

SCHEDULE 7

BONDING REQUIREMENTS

1. GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Design and Build Anthony Henday Drive and Stony Plain Road/100 Avenue Interchange, City of Edmonton, Alberta, Canada (the “DB Agreement”) between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise.

1.2 DB Agreement Reference

This Schedule is referenced in sections 1.3, 3.1, 10.1, and 10.2 of the DB Agreement.

2. GENERAL BONDING REQUIREMENTS

2.1 Actual Form and Substance

All bonds must be in forms and with terms acceptable to the Province, acting reasonably.

3. REQUIRED BONDS

3.1 Required Bonds

The Contractor shall purchase and maintain in full force at all times, from the Execution of the DB Agreement through to the date that is three years after Traffic Availability:

- (a) a performance bond for 50% of the Contract Price for the due performance of the DB Agreement, in the form substantially the same as the form attached as Appendix 1 to this Schedule 7; and
- (b) a labour and material payment bond for 50% of the Contract Price for the payment in full of all claims for labour and for material used or reasonably required for use in the performance of the DB Agreement, in the form substantially the same as the form attached as Appendix 2 to this Schedule 7.

APPENDIX 1

(Form of Performance Bond)



PERFORMANCE BOND

Bond No. _____ Amount _____
Contract No. _____
(50% of contract price)

Project: _____

KNOW ALL PERSONS BY THESE PRESENTS THAT

(the Contractor)

of the _____ of _____
_____ in the Province of Alberta, as Principal (hereinafter called "the Principal"),

- and -

Company) (the Bonding

of the _____ of _____
_____ (hereinafter called the "Surety"), a surety authorized to transact business in the Province of Alberta, are held and firmly bound unto:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, herein represented by the Minister of Transportation of the province of Alberta, obligee (hereinafter called "the Minister")

**SCHEDULE 7 – DB AGREEMENT
DRAFT: JANUARY 9, 2009**

in the sum of _____

_____ dollars (\$ _____), to be paid to the Minister or his successors in office, or to whom the said Minister or his successors may direct, 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 the terms of these presents:

WHEREAS the Principal has entered into a written Contract with the Minister dated the _____ day of _____, A.D. 20____, being Contract No. _____, and which Contract is by reference made a part hereof (And is hereinafter referred to as "the Contract") (date to be filled in by the Department);

AND WHEREAS it is a term of the Contract that a Performance Bond be provided naming the Minister as obligee herein;
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform said contract, notwithstanding that at any one or more times:

- (a) The time for the completion of the said Contract may have been extended;

Page 2 of Perf Bond No. _____

- (b) The Principal may have been changed by death or insolvency, or by addition to or withdrawal from a partnership of any member thereof with the consent of the Surety;
 - (c) Any one or more members of the Principal (if a partnership) may have been released from liability under the said Contract with the consent of the Surety;
 - (d) The work contracted for as aforesaid may have been altered by substitution, addition, partial abandonment or otherwise while still remaining substantially the same Contract work,
- then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Minister to be, in default under the Contract, including without limitation in default of any warranty obligations, the Minister having performed the Minister's obligations thereunder, the Surety shall promptly remedy the default, or shall promptly

- (1) complete the Contract in accordance with its terms and conditions, or
- (2) obtain a bid or bids for submission to the Minister for completing the Contract in accordance with its terms and conditions, and upon determination by the Minister of the lowest acceptable bidder, to arrange for a contract between such bidder and the Minister, which shall provide for the completion of the Contract. The Surety shall be responsible to make payments under this bond (up to the maximum hereof) as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion entered into under this paragraph), and shall pay all costs of completion of the Contract. The Surety will be entitled, on the progress payment basis as set out in the Contract, to have the Minister contribute the balance of the contract price (being the total amount payable by the Minister to the Principal under the Contract, less the amount paid by the Minister to the Principal prior to default); it being understood that all costs of completion over and above the contract price set out in the Contract between the Minister and Principal shall be borne and payable by the Surety up to the maximum of this bond.

Any suit under this Bond must be instituted before the expiration of three (3) years from Traffic Availability (as defined in the Contract).

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Minister named herein, or the heirs, executors, administrators or successors of the Minister.

Provided further and it is hereby agreed and declared that there shall be no liability under this instrument of the Principal and Surety for payment of any Labour, service or material used or reasonably required for use in the performance of the Contract.

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

of _____, 20 _____.

SIGNED and SEALED

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**SCHEDULE 7 – DB AGREEMENT
DRAFT: JANUARY 9, 2009**

in the Presence of

WITNESS TO PRINCIPAL

WITNESS TO SURETY

Principal

Surety

SEAL

SEAL

APPENDIX 2

(Form of Labour and Material Payment Bond)



LABOUR AND MATERIAL PAYMENT BOND

Bond No. _____ Amount _____ Contract No. _____
(50% of contract price)

Project: _____

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Principal)
of the _____ of _____
_____ in the Province of Alberta, as Principal (hereinafter called "the Principal"),

- and -

(Surety)
of the _____ of _____
_____ in the Province of _____ (hereinafter called the "Surety"), a surety
authorized to transact business in the Province of Alberta, are held and firmly bound unto:

HER MAJESTY THE QUEEN, In the Right of the Province of Alberta, herein represented by the Minister of Transportation, as Trustee, (hereinafter called "the Minister") for the use and benefit of claimants as hereinbelow defined, in the sum of

dollars (\$ _____), to be paid to the Minister or his successors in office, or to whom the said Minister or his successors may direct, 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 the terms of these presents:

WHEREAS the Principal has entered into a written Contract (hereinafter called "the Contract") with the Minister, dated the _____ day of _____, A.D. 20____, being Contract No. _____, and which Contract is by reference made a part hereof (date to be filled in by the Department);

AND WHEREAS it is a term of the Contract that a Labour and Material Payment Bond be provided in favour of the Minister, 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 such 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 price thereof, shall only be a claimant to the extent of the prevailing Alberta Roadbuilders & Heavy Construction Association rental rates for the period during

**SCHEDULE 7 – DB AGREEMENT
DRAFT: JANUARY 9, 2009**

which the equipment was used in the performance of the Contract.

(b) "labour and material" means labour, equipment, materials and 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 Minister, but contracting with a contractor who holds a contract with the Minister, for the provision of labour and material, and

(ii) a person contracting with the person first 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 Crown the payment of creditors.

3. The Principal and the Surety hereby jointly and severally agree with the Minister, 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 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 Minister 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 any act, action or proceeding is taken either in the name of the Minister or by joining the Minister 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 Minister against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Minister by reason thereof; provided still further that, subject to the foregoing terms and conditions, a claimant may use the name of the Minister 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 Minister, stating the amount that is claimed. Such notice shall be served by mailing the same to the Principal, Surety and Minister 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 1 year from the date on which the Principal ceased 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 15 days, send, in writing, to the claimant and the Minister, an acknowledgment 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 is not being disputed, the Surety or the Principal, or both, shall make payment to the claimant within 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 30 days, notify, in writing, the claimant and the Minister of the dispute, setting out the grounds of dispute.

8. Any material change in the Contract between the Principal and the Minister 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 Minister to exceed the sum of the bond amount and money due and payable to the Principal, the Minister 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.

ADDRESS FOR NOTICES shall be:

MINISTER

at Alberta Transportation, Program Management Branch, 1st Floor, Twin Atria Building, 4999 - 98 Avenue, Edmonton, Alberta T6B 2X3.

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 _____

**SCHEDULE 7 – DB AGREEMENT
DRAFT: JANUARY 9, 2009**

the Principal in the Presence of _____

WITNESS TO PRINCIPAL

Principa
l

(seal)

SIGNED, SEALED and DELIVERED by
the Surety in the Presence of _____

WITNESS TO SURETY

Surety

(seal)

Page 2 of L&M Payment Bond No. _____