

**LABOUR AND MATERIAL PAYMENT BOND**

Surety Company's Bond No.

Bond Amount \$

KNOW ALL MEN BY THESE PRESENT THAT

of

in the province of

(the "Principal")

AND

**TRISURA GUARANTEE INSURANCE COMPANY**

a corporation created and existing under the laws of Canada and satisfactory to The City Solicitor and allowed by the laws of the Province of Alberta to transact the business of Suretyship in all Provinces and all Territories of Canada as Surety, (hereinafter called "the Surety"), are held and firmly bound unto The City of Calgary, a municipal corporation, as Trustee, (hereinafter called "the Obligee") for the use and benefit of claimants as herein below defined, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), lawful money of Canada to be paid to the Obligee, its successors or assigns, and the said Principal and Surety bind themselves and each of them and their respective successors, heirs, executors, administrators and assigns jointly and severally, to pay the said sum under terms of these presents:

WHEREAS the Principal has entered into a written Contract (hereinafter called "the Contract") with the Obligee, dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, being Contract No. \_\_\_\_\_ and which Contract is by reference made a part hereof;

AND WHEREAS it is a term of the Contract that Labour and Material Payment Bond be provided in favour of the Obligee, as contained herein;

NOW THEREFORE the conditions of this obligation are such that if the Principal shall make payment to all claimants for all labour and material used or reasonably required for use in the performance of the Contract and should payment be properly made, then this obligation shall be null and void; otherwise, this obligation and these conditions will remain in full force and effect, subject to the following conditions:

1. For the purpose of this bond:

- (a) "claimant" means a person, including a body corporate, or a partnership, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law, who has provided labour and material and who has not been paid for the same by the Principal or a subcontractor, in accordance with the Principal's or subcontractor's obligation to do so, provided that a person who rents equipment to the Principal or a subcontractor to be used in performance of the Contract under a contract which provides that all or a part of the rent is to be applied towards the purchase thereof, shall only be a claimant to the extent of the prevailing Obligee rental rates for the period during which the equipment was used in the performance of the Contract.
- (b) "labour and material" means labour, equipment, materials or services used or reasonably required for use in the performance of the Contract.
- (c) "services" means water, gas, electrical power, light, heat, oil, gasoline, steam, telephone, architectural, engineering and technical services, construction camp rental and catering, and other similar services, consumed or incurred, by the Principal or a subcontractor, at the Place of the Work and in the performance of the Work of the Contract.
- (d) "subcontractor" means
  - (i) a person not contracting directly with the Obligee, but contracting with a contractor who holds a contract with the Obligee, for the provision of labour and materials, and
  - (ii) a person contracting with the first person mentioned in subclause (i) for the provision of labour and material.

2. The Surety acknowledges and agrees that Surety means a person who guarantees to the Obligee the payment of creditors.

3. The Principal and the Surety hereby jointly and severally agree with the Obligee, as Trustee, that every claimant who has not been paid as provided for under the terms of his contract with the principal or subcontractor before the expiration of a period of 90 days after the date on which the last of such claimant's work or labour was done or performed or materials were furnished by such a claimant, may, as beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgement for such

sum or sums as may be justly due to such claimant under the terms of his contract with Principal or subcontractor, and have execution thereon; provided that the Obligee is not obliged to do or take any act, action or proceeding against the Surety on behalf of any claimant to enforce the provisions of this Bond. If an act, action or proceeding is taken either in the name of the Obligee or by joining the Obligee as a party to such proceeding, then such act, action or proceeding shall be taken on the understanding and basis that the claimant who takes such act, action or proceeding shall indemnify and save harmless the Obligee against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligee by reason thereof; provided still further that, subject to the foregoing terms and conditions, a claimant may use the name of the Obligee to sue on and enforce the provisions of this Bond.

4. No suit or action shall be commenced pursuant to clause 3 hereof by any claimant unless such claimant shall give notice within the time limits hereinafter set forth, to each of the Principal, Surety and Obligee, stating the amount that is claimed. Such notice shall be served by mailing the same to Principal, Surety and Obligee at the addresses shown in this bond, or served in any manner in which legal process may be served in the Province of Alberta. Such notice shall be given:
  - (a) in respect of any claim for the amount or any portion thereof required to be held back from the claimant by the Principal or subcontractor under the terms of the claimant's contract with the Principal or subcontractor, within 120 days after such claimant should have been paid in full under the claimant's contract with the Principal or subcontractor.
  - (b) in respect of any claim other than for the holdback or portion thereof, referred to above, within 120 days after the date upon which such claimant did or performed the last of the work, or furnished the last materials for which such claim was made under the claimant's contract.
5. Any suit by a claimant under this Bond shall be instituted before the expiration of one (1) year from the date on which the Principal ceased work on the Contract, including work on the Contract, including work under the guarantees and warranties provided in the Contract, and shall be instituted in a court of competent jurisdiction in the Province of Alberta.
6. Upon receipt, at the address shown in this bond, by the Surety, of a notice of claim from a claimant, the Surety shall:
  - (a) immediately commence its investigation of the claim, and
  - (b) within fifteen (15) days, send, in writing, to the claimant and the Obligee, an acknowledgement of the notice of claim and a statement of the procedures to be followed by the claimant in order to attempt to settle the claim.

7. Pursuant to clause 6 hereof and following compliance with the procedures referred to in clause 6 and;
  - (a) providing the claim not being disputed, the Surety or the Principal, or both, shall make payment to the claimant within thirty (30) days after the date of agreement on the quantum of the claim; or
  - (b) in the event the claim is being disputed, the Surety or the Principal, or both, shall, within thirty (30) days, notify, in writing, the claimant and the Obligee of the dispute, setting out the grounds of dispute.
8. Any material change in the Contract between the Principal and the Obligee shall not prejudice the rights or interests of any claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
9. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, by the Surety.
10. Where the aggregate of claims appears to the Obligee to exceed the sum of the bond amount and money due and payable to the Principle, the Obligee and the Surety may agree to suspend payment until all claimants have substantiated their claims.
11. The Surety shall not be liable for a greater sum than the maximum amount specified in this Bond.

NOTICES SHALL BE SENT TO:

The Manager of Supply Management, (Bldg. U, 2<sup>nd</sup> Floor, 677 - 25 Ave SE, Calgary, AB T2G 4K8), City Solicitor, or the Office for Corporate Engineering at 800 Macleod Trail S.E., or if mailed postage prepaid and addressed to : The City of Calgary P.O. Box 2100, Postal Station "M", Calgary, Alberta. T2P 2M5

PRINCIPAL at

SURETY at

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this  
day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED BY:

The Principal:

\_\_\_\_\_  
Name of Person Signing

\_\_\_\_\_  
Signature(Affix Seal)

The Surety: **TRISURA GUARANTEE INSURANCE COMPANY**

\_\_\_\_\_  
Name of Person Signing

\_\_\_\_\_  
Signature(Affix Seal)