

## Specifications

### Purchase of Wetland Compensatory Mitigation Credits

#### **A. Scope.**

The purpose of this document is to establish **one** five (5) year Agency Term Contract per primary service area to provide Wetland Compensatory Mitigation Credits to the Tennessee Department of Transportation.

#### **1. Definitions shall be as follows or as designated and defined in the terms and conditions of the Contract:**

- a. HUC 8: a hydrologic unit code (HUC) is assigned to a geographic region associated with specific bodies of water. The United States is divided and sub-divided into successively smaller hydrologic units which are classified into different levels: Regions (HUC 2), Subregions (HUC 4), Basins (HUC 6), Subbasins (HUC 8), Watersheds (HUC 10), and Subwatersheds (HUC 12). The HUC 8 refers to the geographic area that contains a specific Subbasin.
- b. Inter-agency Review Team (IRT): a committee of state and federal agency members that review, evaluate, negotiate, and approve Mitigation Banking Instruments.
- c. Mitigation Bank ("Bank"): a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or preserved for the purpose of providing Stream and Wetland Mitigation Credits for impacts to aquatic resources permitted under Section 404 and 401 of the Clean Water Act. A Mitigation Bank may be created when a government agency, corporation, nonprofit organization, or other entity undertakes these activities under a formal agreement with the United States Army Corps of Engineers and other applicable environmental regulatory agencies.
- d. Mitigation Banking Instrument (MBI): the agreement between the Mitigation Bank owners and the regulators that establishes the terms of the Mitigation Bank approval, monitoring requirements, and legal obligations.
- e. Primary Service Area: the geographic area (e.g., watershed, county) wherein a Mitigation Bank is authorized to provide compensation for impacts to aquatic resources. The Primary Service Area is designated in the MBI; in Tennessee, the Primary Service Area is typically the HUC 8 watershed where the Mitigation Bank is located.
- f. Released Credits: Stream and Wetland Mitigation Credits that have received regulatory approval from the United States Army Corps of Engineers (USACE) and the Tennessee Department of Environment and Conservation (TDEC) to be sold by Mitigation Banks to third parties. Credits are not authorized to be transferred to third parties until the credits are Released.

g. Secondary Service Area: the geographic area (e.g., watershed, county) wherein a Mitigation Bank is authorized to provide compensation for impacts to aquatic resources but is outside the Primary Service Area. The Secondary Service Area is designated in the MBI; in Tennessee, the Secondary Service Area is often a HUC 8 watershed, or group of HUC 8 watersheds, adjoining the Primary Service Area.

h. Stream and Wetland Mitigation Credits: A "Credit" is a unit of currency associated with tracking measurable impacts to streams and wetlands. USACE and TDEC, through rulemaking, policy, and guidance, determine how the units of credit are measured and calculated. Credits are generated by Mitigation Banks. TDOT is required to purchase Stream and Wetland Mitigation Credits as a condition to receive environmental permits issued by the USACE and TDEC.

2. The Vendor shall establish a Mitigation Bank to sell Wetland Mitigation Credits. The Vendor shall sell Credits produced by the Bank to the State to be used to offset current and future transportation projects. TDOT will use Credits purchased from the Mitigation Bank to obtain environmental permits necessary for the construction of transportation projects.
3. The Vendor shall be expected to own, operate, and manage all aspects of the Mitigation Bank, and sell credits to the State once they have been Released by the United States Army Corps of Engineers ("USACE") and the Tennessee Department of Environment and Conservation ("TDEC"). The Vendor will be expected to provide quarterly updates to TDOT Environmental staff regarding progress on the Mitigation Bank.
4. The credit target per service area is 25 credits. The first credit release from the bank should be available for purchase on or before December 31, 2025. The State intends to buy at least 5 credits on or before December 31, 2025, with an option to purchase up to 25 credits at this time. For subsequent credit releases, the State intends to purchase credits until the credit target is met.
5. Absolutely no funds shall be requested by or paid to Vendor prior to the State's receipt of a signed credit release. Proof of credit release shall be signed and dated by the IRT, a copy of which shall be submitted to TDOT Environmental staff.
6. If the Vendor determines that it will not proceed with the establishment of the Mitigation Bank, the Vendor may make a written request to terminate the contract, which will result in the State canceling the contract for convenience. If at any time the State determines the Vendor is not progressing towards a credit release or bank approval, the State may terminate the contract for convenience. Following any such termination, neither Party shall have any further obligation or liability to the other Party under the Contract.
7. The State's intent is to purchase mitigation credits from the lowest bidder. The State will only pay for the number of Released Credits that meet the State's mitigation needs. The

determination of the State’s mitigation needs shall be in the sole opinion of the State. The State reserves the right to make no award as is determined to be most advantageous to the State.

8. The Vendor’s Mitigation Bank shall be located in one of the HUC 8 watersheds listed in Table 1. Vendors whose banks have not yet been approved shall utilize the Required Secondary Service Areas listed in Table 1. Vendors with pending or approved banks with any of the Primary Service Areas identified in Table 1 are welcome to submit bids regardless of Secondary Service Areas. Banks shall be considered pending if they have submitted a Prospectus to the Tennessee IRT.

Table 1. Primary service areas and required secondary service areas for wetland credits.

<b>Primary Service Area</b>	<b>Required Secondary Service Area</b>
Emory (06010208)	N/A
Holston (06010104)	Lower French Broad (06010107)
Hiwassee (06020002) or Little Tennessee (06010204)	Hiwassee (06020002) or Little Tennessee (06010204)
Upper Duck River (06040002) or Lower Duck River (06040003)	Upper Duck River (06040002) or Lower Duck River (06040003)
Lake Barkley (05130205)	N/A
Stones River (05130203) or Harpeth (05130204)	Stones River (05130203) or Harpeth (05130204)
Bank shall cover Red River (05130206) and Old Hickory Lake (05130201) as primary and/or secondary service areas	