

**THE CORPORATION OF THE CITY OF BURLINGTON**

**D1 - AGREEMENT**

THIS AGREEMENT made in **duplicate** this \_\_\_\_\_ day of \_\_\_\_\_ 201**X**.

THE CORPORATION OF THE CITY OF BURLINGTON  
(hereinafter called "the City")  
OF THE FIRST PART

- and -

**Contractor Name**  
**Address**

(hereinafter called "the Contractor")  
OF THE SECOND PART

WITNESSETH

That the City and the Contractor in consideration of the fulfillment of their respective promises and obligations herein set forth covenant and agree with each other as follows:

**ARTICLE I**

- (a) A general description of the Work is:

**Contract No. CW-XX-XX**  
**Project Title**

- (b) The Contractor shall, except as otherwise specifically provided, at his own expense, provide all and every kind of labour, machinery, plant, structures, roads, ways, materials, appliances, articles and things necessary for the due execution and completion of all the Work set out in this Contract, and shall

forthwith, according to the instructions of the Contract Administrator, commence the Works and diligently execute the respective portions thereof, and deliver the Works complete in every particular to the City within the time specified in the Special Provisions For Contract.

ARTICLE 2

The documents listed in this Article are all part of the Contract, and the terms and provisions thereof shall be of the same force and effect as if contained in this Agreement.

In case of inconsistency or conflict between any of the documents listed below, the provisions of such documents shall take precedence in the order listed, namely:

- (1) This Agreement
- (2) Addendums (if applicable)
- (3) Special Provisions
- (4) Contract Drawings
- (5) Standard Specifications
- (6) General Conditions
- (7) Form of Tender
- (8) Information for Tenderers
- (9) OPSS Amendments
- (10) OPSS and OPSD

ARTICLE 3

The Contractor shall not, without the consent in writing of the City, make any assignment of any part or the whole of any monies due or to become due under the provisions of this Contract.

ARTICLE 4

The City covenants with the Contractor that the Contractor, having in all respects complied with the provisions of this Contract, will be paid for and in respect of the Works the sum of

\_\_\_\_\_ /100 dollars

(\$ \_\_\_\_\_ )

and subject to such additions and deductions as may properly be made under the terms hereof, subject to the provision that the City may make payments on account monthly or otherwise as may be provided in the General Conditions attached hereto.

## ARTICLE 5

Where any notice, direction or other communication is required to be or may be given or made by one of the parties hereto to the other, or to the Contract Administrator or to his/her agent, it shall be deemed sufficiently given or made if mailed or delivered in writing to such party or to the Contract Administrator at the following address:

### THE CITY:

The Corporation of the City of Burlington,  
426 Brant Street  
P.O. Box 5013  
Burlington, Ontario  
L7R 3Z6

### THE CONTRACTOR:

Contractor Name  
Address

### The Contract Administrator:

Executive Director of Capital Works,  
The Corporation of the City of Burlington  
426 Brant Street, P.O. Box 5013  
Burlington, Ontario  
L7R 3Z6

## ARTICLE 6

No implied Contract of any kind whatsoever by or on behalf of the City shall arise or be implied from anything in this Contract contained, nor from any position or situation of the parties at any time, it being clearly understood that the express covenants and agreements herein contained made by the City shall be the only covenants and agreements upon which any rights against the City may be founded.

## ARTICLE 7

The Contractor declares that in tendering for the Works and in entering into this Contract, he has either investigated for himself the character of the Work and all local conditions that might affect his Tender or his acceptance of the Work, or that not having so investigated, he is willing to assume and does hereby assume all risk of conditions arising

or developing in the course of the Work which might or could make the Work, or any items thereof, more expensive in character, or more onerous to fulfil, than was contemplated or known when the Tender was made or the Contract signed. The Contractor also declares that he did not and does not rely upon information furnished by any methods whatsoever by the City or its officers or employees, being aware that any information from such sources was and is approximate and speculative only, and was not in any manner warranted or guaranteed by the City.

#### ARTICLE 8

This Contract shall apply to and be binding on the parties hereto and their successors, administrators, executors and assigns and each of them.

#### ARTICLE 9

The Contractor shall indemnify and save harmless the City from all losses, damages, expenses, actions, causes of action, suits, claims, demands, and costs whatsoever which may arise either directly or indirectly by reason of any failure, neglect or refusal by the Contractor to comply with this Agreement or with the provisions of the Construction Lien Act or by reason of any action brought against the City pursuant to the Construction Lien Act and arising out of the performance of this Agreement by the Contractor, his servants, employees, agents, and subcontractors or arising directly or indirectly from anything done in connection with this Agreement, whether in performance of, outside of or contrary to this Agreement and whether or not in accordance with the City's standards, including without limiting the generality of the foregoing, paying all legal costs of the City on a solicitor and client basis, which may be incurred by the City in taking any action in connection with this Agreement which it deems necessary.

The contractor agrees that the City may deduct the aforesaid costs, losses, damages and expenses from any holdback, payment or other amount owing to the Contractor and in addition, in respect of any construction lien, the City may pay, discharge, vacate and obtain and register a release of all charges, claims, liens and all preserved or perfected liens made, brought or registered pursuant to the Construction Lien Act which may affect any lands owned by the City, including public highways and road allowances and the City may deduct such costs from any holdback, payment or other amount owing to the contractor.

#### ARTICLE 10

The Owner may withhold any money for any defects, deficiencies or work not done and use the money to correct any defects or deficiencies or complete the work. Further, the contractor is responsible for all costs of the Owner in the event the Owner retains any experts or consultant to correct the defect or deficiency or complete the work.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written, attested by the signature of their proper officers, as the case may be.

NAME OF CORPORATION (as per Corporate Seal)

AUTHORIZED SIGNATURE OF CORPORATION

I have authority to bind the corporation.

POSITION HELD IN CORPORATION

**THE CORPORATION OF THE CITY OF BURLINGTON**

MAYOR

CITY CLERK

Legal Department Appd: \_\_\_\_\_

Authorized By: \_\_\_\_\_

Date: \_\_\_\_\_

Report # \_\_\_\_\_

**THE CORPORATION OF THE CITY OF BURLINGTON**

**D2 - LABOUR AND MATERIAL PAYMENT BOND**

(Private Contracts - Trustee Form)

Bond No.

Amount \$

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

KNOW ALL MEN 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 **The Corporation of the City of Burlington** as Trustee, hereinafter called the Obligee, for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns in the amount of

\_\_\_\_\_/100Dollars

(\$\_\_\_\_\_)

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.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

WHEREAS the Principal has entered into a written Contract with the obligee dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

for

**Contract No. CW-XX-XX**  
**Project Title**

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

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 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 entitled "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 Obligee, as Trustee, that every Claimant who has not been paid as provided for under the terms of his 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 judgment for such sum or sums as may be justly due to such Claimant under the terms of his said 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 proceedings 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. Provided still further that, subject to the foregoing terms and conditions, the Claimants or any of them may use the name of the Obligee 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, Surety and Obligee, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, Surety and 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 the Construction Liens 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; (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 two (2) years following the date on which 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.
- (4) 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.
- (5) The Surety shall not be liable for a greater sum than the specified penalty of this Bond.



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

SIGNED: \_\_\_\_\_  
NAME OF CORPORATION (as per Corporate Seal)

\_\_\_\_\_  
AUTHORIZED SIGNATURE OF CORPORATION

I have authority to bind the Corporation.

\_\_\_\_\_  
POSITION HELD IN CORPORATION

SIGNED AND SEALED  
(seal required for  
bonding company)

BONDING COMPANY

By: \_\_\_\_\_  
Attorney-In-Fact

NOTE TO SURETY: (Please attach signing authority of Attorney-In-Fact executed under corporate seal.)

**THE CORPORATION OF THE CITY OF BURLINGTON**

**D3 - PERFORMANCE BOND**

Bond No.  
Amount \$

KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_ as Principal, hereinafter called

the Principal, and

\_\_\_\_\_ as Surety,  
hereinafter called the Surety, are held and firmly bound unto

**The Corporation of the City of Burlington** as Obligee, hereinafter

called the Obligee, in the amount of

**XX/100 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.

WHEREAS, the Principal has entered into a written Contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,

for

**Contract No, CW-XX-XX**

**Project Title**

in accordance with the plans and specifications submitted therefor which Contract, plans and specifications and amendments thereto, to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly and faithfully perform said Contract (including any amendments thereto, provided such amendments do not collectively increase the amount to be paid to the Principal by more than 10% of the amount of the Contract except with the written consent of the Surety) then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever Principal shall be, and declared by Obligee to be, in default under the Contract, the Obligee having performed Obligee's obligations thereunder, the Surety may 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 Obligee for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee and Surety of the lowest responsible bidder, arrange for a Contract between such bidder and Obligee and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of Completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price", as used in this paragraph, shall mean the total amount payable by Obligee to Principal under the Contract, less the amount properly paid by Obligee to Principal.

Any suit under this Bond must be instituted before the expiration of two (2) years from date on which final payment under the Contract falls due.

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 Obligee named herein or the heirs, executors, administrators or successors of Obligee.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its Attorney-in-fact, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

SIGNED

\_\_\_\_\_  
NAME OF CORPORATION  
(as per Corporate Seal)

CORPORATION

\_\_\_\_\_  
AUTHORIZED SIGNATURE OF

I have authority to bind the Corporation.

\_\_\_\_\_  
POSITION HELD IN CORPORATION

SIGNED AND SEALED  
(Seal required for  
Bonding Company)

BONDING COMPANY

By:

Attorney-in-fact

NOTE TO SURETY: (Please attach signing authority of Attorney-in-Fact executed under corporate seal).

IRREVOCABLE LETTER OF CREDIT

(Draft Only, use Bank Letterhead)

(Address of Bank)

To: The Corporation of the City of Burlington,  
 426 Brant Street,  
 P.O. Box 5013  
 BURLINGTON ON L7R 3Z6

WE HEREBY AUTHORIZE YOU TO DRAW ON

FOR THE ACCOUNT OF

UP TO AN AGGREGATE AMOUNT OF  
 AVAILABLE ON DEMAND.

Pursuant to the request of our customer, the said

\_\_\_\_\_, we The \_\_\_\_\_ Bank  
 hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total  
 amount of \$ \_\_\_\_\_ which may be drawn on by you at any time and from time to  
 time upon written demand for payment made upon us by you which demand we shall  
 honour without enquiring whether you have a right as between yourself and our said  
 customers to make such demand, and without recognizing any claim of our said  
 customers.

Provided, however, that you are to deliver to us at such time as a written demand for  
 payment is made upon us, a certificate confirming that monies drawn pursuant to this  
 Letter of Credit are to guarantee obligations incurred or to be incurred in connection with  
 the agreement between \_\_\_\_\_ and the City  
 of Burlington.

This Letter of Credit will continue up to the \_\_\_\_\_ day of \_\_\_\_\_ and  
 will expire on that date and you may call for payment of the full amount outstanding or any  
 part thereof under this Letter of Credit at any time or times prior to that date. It is a  
 condition of this Letter of Credit that it shall be deemed to be automatically extended for  
 one year from the present or any future expiration date hereof, unless thirty days prior to  
 any such date we shall notify you in writing that we elect not to consider this Letter of  
 Credit renewed for any such additional period. Upon receipt by you of such notice, you

may draw hereunder by means of your demand accompanied by your written certification that the amounts drawn will be retained and used by you to meet obligations incurred or to be incurred in connection with the above agreement; further, that you will release any amounts not required by you.

One or more Partial Drawings are permitted at any time or times prior to the expiration of this Letter of Credit.

DATED: \_\_\_\_\_

Signing Officer of Bank

NOTE TO THE BANK MANAGER:

Please use only the wording in the above sample letter. We cannot accept Letters of Credit, which refer to "drafts on sight" or "to be endorsed hereon". If you use your printed form, please delete all references to drafts, etc., and sign the deletions.

Should credit be required to guarantee payments or other obligations not covered by agreement, please change second paragraph to read:

" . . .guarantee obligations to the City of Burlington incurred  
or to be incurred by (name of customer)."

and in the last sentence, delete "in connection with the above agreement" and replace with "by (name of customer) ; further, etc."