THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 12-072

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE GUARANTEE COMPANY OF NORTH AMERICA FOR THE COMPLETION OF THE HUNTER STREET BRIDGE REHABILITATION PROJECT (T-02-10)

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and The Guarantee Company of North America in the form attached hereby as Schedule “A”, and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 14th day of May, 2012.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk
Rehabilitation of the Hunter Street Bridge over the Otonabee River, City of Peterborough
Project No. U1004
Bond No. TS5100680

OWNER AGREEMENT as of this 29th day of May, 2012.

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(hereinafter referred to as the "Owner")

and

THE GUARANTEE COMPANY OF NORTH AMERICA
(hereinafter referred to as "Surety").

WHEREAS the Owner entered into an Agreement with ConCreate USL Ltd. ("ConCreate") dated March 29, 2010 (the "Original Contract") pursuant to which ConCreate agreed to perform the Work described in the Original Contract as the Rehabilitation of the Hunter Street Bridge over the Otonabee River, Town of Peterborough (the "Project").

AND WHEREAS the Surety issued to the Owner, Performance Bond No. TS5100680 dated February 18, 2010 (the "Performance Bond") with respect to the Original Contract;

AND WHEREAS the Performance Bond remains in full force and effect;

AND WHEREAS by Order dated March 16, 2012 (the "Interim Receiving Order") an Interim Receiver ("Interim Receiver") was appointed over the affairs and property of ConCreate and by Order dated April 13, 2012 the Interim Receiver was replaced with a Receiver and Manager;

AND WHEREAS ConCreate is unable to complete the Project and the Receiver has elected not to complete the Project;

AND WHEREAS ConCreate has defaulted on the Original Contract;

AND WHEREAS the Owner has notified the Surety of the default by letter on April 17, 2012 and has called upon the Surety under the terms of the Performance Bond;

AND WHEREAS the Owner has requested the Surety to arrange for completion of the Work
under the Original Contract;

AND WHEREAS there are unpaid subcontractors and suppliers of ConCreate that are required for the completion of the Original Contract.

AND WHEREAS Horseshoe Hill Construction Inc. (the "Completion Contractor") is prepared to complete the work remaining under the Original Contract, including honouring all of ConCreate’s warranties and correcting deficiencies in the work of ConCreate;

AND WHEREAS the Owner represents to the Surety that, at the date hereof, the financial status under the Original Contract is as set out in the Original Contract Financial Status Summary attached at Schedule "A" hereto;

AND WHEREAS to date, the Owner has only identified deficiencies in the north balustrade area and the Owner reserves its right to identify deficiencies in the work performed by ConCreate and the work to be performed by the Completion Contractor;

AND WHEREAS the Surety and the Owner agree to continue to work together to finalize any outstanding change notices ("Changes") related to the Original Contract;

AND WHEREAS there is insufficient time for the Surety to conduct a full and proper investigation of the Owner's claim under the Performance Bond before the Completion Contractor commences work on the Project;

AND WHEREAS the Owner reserves its right to claim liquidated damages (in the amount of $1,000 per day) in the event that the Project is not substantially performed by the end of the eight week period following commencement of the work under the Completion Contract on June 4, 2012;

AND WHEREAS the Surety is prepared to continue its investigation and to enter into this Agreement subject to a full reservation of the Surety's rights under the Performance Bond and the applicable law;

AND WHEREAS the Owner and Surety wish to document their agreement regarding the manner in which the Project is to be completed and any additional agreements necessary to complete the remaining work under the Original Contract;
NOW THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED
HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND
SUFFICIENCY WHEREOF IS HEREBY ACKNOWLEDGED, THIS MEMORANDUM OF
AGREEMENT WITNESSETH THAT;

1. The recitals to this Agreement as stated above form an integral part of this of Agreement;

2. The Owner shall enter into an agreement with the Completion Contractor for the
completion of the Original Contract on the terms and conditions set out in the completion
contract attached hereto as Schedule "C" (the "Completion Contract");

3. Subject to paragraph 7 below, the Owner shall pay to the Completion Contractor the
Balance of the Contract Funds as calculated in accordance with Schedule "A" hereto under the
Original Contract, being the amount of $1,870,851.04 (excluding applicable taxes) (the "Balance
of Contract Funds") in accordance with the Completion Contract.

4. On a monthly basis, following the procedure for payment under the Original Contract, the
Owner shall cause the Consultant (as defined in the Original Contract) to certify and approve the
payments under the Completion Contract that otherwise would have been payable under the
Original Contract and reflect on each certificate the value of the work under the Original
Contract performed by the Completion Contractor for the month and the corresponding amount
of the payment to be made to the Completion Contractor for such work.

5. In the event that the Completion Contractor's invoice amount is in excess of the progress
payment that would have been certified by the Consultant under the terms and conditions of the
Original Contract for the work performed, the Surety shall place the Owner in sufficient funds,
on a monthly basis, to pay the Completion Contractor the difference between the amount so
certified for payment by the Consultant under the Original Contract and the actual Completion
Contractor's invoice amount.

6. The Surety shall have no obligation to pay or fund any Completion Contractor invoice for
any additional or extra work or material ordered by Owner, whether pursuant to the Completion
Contract or otherwise, after the date of the Completion Contract that increases the scope of the
Work as defined therein (the "Changes"). In determining the amount of funds which the Surety is
required to make available to the Owner to pay for the Completion Contract, the additions (resulting in a change order) and deletions (resulting in a credit change order) shall be taken into consideration.

7. The Owner shall pay the Surety the earned 10% statutory holdback amount of $714,175.11 as calculated on Schedule "A" plus the applicable HST (the "10% Holdback") on May 29, 2012 (being the 47th day following the date of the last work performed by ConCreate on April 12, 2012), being that part of the Balance of Contract Funds to be paid to complete the work, honor warranties and correct deficiencies provided that:

(i) title to the Project is clear of any claims for lien related to the work performed by ConCreate; and

(ii) the Surety provides the Owner with the letter attached hereto as Schedule “D”.

The Owner shall maintain a new 10% statutory holdback for the value of Work performed by the Completion Contractor.

8. In the event that the Surety is liable to the Owner under the Performance Bond, the Owner agrees that any payments hereunder by the Surety related to the completion of the Original Contract are deemed to be payments made by the Surety pursuant to the Performance Bond and shall reduce the penal amount of the Performance Bond to that extent.

9. If for any reason the Surety is not liable to the Owner for any amounts, in whole or in part, paid by the Surety to complete the Original Contract under the Performance Bond, the Owner shall reimburse and indemnify the Surety for any such payments made by the Surety under this Agreement.

10. The Owner agrees that any payments by the Surety are made without prejudice to the rights of the Surety under the Performance Bond regarding its liability.

11. The Owner shall cooperate and assist, if necessary, the Surety in settling the claims made against Payment Bond by providing the Surety with copies of relevant documents. If the Surety requires the co-operation an assistance of the Consultant, the Surety shall reimburse the City for the Consultant’s reasonable costs and fees in providing its cooperation and assistance.
12. The Owner agrees to meet with the Surety to resolve the Original Contract accounting, including any unresolved Changes.

13. This Agreement and the performance thereof by the Owner and the Surety shall be without prejudice to the positions of the Owner and the Surety with respect to liability or obligation under the Performance Bond.

14. Nothing contained herein shall expand the liability of the Surety under the Performance Bond, and without limiting the generality of the foregoing; the Surety shall not be required, under the terms of this or any other agreement, to pay in the aggregate more than the maximum amount payable under the Performance Bond (the "Bond Amount"). The Surety shall advise the Owner monthly as to the amounts accrued and/or expended by the Surety under the Performance Bond, and in the event that the total of such amounts equals or exceeds 80% of the Bond Amount, the Surety shall give notice to the Owner thereof, and the Surety and the Owner will make arrangements for the Surety to turn the Project over to the Owner, should it appear likely that the Bond Amount will be exhausted prior to the completion of the Work.

15. The Owner acknowledges and agrees that the Surety's obligation herein shall not increase the specified bond amount of the Performance Bond and in no circumstance shall the Surety be liable to the Owner for an amount in excess of the specified bond amount of the Performance Bond.

16. This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original, but such separate counterparts shall together constitute one and the same instrument. Execution of this Agreement may be communicated by facsimile transmission or email of an originally-executed counterpart thereof.
N WITNESS WHEREOF, the Owner and the Surety have, by their respective authorized employees or officers, executed this Agreement on the date first written above:

THE CORPORATION OF THE CITY OF PETERBOROUGH

__________________________________
Henry Clarke, Acting Mayor

John Kennedy, City Clerk
We have the authority to bind the Owner

THE GUARANTEE COMPANY OF NORTH AMERICA

By: __________________________________________
I have authority to bind the Surety
### SCHEDULE "A"

#### CONTRACT FINANCIAL STATUS

<table>
<thead>
<tr>
<th>Description</th>
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<td>$7,796,155.00</td>
</tr>
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<td>Approved Change Orders</td>
<td>$427,426.18</td>
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<td>Amended Contract Price (3 = 1+2)</td>
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<td>Balance of Contract Funds (3 – 5) including Holdback (6+7)</td>
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***All amounts are calculated according to the Original Contract and excluding HST***

**Notes:**

1. The tendered Contract price was $7,996,155.00, which included a $200,000.00 contingency. The Contract price is therefore $7,796,155.00.

2. The listing of change orders, from 1 to 29, does not include revisions to approach works items which have been made in the body of the payment certificate (and only noted under the change order listing). The value indicated above includes all approved changes to date.

3. On Payment Certificate 18, the $7,998,457.30 figure had not been updated for all change orders and the $8,223,581.18 is the correct present Contract amount.
SCHEDULE “B”
INTENTIONALLY BLANK
SCHEDULE "C"

COMPLETION CONTRACT
Rehabilitation of the Hunter Street Bridge over the Otonabee River, City of Peterborough
Contract No. U1004
Bond No. TS5100680

COMPLETION CONTRACT made as of this 29th day of May, 2012.

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(hereinafter referred to as the "Owner")

and

HORSESHOE HILL CONSTRUCTION INC.
(hereinafter referred to as "Completion Contractor")

WHEREAS the Owner entered into an Agreement with ConCreate USL Ltd. ("ConCreate")
dated March 29, 2010 (the "Original Contract"), a copy of which is attached hereto and marked
as Schedule "A", pursuant to which ConCreate agreed to perform the Work described in the
Original Contract as the Rehabilitation of the Hunter Street Bridge over the Otonabee River,
City of Peterborough (the "Project").

AND WHEREAS the Project was scheduled to be completed on December 8, 2011;

AND WHEREAS the Completion Contractor has stated that the Project can be completed in
accordance with the schedule attached at Schedule “D” hereto.

AND WHEREAS the Parties agree that the Owner is entitled to exercise its rights under
Original Contract if the Project is not completed in accordance with the schedule attached at
Schedule “D” hereto.

NOW THEREFORE in consideration of the premises and mutual covenants herein contained
and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties
hereto agree as follows:

1. The Completion Contractor will execute and perform all of the work necessary to
complete the Original Contract (the "Work"), including (subject to the provisions of
paragraph 9 below) any existing, readily apparent or discoverable deficiencies in the
work performed by ConCreate as of the date hereof, all of which is to be performed
pursuant to the terms and conditions of the Original Contract, in all respects, except as modified or changed by this Completion Contract (the "Scope of the Work"), for an amount (excluding HST) calculated as follows:

(a) the Cost of the Work as defined on Schedule "B" hereto; plus

(b) a Fee equal to 12% of the Cost of the Work (as defined below).

(collectively referred to as "Completion Contract Price").

2. "Fee" means 12% of the Cost of the Work paid to the Completion Contractor (excluding applicable taxes).

3. Notwithstanding paragraph 1 above, the Completion Contract Price shall in no circumstances be less than the Balance of Contract Funds as calculated on Schedule "C" hereto.

4. All payments to the Completion Contractor shall be subject to the provisions of the applicable lien legislation.

5. The Completion Contractor is to commence the work on the Project on June 4, 2012 (the "Commencement Date"). The Completion Contractor shall diligently pursue completion of the work in accordance with Schedule "D" hereto.

6. The Completion Contractor hereby irrevocably directs the Owner on a monthly basis to, and the Owner shall, deposit the monthly amount of Completion Contract Price payable to the Completion Contractor into Account No. 08052 010 5405815 at Bank Of Commerce 2 King Street East Bolton Ontario L7E 5T1.

7. Except as otherwise stated herein, all of the terms and conditions of the Original Contract shall apply mutatis mutandis to the Completion Contractor and the Owner as if named therein as Contractor and Owner, respectively, and as if such terms and conditions were set out in this Agreement.

8. The Owner shall, on a monthly basis, subject to any holdbacks required by the applicable lien legislation, make such payments to the Completion Contractor on account of the Completion Contract Price as may be set out in the Completion Contractor's invoices, all in accordance with the payment terms of the Original Contract. The Completion
Contractor shall submit on a monthly basis an application for progress payment in accordance with the payment terms and conditions of the Original Contract to enable the Consultant (as defined in the Original Contract) to continue to certify the percentage of the value of work of the Original Contract and to determine the value of such work under the Original Contract and the Completion Contract. The Owner and Completion Contractor shall work cooperatively with the Consultant to facilitate the certification of the work as described herein and under the Original Contract.

9. The Completion Contractor shall not incur any cost of correcting any alleged deficient work in respect of the work performed by ConCreate under the Original Contract unless Completion Contractor has first provided the Owner with notice of such deficiency and received from the Owner approval to proceed with the correction of such deficiency.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

THE CORPORATION OF THE CITY OF PETERBOROUGH

__________________________________________
Henry Clarke, Acting Mayor

THE CORPORATION OF THE CITY OF PETERBOROUGH

__________________________________________
John Kennedy, City Clerk
We have authority to bind the Owner

HORSESHOE HILL CONSTRUCTIONS INC.

By: ________________________________
I have the authority to bind the Completion Contractor
Schedule "A"

Original Contract

Contract between The Corporation of the Corporation of the City of Peterborough and ConCreate USL Ltd. dated March 29, 2010
Schedule "B"
Cost of the Work Schedule

"Cost of the Work", which excludes HST or any other applicable taxes, shall mean the actual cost, without mark-up, paid by Completion Contractor to complete the work, and shall be restricted to the following:

(i) wages and benefits paid for labour in the direct employ of Completion Contractor under applicable collective bargaining agreements or under a salary or wage schedule agreed on by the Owner and Completion Contractor;

(ii) salaries, wages and benefits for Completion Contractor's foremen and supervisors, project superintendents, mechanical and electrical coordinators, etc;

(iii) the amounts of all contracts or written agreements with subcontractors and suppliers;

(iv) the cost of all products incorporated into the Project;

(v) the cost of materials, supplies, equipment, temporary services and facilities, including transportation, which are consumed in the performance of the Project; less salvage value on such items used but not consumed, which remain the property of Completion Contractor;

(vi) the cost of all tools, machinery and equipment, exclusive of hand tools used in the performance of the work, whether rented from third parties by Completion Contractor;

(vii) the cost of quality assurance such as independent inspection and testing services;

(viii) fees or duties levied by authorities having jurisdiction at the Project;

(ix) premium for all insurance for which Completion Contractor is required, by the contract documents, to purchase and maintain in relation to the performance of the work;

(x) the cost of removal and disposal of waste products and debris;

(xi) costs incurred due to emergencies affecting the safety of persons or property; and

(xii) the cost of removal or containment of toxic or hazardous substances.

For greater certainty the following amounts are not Cost of the Work:

i. charges for long distance telephone and facsimile communications, courier services, expressage, photocopying, reproduction of contract documents, and petty cash items incurred in relation to the performance of the work.

ii. salaries, wages and benefits of Completion Contractor's head office or field
(site) office personnel, general management, warehouse personnel, maintenance workers and other employees engaged in daily operations at the place of business or at the site;

iii. overhead, profit, general expense (insurance, rent, leases, mortgages, financing costs including holdback, utilities, disposal charges and related services, telephone, light, power, water, utilities and heat) and applicable taxes;

iv. expenses of Completion Contractor's head, district and field (site) offices;

v. legal costs;

vi. the cost of financing the work;

(vii) the cost of any accounting or auditing;

(viii) costs due to the fault or negligence of Completion Contractor or anyone for whose acts Completion Contractor may be liable, including costs for the correction of damaged, defective or non-conforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the work;

(ix) fines, penalties, sanctions or impositions assessed or imposed by any governmental body, in whole or in part, due to the action or inaction of Completion Contractor or anyone for whose acts Completion Contractor may be liable;

(x) costs resulting from the failure of Completion Contractor to procure and maintain insurance as required by the contract documents;

(xi) losses or expenses for which Completion Contractor is compensated or reimbursed by insurance or otherwise;

(xii) costs for re-inspections and re-testing of non-conforming work not carried out in accordance with the contract documents;

(xiii) leased or rented equipment, furniture and facilities not used on the site;

(xiv) office supplies, including stationery, postage and other office supplies, equipment, computer hardware and software;

(xv) project related office expenses, including permits and/or licenses required by authorities having jurisdiction, phone, fax, internet, printing, courier charges, office equipment rentals, lodging and travel;

(xvi) project related site expenses, including site/trailer office(s) and sheds, including cost of telephone, light, power, utilities, water and heat used therein, project safety (hoarding, signage, hump lines, etc.), site security, fire prevention, snow removal, winter conditions, surveying, coordination of service disruption, project signage, sanitary facilities, water, power, heat, temporary protection of areas adjacent to the work, as-built drawings and maintenance manuals;

(xvii) salaries, wages, benefits for Completion Contractor's project managers;
(xviii) licenses, permits, certificates, fees and deposits; and

(xix) printing charges for proposed changes, change orders and drawings for use in the work by Completion Contractor.
## Schedule "C"

**CONTRACT FINANCIAL STATUS**

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Schedule "D"

Project Schedule
SCHEDULE D
SURETY LETTER TO OWNER PURSUANT
TO PARAGRAPH 7

TO: OWNER

FROM: SURETY

The ConCreate accounts payable for labour or services supplied to the Project prior to March 16, 2012 by any Claimants (as that term is defined in the Payment Bond) have been or will be paid.

Signed by Surety