

CONTRACT NO. YRP \_\_\_\_\_

**UNDERTAKING TO BOND**

To: THE REGIONAL MUNICIPALITY OF YORK POLICE SERVICES BOARD (the "Board")

AND TO: \_\_\_\_\_ (the "Contractor")

We, the undersigned, hereby undertake and agree to become bound as Surety for the Contractor in:

- (a) a performance bond totaling 100% of the total price and conforming to the form of performance bond attached hereto as **Schedule 1**; and
- (b) a labour and material payment bond totaling 50% of the total price and conforming to the form of labour and material payment bond attached hereto as **Schedule 2**,

if the bid for the \_\_\_\_\_ - located at \_\_\_\_\_ Rd, \_\_\_\_\_, Ontario is accepted by the Board.

If the above-mentioned bid is accepted, the undersigned will execute the bond within 8 Working Days of notification of acceptance of the bid.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of Surety Company)

\_\_\_\_\_  
Signature of Authorized Person Signing for Surety

(Company Seal)

I have authority to bind the Corporation

**SCHEDULE 1 TO UNDERTAKING TO BOND**  
**FORM OF PERFORMANCE BOND**

BOND NO. \_\_\_\_\_

**KNOW THEREFORE ALL MEN BY THESE PRESENTS** that \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called the "Principal") and \_\_\_\_\_  
\_\_\_\_\_ a corporation created and existing under the  
laws of \_\_\_\_\_ and whose principal office for Canada is located  
in the \_\_\_\_\_ (hereinafter called the "Surety") are held and  
firmly bound unto The Regional Municipality of York Police Services Board (hereinafter called the  
"Obligee") in the amount of \$\_\_\_\_\_ lawful money of Canada, for the  
payment of which sum, well and truly to be made, the Principal and the Surety bind themselves  
and their respective heirs, legal representatives, successors and assigns, jointly and severally,  
firmly by these presents.

WHEREAS the Principal has entered into a contract with the Obligee dated the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_ for Contract No. \_\_\_\_\_ which by reference hereto is  
made a part hereof as fully to all intents and purposes as though recited in full herein and which  
contract as amended, supplemented or modified from time to time is hereinafter called the  
"Contract".

NOW THEREFORE, the condition of the foregoing obligation is such that, if the Principal shall  
well and truly observe and perform all the obligations of the Contract on the part of the Principal  
to be observed and performed, then this obligation shall be void but otherwise shall remain in full  
force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Obligee.

Whenever the Principal shall be, and is declared by the Obligee to be in default under the  
Contract, the Surety shall:

- (a) if the work is not taken out of the Principal's hands, remedy the default of the Principal;
- (b) if the work is taken out of the Principal's hands and the Obligee directs the Surety to  
undertake the completion of the work, complete the work in accordance with the Contract  
provided that if a contract is entered into for the completion of the work:
  - (i) such contract shall be between the Surety and the completing contractor and  
subject to the terms and conditions of this Bond; and
  - (ii) the selection of the completing contractor shall be subject to the approval of the  
Obligee; and
  - (iii) the Surety shall be entitled to the monies representing the balance of the contract  
price in discharging its obligation. The term "balance of the contract price", as  
used in this paragraph, shall mean the total amount payable by the Obligee to  
the Principal under the Contract, less the amount properly paid by the Obligee to  
the Principal.
- (c) Recognize that time is of the absolute essence in rectifying such default and shall, in  
addition to its other obligations hereunder, meet with the Obligee within 48 hours to  
explore methods of completing the work under the Contract. If requested to do so by the  
Obligee, the Surety shall appoint an emergency replacement construction contractor  
satisfactory to the Obligee for the purposes of ensuring services, works, construction  
methods, safeguards, environmental protection and public safety are maintained and,  
further, to ensure to whatever extent possible that the work shall proceed with minimal  
interruption. Such emergency replacement construction contractor shall remain in place  
for a period of 35 days from the date of the Principal's default, which time may be  
extended upon mutual agreement between the Obligee and the Surety, during which time  
a permanent solution under paragraph (a) or (b) shall be implemented. If the Surety fails

to respond in accordance with its obligations under this bond, the Obligees may proceed to make arrangements to complete the Contract and the Surety shall assume financial responsibility for the cost of completion in excess of the balance of the contract price as defined in paragraph (b) (iii) above.

No action shall be instituted by the Obligees herein against the Surety pursuant to these presents after the expiration of two years from the date upon which final payment under the Contract is made.

In no event shall the Surety be liable for a greater sum than the specified penalty of this bond.

The Surety shall be liable as Principal and nothing of any kind or matter whatsoever shall operate as a discharge or release of the liability of the Surety notwithstanding any law or usage relating to the liability of sureties to the contrary, until all obligations of the Contract have been observed and performed.

In witness whereof, the Principal and Surety have hereunto affixed their corporate seals and caused their presents to be signed by their duly authorized officers.

**DATED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name - Surety

c/s

\_\_\_\_\_  
Name:  
Title:  
Address for Service:

\_\_\_\_\_  
Name - Principal

c/s

\_\_\_\_\_  
Name:  
Title:

**SCHEDULE 2 TO UNDERTAKING TO BOND**  
**FORM OF LABOUR AND MATERIAL PAYMENT BOND**

BOND NO. \_\_\_\_\_

**KNOW THEREFORE ALL MEN BY THESE PRESENTS** that \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called the "Principal") and \_\_\_\_\_  
\_\_\_\_\_ a corporation created and existing under the laws of \_\_\_\_\_  
\_\_\_\_\_ and whose principal office for Canada is located in the \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called the "Surety") are held and firmly bound unto The  
Regional Municipality of York Police Services Board (hereinafter called the "Obligee") for the use and  
benefit of the Claimants and each of their heirs, executors, administrators, successors and assigns, in the  
amount of \$ \_\_\_\_\_, lawful money of Canada, for the payment of which sum, well  
and truly to be made, the Principal and the Surety bind themselves and their respective heirs, legal  
representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a contract with the Obligee dated the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_ for Contract No. \_\_\_\_\_ which by reference hereto is made a  
part hereof as fully to all intents and purposes as though recited in full herein and which contract as  
amended, supplemented, modified or restated from time to time is hereinafter called the "Contract".

NOW THEREFORE, the condition of the foregoing obligation is 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, then this obligation shall be void but otherwise shall remain in full force and  
effect.

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 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 rental  
value of equipment shall be determined, 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 Canadian Construction  
Association title "Rental Rates on Construction Equipment" published prior to the period during which the  
equipment was used in the performance of the Contract.

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 its contract with the Principal, 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 Claimant, may as a beneficiary of the trust  
herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may  
be justly due to such Claimant under the terms of its contract with the Principal 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 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 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 Claimants or any of them, who take 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.

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 Obligee, 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 Obligee, 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, under either the terms of the Claimant's contract with the Principal, or under construction lien legislation applicable to the Claimant's contract with the Principal, whichever is the greater, within 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 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 1 year following the date on which the 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 agree to submit to the jurisdiction of such Court.

Any material change in the contract between the Principal and the Obligee 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.

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 the Surety of construction 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.

The Surety shall be liable as principal and nothing of any kind or matter whatsoever shall operate as a discharge or release of the liability of the Surety notwithstanding any law or usage relating to the liability of sureties to the contrary.

In witness whereof, the Principal and Surety have hereunto affixed their corporate seals and caused their presents to be signed by their duly authorized officers.

**DATED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

c/s

\_\_\_\_\_  
Name - Surety

\_\_\_\_\_  
Name:  
Title:  
Address for Service:

c/s

\_\_\_\_\_  
Name - Principal

\_\_\_\_\_  
Name: Title: