

FORM 5
HOLDBACK REPAYMENT BOND UNDER SUBSECTION 22(4) OF THE ACT
Construction Act

No. _____ (the “**Bond**”)

_____, as a principal, hereinafter called the “**Contractor**”, and
(name of the contractor*)

_____, a corporation created and existing under the laws of
(name of the surety company**)

_____, as a surety, and duly authorized to transact the
(place of incorporation)

business of Suretyship in the Province of Ontario and hereinafter called the “**Surety**”, are held and firmly bound unto

_____ as obligee, hereinafter for the purposes of this Bond
(name of the owner***)

called the “**Owner**”, in the amount of 10% of the price of the Original Contract (defined below), or, as such price is adjusted in accordance with the terms of the Original Contract and Performance Bond No. _____,

hereinafter called the “**Bond Amount**”, 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**”;

AND WHEREAS the Contract allows for the Owner to make payments to the Contractor without retaining the holdback, as defined in the Construction Act (the “**Act**”), in the form of funds;

AND WHEREAS the Act provides that the Owner may satisfy its obligation to retain the holdback in the form of this Bond;

AND WHEREAS the Act provides that the Owner shall maintain the holdback until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under the Act;

NOW THEREFORE the condition of this Obligation is such that if all liens in respect of the Contract that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under the Act, 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. Whenever a lien or liens against the holdback in respect of the Contract have not expired or been satisfied, discharged or otherwise provided for under the Act but is or are preserved, the Owner may make demand on this Bond for an amount necessary for the Owner to comply with its holdback obligations under the Act, substantially in the form set out at Schedule A executed by two (2) officers of the Owner (a “**Demand**”). For greater clarity, the Demand may include amounts required for security for costs. Partial and multiple Demands not exceeding the Bond Amount in the aggregate may be made. The Demand shall certify the amount of the lien or liens against the holdback in respect of the Contract and that such liens have not expired or been satisfied, discharged or otherwise provided for under the Act.
2. This Bond shall be irrevocable and payment will be made within ten (10) business days of receipt of a Demand, notwithstanding any objection by the Contractor. The Demand shall be accepted by the Surety as conclusive evidence that a Default has occurred and that the amount set out in the Demand is an appropriate amount, and the Surety shall not assert as a defense or grounds for not paying the Bond Amount, in whole or in part, pursuant to such Demand that a default has not occurred, that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Contract or that the Owner is in default under the Contract. The Surety’s liability under this Bond is unconditional and shall not be discharged or released or affected by any arrangements made between the Owner and the Contractor, or by any dispute between the Surety and the Contractor, or the taking or receiving of security by the Owner from the Contractor, or by any alteration, change, addition, modification, or variation in the Contractor’s

obligations under the Contract, or by the exercise by the Owner of any of the rights or remedies reserved to it under the Contract or by any forbearance to exercise any such rights or remedies whether as to payment, time, performance or otherwise (whether or not any arrangement, alteration or forbearance is made without the Surety's knowledge or consent). All payments by the Surety shall be made free and clear without deduction, set-off or withholding. The Surety's obligation to pay a Demand arises solely upon the Owner delivering a Demand in the prescribed form to the Surety, and the Surety shall not assert as a defence that the lien is invalid and shall not seek relief in any court to avoid this payment or assert any other defence other than the Demand has not been delivered in accordance with this Bond.

3. Notwithstanding any other provision in this Bond, the Surety's total liability under this Bond shall be limited to the lesser of the amount of holdback paid to the Contractor in respect of the Contract or the Bond Amount.
4. As a condition precedent to any suit or action under the Bond, a Demand must be received by the Surety on or before a period of one hundred and twenty (120) calendar days from the last date on which a lien arising from the Contract could have been preserved under the Act.
5. The parties to this Bond agree that any suit or action under the Bond 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.
6. 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.
7. All Demands and notices under this Bond shall be delivered by facsimile or registered mail to the Surety, with a copy to the Contractor, at the addresses set out below, subject to any change of address in accordance with this Section. All other correspondence may be delivered by any of facsimile, regular mail, registered mail, email or courier. A change of address for the Surety is publicly available on the Financial Services Commission of Ontario website (see: https://www5.fsco.gov.on.ca/Licensing/LicClass/eng/lic_companies_class.aspx). The address for 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 Contractor:

[Contractor proper name]
[address]
[fax]
[email]

8. This Bond shall be governed by the laws of the Province of Ontario.

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

[Contractor proper name]

Witnessed by :

By: _____

Name: _____

Name of Witness: _____

Title: _____

Address of Witness: _____

I have authority to bind the corporation.

[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
Demand

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

Re: _____

Holdback Repayment Bond No: _____

Contractor: _____ JV

Contract: _____

We hereby certify that a lien or liens against the holdback in the amount of \$ _____, in respect of the Contract, have not expired or been satisfied, discharged or otherwise provided for under the *Construction Act* and that we are entitled to make Demand on the captioned Holdback Repayment Bond.

We hereby demand payment of *(insert here the lesser of the amount of the lien or liens, plus the amount of the statutory security for costs, and the amount of the holdback)* \$ _____ within ten (10) business days of your receipt of this Demand.

Payment should be made by cheque to our address at _____,

or by bank wire transfer as follows:

Beneficiary: _____

Credit account number: _____

Bank name: _____

Bank address: _____

SWIFT/IBAN code: _____

Executed this _____ day of _____, 20____, on behalf of

[Owner's full corporate title]

By: _____

Name: _____

Title: _____

Phone: _____

Email address: _____

I have authority to make this certification and to bind the [Owner].

By: _____

Name: _____

Title: _____

Phone: _____

Email address: _____

I have authority to make this certification and to bind the [Owner].

cc: [Contractor]