

**MBI MODEL PERFORMANCE BOND**

<b>DATE BOND EXECUTED (Must be same or later than date of MBI)</b>
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<b>PRINCIPAL</b> (Legal name and business address)
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<b>Surety(ies)</b> (Legal name(s) and business address(es))
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<b>TYPE OF ORGANIZATION ("X"ONE)</b>
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<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation
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<b>PENAL SUM OF BOND</b>			
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<b>Million(s)</b>	<b>Thousand(s)</b>	<b>Hundred(s)</b>	<b>Cent(s)</b>
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<b>STATE OF INCORPORATION</b>
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<b>Mitigation Banking Instrument Name and Date</b>
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**OBLIGATION:**

The Principal and Surety(ies) are firmly bound to the United States Army Corps of Engineers (hereinafter called the Corps) in the above penal sum. For the payment of the penal sum, the Principal and Surety(ies) bind themselves, their heirs, executors, administrators, assigns, and successors, jointly and severally. For purposes of a civil action(s) by the Corps to enforce this bond, the Surety(ies) acknowledge that the action(s) may be brought against each or any of them in any court of competent jurisdiction, regardless of the joinder of any other sureties. Each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety below and, if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum of this bond.

**CONDITIONS:**

The Principal executed the Mitigation Banking Instrument identified above.

**THEREFORE:**

The above obligation is void if the Principal –

- (a) Specifically performs and fulfills the requirements of the Mitigation Banking Instrument and the Mitigation Bank Plan attached thereto, and
- (b) Also specifically performs and fulfills all of the requirements of any and all duly authorized modifications of the Mitigation Banking Instrument or the Mitigation Bank Plan attached thereto. The Surety(ies) waive(s) notice of those modifications.

**IT IS FURTHER EXPRESSLY PROVIDED THAT:**

The Corps shall have the full and final authority to determine whether the Principal and Surety(ies) have specifically performed and fulfilled some or all of the compensatory mitigation requirements stated in paragraphs (a) and (b) above.

Within thirty (30) calendar days of receiving notice from the Corps that the Principal has defaulted on some or all of the compensatory mitigation requirements stated in paragraphs (a) and (b) above, the Surety(ies) shall either -

- (1) Remedy the default of the Principal to the full satisfaction of the Corps, or -
- (2) Make a written commitment to the Corps to remedy the default of the Principal to the full satisfaction of the Corps by a date determined by the Corps, or -
- (3) Make a written commitment to the Corps to tender to a party or parties identified by the Corps the portion of the penal sum that the Corps determines is due and owing and necessary to remedy the default (in no circumstance shall such a sum be tendered directly to the Corps), by a date determined by the Corps.

In the event that the Surety(ies) fail(s) to respond within thirty (30) calendar days to the Corps' notice of default by electing one of the above options, or to timely implement all commitments made under options (2) or (3) to the full satisfaction of the Corps, the Surety(ies) shall, at the election of the Corps, immediately tender the full penal sum of the bond (or such portion determined by the Corps) to a party or parties identified by the Corps. In no circumstance shall any portion of the penal sum be tendered directly to the Corps.

In the event of any judicial action by the United States to enforce any requirement of the Mitigation Banking Instrument or the Mitigation Bank Plan attached thereto, the Surety(ies) shall: (i) implement any mitigation, remediation or other remedy ordered by the court, or (ii) pay the full penal sum of the bond, or such portion as the court may direct, to a party or parties specified by the court in an appropriate order. Nothing in this paragraph shall limit the ability of the United States to bring legal action against the Surety(ies) to this bond in the event of a default by any of them.

EXECUTED BY:

The Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

<b>PRINCIPAL</b>		
Signature 1	Signature 2	Corporate Seal
Name, title 1 (typed)	Name, title 2 (typed)	
<b>CORPORATE SURETY(IES)</b>		
<b>Surety A</b>		
Legal Name & address	State of Incorporation	Liability limit
Signature	Name, title (typed)	
	(Seal)	
<b>Surety B</b>		
Legal Name & address	State of Incorporation	Liability limit
Signature	Name, title (typed)	
	(Seal)	
<b>Surety C</b>		
Legal Name & address	State of Incorporation	Liability limit
Signature	Name, title (typed)	
	(Seal)	

**INSTRUCTIONS**

1. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. The Principal must insure that the person executing the bond on its behalf is authorized to bind the Principal and shall, on request, provide documentation satisfactory to the Corps demonstrating that authority.

act within the limitations listed therein. The name, address, and signature of each surety shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." Where more than one surety is involved, in the space designated "SURETY(IES)" on face of the form, insert only the identification letters of the sureties.

2. Only corporate sureties are allowed to execute this performance bond. Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must

3. Corporations executing the bond shall affix their corporate seals and provide a power of attorney or other documentation satisfactory to the Corps demonstrating that the agent executing the bond on behalf of the Surety is authorized to bind the Surety.