

**Annex 7.2: Labour and Material Payment Bond
(2004-05-14)**

No. _____
\$ _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____ as Principal, hereinafter called the Principal, and _____ as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto _____ as Oblige, hereinafter called the Crown, in the amount of _____ Dollars (\$ _____), 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, firmly by these presents.

SIGNED AND SEALED this _____ day of _____ 20 _____

WHEREAS, the Principal has entered into a Contract with the Crown, dated the _____ day of _____ 20_____ for _____ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS BOND 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 and extensions of the Contract that may hereafter be made, notice of which modifications and extensions to the Surety being hereby waived, then this obligation shall be void, otherwise it shall remain in full 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 the Principal or any Subcontractor of the Principal for labour, material or both, used or reasonably required for use in the performance of the Contract, labour and material being constituted to include 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 the Principal during the currency of or in respect of the Contract.
3. The Principal and the Surety hereby jointly and severally agree with the Crown that if any Claimant has not been paid as provided for under the terms of its contract with the Principal or a Subcontractor of the Principal 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 Crown 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; and such right of the Crown is assigned by virtue of Part VIII of the *Financial Administration Act* to such Claimant.
4. For the purpose of this Bond, the liability of the Surety and the Principal to make payment to any claimant not having a contract directly with the Principal shall be limited to that amount which the Principal would have been obliged to pay to such claimant had the provisions of the applicable provincial or territorial legislation on lien or privileges been applicable to the work. A claimant need not comply with provisions of such legislation setting out steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which the claimant might have had. Any such claimant shall be entitled to pursue a claim and to recover judgment hereunder subject to the terms and notification provisions of the

Bond.

5. Any material change in the Contract between the Principal and the Crown 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.
6. 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 the 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 the 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 Claimant by the Principal or by the Subcontractor of the Principal under either the terms of the Claimant's Contract with the Principal or the Claimant's Contract with the Subcontractor of the Principal within one hundred and twenty (120) days after such Claimant should have been paid in full under its Contract,
 - (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 service, work or labour or furnished the last of the materials for which such claim is made under the Claimant's Contract with the Principal or a Subcontractor of the Principal;
 - (b) After the expiration of one (1) year following the date on which the Principal ceased work on the said 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.
7. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.
8. The Surety shall not be entitled to claim any moneys relating to the Contract and the liability of the Surety under this Bond shall remain unchanged and, without restricting the generality of the foregoing, the Surety shall pay all valid claims of Claimants under this Bond before any moneys relating to the Contract held by the Crown are paid to the Surety by the Crown.
9. The Surety shall not be liable for a greater sum than the amount specified in this Bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

Principal

Witness

Surety

NOTE: Affix Corporate seal if applicable.