation plan shall be initiated no later than the first full growing season after the date of the first credit transaction. For preservation only sites, 100% of the preservation credits shall be available immediately upon satisfaction of 25 (a), (b), (c), (d), and (e) above.

23. Subject to the Sponsor's continued satisfactory completion of all required Performance Standards and monitoring, additional restoration mitigation credits for each Bank site will be available for sale by or withdrawal by the Sponsor as detailed in the Site Specific Mitigation Plan.

24. The credit release schedules apply only to the extent the Sponsor documents acceptable survival and growth of planted vegetation and attainment of acceptable stream/wetland hydrology as described under the Performance Standards in the monitoring section of the mitigation plan.

25. Additionally, it is anticipated that Site Specific Mitigation Plans may contain alternative release conditions for specific Bank Sites. The alternatives will be made only upon mutual agreement by the IRT and Sponsor.

26. The Sponsor has developed the Permit and Mitigation Information Tracking System (PerMITS), an accounting system that is acceptable to the IRT for maintaining accurate records of debits made from the Umbrella Bank. This system allows the generation of a report by the Sponsor showing credits released and credits used at the time they are debited from the Umbrella Bank, total credits used, total balance of credits remaining as well as specific information about each mitigation project. The Bank Ledger within PerMITS shall identify credit releases, credits debited and remaining by type of credit and shall include for each reported debit the date of each transaction, name of Permittee and USACE Action ID number for the permit for which the credits were utilized. PerMITS will be available to the IRT and the general public via the World Wide Web until such time as all of the credits have been utilized, or this agreement is otherwise terminated. In addition, the Sponsor shall prepare an annual credit ledger report to be submitted to each member of the IRT, due August 31 of each calendar year, summarizing bank activity for the prior fiscal year (July 1-June 30), until such time as all of the credits have been utilized, or this agreement is otherwise terminated.

### **Property Disposition**

27. The Sponsor shall preserve all Bank Lands with a preservation mechanism in a form acceptable to the USACE, sufficient to protect the Bank Sites in perpetuity. The preservation mechanism shall be perpetual, preserve all natural areas, and prohibit all use of the property inconsistent with its use as mitigation property, including any activity that would materially alter the biological integrity or functional and educational value of streams and wetlands within the Bank Site, consistent with the Site Specific Mitigation Plan. The purpose of the preservation mechanism will be to assure that future use of the Bank Sites will result in the restoration, protection, maintenance, and enhancement of stream and wetland functions described in the Site Specific Mitigation Plan. The Sponsor shall deliver a title opinion acceptable to the USACE covering the mitigation property. The property shall be free and clear of any encumbrances that would conflict with its use as mitigation, including, but not limited to, any liens that have priority over the recorded preservation mechanism. The Sponsor shall maintain and preserve the Bank Sites consistent with the goals of the Umbrella Bank, and shall take all actions necessary to enforce the terms, conditions, and restrictions of the conservation easement. The Sponsor reserves the right to rescind any and all easements in accordance with Paragraph 7. The Sponsor must provide a 60-day advance notification to the district engineer before any action is taken to void or modify easements.

### **Financial Assurances**

28. The Sponsor is committed to the requirements found in this instrument and to the implementation, monitoring, maintenance and long-term stewardship of its mitigation projects. Revenues from sales of mitigation credits will assure the implementation, monitoring and maintenance of all Bank Sites through the required monitoring period. In the event that sales from the Bank Sites do not cover cost, allocations from the Sponsor's Storm Water Enterprise Fund will cover cost. Any cost covered by the Enterprise fund will be reimbursed upon bank credit sales. The City Manager of the City of Charlotte has stated his commitment to the success of future Bank Sites in a letter, dated \_\_\_\_\_, which is attached as Appendix A to this instrument. The financial assurances outlined in this letter ensure that the City (Sponsor) will



meet all of its compensatory mitigation project obligations, including land acquisition, project planning and design, construction, legal fees, monitoring, remediation or adaptive management activities, administrative costs, long-term management, and contingency costs.

29. The parties to this Agreement understand that the City of Charlotte is a municipal corporation of the State of North Carolina subject to the Local Government Budget and Fiscal Control Act, N.C.G.S. 159-28. The Fiscal Control Act provides additional financial assurances to ensure completion of all remaining mitigation work, required reporting and monitoring, any remedial work and long-term stewardship required pursuant to this MBI.

30. The Umbrella Bank has its own distinct cost center number within the City's budgeting and financial tracking system. Therefore all accounting for revenues, contract encumbrances, fund transfers, and expenses, will be performed and reported independent from all other Storm Water Division capital budget or operating budget accounting. A distinct revenue account will be used to account for only stream and wetland restoration dedicated revenues and fund transfers.

31. The cost per unit of credit will include the expected costs associated with the restoration, establishment, enhancement, and/or preservation of aquatic resources in the service area. These costs will be based on full cost accounting, and include, as appropriate, expenses such as land acquisition, project planning and design, construction, legal fees, monitoring, remediation or adaptive management activities, administrative costs, long-term management, and contingency costs.

32. Full cost accounting measures will be documented and reported concurrently with the annual credit ledger report (Paragraph 26) and will be submitted to each member of the IRT and due August 31 of each calendar year. The full cost accounting annual report will describe Bank expenditures for the prior fiscal year (July 1-June 30). Bank expenditures include, but are not limited to, the following costs: land acquisition, planning and design, construction, legal fees, monitoring, remediation or adaptive management activities, administrative costs, long-term management, and contingency costs. In addition to the full cost accounting reporting requirements, The City of Charlotte is subject to and fully complies with the requirements of the Freedom of Information Act and the North Carolina Public Records Law (N.C.G.S. 132).

### **Long-term Stewardship**

33. The Sponsor agrees that its projects will be designed to be self-sustaining to the maximum extent practicable. The Sponsor shall be responsible for maintaining its projects, consistent with the mitigation plan, to ensure their long term viability as functional aquatic resources. These activities will be funded through sales of mitigation credits. Should credits sales not generate enough money to cover the Long-term Stewardship obligations, allocations from the Sponsor's Storm Water Enterprise Fund will be utilized to cover cost (Paragraph 28). The Sponsor is committed to the success of future bank sites as stated in the financial assurance section of this document.

## Miscellaneous

34. Any member of the IRT may terminate its participation in all activities related to this bank with notice in writing to all other parties to this agreement. Termination shall be effective seven (7) days from placing said notices in the United States mail. Member withdrawal shall not affect any prior sale of credits and all remaining parties shall continue to implement and enforce the terms of this MBI. Except for termination as described above, this agreement may be modified only with the written agreement of all remaining parties to this agreement at the time of the modification.

35. Any delay or failure of Sponsor 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 Sponsor's reasonable control and significantly adversely affects its ability to perform its obligations hereunder including: (i) acts of God, lightning, earthquake, fire, landslide, drought, hurricane, storm, flood, or interference by third parties; (ii) condemnation or other taking by any governmental body; (iii) change in applicable law, regulation, rule, ordinance or permit condition, or the interpretation or enforcement thereof; (iv) any order, judgment, action or determination of any federal, state or local court, administrative agency or government body; or (v) the suspension or interruption of any permit, license, consent, authorization or approval. If the performance of the Sponsor is affected by any such event, Sponsor shall give written notice thereof to the IRT as soon as is reasonably practicable. If such event occurs before the final availability of all credits for sale, the Sponsor shall take remedial action to restore the property to its condition prior to such event, in a manner sufficient to provide adequate mitigation to cover credits that were sold prior to such delay or failure to compensate for impacts to waters, including wetlands, authorized by Department of the Army permits. Such remedial action shall be taken by the Sponsor only to the extent necessary and appropriate, as determined by the IRT. In the event that remedial action cannot be performed due to the nature of the delay or failure, the Sponsor shall have the option to withdraw a Bank Site or a portion of a Bank Site in accordance with Paragraph 7.

36. No third party shall be deemed a beneficiary hereof and no one except the signatories hereof, their successors and assigns, shall be entitled to seek enforcement hereof.

37. This MBI constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

38. In the event any one or more of the provisions contained in this MBI 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 MBI shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

39. This MBI shall be governed by and construed in accordance with the laws of North Carolina and the United States as appropriate.

40. This MBI 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.

41. The terms and conditions of this MBI shall be binding upon, and inure to the benefit of the parties hereto and their respective successors.

42. All notices and required reports shall be provided to each of the parties at their respective addresses, provided below. Notices and required reports may be sent to individual parties by electronic mail or facsimile with prior approval by the receiving party.

43. USACE approval of this instrument constitutes the regulatory approval required for the Umbrella Bank to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This instrument is not a contract between the Sponsor or Property Owner and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

**Sponsor:**

City of Charlotte  
c/o Mr. Isaac Hinson, Charlotte-Mecklenburg Storm Water Services  
600 East Fourth Street  
Charlotte, North Carolina 28202-2844

**USACE:**

Ms. Crystal Amschler  
U.S. Army USACE of Engineers, Regulatory Division  
Asheville Regulatory Field Office  
151 Patton Avenue, Room 208  
Asheville, NC 28801-5006

**USEPA:**

Mr. Todd Bowers  
US EPA Region 4  
Wetlands Regulatory Section  
61 Forsyth Street  
Atlanta, GA 30303

**USFWS:**

Mr. Bryan Tompkins  
U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement  
160 Zillicoa Street, Suite C  
Asheville, NC 28801-1082

**NCDWR:**

Mr. Alan Johnson  
NCDENR, Division of Water Resources, 401/ Wetlands Unit  
610 East Center Drive  
 Mooresville, NC 28115

**NCWRC:**

Ms. Shari Bryant  
NC Wildlife Resources Commission  
PO Box 129  
Sedalia, NC 27342

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled  
“Amendment One To The Agreement To Establish The City of Charlotte Umbrella Stream  
and Wetland Mitigation Bank In Mecklenburg County, North Carolina”:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Sponsor:** Ron Carlee, City Manager, City of Charlotte

By: \_\_\_\_\_ Date: \_\_\_\_\_

**U.S. Army Corps of Engineers:**

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled  
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and Wetland Mitigation Bank In Mecklenburg County, North Carolina”:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**U.S. Environmental Protection Agency:**

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled  
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and Wetland Mitigation Bank In Mecklenburg County, North Carolina”:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**U.S. Fish and Wildlife Service:**

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“Amendment One To The Agreement To Establish The City of Charlotte Umbrella Stream  
and Wetland Mitigation Bank In Mecklenburg County, North Carolina”:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**N.C. Division of Water Resources:**



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and Wetland Mitigation Bank In Mecklenburg County, North Carolina”:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**N.C. Wildlife Resources Commission:**