

Compensatory Mitigation Performance Bond

Date Executed: _____

Bond No. _____

Penal Sum: \$ _____

Obligee: Baltimore District,
United States Army Corps of Engineers
2 Hopkins Plaza
Baltimore, MD 21201

Principal: (Legal name and business address)

Penal Sum of Bond: (amount determined solely by Obligee)

Type of Organization: (Individual, Joint Venture, Partnership, Corporation, or Limited Liability Company)

Permit
Date:

State of Incorporation:

Surety(ies): (Legal name(s) and business address(es))

Permit No.:

Obligation:

We, the Principal and Surety(ies) hereto, are firmly bound as Obligors to the U.S Army Corps of Engineers (the "Obligee") in the above penal sum. For the payment of the penal sum, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown below the name of the Surety. The limit of liability shall be the full amount of the penal sum.

CONDITIONS:

The Principal received the above-referenced Permit, dated the day of _____, 20___, from the U.S. Army Corps of Engineers, Baltimore District. The Permit includes the approved Mitigation Site Plan for [Site Name](the "Mitigation Site") to ensure that aquatic resources will be restored or established on the Mitigation Site. The Permit, including the Mitigation Plan are incorporated by reference and made a part hereof as if fully set forth herein. The Permit requires the Principal to post this performance bond to ensure full compliance with all terms and conditions of the Permit.

THEREFORE:

The above obligation is void if the Principal –

(a) Specifically performs and fulfills all of the obligations, covenants, terms, conditions and agreements of the Permit during the original term of the Permit and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety(ies), and during the life of any guaranty required under the Permit, and –

(b) Also specifically performs and fulfills all of the obligations, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the Permit that may hereafter be made. Notice of those modifications to the Surety(ies) are waived.

IT IS FURTHER EXPRESSLY PROVIDED THAT:

The Obligee 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 obligations, covenants, terms, conditions and agreements of the Permit.

In accordance with regulation at 33 C.F.R. § 332.3(n)(5), the Surety(ies) shall provide the Obligee notification at least 120 days in advance of termination, revocation, or modification of this bond.

Within thirty (30) business days of receiving notice from the Obligee that the Principal has defaulted on some or all of the obligations, covenants, terms, conditions and agreements of the Permit, the Surety(ies) shall either –

(a) Remedy the default of the Principal to the full satisfaction of the Obligee by a certain date determined by the Obligee, or -

(b) Immediately tender to a party or parties identified by the Obligee (or to a standby trust agreement consistent with 33 C.F.R. § 332.3(n)(6)) the portion of the penal sum that the Obligee determines is due and owing and necessary to remedy the default. In no circumstance shall such a sum be tendered to the Obligee. Any new party or parties identified by the Obligee under this section shall immediately become a Surety or Sureties to this bond. If the Obligee determines that it is unable to identify such a party or parties, the Surety(ies) shall remedy the default of the Principal under (a) of this section.

In the event that the Surety(ies) fail(s) to notify Obligee at least 120 days in advance of any termination or revocation, fail(s) to respond within thirty (30) business days to the Obligee's notice of default, or fail(s) to honor commitments to the full satisfaction of the Obligee under (a) or (b) above of this section, the full penal sum may, at the election of the Obligee, immediately become due and owing and paid to a party or parties (or to a standby trust agreement) identified by the Obligee. In no circumstance shall the full penal sum be tendered to the Obligee. Any

new party or parties identified by the Obligee under this paragraph shall immediately become a Surety or Sureties to this bond.

WITNESS:

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

PRINCIPAL

Signature 1

Signature 2

Corporate Seal

Name, Title

Name, Title

SURETY

Name & Address

State of Incorporation

Liability Limit

Signature 1

Signature 2

Name, Title

Name, Title

STATE OF
COUNTY OF

I hereby certify that on the _____ day of _____, 20____, before me, the subscriber, a notary public of the State of _____, in and for _____, personally appeared _____ and made oath in due form of law that the matters contained in the above-stated Bond are true to the best of his/her knowledge, information and belief.

As witness, my hand and notarial seal.

Notary Public

My commission expires: _____

STATE OF
COUNTY OF

I hereby certify that on the _____ day of _____, 20____, before me, the subscriber, a notary public of the State of _____, in and for _____, personally appeared _____ and made oath in due form of law that the matters contained in the above-stated Bond are true to the best of his/her knowledge, information and belief.

As witness, my hand and notarial seal.

Notary Public

My commission expires: _____