FORM 32
PERFORMANCE BOND UNDER SECTION 85.1 OF THE ACT

Construction Act

No. _____ (the **"Bond"**) Bond Amount $ _____

_____ ,
(name of the contractor*)

as a principal, hereinafter [collectively] called the **"Contractor"**, and

_____
(name of the surety company**)

a corporation created and existing under the laws of _____
(place of incorporation)

as a surety, and duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter called the **"Surety"**, are held and firmly bound unto _____
(name of the owner***)

as obligee, hereinafter called the **"Owner"**, in the amount of $ _____ hereinafter called the **"Bond Amount"**,
(Bond Amount in figures)

for the payment of which sum the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally in accordance with the provisions of this Bond (the **"Obligation"**).

WHEREAS the Contractor has entered into a written contract with the Owner dated the _____ day of _____
(name of month)

in the year _____ for _____
(title or description of the contract)

(the **"Original Contract"**) and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the **"Contract"**;

NOW THEREFORE the condition of this Obligation is such that if the Contractor shall promptly and faithfully perform the Contract then this Obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following terms and conditions:

1. <u>Written Notice</u>

1.1 The Owner may make a written demand on the Surety in accordance with this Bond, by giving notice to the Surety substantially in the form attached as Schedule A (the "**Notice**"). Except for a Pre-Notice Meeting in accordance with Section 2.1, the Surety shall have no obligation under this Bond until it receives a Notice.

1.2 Where the Surety includes two or more companies, the Notice may be delivered to the first listed Surety on behalf of all Sureties. The first listed Surety is hereby authorized to respond to the Notice on behalf of the Sureties, and the Owner is not required to give separate Notice to each Surety and is entitled to correspond with the first listed Surety on behalf of all Sureties.

2. <u>Pre-Notice Meeting</u>

2.1 The Owner may, at its sole discretion and acting reasonably, request a pre-Notice conference by notifying the Surety and the Contractor in writing that it is considering declaring the Contractor to be in default under the Contract (the "Pre-Notice Meeting"). This notice and request for a Pre-Notice Meeting by the Owner does not constitute a Notice under this Bond, nor under the Contract, nor is it a precondition to the giving of a Notice. Upon receipt of such request the Surety shall propose a face-to-face meeting, a telephone conference call or a meeting by any other form of electronic media between the Contractor, the Owner and the Surety to take place

at a time and place mutually convenient for all parties within seven (7) business days (or such longer time as agreed by all parties) after the Surety's receipt of the Owner's request for a Pre-Notice Meeting in accordance with this Section. The Owner, the Contractor and the Surety shall make reasonable efforts to arrange and attend the Pre-Notice Meeting. In the event that the Owner delivers a Notice prior to the Pre-Notice Meeting, then the Pre-Notice is deemed to be retracted.

2.2 The purpose of a Pre-Notice Meeting is to allow the Owner, prior to exercising its other rights under this Bond, to express any concerns about the Contractor's performance pursuant to the Contract and to allow the Contractor to respond to such concerns. The participation of the parties in one or more Pre-Notice Meetings shall be without prejudice to their respective rights and obligations under the Contract, this Bond or applicable law, and neither the participation by any party in any Pre-Notice Meeting, nor any statement or position taken or information provided by any party during any Pre-Notice Meeting, may be relied on by any other party as a waiver or compromise of the rights or obligations of the Owner, the Surety or the Contractor under the Contract, this Bond or applicable law; including, but not limited to the Owner's right to declare the Contractor in default under the Contract and give Notice under this Bond.

3. Surety's Investigation and Response

3.1 Upon receipt of a Notice from the Owner, the Surety shall promptly initiate an investigation of the Notice (the "**Investigation**"), using its best efforts, to determine if the Conditions Precedent have been satisfied and to determine its liability, if any, under the Bond.

3.2 Within the four (4) business days following receipt of the Notice, the Surety shall provide the Owner with an acknowledgement, substantially in the form set out as Schedule B **(**the "**Acknowledgement**"), identifying the date on which the Notice was received and requesting from the Owner the information and documentation (the "**Information**") the Surety requires to continue the Investigation and, if necessary, request access to personnel who are knowledgeable about the circumstances of the Notice and to the Contract work site(s) where the work is being performed. Upon receipt of the Surety's Acknowledgement, the Owner shall promptly, and in accordance with terms of the Contract, provide the Surety with the requested Information and access to personnel and the work site(s) within its possession or control.

3.3 The Surety shall within a reasonable time conduct the Investigation, but in any event no later than twenty (20) business days after receipt by the Surety of a Notice (or such longer period as may be agreed between the Surety and Owner), the Surety shall provide the Owner with its written response to the Notice, substantially in the form set out at Schedule C (the "**Surety's Position**"), advising either that:

a) The Surety accepts liability under the Bond and proposes to satisfy its Obligation by performing one of the options set out in Section 6.1; or

b) The Surety does not accept liability, providing its specific reasons; or

c) The Surety is unable to determine whether or not one or more of the Conditions Precedent has been satisfied and, in the Surety's sole discretion, the Surety may propose a process for collaborating with the Owner in the advancement of the completion of the work so as to attempt to mitigate the Owner's cost to complete the Contract.

3.4 The Surety shall also, if requested by the Owner to do so, meet with the Owner to discuss the status of the Investigation within five days following receipt of the request. This meeting may take place via a face-to-face meeting, a telephone conference call or a meeting by any other form of electronic media as may be mutually agreed to by the Owner and Surety.

4. Necessary Interim Work

4.1 Prior to and during the Investigation, if the Owner must take action which is necessary to:

a) ensure public or worker safety,

b) preserve or protect the work under the Contract from deterioration or damage, or

c) comply with applicable law,

(the "**Necessary Interim Work**")

the Owner may, acting with due diligence and provided written notice is subsequently provided to the Surety within three (3) Business Days of the commencement of such Necessary Interim Work, undertake such

Necessary Interim Work provided that:

i. Owner shall allow the Surety and/or its consultant(s) reasonable access to the Contract work site(s) during the course of the Necessary Interim Work for the purpose of monitoring the progress of the Necessary Interim Work;

ii. any such Necessary Interim Work shall be undertaken without prejudice to the rights of the Owner, the Contractor or the Surety under the Contract, this Bond or applicable law; and

iii. the reasonable costs incurred by the Owner in undertaking such Necessary Interim Work (to the extent they are not deducted in the calculation of the Balance of Contract Price in Section 9.1) shall be reimbursed by the Surety, subject to the Surety's liability being subsequently established and subject to such expenses being covered by this Bond. Any payments made by the Surety in respect of the Necessary Interim Work shall reduce the Bond Amount by the amount of any such payments.

4.2 Nothing in this section is intended to limit the ability of an Owner to take whatever steps are reasonably necessary in the public interest.

4.3 Subject to the foregoing provisions in Section 4.1, the Surety shall not raise the mere fact that the Necessary Interim Work proceeded as a defence to any claim by the Owner hereunder.

5. Post-Notice Conference

5.1 Upon receipt of a Notice, the Surety shall propose a face-to-face meeting, telephone conference call or a meeting by any other form of electronic media (a "**Post-Notice Conference**") with the Owner at a mutually convenient time and place within five (5) business days (or such longer period as may be agreed between the Surety and Owner). The Contractor may participate in a Post-Notice Conference at the invitation of the Surety.

5.2 The purpose of the Post-Notice Conference shall be to determine what actions or work, if any, the Owner believes must be done while the Surety is conducting the Investigation in order to effectively mitigate the costs for which the Owner is seeking recovery under this Bond (the "**Mitigation Work**"). Mitigation Work may be performed after Necessary Interim Work and throughout the period of investigation by the Surety.

5.3 Provided the Owner provides reasonable evidence to the Surety that Mitigation Work is necessary during the Investigation and that the anticipated costs are reasonable, the Owner may proceed with the Mitigation Work subject to the following conditions:

a) Owner shall pay the reasonable costs of the Mitigation Work;

b) Owner shall keep separate records of all amounts related to the Mitigation Work for which it intends to seek recovery under this Bond, including amounts to be set off against the Balance of Contract Price;

c) Owner shall allow the Surety and/or its consultant(s) reasonable access to the Contract work site(s) during the course of the Mitigation Work for the purpose of monitoring the progress of the Mitigation Work; and

d) the Mitigation Work shall be without prejudice to the rights or obligations of the Owner, the Contractor or the Surety under the Contract, this Bond or applicable law.

5.4 If the Surety objects to any part of the Mitigation Work, including without limitation the Owner's proposed Mitigation Work contractor(s), scope of work, cost or method of work, it shall immediately advise the Owner in writing of its objections and the reasons therefor. The Owner may still proceed with the Mitigation Work and the Surety's objections will be addressed through negotiation with the Owner or at the trial of any action brought pursuant to this Bond.

5.5 The reasonable costs incurred by the Owner in undertaking the Mitigation Work shall be reimbursed by the Surety, subject to the Surety's liability being subsequently established. Any payments made by the Surety in respect of the Mitigation Work shall form part of its Obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments.

5.6 For greater clarity, any Necessary Interim Work being performed by the Owner pursuant to Section 4 may continue to be performed pending an agreement, if any, as to the Mitigation Work.

5.7 Subject to the foregoing provisions in this Section 5, the Surety shall not raise the mere fact that the Mitigation

Work proceeded as a defence to any claim by the Owner hereunder.

6. Surety's Options

6.1 If the Surety has accepted liability pursuant to this Bond, the Surety shall promptly select and commence one of the following options:

a) remedy the default; or

b) complete the Contract in accordance with its terms and conditions; or

c) obtain a bid or bids for submission to the Owner for completing the Contract in accordance with its terms and conditions and, upon determination by the Owner and the Surety of the lowest responsible bidder:

i. arrange for a contract between such bidder and the Owner; and

ii. make available as work progresses (even if there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to complete the Contractor's obligations in accordance with the terms and condition of the Contract including any applicable value-added taxes for which the Surety may be liable, less the Balance of Contract Price; or

d) pay the Owner the lesser of: (1) the Bond Amount, or (2) without duplication, the Owner's Direct Expenses plus the Owner's proposed cost of completion of the Contract and any applicable value-added taxes for which the Surety may be liable, less the Balance of Contract Price.

6.2 The option selected by the Surety is referred to in this Bond and the Schedules as the "**Surety Option**".

7. Owner's Direct Expenses

7.1 Where the Surety is liable under this Bond, then the Surety shall be liable for the following fees and expenses, without duplication (the "**Owner's Direct Expenses**"):

a) reasonable professional fees incurred by the Owner to complete the Contract which are a direct result of the Contractor's default and which would not have been incurred but for the default of the Contractor;

b) reasonable external legal fees incurred by the Owner to complete the Contract, which are a direct result of the Contractor's default and which would not have been incurred but for the default of the Contractor, with the exception of legal fees incurred by the Owner in defending a claim or action by the Contractor, or incurred by the Owner in pursuing an action against the Contractor;

c) reasonable, miscellaneous and out-of-pocket expenses incurred by the Owner to complete the Contract which are a direct result of the default of the Contractor and which would not have been incurred but for the default of the Contractor;

d) direct costs incurred as a result of an extension of the duration of the supply of services or materials used or reasonably required for use in the performance of the Contract, which are a direct result of the default of the Contractor and which would not have been incurred but for the default of the Contractor;

e) reasonable costs of the Necessary Interim Work;

f) reasonable costs of the Mitigation Work; and

g) any additional fees and expenses agreed to by the Obligee, the Principal and the Surety.

7.2 For the purpose of Section 7.1(d), the "direct costs" incurred are the reasonable costs of performing the Contract during the extended period of time, including costs related to the additional supply of services or materials (including equipment rentals), insurance and surety bond premiums, and costs resulting from seasonal conditions, that, but for the extension, would not have been incurred.

7.3 Subject to any agreement to the contrary, between the Owner, the Principal and the Surety, the Surety shall not be liable under this Bond for:

a) any liquidated damages under the Contract;

b) if no liquidated damages are specified in the Contract, any damages caused by delayed performance or non-performance of the Contractor, except as provided in Section 7.1(d); or

c) any indirect or consequential damages, including but not limited to costs of financing, extended financing, hedging arrangements, loss of or deferral of profit, productivity or opportunity, or head office overhead costs.

7.4 If the Surety is liable under this Bond then, at the Owner's option, Owner's Direct Expenses may be deducted by the Owner from the Balance of the Contract Price as defined hereinafter or will be promptly reimbursed by the Surety subject to the other terms, conditions and limitations of this Bond and will reduce the Bond Amount.

8. Conditions Precedent

8.1 The Surety shall have no liability or Obligations under this Bond unless all of the following conditions precedent (the "**Conditions Precedent**") have been satisfied:

a) The Contractor is, and is declared by the Owner to be, in default under the Contract;

b) The Owner has given such notice to the Contractor of a default of the Contractor, as may be required under the terms of the Contract;

c) The Owner has performed the Owner's obligations under the Contract; and

d) The Owner has agreed to pay the Balance of Contract Price to the Surety or as directed by the Surety.

9. Balance of Contract Price

9.1 The term "**Balance of Contract Price**" means the total amount payable by the Owner to the Contractor under the Contract, including any adjustments to the price in accordance with the terms and conditions of the Contract, or other amounts to which the Contractor is entitled, reduced by any amounts deducted by the Owner for the Owner's Direct Expenses under Section 7.4 and all valid and proper payments made to or on behalf of the Contractor under the Contract.

9.2 The Balance of Contract Price shall be used by the Owner to first mitigate against any potential loss to the Surety under this Bond and then under the Labour & Material Payment Bond, and the Owner shall assert all rights and remedies available to the Owner to the Balance of Contract Price and make payment of the Balance of Contract Price as directed by the Surety.

10. Limitations on the Surety's Liability

10.1 Notwithstanding anything to the contrary contained in this Bond or in the Contract, the Surety shall not be liable for a greater sum than the Bond Amount under any circumstances.

10.2 The Surety's responsibility to the Owner under this Bond in respect of any Surety Option or Owner's Direct Expenses shall not be greater than that of the Contractor under the Contract.

11. Right of Action

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

12. Commencement of Action

12.1 It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of: (a) the date of substantial performance of the Contract as defined under the *Construction Act* (the "***Act***"); or (b) the date on which a Notice in respect of the default that is the subject of such suit or action is received by the Surety under this Bond.

12.2 The Owner, the Contractor and the Surety agree that any suit or action is to be made to a court of competent jurisdiction in Ontario and agree to submit to the jurisdiction of such court notwithstanding any terms to the contrary in the Contract.

13. Common Law Rights

13.1 The rights and obligations of the Owner, the Contractor, and the Surety under this Bond are in addition to their respective rights and obligations at common law and in equity.

14. Applicable Law

14.1 This Bond is governed by the laws of the Province of Ontario.

15. Notices

15.1 All notices under this Bond shall be delivered by registered mail, facsimile, or electronic mail at the addresses set out below, subject to any change of address in accordance with this Section. Any notice given by facsimile or electronic mail shall be deemed to have been received on the next business day or, if later, on the date actually received if the person to whom the notice was given establishes that he or she did not, acting in good faith, receive the notice until that later date. Any notice given by registered mail shall be deemed to have been received five (5) days after the date on which it was mailed, exclusive of Saturdays and holidays or, if later, on the date actually received if the person to whom the notice was mailed establishes that he or she did not, acting in good faith, receive the notice until that later date. A change of address for the Surety is publicly available on the Financial Services Regulatory Authority of Ontario website. The address for the Owner or the Contractor may be changed by giving notice to the other parties setting out the new address in accordance with this Section.

The Surety:
[Surety corporate name]
[address]
[fax]
[email]

The Owner:
[Owner proper name]
[address]
[fax]
[email]

The Contractor:
[Contractor corporate name]
[address]
[fax]
[email]

16. Headings for Reference Only

16.1 The headings and references to them in this Bond are for convenience only, shall not constitute a part of this Bond, and shall not be taken into consideration in the interpretation of this Bond.

IN WITNESS WHEREOF, the Contractor and the Surety have Signed and Sealed this Bond this _____ day of _____ in the year _____ .

[Contractor proper name]

By: _____

Name: _____

Title: _____

I have authority to bind the corporation.

Witnessed by :

_____

Name of Witness: _____

Address of Witness: _____

[Surety corporate name]

By: _____

Name: _____

Attorney-in-fact

*** IF THERE ARE TWO OR MORE COMPANIES IN PARTNERSHIP OR JOINT VENTURE, JOINTLY AND SEVERALLY BOUND, INSERT THE NAME OF EACH PARTNER OR JOINT VENTURE PARTY, AND INSERT THE WORD "COLLECTIVELY" AFTER THE WORD "HEREINAFTER" IN THE FIRST LINE.**

**** IF THERE ARE TWO OR MORE SURETY COMPANIES, JOINTLY AND SEVERALLY BOUND, INSERT THE *"[Name of the surety company], a corporation created and existing under the laws of [Place of incorporation],"* FOR EACH SURETY, FOLLOWED BY *"each as a surety and each duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter collectively called the "Surety"".***

***** INSERT THE CROWN, A MUNICIPALITY OR A BROADER PUBLIC SECTOR ORGANIZATION, AS APPLICABLE, OR SUCH OTHER PARTY DEEMED TO BE THE OWNER UNDER THE ACT, AND ENTERING INTO THE PUBLIC CONTRACT WITH THE CONTRACTOR.**

SCHEDULE A
Form of Notice

[date]

[Surety name]
[Surety address]
[Surety address]
[Surety's electronic/email address]
Attention:

Re: .....

Bond No: .....

Contractor: .....

Owner: .....

Contract: .....

Dear Sir/Madam,

We hereby notify you that the Contractor is in default of the captioned Contract. In general terms the details of the default are as follows:

[insert description of the Contractor Default]

We have given such notice of this default to the Contractor as is required under the Contract and enclose a copy for your records, and confirm that we have honoured our obligations under the Contract.

We call on you as Surety to honour your obligations under the Bond. We represent and warrant that we have in our possession the original, executed Performance Bond and herein enclose a copy.

Please provide us with potential dates and times to conduct the Post-Notice Conference under Section 5.1 of the Bond.

OPTIONAL: In the circumstances we plan to proceed with work and incur expenses necessary in the circumstances to ensure public safety or to preserve or protect the work under the Contract from deterioration or damage, referred to as the Necessary Interim Work under Section 4.1 of the Bond, and will provide you with information and access to discuss and observe this work. In the interim the following is a general description of the anticipated Necessary Interim Work:

OPTIONAL: To assist you in your Investigation we enclose with this Notice the documents and information indicated in Appendix A to this Notice. *[In addition to Appendix A, the Owner is encouraged to provide any information or material that may expedite the Investigation.]*

We look forward to receiving your acknowledgment of this Notice no later than four (4) business days of receipt and your request for any additional documentation or information you require to meet your obligations under the Bond.

Your truly,

[Full corporate title]

By: .....

[Name]
[Title]
[Phone]
[Email address]

CC: **[Contractor]**

Appendix A to Form of Notice

The following checked documents and information are enclosed with this Notice:

- ☐ Copy of full, executed Contract (with letter of award), including approved changes and pending changes relevant to this Notice (along with a copy of the Change Order log)
- ☐ Copy of original schedule and latest approved schedule for the Contract including actual progress and the order to commence work
- ☐ Specifications and drawings, including tender and post tender addenda, if any, applicable to the Contractor's scope of work
- ☐ Copies of and summary reconciliation of all invoices received under the Contract
- ☐ Copies of and summary reconciliation of all payments made and holdback of any kind retained under the Contract
- ☐ Copy of the most recent approved or certified payment application including the applicable Schedule of Values and copies of all unpaid payment applications
- ☐ A detailed list of all outstanding work in the Contractor's scope of work (including any deficiencies identified to date)
- ☐ Any issued or pending backcharges from the Owner to the Contractor
- ☐ Copy of any notice or correspondence to and from the Contractor related to the Contract and relevant to this Notice
- ☐ Copy of any claim for lien, legal proceeding or other documents received on the Contract
- ☐ Copy of any correspondence from subcontractors, suppliers or others indicating claims for unpaid amounts related to the Contract
- ☐ Copy of the executed and delivered Performance Bond
- ☐ **[Additional documents or information]**

SCHEDULE B
Surety's Acknowledgement of a Notice

[date]

[Name/corporate title of the Owner]
[Address]
[Address]
[E-mail address (if provided in the Notice of Claim)]
Attention:

Re: .....

Bond No: .....

Contractor: .....

Owner: .....

Contract: .....

Dear Sir/Madam,

On behalf of the Surety defined in the captioned Bond we acknowledge receipt on ..... of your Notice
(date of receipt)

under the captioned Performance Bond.

Please advise as soon as possible which of the following proposed dates and times and logistics are convenient to conduct the Post-Notice Conference:

Proposed Date	Proposed Time	Meeting or conference/video conference logistics

To enable our Investigation of the Notice please provide us promptly with the information and/or documentation identified in Appendix A to this Acknowledgement (and as necessary with access for our staff or appointed representatives to attend the place where the Contract is being performed to inspect the condition and progress of the work), hereinafter the Information.

We will provide you with the Surety's Position to the Notice no later than twenty (20) business days of our receipt of the Notice based on the information, documentation and access you have provided.

We continue to reserve all of our rights pursuant to the Bond and at law.

Yours truly;

[Corporate name of the Surety]

By: .....

[Name]
[Title]
[Phone]
[Email address]

CC: **[Contractor]**

Appendix A to Surety's Acknowledgement
Surety's Request for Information

Please identify and provide contact information for a person who is knowledgeable about the circumstances of the Notice and any Necessary Interim Work and Mitigation Work, and who can speak for the Owner.

Please identify and provide contact information for a person with whom arrangements can be made for access to the site where the work under the Contract is being performed.

Please provide copies of the following documentation in digital or hard copy format:

- ☐ Copy of full, executed Contract (with letter of award), including approved changes and pending changes relevant to this Notice (along with a copy of the Change Order log)
- ☐ Copy of original schedule and latest approved schedule for the Contract including actual progress and the order to commence work
- ☐ Specifications and drawings, including tender and post tender addenda, if any, applicable to the Contractor's scope of work
- ☐ Copies of and summary reconciliation of all invoices received under the Contract
- ☐ Copies of and summary reconciliation of all payments made and holdback of any kind retained under the Contract
- ☐ Copy of the most recent approved or certified payment application including the applicable Schedule of Values and copies of all unpaid payment applications
- ☐ A detailed list of all outstanding work in the Contractor's scope of work (including any deficiencies identified to date)
- ☐ Any issued or pending backcharges from the Owner to the Contractor
- ☐ Copy of any notice or correspondence to and from the Contractor related to the Contract and relevant to this Notice
- ☐ Copy of any Notice of Non-payment issued under the Act
- ☐ Copy of any Notice of Adjudication issued under the Act
- ☐ Copy of any claim for lien, legal proceeding or other documents received on the Contract
- ☐ Copy of any correspondence from subcontractors, suppliers or others indicating claims for unpaid amounts related to the Contract
- ☐ Copy of the executed and delivered Performance Bond
- ☐ **[Additional documents or information]**

SCHEDULE C
Surety's Position

[date]

[Name/corporate title of the Owner]
[Address]
[Address]
[E-mail address (if provided in the Notice of Claim)]
Attention:

Re: .....

Bond No: .....

Contractor: .....

Owner: .....

Contract: .....

Dear Sir/Madam,

Based on the Information you have provided and given the current status of our Investigation, we can advise that [use only one of these Options]:

OPTION A

The Surety accepts liability under the Bond. To satisfy our Obligation we propose, under Section 6.1 of the Bond, to: *[Select 1 and delete the others]*

a) Promptly remedy the Contractor Default. *[Describe proposal and timelines.]*
or
b) Complete the Contract in accordance with its terms but only on the condition that the Owner undertakes to pay or to make available to the Surety the Balance of the Contract Price. *[Describe proposal and timelines.]*
or
c) Obtain a bid or bids for submission to the Owner for completing the Contract in accordance with its terms and conditions and, upon determination by the Owner and the Surety of the lowest responsible bidder:
    i. arrange for a contract between such bidder and the Owner; and
    ii. make available as work progresses (even if there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to complete the Contractor's obligations in accordance with the terms and conditions of the Contract including any applicable value-added taxes for which the Surety may be liable, less the Balance of Contract Price. *[Describe proposal and timelines.]*

or
d) pay the Owner the lesser of : (1) the Bond Amount, or (2) without duplication, the Owner's Direct Expenses plus the Owner's proposed cost of completion of the Contract and any applicable value-added taxes for which the Surety may be liable; less the Balance of Contract Price. *[Describe proposal and timelines.]*

OPTION B

The Surety disputes the Notice. The reasons are as follows:

OPTION C

Based on the Information you have provided and the time available for our Investigation

[if applicable] and taking into account genuine disputed issues as between the Owner and the Contractor that have not been resolved according to the terms of the Contract as outlined generally below,

the Surety is unable to determine whether or not one or more of the Conditions Precedent has been satisfied and, therefore, is not able to accept liability under the Bond.

In particular we have been unable to determine that

[delete those that do not apply]

a) the Contractor is, in fact, in default of its obligations under the Contract. *[Provide further explanation as appropriate.]*

and/or

b) the Owner has performed its obligations under the Contract. *[Provide further explanation as appropriate.]*

and/or

c) the Owner has given the notice to the Contractor of a Contractor Default as required under the terms of the Contract. *[Provide further explanation as appropriate.]*

and/or

d) the Owner has agreed to apply the Balance of Contract Price as necessary to enable the Surety to exercise the Surety Option under the Bond. *[Provide further explanation as appropriate.]*

With your agreement and assistance we are willing to extend our Investigation in an effort to resolve outstanding issues. Should this extended Investigation allow us to provide you with an alternative Surety's Position we will do so promptly.

[If applicable] Under a full reservation of all of our rights under the Bond and the applicable law, and without prejudice to the rights and obligations of the Owner, the Contractor or the Surety under the Bond we propose to proceed as follows:

We continue to reserve all of our rights pursuant to the Bond and at law.

If you have any questions or concerns, please do not hesitate to contact us.

Yours truly;

[Corporate name of the Surety]

By:

[Name]
[Title]
[Phone]
[Email address]

CC: **[Contractor]**