



# LABOUR AND MATERIAL PAYMENT BOND

THE MANITOBA WATER SERVICES BOARD  
MWSB 3F

Bond No. \_\_\_\_\_ \$

**Note:** This Bond is issued simultaneously with another Bond in favour of the MWSB conditioned for the full and faithful performance of the Contract.

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_, as principal (hereinafter called the "Principal"), and **TRISURA GAURANTEE INSURANCE COMPANY**, 333 Bay Street, Suite 1610, Toronto, Ontario M5H 2R2, as surety (hereinafter called the "Surety"), are held and firmly bound unto **THE MANITOBA WATER SERVICES BOARD**, as the Trustee (hereinafter called the "MWSB") for the use and benefit of the Claimants (as defined herein), and each of their heirs, executors, administrators, successors and assigns, in the sum of Dollars (\$) \_\_\_\_\_ of lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

WHEREAS the Principal has entered into a written contract with the MWSB, dated the \_\_\_\_\_ day of \_\_\_\_\_ for

- Project No.:**
- Project Name:**
- Project Description:**

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of this obligation is such that, if the Principal shall promptly make payment to all Claimants, for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the Performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial value of equipment shall be determinate, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Manitoba Heavy Construction Association titled "Annual Directory and Equipment Rental Rates Guide" published prior to the period during which the equipment was used in the performance of the Contract;
- (2) The Principal and the Surety, hereby jointly and severally agree with the MWSB, as Trustee, that every Claimant who has not been paid as provided for under the terms of their contract with the Principal before the expiration of a period of ninety (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 Claimant, may as a 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 their contract with the Principal, and have execution thereon. Provided that the MWSB 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 this Bond. If any act, action or proceeding is taken either in the name of the MWSB or by joining the MWSB 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 the MWSB against all costs,

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charges and expenses or liabilities incurred thereon and any loss or damage resulting to the MWSB by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them, may use the name of the MWSB to sue on and enforce the provisions of this bond.

- (3) 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 each of the Principal, the Surety and the MWSB, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the MWSB, 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 of Manitoba. Such notice shall be given:
(i) in respect of any claim for the amount or any portion of thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under The Builders' Liens Act applicable to the Claimant's contract with the Principal, whichever is the greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;
(ii) in respect of any claim other than for 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 work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
(b) after the expiration of one (1) year following the date on which the Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract; and
(c) other than in a court of competent jurisdiction in the Province of Manitoba and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such court.
(4) Any material change in the contract between the Principal and the MWSB 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) 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, inclusive of the payment by Surety of Builders' Liens which may be filed on record against the subject matter of the Contract, whether or not claim for the amount of such lien be presented under and against this bond;
(6) The Surety shall not be liable for a greater sum than the specified penalty of this bond.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this bond on the day of

SIGNED, SEALED AND DELIVERED

in the presence of

Witness

Principal seal

TRISURA GUARANTEE INSURANCE COMPANY

Witness

, Attorney-in-fact seal

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