

## FORM OF LABOUR AND MATERIAL PAYMENT BOND

LABOUR AND MATERIAL PAYMENT BOND No

**KNOW ALL PERSONS BY THESE PRESENTS**, that

as Principal, hereinafter called "**Principal**", and TRISURA GUARANTEE INSURANCE COMPANY

a corporation created and existing under the laws of Canada and duly authorized to transact business of Suretyship in British Columbia as Surety, hereinafter called the "**Surety**", are, subject to the conditions hereinafter contained, held and firmly bound unto

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

or its successors, as Obligee, hereinafter called "**BC Hydro**", in the amount of

Dollars (\$) )

lawful money of Canada, for the payment of which sum, well and truly to be made, Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has entered into a contract with BC Hydro entitled "British Columbia Hydro and Power Authority, Contract No. \_\_\_\_\_" (the "**Contract**") which is hereby made a part hereof.

Words defined in the Contract Documents (as defined in the Contract) and not specifically defined in the Bond, whether capitalized or not, have the same meaning given to them in the Contract Documents unless the context clearly requires otherwise.

**NOW, THEREFORE**, the conditions of this obligation are such that, if payment is promptly made to all Claimants who have performed labour or services or supplied material in connection with the Contract and any and all duly authorized modifications, extensions and adjustments of either or both of (a) an amount required to be paid under the Contract, or (b) a time within which the Work is to be performed under the Contract, that may hereafter be made, notice of which modifications, extensions and adjustments to the Surety being hereby waived, then this obligation shall be void, otherwise it shall remain in force and effect, subject, however, to the following conditions:

- (1) For the purpose of this Bond, a Claimant is defined as one having a direct contract with Principal (a "First Tier Subcontractor") or anyone having a direct contract with the First Tier Subcontractor (a "Second Tier Subcontractor") for labour, material or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include, inter alia, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment (but excluding rental of equipment where the rent pursuant to an agreement is to be applied towards the purchase price thereof) directly applicable to the Contract.

- (2) For the purpose of this Bond, no payment is required to be made in respect of a claim for payment for labour or services performed or material supplied in connection with the Contract that represents a capital expenditure, overhead or general administration costs incurred by Principal during the currency or in respect of the Contract.
- (3) Principal and the Surety hereby jointly and severally agree with BC Hydro that if any Claimant has not been paid as provided for under the terms of his contract with Principal or a First Tier Subcontractor before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's labour or service was done or performed or materials were supplied by such Claimant, the Claimant may sue on this Bond, have the right to prosecute the suit to final judgement for such sum or sums as may be due and have execution thereon. BC Hydro is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of the bond. If any act, action or proceeding is taken either in the name of BC Hydro or by joining BC Hydro as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless BC Hydro against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to BC Hydro by reason thereof; provided that, subject to the foregoing terms and conditions, the Claimants, or any of them, may use the name of BC Hydro to sue on and enforce the provisions of this Bond.
- (4) Any material change in the Contract between Principal and BC Hydro shall not prejudice the rights or interest of any Claimant under this Bond who is not instrumental in bringing about or has not caused such change.
- (5) No suit or action shall be commenced hereunder by any Claimant:
  - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to Principal and the Surety above named, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to Principal and the Surety at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Contract is located. Such notice shall be given
    - (i) in respect of any claim for the amount or any portion thereof required to be held back from the First Tier Subcontractor by Principal or Second Tier Subcontractor by First Tier Subcontractor under either the terms of the First Tier Subcontractor's contract with Principal or the Second Tier Subcontractor's contract with the First Tier Subcontractor within one hundred and twenty (120) days after such Claimant should have been paid in full under this Contract; or
    - (ii) in respect of any claim other than the holdback or portion thereof referred to above within one hundred and twenty (120) days after the date upon which such Claimant did or performed the last of the service,

work or labour or furnished the last of the materials for which such claim is made under the First Tier Subcontractor's contract with Principal or the Second Tier Subcontractor's contract with the First Tier Subcontractor;

- (b) after the expiration of one (1) year following the date on which Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract;
- (c) other than in a court of competent jurisdiction in the province or district of Canada in which the subject matter of the Contract or any part thereof is situated and not elsewhere, and the parties hereto hereby agree to submit to the jurisdiction of such court.

(6) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

(7) The Surety shall not be liable for a greater sum than the amount specified in this Bond.

**IN WITNESS WHEREOF**, Principal and the Surety have hereunto affixed their corporate seals, duly attested by their proper officers or attorney on their behalf this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 By \_\_\_\_\_ )  
 Authorized Signatory \_\_\_\_\_ )

**TRISURA GUARANTEE INSURANCE COMPANY**  
 SURETY: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 By \_\_\_\_\_ )  
 \_\_\_\_\_, Attorney-in-fact \_\_\_\_\_ )

**Labour and Material Payment Bond Requirement**  
**(wording contained in this box does not form part of the Labour and Material Payment Bond)**

The labour and material payment bond should be with a surety licensed to transact the business of a surety in British Columbia, having a minimum credit rating of not less than Standard & Poor's A-, A.M Best B++, Moody's A3 or DBRS A(low). If such credit rating agencies publish differing credit ratings for the same surety, the lowest credit rating of any of the credit rating agencies shall apply for purposes of this section. If the labour and material payment bond is issued by more than one surety on a joint & several basis then the minimum credit rating requirement will be met as long as one

of the joint & several sureties issuing the performance bond meets the minimum credit rating. The surety must meet these minimum credit ratings at all time during the validity period of the labour and material payment bond.