

SCHEDULE "1"

Bonds

ROAD & BRIDGE MAINTENANCE

SPECIMEN

PERFORMANCE BOND

No. _____

\$ _____

KNOW ALL PERSONS BY THESE PRESENTS that _____(CONTRACTOR'S NAME) as Principal, (the "Principal") and _____(SURETY/INSURANCE COMPANY NAME AND ADDRESS)_____ a corporation created and existing under the laws of Canada, and duly authorized to transact the business of Suretyship in Canada, as Surety (the "Surety") are, subject to the conditions hereinafter contained, held and firmly bound unto Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation, as Obligee (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 Surety bind themselves, their heirs, executors, administrators, 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 _____(DATE)_____,20____ for Highway Maintenance entitled "Maintenance Agreement Service Area No. _____" (the "Contract") which is incorporated by reference as part of this Bond.

AND WHEREAS, concurrently with the issuance of this Performance Bond the Surety has issued a Labour and Material Payment Bond which names Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation, as Obligee (the "L&M Payment Bond").

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and faithfully observe and perform all the obligations on the part of the Principal to be observed and performed in connection with the Contract then this obligation shall be void; otherwise it shall remain in full force and effect, on the following conditions:

1. If the Obligee declares an Event of Default, as defined in the Contract, then upon written notice of same being given by the Obligee to the Surety:
 - (a) if the work is not taken out of the Principal's hands by the Obligee, the Obligee may require the Surety to remedy the default giving rise to the Event of Default, in which case the Surety shall cause the Principal to remedy the Event of Default within thirty (30) days of the date the Surety received the written notice from the Obligee or, if the Principal has not

remedied the Event of Default, the Surety shall, subject to the Bond Amount, remedy the Event of Default within a further period of fifteen (15) days; and/or

- (b) the Obligees may, whether or not the Contract is terminated, and whether or not the Contract is taken out of the Principal's hands by the Obligees, take reasonable steps to cure the Event of Default itself and then make demand under this Bond for indemnification by the Principal and Surety for the costs thereof after making all reasonable adjustments and credits under the Contract, in which case the resulting cost, including but not limited to the costs of the Event of Default and administrative costs of the Obligees, determined by the Obligees, shall be paid by the Principal within thirty (30) days of demand by the Obligees or, failing payment by the Principal, shall be paid, subject to paragraph 2 of this Bond, by the Surety within the following fifteen (15) day period; and/or
- (c) the Obligees may take the Contract out of the Principal's hands, in which case:
 - (i) if after written notice has been given to the Surety of the Event of Default, the Surety and the Obligees agree in writing, the Surety may complete or cause to be completed the Contract, through methods including, but not limited to using the employees, equipment and subcontractors of the Principal.
 - (ii) absent such an agreement,
 - (1) the Obligees will request proposals from not less than two maintenance contractors who are then performing highway maintenance services in other service areas in British Columbia;
 - (2) the Obligees will, with consultation from the Surety, if requested by the Surety, evaluate all proposals PROVIDED THAT the final selection of a replacement contractor shall be within the sole discretion of the Obligees, after consultation with the Surety.

If the Obligees consider the Event of Default to represent a material risk to public safety then the Obligees may take immediate steps to protect public safety by engaging others (the "Emergency Forces") to perform such services as the Obligees may reasonably decide are required for the purpose of ensuring services, works, safeguards, environmental protection and public safety are maintained and, further, to ensure that necessary work shall reasonably proceed with minimal interruption. The Obligees and the Surety will meet at the reasonable request of the Surety, to explore methods of completing the work under the Contract, including engaging a permanent replacement contractor pursuant to the provisions of Clause 1(c) of this Bond. The Emergency Forces may remain in place until a replacement contractor is appointed or until other arrangements for completing the work or the Contract, acceptable to the Obligees, are made by the Surety.

Upon selection by the Obligees of a bidder acceptable to the Obligees, the Obligees will contract with such bidder. The Surety will pay, at the direction of the Obligees, not less frequently than every thirty (30) days, as work progresses, whether by Emergency Forces or by a replacement contractor or both, sufficient funds to pay by monthly instalments the

difference between the cost of completion of all the obligations of the Principal under the Contract and the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the Bond Amount. The term "balance of the Contract price" as used in this Bond means the total amount payable by the Obligeo to the Principal under the Contract, less the amount properly paid by the Obligeo to the Principal.

2. Unless otherwise agreed in writing by the Surety and the Obligeo, all payments under this Bond will be made on a monthly basis such that within thirty (30) days of the end of any month for which a claim is made under this Bond, the Surety will pay to or at the direction of the Obligeo:

(a) the difference between:

- (i) the amount of the payment that would have been due from the Obligeo to the Principal for that month pursuant to the Contract, but for the default of the Principal; and
- (ii) the amount paid by the Obligeo to other contractors to complete the obligations of the Principal under the contract for that month.

- and -

(b) the reasonable additional and actual direct costs incurred by the Obligeo to select and retain the other contractors required to complete the work of the Principal and to direct the completion of the work for that month.

The cumulative total of the monthly payments will be subject to the final adjustment after the expiry of the original term of the Contract when all costs are known.

3. The requirement to make payment under this Bond will arise solely on the written demand for payment by the Obligeo in respect of an Event of Default under the Contract or this Bond and the making of any payment under or pursuant to this Bond shall not be deemed to be an admission of liability on behalf of the Principal or Surety and will be made without prejudice to any right or cause of action which either or both the Principal or Surety may have against the Obligeo. If payment has been made under or pursuant to the Bond by the Surety or if the Principal has paid to remedy the Event of Default or paid the Completion Costs, either the Principal or Surety may challenge the validity of the declaration of the Event of Default, the demand under this Bond, the accounting for Contract monies, the reasonableness or validity of the completion costs, or any other claim they may have relating to the Obligeo's performance under the Contract and this Bond and make claim against the Obligeo for damages.
4. Nothing herein contained shall release the Obligeo from any duty to operate with the utmost good faith and to mitigate any costs or damages incurred as a result of the Event of Default. PROVIDED ALWAYS that the provision as to mitigation shall not be construed as requiring the Obligeo to allow the Principal to complete the Contract.

5. Either or both the Principal or Surety may, by giving written notice to the Obligees within fourteen (14) days of receiving notice of an Event of Default from the Obligees, take the position that the notice of the Event of Default was wrongfully issued by the Obligees and claim for damages by suit, arbitration, or otherwise, provided however that neither delivery of such notice, nor any litigation, arbitration or other dispute resolution process, actual or contemplated, shall in any way delay payment from the Principal or failing payment by the Principal then from the Surety, and any payment will be made without prejudice to the right of the Principal or Surety to pursue any claim against the Obligees by litigation, arbitration or otherwise.

6. If a Court of competent jurisdiction, or an arbitrator in any arbitration proceeding between the Obligees and any one or more of the Principal and Surety, where the agreement to arbitrate provides that the decision is to be final and binding on the parties, holds that funds are owing by the Obligees to the Principal or Surety in connection with the Contract or Bond, the Obligees shall, after the period for appeals has expired, provided no appeals have been filed, remit the amount of any judgement or award to either the Principal or the Surety, with interest as determined in accordance with the provisions of B.C. Regulation 215/83 entitled "Interest on Overdue Accounts Payable Regulation", as amended from time to time from the date of such decision by the Court or arbitrator. Subject to the judgement or award, such payment obligation shall be without prejudice to any rights available to the Obligees.

7. The Obligees shall account for any unpaid Contract monies, including any holdback monies, relating to the Contract up to the date of the Event of Default as declared by the Obligees, which are payable to the Principal, and upon written notice from the Surety shall apply those monies:
 - (a) first, to pay for labour, material, equipment and services used by the Principal in the performance of the Contract prior to the Event of Default;
 - (b) second, to reimburse the Obligees for the difference between the cost of completion and the balance of the Contract price.

Any excess and all remaining Contract monies shall be paid by the Obligees to the Surety. Subject to the terms of this Bond and the Bond Amount, the Surety shall be liable for and pay the Obligees for the difference between the cost of completion and the balance of the Contract price if the cost of completion exceeds the Contract price, and such other costs of completing the obligations of the Principal, including reasonable additional administrative costs of the Obligees, as determined by the Obligees, acting reasonably.

8. The Surety shall not be liable for any amount in excess of the Bond Amount. The Surety shall deliver to the Obligees timely notice of the amount from time to time paid under this Bond, and the Bond Amount shall be reduced by any amounts paid by the Surety to remedy or to cause to be remedied any Event of Default, notice of which has been provided by the Obligees to the Surety, with demand for payment, and by any amounts paid by the Surety under, or pursuant to its obligations under, this Bond.

9. The Obligees, whether or not an Event of Default has occurred or been declared, may advise the Surety in writing whenever:

- (a) a Notice to Comply is issued by the Obligee to the Principal;
- (b) the Obligee issues written notice of an Event of Default to the Principal pursuant to Section 18.2 of Article 18 of the Contract; or
- (c) the Obligee retains any holdback from any payment which, but for the holdback and the Obligee's reason for the holdback, would be due to the Principal under the Contract.

Copies of the Notice to Comply, Notice of an Event of Default and Notice of Holdback may be provided to the Surety with the notice advising the Surety of same. Unless accompanied by a Declaration of Event of Default and a written demand by the Obligee to the Surety requiring the Surety to fulfill its obligations under the Bond, such advice and copies of such documents shall be considered to be for general information only and shall not constitute a declaration of an Event of Default nor a call upon this Bond.

10. Although the term of the Contract is ten (10) years commencing on _____ and ending on _____, the term of this Bond is for the first five (5) years of the Contract only, beginning at 12:01 am pst on the _____ day of _____, 20____, and ending at 12:00 midnight pst on the _____ day of _____, 20____, (the "Initial Term"). The Initial Term may be extended, solely at the option of the Surety, for an additional five (5) year period, being the second five (5) years of the Contract (the "Renewal Term"). No later than the last Working Day (as defined in the Contract) of the 54th month of the Initial Term, the Surety shall either:
- (i) advise the Obligee in writing that the Surety is electing not to extend this Bond and the L&M Payment Bond for the Renewal Term; or
 - (ii) deliver to the Obligee a continuation certificate duly executed by the Surety and the Principal extending the term of this Bond and the L&M Payment Bond for the Renewal Period.
11. If the Surety elects not to extend this Bond and the L&M Payment Bond for the Renewal Term and the Principal fails to deliver to the Obligee replacement bonds (as required by Section 10.4 of the Contract) within 60 days following the last Working Day of the 54th month of the Initial Term, the Surety shall pay to the Obligee the sum of \$50,000. Such payment, which for all purposes shall be deemed to be a payment pursuant to this Bond, shall be payable to the Obligee at the conclusion of the Initial Term or the day on which the Obligee terminates the Contract or takes the Contract out of the hands of the Principal, whichever occurs first. If the Principal delivers replacement bonds to the Obligee as set out above, neither the Surety nor the Principal shall be obligated to pay the \$50,000 referred to above to the Obligee. The Surety's election not to extend this Bond and the L&M Payment Bond for the Renewal Term shall not constitute grounds for a claim under this Bond or the L&M Payment Bond notwithstanding that this may constitute an Event of Default by the Principal under the Contract.
12. If the Surety elects not to extend this Bond and the L&M Payment Bond for the Renewal Term the Principal and the Surety shall remain liable hereunder and in accordance with the terms hereof for all of the obligations of the Principal for the first five (5) years of the Contract, exclusive, in the case of the Surety, of the obligation to provide replacement bonds for the second five (5) years of the

Contract. For greater certainty, this shall not relieve the Principal of its obligation to provide the replacement bonds as required by Section 10.4 of the Contract. Moreover, the Surety's election not to renew this Bond and the L&M Payment Bond for the Renewal Term is not intended to diminish the Obligee's rights, as against the Principal only, for any breach of the Contract.

- 13. No suit or action shall be instituted by the Obligee against the Surety, or by the Surety or the Principal against the Obligee, under or pursuant to this Bond, after the expiration of two years from (a) the expiry of the Initial Term if the Surety elects not to extend this Bond and the L&M Payment Bond for the Renewal Term, or (b) the date on which final payment under the Contract is due, if the Surety elects to extend this Bond and the L&M Payment Bond for the Renewal Term, whichever is applicable.
- 14. The penal sum of this Bond is not and shall not be deemed to be cumulative in the event the Surety elects to extend this Bond for the Renewal Term. For greater certainty, the penal sum for the Renewal Term notwithstanding any claims or payments whatsoever under this Bond in place in the Initial Term, shall be \$2,000,000.
- 15. All notices and demands to be given to the Surety under this Bond shall be given to the Surety at the following address:

(Name of Surety)

(Address of Surety)

Attention: _____

IN WITNESS WHEREOF, the Principal, the Obligee and the Surety have Signed and Sealed this Bond this _____ day of _____, 20_____.

SIGNED AND SEALED in the presence of:

For the Principal - Director

For the Surety - Attorney in fact

Authorized signatory for Her Majesty the Queen
in Right of the Province of British Columbia as
Represented by the Minister of Transportation

SPECIMEN

**LABOUR AND MATERIAL PAYMENT BOND
(British Columbia Government Form)**

No. _____ \$ _____

Note: This Bond shall be issued by the Surety simultaneously with a Performance Bond in favour of the Obligee for the full and faithful performance of the contract.

KNOW ALL PERSONS BY THESE PRESENTS THAT _____ **(CONTRACTOR NAME)** as Principal, hereinafter called the Principal, and (_____ **SURETY/INSURANCE COMPANY NAME AND ADDRESS**) a corporation created and existing under the laws of Canada, and duly authorized to transact the business of Suretyship in Canada, as Surety, hereinafter called the Surety are, subject to the conditions hereinafter contained, held and firmly bound unto HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION, as Obligee, hereinafter called the Obligee, for the use and benefit of the Claimants (as defined below), their and each of their heirs, executors, administrators, successors and assigns, in the amount 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, firmly by these presents.

WHEREAS, the Principal has entered into a written contract with the Obligee, dated the ____ day of 20__ for Highway Maintenance entitled "Maintenance Agreement Service Area No. _____" (the "Contract") which is incorporated by reference as part of this Bond.

AND WHEREAS, concurrently with the issuance of this Bond, the Surety has issued a Performance Bond which names Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation, as Obligee (the "Performance Bond").

NOW, THEREFORE, THE CONDITION OF THIS 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 null and 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 a person, firm or corporation 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 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 titled "Rental Rates on Contractors Equipment" 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 Oblige, 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 use the name of the Oblige to sue on and enforce the provisions of 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 their contract with the Principal and have execution thereon subject to the following terms and conditions: the Oblige is not to be 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; and if any act, action or proceeding is taken either in the name of the Oblige or by joining the Oblige 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 Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige by reason thereof.
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 Oblige, stating with substantial accuracy the amount claimed and at least 90 days shall have past since the notice was given. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Oblige, 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
 - (1) 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 the builders lien Legislation 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;
 - (2) 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 earlier of:
- (1) the expiry of the Initial Term (as defined below) if the Surety elects not to extend this Bond for the Renewal Term (as defined below); or
 - (2) 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 a Province or Territory 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.
4. The Surety agrees not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated to the rights, hypothecs and privileges of said Claimant.
 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 the Surety of Mechanics' Liens which may be filed of 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.
 7. Although the term of the Contract is ten (10) years commencing on _____ and ending on _____, the term of this Bond is for the first five (5) years of the Contract only, beginning at 12:01 am pst on the _____ day of _____, 20____, and ending at 12:00 midnight pst on the _____ day of _____, 20____, (the "Initial Term"). The Initial Term may be extended, solely at the option of the Surety, for an additional five (5) year period, being the second five (5) years of the Contract (the "Renewal Term"). No later than the last Working Day (as defined in the Contract) of the 54th month of the Initial Term, the Surety shall either:
 - (a) advise the Oblige in writing that the Surety is electing not to extend this Bond and the Performance Bond for the Renewal Term; or
 - (b) deliver to the Oblige a continuation certificate duly executed by the Surety and the Principal extending the term of this Bond and the Performance Bond for the Renewal Period.
 8. If the Surety elects not to extend this Bond and the Performance Bond for the Renewal Term, the Principal and the Surety shall remain liable hereunder and in accordance with the terms hereof for all of the obligations of the Principal for the first five (5) years of the Contract.
 9. The penal sum of this Bond is not and shall not be deemed to be cumulative in the event the Surety elects to extend this Bond and the Performance Bond for the Renewal Term. For greater

certainty, the penal sum for the Renewal Term notwithstanding any claims or payments whatsoever under the Bond in place in the Initial Term, shall be \$2,000,000.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond this ____ day of _____, 20 ____.

SIGNED and SEALED
In the presence of:

For the Principal

SEAL

For the Surety Attorney-in-fact

SEAL