

**TOWNSHIP OF ESSA
PUBLIC WORKS GARAGE
5654 County Road 21, Utopia**

Request For Proposal Document

EPW-22-003

Closing Date

October 27, 2022
2:00 PM

Deadline For Questions

October 18, 2022
2:00 PM

LATE PROPOSALS WILL NOT BE ACCEPTED

File:

422387

Date:

**September
20, 2022**

Prepared by:

Tatham Engineering Limited

41 King Street, Unit 4
Barrie, Ontario L4N 6B5

T 705-733-9037

**E info@tathameng.com
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Prepared for:

Township of Essa

5786 County Road 21
Utopia, Ontario L0M 1T0

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1 Instructions to Bidders

To be read in conjunction with the CCDC 14 Design-Build Stipulated Price Contract 2013 General Conditions of Contract.

1.1 DEFINITIONS

Agreement	a signed and executed CCDC 14 Design-Build Stipulated Price Contract 2013 and signed and executed Agreement as per Section 6
Bidder	a person or entity that is submitting a Proposal in response to the RFP process
Closing Date and Time	has the meaning ascribed thereto in Section 1.9: Proposal Closing
Consultant	has the meaning ascribed thereto in CCDC 14 Design-Build Stipulated Price Contract 2013
Contract	an agreement to be signed between the Owner and a successful Bidder pursuant to this RFP process
Contract Documents	the documents identified in Article A-3 of the CCDC 14 general conditions of contract
Design-Builder	the successful Bidder pursuant to this RFP process that has executed a Contract
Owner	the Owner as described in Section 6 of the Agreement
Owner's Advisor	The Owner's Advisor as defined in the CCDC 14 - 2013 general conditions of contract
Owner's Representative	The Owner's Representative for the purposes of this RFP process as described in Section 1.4
Project	the Work generally described in Section 1.3: Scope of Work and in Appendix B
Proper Invoice	an invoice submitted by the Design-Builder to the Owner in accordance with the Construction Act in the format described in Section 10.3.7.
Start Work Order	the document in writing, referred to in the Bid Form that is issued by the Owner and that authorizes the Design-Builder to begin the Work
RFP	the documents issued by the Owner in respect of a specific opportunity
RFP Process	the Request for Proposal process initiated by the Owner to obtain proposal documents submitted by Bidders to complete the Work
Proposal	the documents listed in Section 1.7: Proposal Submission
Work	the Work to be performed by a Design-Builder pursuant to a Contract issued as a result of this RFP process and includes, but is not limited to, the work generally described in Section 1.3: Scope of Work and Appendix B

1.2 LOCATION OF WORK

The location of the work is as follows:

- Township of Essa Public Works Yard, located at 5654 County Road 21, Utopia

1.3 SCOPE OF WORK

The Township of Essa is seeking proposals from qualified design-build companies to complete the design and construction of a garage addition at the Township's public works yard. Generally, the scope of work will involve the following:

- Prepare the architectural, structural, mechanical, electrical, septic, and site servicing design and drawings for a 15.8m x 44.2m garage addition. The garage will be used primarily for the storage of public works vehicles.
- Conduct all necessary investigations as required by the Design-Builder's consultants to complete the design.
- Obtain all necessary permits and approvals for the project. Site plan approval from the Township and a building permit from the building department will be required. A work permit from the Conservation Authority will not be required.
- Complete the construction of the building and all associated services and site works.
- Refer to Appendix B for a summary of the Owner's requirements. The attached drawings are conceptual to describe the Owner's general intent for the project, however the final design and construction will be based on the design drawings and specifications prepared by the Design-Builder and as approved by the Owner.
- All design and construction work shall be in accordance with the Ontario Building Code, Occupational Health and Safety Act, and all applicable regulations, legislation, laws, standards, and codes.

1.4 OWNER'S REPRESENTATIVE

The Owner's Representative for the purposes of this RFP process is as follows:

Tatham Engineering Limited
41 King Street, Unit 4
Barrie, Ontario L4N 6B5

705-733-9037
info@tathameng.com

Michael Sanfilippo, P.Eng
Senior Engineer, Project Manager

msanfilippo@tathameng.com

1.5 BIDDER EXAMINATION

The Bidder shall visit the site of the Work and carefully investigate all conditions potentially affecting the Work and how it is to be completed, with respect to site access, working area, storage areas, local features, including private property and utilities, as well as any other conditions that may influence the undertaking and/or pricing of the Work.

A Geotechnical Report is NOT available for this site. A geotechnical investigation shall be completed by the Design-Builder as part of the design process. It is anticipated soils with an allowable soil bearing capacity of 75 kPa or greater are available to support the building.

The Bidder may carry out such further investigations as are necessary to inform them of the subsurface conditions, which will be encountered during Construction with the approval of the Owner. The arrangements for such investigations should be made with the Owner and any other appropriate authorities.

1.6 CORRESPONDENCE & QUESTIONS

All correspondence (with the exception of the proposal submission) shall be directed to the Owner's Representative. Emails shall reference the RFP number in the subject line of the email.

Michael Sanfilippo, P.Eng

msanfilippo@tathameng.com

Bidders may submit questions regarding the RFP up to the Time Limit for Questions, which is:

October 18, 2022

2:00 PM

Questions are to be submitted via email to the Owner's Representative. Bidders shall be responsible to ensure proper receipt of questions.

Where the Owner's Representative deems that an explanation or interpretation is necessary or desirable, an Addendum will be posted on biddingo and the Township's website.

No oral explanation or interpretation provided by the Owner, Owner's Representative, or any other person shall modify any of the requirements or provisions of the RFP.

1.7 PROPOSAL SUBMISSION

Bidders shall submit the following forms complete in all respects:

- Proposal Form Section 2
- Schedule of Items & Prices Section 3
- List of Subcontractors & Suppliers Section 4

- Bidder's Ability & Experience Form Section 5
- Agreement to Bond Section 7
- All Addenda issued during the RFP Process duly signed
- Bid Security as specified herein

Each proposal must be fully legible, signed, sealed and witnessed in the spaces provided, with the signature of a responsible officer of the Bidder.

All Sections must be completed in ink, with all of the blank spaces completed.

Bidders may submit the entire document if they so desire.

Proposals are to be sealed in an envelope bearing the contract number and name of the bidder.

Proposals WILL NOT be accepted via email or through biddingo. Only hard copy proposals delivered to the office of the Owner will be accepted.

1.8 BID SECURITY

A Bid Security document is required to accompany the proposal in the amount of:

\$75,000

The Bid Security is to be made payable to the Owner and can be issued in one, or a combination, of the following:

1. certified cheque;
2. bank draft;
3. money order;
4. irrevocable letter of credit; or
5. bid bond (CCDC 220 - 2002).

If Section 1.7 allows submissions via email, a properly completed bid bond shall be submitted in electronic format with the proposal submission.

The Bidder agrees that, if they should withdraw their proposal or fail for any reason to execute the agreement or provide the required bonds or other documents required, the Owner may retain the Bid Security for the use of the Owner and may accept any other proposal, advertise for new proposals, or not accept any proposal as the Owner deems advisable.

The Bid Securities for the 3 low bidders shall be retained until the expiration of the validity period or a contract is executed, whichever is shorter.

1.9 PROPOSAL CLOSING

Proposals will be received at the office of the Owner in hard copy or digitally by email up to the Closing Date and Time noted below. Each proposal will be marked with the time and date it is received.

October 27, 2022

2:00 PM

The Bidder is responsible to confirm receipt of the proposal package prior to the closing. Proposals received after the Official Closing Date and Time, regardless of manner of delivery, shall not be considered. The manner of delivery of any proposal shall be at the risk of the Bidder.

1.10 PROPOSAL OPENING

Proposals will be opened privately immediately following the closing of the RFP process.

1.11 PROPOSAL AMENDMENT OR WITHDRAWAL

A Bidder who has already submitted a proposal may submit a further proposal at any time up to the official Closing Date and Time. The last proposal received shall supersede and invalidate all proposals previously submitted by that Bidder for this Contract.

A Bidder may withdraw their proposal at any time up to the official closing Date and Time by submitting a letter bearing their signature and seal as in their proposal to the office of the Owner or by email to the Owner's Representative.

1.12 INFORMAL PROPOSALS

Proposals that are incomplete, conditional, illegible or obscure or that contained additions not called for, reservations, erasures, alteration or irregularities of any kind, may be rejected as informal. Bidders are required to fill in all the blanks. Proposals that contain prices which appear to be so unbalanced as likely to adversely affect the interests of the Owner may be rejected at the Owner's sole discretion.

1.13 DISQUALIFICATION OF PROPOSALS

Proposals will not be opened and are disqualified if they are received after the closing time and date.

Proposals may be declared invalid and disqualified if presented as follows:

- with blank spaces missing required information;

- with additions uncalled for;
- unbalanced;
- conditional;
- qualified;
- irregular;
- without the bid security in the prescribed form;
- unsigned and unsealed;
- illegible;
- obscure; or
- completed in pencil.

1.14 RIGHT TO ACCEPT OR REJECT

Contract award will be by written notification from the Owner or Owner's Representative to the successful Bidder, if any. The Bidder acknowledges that the Owner shall have the right to reject any, or all Proposals for any reason, or to accept any Proposal which the Owner in its sole discretion deems most advantageous to itself. The lowest or any Proposal shall not necessarily be accepted.

1.14.1 Consideration for Award

Consideration for award shall only be undertaken in relation to Bidders who are determined by the Owner to have satisfied all requirements of the RFP.

The Owner hereby reserves the right, privilege, entitlement and absolute discretion, and for any reason whatsoever to:

1. accept a Proposal which is not the lowest Proposal submission, or reject a Proposal that is the lowest priced Proposal even if it is the only Proposal received;
2. cancel this Request for Proposals at any time, either before or after the Closing Date and Time;
3. accept the Proposal deemed most favourable to the interest of the Owner or that may provide the greatest value, advantage and benefit to the Owner based upon and not limited to:
 - i. price
 - ii. ability

- iii. quality of work
 - iv. service
 - v. past experience
 - vi. past performance
 - vii. qualification
4. accept or reject any and all Proposals whether in whole or in part;
 5. with the exception of disqualified Proposals, waive any informalities, requirements, discrepancies, errors, omissions, or any other defect of deficiencies in any Proposal submission;
 6. award any part of any Proposal;
 7. accept or reject any unbalanced, irregular, or informal Proposals; or
 8. reject any Bidder who is involved in litigation with the Owner.

1.14.2 Evaluation of Proposals

The Owner reserves the right to consider, during the evaluation of Proposals:

1. information provided in the Proposal itself;
2. information provided in response to enquiries of credit, experience and industry references set out in the Proposal;
3. information received in response to enquiries made by the Owner of third parties apart from those disclosed in the Proposal in relation to the reputation, reliability, experience and capabilities of the Bidder;
4. the manner in which the Bidder provides services to others;
5. the experience and qualification of the Bidder's senior management, and project management; and
6. the compliance of the Bidder with the Owner's requirements and specifications.

The Bidder acknowledges that the Owner may rely upon these and any other criteria, which the Owner deems relevant; even though such criteria may not have been disclosed to the Bidder. By submitting a Proposal, the Bidder acknowledges the Owner's rights under this Section and absolutely waives any right, or cause of action against the Owner and the Owner's representative, by reason of the Owner's failure to accept the Proposal submitted by the Bidder, whether such right or cause of action arises in Contract, negligence, or otherwise.

1.15 MATERIAL INCORPORATED INTO THE WORK

All material incorporated into the work and necessary for the proper completion of the work including testing and certification shall be supplied by the Design-Builder unless otherwise noted.

All material supplied by the Design-Builder shall be new. In no case is material to be remanufactured, factory reconditioned, or recycled from the site unless specifically approved and tested by the Owner's representative.

1.16 CONTRACT

The party to whom the Contract is awarded will be required to execute the Agreement contained herein in triplicate (refer to Section 6), to enter into a CCDC 14 Design-Build Stipulated Price Contract with the Owner and will be required to furnish a certified copy of a satisfactory insurance policy within 7 days not including Sunday or a legal holiday, after notification (by mail or email) by the Owner to them at their business address stated in their Proposal, of the award of the Contract to them. Should the said party fail to execute this Agreement within the time stipulated above, the Bid Security accompanying their Proposal (if applicable) shall be forfeited to the Owner.

1.17 BONDS

The Successful Bidder shall be required to furnish Bonds for 'Performance' and 'Labour & Materials' each equal to 100% of the Bid Price, including the Contingency Allowance and HST, with a Guarantee Surety Company authorized by law to carry on business in the Province of Ontario and having an office in Ontario. The bidder shall include with their proposal an original, completed Agreement to Bond in the form provided (refer to Section 7) executed under seal by the Surety Company from which the Successful Bidder proposes to obtain the required bonds.

1.18 INSURANCE

The Successful Bidder shall be required to provide a certified copy of an insurance policy covering the types of insurance required under the CCDC 14 Design-Build Stipulated Price Contract and CCDC 41 - 2020.

The minimum amount shall be \$10,000,000 exclusive of interest and cost.

Where aircraft are used the Design-Builder shall supply aircraft liability insurance per GC 11.1.4 and CCDC 41 - 2020. Where watercraft are used the Design-Builder shall supply watercraft insurance per GC 11.1.4 and CCDC 41 - 2020. Where buildings are erected the Design-Builder shall supply all risks property insurance per GC 11.1.5 and CCDC 41 - 2020.

Where pressure vessels are installed the Design-Builder shall supply boiler insurance per GC 11.1.6 and CCDC 41 - 2020.

General liability insurance shall list as additional insured to the Design-Builder, the Owner, Tatham Engineering Limited, the Owner's consultants and agents, the Municipality and their agents in the same manner and to the same extent as if a separate policy had been issued for each.

1.19 WORKPLACE SAFETY & INSURANCE BOARD CLEARANCE

The Successful Bidder shall supply a Certificate from the Workplace Safety and Insurance Board indicating that they are in good standing with the Board prior to the start of construction, with each request for payment, and at any other time when requested by the Owner.

1.20 STARTING DATE

No work shall begin until the Owner has issued a Start Work Order. The Start Work Order will be issued once the Design-Builder has provided all forms, permits, plans, schedules, insurance forms etc. to the satisfaction of the Owner.

1.21 PROGRESS & COMPLETION

The Bidder's attention is drawn to the Substantial Performance and Contract Completion dates stipulated in the Proposal Form (Section 2), with due consideration to the Liquidated Damages Clause in General Conditions Supplementary Section 10.3.5. The Design-Builder shall be required to submit a detailed Schedule of Work as set out in the Special Provisions prior to starting work.

The Design-Builder shall advertise the Certificate of Substantial Performance in the Daily Commercial News (DCN) and shall pay all related costs. The Design-Builder shall be responsible to provide proof of publication prior to release of holdback.

1.22 FORCE MAJEURE EVENT

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.

Without limiting the generality of the foregoing, the parties agree that force majeure events shall include:

- natural disasters;
- acts of war;
- pandemics;
- acts of God;
- strikes;
- labour disputes;
- severe weather disruption;
- riots;
- insurrection and terrorism; or
- other declared emergencies.

If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. The party declaring a force majeure event shall put forward reasonable efforts to render performance in a timely manner. If the anticipated or actual delay or non-performance exceeds thirty (30) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

1.23 TESTING & CERTIFICATION

All works constructed shall be subjected to testing, inspection and recording of their location. The Design-Builder shall test the works and/or make the works available for testing. The Design-Builder shall make the works available for inspection by the Owner, Owner's Advisor, and Design-Builder's Consultants.

The Design-Builder's Consultants shall certify the work unless specified elements of the work require specific design and certification by the supplier. Where specific certification is required this shall be included in the cost.

The Design-Builder shall perform all testing for certification and repeat until all work is successfully tested.

1.24 AS-BUILT INFORMATION

The Design-Builder shall reasonably assist the Owner's Advisor and Consultants with gathering field information as a check for compliance with the design. The Design-Builder shall be responsible to gather detailed as-built information and communicate any variances from the design immediately to the Owner's Advisor and Consultants. The Design-Builder's as-built information shall be provided to the Owner's Advisor and Consultants in digital (ACAD) format. The Owner's Advisor's and/or Consultant's check of compliance with design shall not relieve the Design-Builder from the responsibility to construct the works according to the "Approved For Construction" drawings and specifications.

1.25 TAXES

The unit and lump sum prices submitted by the Bidder shall **exclude** the Federal Harmonized Sales Tax (HST). Payment of the HST shall be added to the monthly proper invoice. Payment of the HST shall be contingent upon the submission of the Design-Builder's HST Registration Number.

1.26 OCCUPATIONAL HEALTH & SAFETY ACT

The Design-Builder by executing the Contract, unequivocally acknowledges that they are the "Constructor" within the meaning of the Occupational Health and Safety Act and the Design-Builder undertakes to carry out the duties and responsibilities of "Constructor" with respect to the Work.

1.27 CONSTRUCTION ACT

The Contract shall be administered in full compliance with the Construction Act. In any instances where any part of the RFP and/or Contract Documents are not in agreement with the Construction Act, the Construction Act shall govern.

1.28 ACCESSIBILITY

Design-Builders shall be compliant with the "Accessible Customer Service Standard", Ontario Regulation 429/07 made under the "Accessibility for Ontarians with Disabilities Act" (AODA) 2005. Applicable policies and proof of employee training shall be provided upon request.

1.29 ROAD OCCUPANCY PERMITS

See SP1.17 in Section 11.

1.30 TEST HOLES

Test holes WILL NOT be excavated by the Owner during the RFP period.

1.31 PERMIT TO TAKE WATER

See SP1.15 in Section 11.

1.32 FREEDOM OF INFORMATION & PRIVACY

All bids submitted to the Owner being a Municipality become the property of the Owner and as such, are subject to the Municipal Freedom of Information and Protection of Privacy Act.

1.33 SCHEDULE OF VALUES

Two weeks prior to the first application for payment the Design-Builder shall submit to the Owner's Advisor a schedule of values for parts of the Work, aggregating to the total amount of the Contract Price, to facilitate the evaluation of applications for payment. The Design-Builder will make every effort to balance the schedule such that the real costs of individual parts of the work are fairly and reasonably represented. Within one week of receipt, the Owner's Advisor will review the schedule of values and confirm it is acceptable or provide comments and adjustments shall be made by the Design-Builder if/as required by the Owner's Advisor to the satisfaction of the Owner and Owner's Advisor. Unbalanced schedules of values will not be accepted.

2

PROPOSAL FORM

2 Proposal Form

To: The Corporation of the Township of Essa
5786 County Road 21
Essa, Ontario L0M 1T0

c/o: Tatham Engineering Limited
41 King Street, Unit 4
Barrie, Ontario L4N 6B5

Att: Michael Sanfilippo, P.Eng

The undersigned has carefully examined the Instructions to Bidders, Proposal Form, General Conditions, General Conditions Supplementary, Drawings, Owner's Requirements, and all other RFP documents for this Contract and acknowledges the same to be part of the Contract. Further, the undersigned has visited the site and studied all conditions therein which affect the Work and is fully informed as to the nature of the Work and the conditions relating to its performance.

The undersigned hereby proposes to furnish all plant, labour, and materials including in every case, freight, duty, exchange and sales tax in effect (excluding HST), except as otherwise specified and to complete the Work in strict accordance with the requirements of the Contract for the lump sum price of:

in
words

in
numbers \$

The undersigned agrees to the following:

1. To execute the Agreement in triplicate and to furnish in triplicate to the Owner, the required certified copy of the Insurance Policy required under the Contract, construction schedule and, if required by the Owner, the Bonds as described in the Instructions to Bidders within 7 days, not including Sunday or a legal holiday, from the date of mailing or emailing of the notice of acceptance of this Proposal by the Owner to the address stated hereunder.
2. This offer is to continue open to acceptance until the Contract is executed by the Successful Bidder or for a period of 60 days commencing from the Closing Date and Time, whichever event first occurs and that the Owner may, at any time within that period, accept this Proposal whether any other Proposal has been previously accepted or not.
3. The Owner may reject any or all Proposals without explanation.
4. The Bidder shall have no claim against or entitlement to damages from the Owner by reason of the Owner rejecting its Proposal or all proposals or by reason of any delay in acceptance of a Proposal.
5. If requested in writing by the Owner, the undersigned will enter into a Contract with the Owner based upon his Proposal but jointly in the names of the Bidder and the Bidder's parent company, if any. The Bidder further agrees that any request by the Owner as indicated above is not and shall not be deemed to be a counter-offer by the Owner.
6. This Proposal is subject to a formal contract being prepared and executed by both parties.
7. No person, firm or corporation other than the Bidder has any interest in this Proposal or in the proposed Contract for which this Proposal is made.
8. This Proposal is made without any connection, comparison of figures or arrangements with, or knowledge of, any other corporation, firm or person making a Proposal for the same work and is in all respects fair and without collusion or fraud.
9. The Work will be commenced within 5 days of the issuance of a Start Work Order. A Start Work Order will be subject to receiving all approvals. It is expected that all approvals will be in place to issue the Start Work Order on:

November 15, 2022
10. The Contract shall be Substantially Performed within the noted period following the Start Work Order or by the date noted below:

September 29, 2023

11. The Contract shall be Completed within the noted period following the Start Work Order or by the date noted below:

October 31, 2023

12. That the Proposal documents submitted by the Bidder comprise the following:

		initial
▪ Proposal Form	Section 2	_____
▪ Schedule of Items & Prices	Section 3	_____
▪ List of Subcontractors & Suppliers	Section 4	_____
▪ Bidder's Ability and Experience Forms	Section 5	_____
▪ Agreement to Bond	Section 7	_____
▪ Addenda ___ through ___		_____
▪ Bid Security		_____

13. That the Bidder is not entitled to payment for provisional items and/or contingency allowance items except for additional work carried out by him in accordance with the Contract and approved by the Owner and then only to the extent of such additional work.

The Bidder solemnly declares that the several matters stated in the foregoing Proposal are in all respects true.

Authorized Officer: _____
print name

_____ date
signature

Witness _____
print name

_____ date
signature

Company Seal:

This Proposal is submitted by:

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

HST Registration: _____

Name & Title: _____

Signature of Bidder: _____ Date: _____

Company Seal:

3

SCHEDULE OF ITEMS & PRICES

3 Schedule of Items & Prices

Item No.	Description	Qty.	Units	Unit Price	Total
1	General Work, Bonds, Insurance, & Permits	L.S.	1		
2	Design/engineering services	L.S.	1		
3	Concrete footings & foundation walls incl. excavation & backfilling	m	125		
4	Concrete slab on grade including granular compacted base	sq.m	725		
5	Structural steel (beams, columns, framing, connections)	L.S.	1		
6	Roofing incl. insulation & flashings & ceiling finishes	sq.m	725		
7	Exterior wall framing & siding, & interior wall finishes incl. insulation	L.S.	1		
8	Doors & Windows including flashings & seals	L.S.	1		
9	Overhead doors incl. tracks, jambs, attachments, finishes, & operators	ea.	5		
10	Plumbing, hose bibs, & bathroom fixtures	L.S.	1		
11	Mechanical/HVAC	L.S.	1		
12	Electrical	L.S.	1		
13	Septic system & exterior building servicing (storm and sanitary)	L.S.	1		
14	PROVISIONAL - Interior finishes (paint, drop ceiling, floor finishes, drywall, trim)	L.S.	1		
15	PROVISIONAL - Asphalt paving including base materials	sq.m	4,200		
16	PROVISIONAL - Geotechnical allowance	L.S.	1	\$10,000.00	\$10,000.00
17	PROVISIONAL - In-floor heating system	L.S.	1		
18	PROVISIONAL - Air supply system including compressor	L.S.	1		
	Total Bid Price Excl. HST				

This Schedule of Items & Prices is an integral part of the Bid Documents and the Bidder confirms that all labour, materials, and equipment required to complete the full Work of the Contract are included in the itemized costs and total cost provided.

The undersigned affirms that he/she is duly authorized to execute this Bid.

BIDDER: _____

DATE: _____

SIGNATURE: _____

NAME AND TITLE: _____

I have authority to bind the bidder named above

WITNESS: _____

If not under seal

NAME AND TITLE: _____

If Corporate Seal is not available, documentation shall be witnessed.

4

LIST OF SUBCONTRACTORS & SUPPLIERS

4 List of Consultants, Subcontractors & Suppliers

The Bidder shall list here under the names of all Consultants, Subcontractors and Suppliers as applicable who he proposes to use.

Consultant, Subcontractor or Supplier	Address	Trade	Approximate Value

It is understood by the Bidder that the above list of Consultants and Subcontractors/Suppliers is complete and that N/A or blanks are not acceptable and will make the proposal non-compliant. No additions to this list will be permitted after Closing Time, without the written approval of the Owner.

Name of Bidder: _____

Signature of Bidder: _____ Date: _____

5

BIDDER'S ABILITY & EXPERIENCE

5 Bidder's Ability & Experience

5.1 PROJECT EXPERIENCE

The Bidder shall provide information on 4 contracts in this class of work that have been undertaken over the past 3 years.

Project 1 _____ Year _____

Project Value _____

Description of Work _____

Project Owner _____

Project Manager _____ Tel _____

Contract Completion _____

Date (as per contract) _____

Substantial Completion _____

Date _____

Additional Comments _____

(optional) _____

Project 2 _____ Year _____

Project Value _____

Description of Work _____

Project Owner _____

Project Manager _____ Tel _____

Contract Completion _____

Date (as per contract) _____

Substantial Completion _____

Date _____

Additional Comments _____

(optional) _____

Project 3 _____ Year _____

Project Value _____

Description of Work

Project Owner _____

Project Manager _____ Tel _____

Contract Completion Date (as per contract) _____

Substantial Completion Date _____

Additional Comments (optional) _____

Project 4 _____ Year _____

Project Value _____

Description of Work

Project Owner _____

Project Manager _____ Tel _____

Contract Completion Date (as per contract) _____

Substantial Completion Date _____

Additional Comments (optional) _____

Reference Release: Authorization is hereby provided to the Owner and Owner's Representative to contact the person or organizations listed above for the purpose of obtaining reference information relating to the Bidder and Subcontractor. These persons are authorized to disclose such information.

Name of Bidder _____

Signature of Bidder: _____ Date: _____

5.2 QUALIFICATIONS OF SENIOR SUPERVISORY STAFF

Senior Supervisory Staff as listed below cannot be changed without prior written approval of the Owner and/or Owner's Advisor.

Name & Title _____
Qualifications _____
& Experience _____

Name & Title _____
Qualifications _____
& Experience _____

Name & Title _____
Qualifications _____
& Experience _____

Name & Title _____
Qualifications _____
& Experience _____

5.3 PROPOSED CONSTRUCTION EQUIPMENT FOR THIS CONTRACT

Equipment
Available

Equipment
to be
Rented

Equipment
to be
Purchased

6 AGREEMENT

6 Agreement

This Agreement made in triplicate on _____ by and between:

Design-Builder:

and

Owner:

WITNESSETH

That, the Design-Builder for and in consideration of the payment specified in his Proposal for this Work, hereby agrees to furnish all necessary design, plant, labour and materials, except as otherwise specified, and to complete the said Work in strict accordance with the RFP requirements, all of which are to be read herewith and form part of this present Agreement as fully and completely to all intents and purposes as though all the stipulations thereof have been embodied therein.

The Design-Builder further agrees that he will deliver the whole of the Work completed in accordance with the Agreement.

IN CONSIDERATION WHEREOF, the Owner agrees to pay to the Design-Builder for all Work done, the stipulated lump sum or sums in the Proposal as enclosed herein. Holdbacks and Payment terms to be as stipulated in the CCDC 14 general conditions of contract and supplementary general conditions.

THIS AGREEMENT SHALL endure to the benefit of and be binding upon the heirs, executors, administrators, and assigns of the Design-Builder and on the heirs and successors of the Owner.

IN WITNESS WHEREOF, the Design-Builder and the Owner have hereunto signed their names and set their seals on the day first above written.

Signed & Sealed by the Design-Builder

Signature _____
I have the ability to bind the corporation

Name _____

Title _____

Date _____

Witness
Signature _____

Name _____

Signed & Sealed by the Owner

Signature _____
I/we have the ability to bind the corporation

I/we have the ability to bind the corporation

Name _____

Title _____

Date _____

Witness
Signature _____

Name _____

Date of Proposal Submission

Total Proposal Price

Design-Builder's HST No.

7

AGREEMENT TO BOND

7 Agreement to Bond

We, the undersigned, hereby agree to become bound as Surety for:

Bidder: _____

in a "Performance Bond" for the amount of 100% of the total Proposal, and a "Labour and Materials Contract Payment Bond" in the amount of 100% of the total Proposal, conforming to the instruments of Contract attached hereto, for the full and due performance of the Works shown and as described herein if the Proposal noted below is accepted by the Owner. Period of maintenance shall be 24 months from completion.

Proposal: _____

It is a condition of this Agreement, that, if the above mentioned Proposal is accepted by the Owner, application for both bonds must be made to the undersigned within 60 days of the execution of the Contract related thereto, otherwise this Agreement shall be null and void.

Dated: _____ day of _____ 2022

Bonding Company: _____

Signature of Authorized
Person Signing for
Bonding Company: _____

Position of Signing
Officer: _____

Company Seal:

8

PERFORMANCE BOND

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. Written Notice

- 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. Pre-Notice Meeting

- 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 Obligee, 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 Commission of Ontario website (see: https://www5.fsc.o.gov.on.ca/Licensing/LicClass/eng/lic_companies_class.aspx). 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: _____

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

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)

of your Notice 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 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 issues 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]**

9

LABOUR & MATERIAL BOND

FORM 31
LABOUR AND MATERIAL PAYMENT 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 make payment to all Claimants as hereinafter defined in accordance with the terms of their respective subcontracts or sub-subcontracts 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 to the following conditions:

1. Every corporate or natural person, including a union or workers trust fund on behalf of unionized workers, having a direct contract with the Contractor (hereinafter called a “Subcontractor”) or with any Subcontractor (hereinafter called a “Sub-subcontractor”) for labour, material or both used or reasonably required for use in the performance of the Contract is a “Claimant” under this Bond. The entitlement under this Bond of any Sub-subcontractor, however, is limited to such amounts as the Contractor would have been obligated to pay to the Sub-subcontractor under the *Construction Act* (the “Act”). The entitlement under this Bond of any union or workers trust fund is limited to wages and monetary supplementary benefits, as defined in the Act. The terms “labour” and “material” include that part of water, gas, power, light, heat, oil, gasoline, telephone or digital service or rental equipment directly applicable to the Contract provided that a Claimant who rents equipment to the Contractor or a Subcontractor 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, by the prevailing rates in the equipment marketplace in which the work is taking place.
2. The Owner is not obligated to do or take any action or proceeding against the Surety on behalf of the Claimant to enforce the bond.

3. Every Claimant who has not been paid for labour, material or both used or reasonably required for use in the performance of the Contract, after the date on which payment was due and payable under the terms of its subcontract or sub-subcontract may demand payment under this Bond by giving the Surety, with a copy to the Contractor and the Owner, a written Notice of Claim, substantially in the form prescribed in Schedule A for a Subcontractor or Schedule B for a Sub- subcontractor, hereinafter called the "**Notice of Claim**".
4. Where the Surety includes two or more companies a Notice of Claim may be delivered to the first listed Surety on behalf of all Sureties. The first listed Surety is hereby authorized to respond to a Notice of Claim on behalf of the Surety, and a Claimant is not required to make separate Notices of Claim to each Surety and is entitled to correspond with the first listed Surety on behalf of all Sureties.
5. It is a condition precedent to the liability of the Surety under this Bond that a Claimant shall have submitted a Notice of Claim
 - a) in respect of any amount required to be held back from the Claimant by the Contractor, or by a Subcontractor, under either the terms of the Claimant's contract with the Contractor or Subcontractor or under the *Act*, whichever is the greater, hereinafter and for the purposes of this Bond called the "Holdback", within one hundred and twenty (120) calendar days after the Claimant should have been paid in full under its contract with the Contractor or with a Subcontractor; and
 - b) in respect of any amount other than for Holdback within one hundred and twenty (120) calendar days after the date on which the Claimant last performed labour or provided materials for which the Notice of Claim was given.
6. For each Notice of Claim provided by a **Subcontractor**:
 - a) No later than three (3) business days after receipt by the Surety of a Notice of Claim the Surety shall acknowledge receipt of the Notice of Claim, substantially in the form prescribed at Schedule C, and request from the Claimant any information and documentation the Surety requires to determine the Claimant's entitlement under this Bond (hereinafter called the "**Information**"); and
 - b) No later than the earlier of: (a) ten (10) business days after receipt by the Surety of the Information, (b) twenty-five (25) business days after receipt by the Surety of a Notice of Claim, or (c) such longer time as agreed by the Surety and the Subcontractor, the Surety shall provide a position in response to the Notice of Claim, substantially in the form prescribed at Schedule D, hereinafter called the "**Surety's Position**".
7. For each Notice of Claim provided by a **Sub-subcontractor**:
 - a) No later than three (3) business days after receipt by the Surety of a Notice of Claim the Surety shall acknowledge receipt of the Notice of Claim, substantially in the form prescribed at Schedule C, and request from the Claimant any information and documentation the Surety requires to determine the Claimant's entitlement under this Bond (hereinafter called the "**Information**"); and
 - b) No later than the earlier of: (a) fifteen (15) business days after receipt by the Surety of the Information, (b) thirty-five (35) business days after receipt by the Surety of a Notice of Claim, or (c) such longer time as agreed by the Surety and the Sub-subcontractor, the Surety shall provide a position in response to the Notice of Claim, substantially in the form prescribed at Schedule D, hereinafter called the "**Surety's Position**".
8. No later than ten (10) business days after the Surety's Position being provided to any Claimant the Surety shall pay such amounts included in the Notice of Claim that are undisputed by the Surety, except to the extent that the Surety makes an application to the Court with respect to such amounts in accordance with Section 12 below. This payment of undisputed amounts shall be without prejudice to the Surety's position regarding any disputed portions of a Notice of Claim.
9. If the subject matter of a notice of adjudication which is delivered in accordance with the *Act* by the Contractor or a Claimant (the "**Notice of Adjudication**") is substantially the same as that contained in a Notice of Claim, the obligations of the Surety under this Bond shall be stayed until the Surety receives a copy of the adjudicator's determination or there is otherwise a failure to complete or a termination of the adjudication under Section 13.14 of the *Act*.
10. By submitting a claim under this Bond, a Claimant agrees that, in the event of an adjudication between itself and the Surety pursuant to which the Surety pays the Claimant pursuant to an adjudicator's interim binding determination, the Surety shall be entitled to bring an action against the Claimant to obtain a final and binding decision in respect of the Claimant's entitlement under this Bond.
11. The Surety shall not in any circumstances be liable for a greater sum than the Bond Amount.
12. The Bond Amount shall be reduced by and to the extent of any payment or payments made under this Bond. If the aggregate of all Notices of Claim exceed, or the aggregate of amounts for which Notices of Claim might be given are believed by the Surety to exceed, the Bond Amount then the Surety may apply to the Court for direction in the interest of all Claimants.

13. Upon payment to a Claimant under this Bond in respect of any indebtedness of the Contractor or Subcontractor to the Claimant, the Surety shall be subrogated to all of the rights of the Claimant in respect of any and all claims, causes of action and rights to recovery which the Claimant may have against any person, firm or corporation because of or in connection with or arising out of such indebtedness, and the Claimant undertakes to extend to the Surety or the Surety's designee any warranties and/or guarantees under the Contract in respect of all labour and materials for which the Claimant has been paid.
14. As a condition precedent, any suit or action under this Bond must be commenced within one (1) year after the date on which the Contractor last performed work on the Contract, including work performed under any warranty or guarantees provided in the Contract.
15. The parties to this Bond and a Claimant by providing a Notice of Claim 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.
16. 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.
17. This Bond shall be governed by the laws of the Province of Ontario.
18. All notices ("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 shall be publicly available on the Financial Services Commission of Ontario website (see: https://www5.fscso.gov.on.ca/Licensing/LicClass/eng/lic_companies_class.aspx). 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]

Contractor

Signature

Name of person signing

Surety

Signature

Name of person signing

* 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.**

[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: _____

By: _____

Name: _____

Name: _____

Attorney-in-fact: _____

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
Notice of Claim
[Subcontractor]

[date]

[Surety name]

[Surety address]

[Surety address]

[Surety's electronic/email address]

Attention:

Re: _____

Bond No: _____

Contractor: _____

Owner: _____

Contract: _____

Dear Sir/Madam,

We have a subcontract with the Contractor for _____
(title or description of the Contract)

(our "Subcontract") related to the Contract between the Owner and the Contractor for
_____ in _____
(town/city, province)

We have given notice to the Contractor as required under our Subcontract that an amount is due and payable under the Subcontract and remains unpaid contrary to the terms of the Subcontract.

For Holdback amounts we hereby demand payment of \$ _____ under the captioned Bond.

For amounts other than Holdback we hereby demand payment of \$ _____ under the captioned Bond for all labour and material used or reasonably required for use in the performance of the Contract.

To assist in your evaluation of this Notice of Claim we invite you to contact our representative as follows:

[Name]

[Title]

[Company address]

[Phone (mobile)]

[Email address]

We also enclose the following documents supporting our Notice of Claim:

[The following is a suggested list of documents to be considered for delivery to the Surety. Please check off the documents (if any) that you are providing with this Notice of Claim.]

- Copy of full, executed Subcontract [or Purchase Order or Collective Bargaining Agreement], including approved changes and pending changes relevant to this Notice of Claim
- Copy of the prime contract between the Contractor and the Owner
- Copy of original schedule and latest approved schedule for the Subcontract
- Copies of all invoices submitted to the Contractor
- Copies of all payments from the Contractor to the Claimant

- Summary reconciliation of all invoices issued under the Subcontract
- Summary reconciliation of all payments received under the Subcontract
- Confirmation from the Owner or Contractor that the Claimant has completed all of its work including rectification of all identified deficiencies and the delivery of all required close-out documents
- Copy of any notice or correspondence to and from the Contractor relevant to this Notice of Claim
- Confirmation of the last day the Claimant performed work pursuant to the Subcontract including proof thereof
- Copy of any claim for lien, legal proceeding or other documents to enforce your entitlement to payment
- Copy of the executed Labour and Material Payment Bond under which this Notice of Claim is being made
- [additional documents]

We look forward to receiving your acknowledgment of this Notice of Claim within three (3) business days of receipt and your request for any additional documentation or information you require to meet your obligations under the Bond.

Yours truly;

[Full corporate title]

By: _____

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

CC: **[Contractor]**

SCHEDULE B
Notice of Claim
[Sub-subcontractor]

[date]

[Surety name]

[Surety address]

[Surety address]

[Surety's electronic/email address]

Attention:

Re: _____

Bond No: _____

Contractor: _____

Subcontractor _____

Owner: _____

Contract: _____

Dear Sir/Madam,

We have a written subcontract with _____ (the "Subcontractor") for
(name of the subcontractor)

_____ (our "Subcontract") related to the Contract
(title or description of the Sub-subcontract)

between the Owner and the Contractor for _____ in
(title or description of the Contract)

(town/city, province)

We have given notice under our Sub-subcontract to the Subcontractor that an amount is due and payable under the Sub-subcontract and remains unpaid contrary to the terms of the Sub-subcontract. A copy of that notice has also been provided to the Contractor.

We hereby demand payment of \$ _____ under the captioned Bond.

To assist in your evaluation of this Notice of Claim we invite you to contact our representative as follows:

[Name]

[Title]

[Company address]

[Phone (mobile)]

[Email address]

We also enclose the following documents supporting our Notice of Claim:

[The following is a suggested list of documents to be considered for delivery to the Surety. Please check off the documents (if any) that you are providing with this Notice of Claim.]

- Copy of full, executed Sub-subcontract [or Purchase Order or Collective Bargaining Agreement], including approved changes and pending changes relevant to this Notice of Claim
- Copy of the prime contract between the Subcontractor and the Contractor
- Copy of original schedule and latest approved schedule for the Sub-subcontract
- Copies of all invoices submitted to the Subcontractor

- Copies of all payments from the Subcontractor to the Claimant
- Summary reconciliation of all invoices issued under the Sub-subcontract
- Summary reconciliation of all payments received under the Sub-subcontract
- Confirmation from the [Owner, Contractor or Subcontractor] that the Claimant has completed all of its work including rectification of all identified deficiencies and the delivery of all required close-out documents
- Copy of any notice or correspondence to and from the Subcontractor or Contractor relevant to this Notice of Claim
- Confirmation of the last day the Claimant performed work pursuant to the Sub-subcontract including proof thereof
- Copy of any claim for lien, legal proceeding or other documents to enforce your entitlement to payment
- Copy of the executed Labour and Material Payment Bond under which this Notice of Claim is being made
- [additional documents]

We look forward to receiving your acknowledgment of this Notice of Claim under the Bond and your request for any additional documentation or information you require to meet your obligations under the Bond.

Yours truly;

[Full corporate title]

By: _____

[Name]

[Title]

[Phone]

[Email address]

CC: **[Contractor and Subcontractor]**

SCHEDULE C
Acknowledgement of Notice of Claim

[date]

[Name/corporate title of the Subcontractor or Sub-subcontractor]

[Address]

[Address]

[E-mail address (if provided in the Notice of Claim)]

Attention:

Re: _____

Bond No: _____

Contractor: _____

Owner: _____

Contract: _____

Dear Sir/Madam,

We acknowledge receipt on _____ of your Notice of Claim dated _____ .
(date of receipt)

Subject to a full reservation of all of our rights pursuant to the Bond and at law and to assist us in evaluating your Notice of Claim we ask that you provide the following information and/or documentation promptly:

This request for information is not an acknowledgement of the validity of your claim. We look forward to hearing from you.

Yours truly;

[Corporate name of the Surety]

By: _____

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor]

SCHEDULE D
Surety's Position

[date]

[Name/corporate title of the Subcontractor or Sub-subcontractor]

[Address]

[Address]

[E-mail address (if provided in the Notice of Claim)]

Attention:

Re: _____

Bond No: _____

Contractor: _____

Owner: _____

Contract: _____

Dear Sir/Madam,

Having reviewed the information and documentation provided to us in support of your Claim, we can advise as follows:

A – Disputed Amount(s)

The following amounts in your Claim are disputed at the present time for the reasons indicated:

With respect to any disputed amounts we invite you to contact us promptly with further information or documentation in support of your Claim.

B – Undisputed Amount(s)

The following amounts in your Claim are not disputed at the present time, however we reserve the right to dispute any amount should an ultimate determination find that amounts included in your Claim were not payable by the Contractor:

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]

10

GENERAL CONDITIONS SUPPLEMENTARY

Section Contents

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10 General Conditions Supplementary

10.1 GENERAL CONDITIONS

The words General Conditions in this Contract mean the CCDC 14 Design-Build Stipulated Price Contract, as attached hereto.

If there is any discrepancy between the General Conditions and the General Conditions Supplementary, the General Conditions Supplementary will apply.

If there is any discrepancy between the General Conditions or General Conditions Supplementary and the Construction Act, the Construction Act shall govern.

10.2 DESIGNATION OF PARTIES

Where the word "Owner" is used in this Contract, it shall mean:

The Corporation of the Township of Essa

Where the word "Owner's Advisor" is used in this Contract it shall mean:

Tatham Engineering Limited

or any other Owner's Advisor as may be authorized or appointed by the Owner to act on behalf of the Owner in any particular capacity.

Where the word "Contractor" is used in this Contract, it shall mean in every case the Design-Builder, but where referred to in the trades it shall also mean the Subcontractor.

10.3 AMENDMENTS TO THE GENERAL CONDITIONS

10.3.1 GC 1.1 Contract Documents

Delete 1.1.6.1 and replace with the following: "the order of priority of documents, from highest to lowest, shall be:

1. Agreement
2. Addendum(s) (if any)
3. Owner's Statement of Requirements
4. Definitions
5. Instructions to Bidders
6. Supplementary Conditions

7. General Conditions

8. Construction Documents”

Add 1.1.11: “The Geotechnical Report(s) procured and supplied by the Design-Builder shall not form part of the Contract Documents. It is to be clearly understood that the information contained in the Geotechnical Report(s) was accumulated for design purposes only and any interpretation placed on it by the Bidder or Design-Builder is solely the responsibility of the Bidder or Design-Builder.”

Add 1.1.12: “Items noted as “provisional” in the schedule of items and prices can be deleted, used in part or exceed the estimated quantity with payment based on the final measurement and unit prices indicated in the schedule of items and prices. The Owner will not accept any claim for monies lost by the Design-Builder due to the above for any reason.”

10.3.2 GC 2.2 Role of the Owner

Add 2.2.7: “The Owner may direct the Design-Builder to suspend work that causes excessive disruption pending development and implementation of acceptable solutions that allow the work to proceed. The Design-Builder shall have no claim to additional costs or time resulting from the suspension of work.”

10.3.3 GC 3.1 Control of the Design Services and the Work

Add 3.1.15: “Materials and/or Equipment shall not be stored within 3 metres of any travelled portion of any roadway or driveway on the site or exterior to the site. Notwithstanding the foregoing, the Design-Builder shall, at their own expenses, remove any equipment or material which in the option of the Owner or Owner’s Advisor constitutes a traffic hazard. The storage of materials and equipment on site is limited and subject to the Owner’s approval. The Design-Builder shall allow for off-site storage in their bid price.”

10.3.4 GC 3.2 Design-Builder’s Review of Owner’s Statement of Requirements or Other Information

Add 3.2.3: “Errors, inconsistencies, or omissions which could have been reasonable identified and accounted for when pricing the Work shall not be the basis for claiming change in the Contract price or approved schedule.”

10.3.5 GC 3.6 Design Services and Work Schedule

Add 3.6.1.4: “Once approved, the schedule shall not be altered without approval from the Owner and/or Owner’s Advisor.”

Add 3.6.2: “It is agreed by the parties to the Contract that in case all the Design Services and Work called for under the Contract is not finished or completed by the completion date

stipulated in the Proposal Form, damage will be sustained by the Owner and that is is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Owner will sustain in the event of and by reason of such delay and the parties hereto agree that the Design-Builder will pay to the Owner the sum of Seven Hundred and Fifty Dollars (\$750.00) for liquidated damages for each and every calendar day's delay in finishing the work in excess of the dates of completion prescribed. It is agreed that this amount is an estimate of the actual damage to the Owner which will accrue during the period in excess of the completion dates stipulated. In addition to the above amount per day Liquidated Damages charge, the Design-Builder shall pay to the Owner in respect of additional project management, supervision, office supervision, and administration caused by the delay in finishing the Work in excess of the completion dates stipulated."

Add 3.6.3: "The Owner may deduct any amount due under 3.6.2 from any monies that may be due payable to the Design-Builder on any account whatsoever. The liquidated damages payable under 3.6.2 are in addition to and without prejudice to any other remedy, action, or other alternative that may be available to the Owner."

10.3.6 GC 3.10 Shop Drawings

Add 3.10.6: "Unless otherwise agreed to, the schedule for the Owner, Consultant, and Owner's Representative to complete a review of shop drawings shall not be less than 10 working days."

10.3.7 GC 5.2 Applications for Progress Payment

Add 5.2.9: "Payment of a Proper Invoice submitted by the Design-Builder shall not bind the Owner in his evaluation of the Works completed."

Add 5.2.10: "Ten percent (10%) of all monies due to the Design-Builder in accordance with the Proper Invoice shall be retained by the Owner and shall be termed Statutory Holdback in accordance with the Construction Act."

Add 5.2.11: "Fifteen percent (15%) of the value of contract items which must be tested or for which as-built information must be gathered may be retained to guarantee the quality of the work performed and shall be termed Testing/As-Built Holdback. The Testing/As-Built Holdback shall reduce the value of the work completed to date on the progress certificate. The Testing/As-Built Holdback will be gathered if in the opinion of the Owner the testing of contract work is not being pursued in a timely manner, work has proceeded without required testing, or as-built information has not been gathered and recorded. The Testing/As-Built Holdback shall be released in the monthly Progress Payment Certificate after the work has been satisfactorily tested, inspected, and approved by the Consultant. The Design-Builder

shall present the as-built drawings with the payment claim for review by the Owner and Owner's Representative showing the information gathered."

Add 5.2.12: "Prior to Substantial Performance an additional two and one-half percent (2.5%) of all monies due to the Design-Builder in accordance with the Proper Invoice shall be retained by the Owner and shall be termed Warranty Holdback. Upon application by the Design-Builder, contract items may be removed from the aggregate value of work complete for which the Warranty Holdback applies. For an invoice to be considered a Proper Invoice, the invoice must include the Warranty Holdback. Invoices that do not include the Warranty Holdback will not be considered a Proper Invoice."

Add 5.2.13: "The Warranty Holdback shall be paid to the Design-Builder at the expiration of the Warranty Period and upon issuance of the Final Acceptance Certificate."

Add 5.2.14: "An invoice will not be considered a proper invoice unless it includes the following/is submitted as follows:

- a) All requirements for a Proper Invoice as indicated in the Construction Act;
- b) Statutory declaration as described in GC 5.2.7;
- c) Up to date and valid WSIB clearance certificate;
- d) Completed schedule of values in accordance with 1.35 of the Request for Proposal Document, updated to reflect the quantities and amounts included in the Application for Progress Payment;
- e) An updated schedule;
- f) The invoice shall contain the purchase order number, Design-Builder's full contact information, invoice date, payment amount, HST, and total;
- g) The Application for Progress Payment shall be addressed and submitted to the Owner via email and the email shall be carbon copied to the Payment Certifier and Owner's Representative; and
- h) Any other requirements indicated elsewhere in the Contact Documents.

Add 5.2.15: "The email addresses for submission of Applications for Progress Payment shall be confirmed with the Owner by the Design-Builder prior to the submission of the first Application for Progress Payment."

10.3.8 GC 5.4 Substantial Performance of the Work

Add 5.4.6: "The Work will be deemed to be substantially performed when all of the following apply:

- a) the Work to be performed under the Contract or a substantial part thereof is ready for use or is being used for the purpose intended;

- b) the Work to be performed under the Contract is capable of completion or, where there is a known defect, the cost of correction is not more than;
- 3% of the first \$1,000,000 of the Contract price,
 - 2% of the next \$1,000,000 of the Contract price, and
 - 1% of the balance of the Contract price.
- c) The Consultant and the Owner or Owner's Representative has verified the works have satisfactorily passed the required inspection and testing and has verified the Contract has been substantially performed.

Add 5.4.7: "For the purposes of this Contract, where the Work or a substantial part thereof is ready for use or is being used for the purposes intended and the remainder of the Work cannot be completed expeditiously, for reasons beyond the control of the Design-Builder or, where the Owner and the Design-Builder agree not to complete the Work expeditiously, the price of the services or materials remaining to be supplied and required to complete the Work shall be deducted from the Contract price in determining Substantial Performance.

Add 5.4.8: In accordance with the Construction Act, a 10% Finishing Holdback will be captured for works completed after the issuance of the Certificate of Substantial Performance. The Finishing Holdback will be released upon the issuance of a Final Acceptance Certificate.

10.3.9 GC 5.7 Final Payment

Add 5.7.5: "No certificate other than the Final Acceptance Certificate shall be deemed to imply approval of any part of the Work or of the Design-Builder's due performance of the Contract or any part thereof."

10.3.10 GC 6.5 Delays

Add 6.5.3.5: "A force majeure event as described in Instructions to Bidders, Section 1.25."

10.3.11 GC 9.4 Construction Safety

Add 9.4.2: "No comments, suggestions, or instructions by the Owner, Owner's Advisor, or any other agents representing the Owner are to be relied upon or assumed to reduce or replace the Design-Builder's responsibility for construction safety."

Add 9.4.3: "The Design-Builder shall indemnify and hold harmless the Owner, Owner's Advisor, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributed to, the Design-Builder's safety performance.

10.3.12 GC 10.2 Laws, Notices, Permits, and Fees

Add 10.2.8: "The Design-Builder shall promptly inform the Owner's Advisor and the Consultant of all deficiencies in Work performed under this Contract that are reported by Authorities Having Jurisdiction. The Design-Builder shall immediately correct the deficiencies and have the Work re-inspected at his cost."

10.3.13 GC 12.5 Warranty

Revise 12.5.1 to: "Except for extended warranties as described in 12.5.6, the warranty period under the Contract is two years from the date of Substantial Performance of the Work."

Revise 12.5.3 to: "The Owner shall promptly give the Design-Builder Notice in Writing of observed defects and deficiencies which occur during the two year warranty period."

In 12.5.6, revise "one year warranty period" to "two year warranty period".

Add 12.5.9: "In addition to any other holdbacks described in the Contract Documents, the Owner shall apply a 2.5% warranty holdback to all payments. The warranty holdback shall be held by the Owner until the later of expiration of the two year warranty period or completion of warranty work outstanding at the date of expiration of the warranty period to the satisfaction of the Owner, at which point the holdback shall become payable to the Design-Builder. Payment of the warranty holdback shall be made by the Owner within 60 calendar days of the date the warranty holdback becomes payable."

10.4 PAYMENTS

Payments shall be made in accordance with the Construction Act.

10.5 NIGHT, WEEKEND & HOLIDAY WORK

Working hours are to be in accordance with relevant Municipal By-Laws. No night work will be permitted except in the case of an emergency and then only with the written permission of the Owner or Owner's Advisor and to such extent as they deem necessary. However, the Owner reserves the right to order any work under this Contract to be undertaken at night and the Design-Builder shall comply with such an order and shall carry out all night work with adequate illumination and with due respect for the noise restrictions requested by local residents or authorities having jurisdiction consistent with the faithful performance of the work.

Night shall be defined as that time after sunset and before sunrise.

No Sunday work will be permitted except in the case of emergency and then only with written permission of the Owner or Owner's Advisor and to such extent, as they deem necessary.

Except in cases of emergency and then only with the consent in writing of the Owner or Owner's Advisor, the Design-Builder shall not work on any Saturday or Statutory Holiday. In the case the Design-Builder desires to work on a Saturday or Statutory Holiday he shall request in writing the permission of the Owner. This request shall be at least four (4) days in advance of such holiday stating those places where such work will be conducted. In case the Design-Builder fails to give such notice in advance, no work within the terms of the Contract shall be done on such Saturday or Statutory Holiday. The Design-Builder is responsible for obtaining approval from authorities having jurisdiction over local noise bylaws for such work.

The above provisions shall not apply to any maintenance operations, which the Design-Builder is required to perform under this Contract or as required by the Owner or Owner's Advisor at any time including Nights, Saturdays, Sundays and Statutory Holidays.

Prior to moving off the job before each weekend, Public Holiday or any other non-working day, the Design-Builder shall erect all signs, barricades and lights so that they will remain in place during the period of absence. The roadway shall be graded to provide a smooth travelling surface and water and calcium chloride added where necessary or as directed by the Owner's Advisor.

The Design-Builder shall provide the Owner and Owner's Advisor with the name and telephone number of their project superintendent or other reliable supervisor who can be contacted during the Design-Builder's absence from the job. Such person shall be responsible for inspecting the job periodically during the Design-Builder's absence and shall check all signs, barricades and lights and repair the roadway surface as required. No additional payment will be made for this work.

10.6 DEFECTIVE WORK

The Design-Builder shall, at any time when so required by the Owner's Advisor, during construction or during the warranty period, make such openings, and to such extent through any part of the Work as the Owner's Advisor may direct, which he shall forthwith make good again to the satisfaction of the Owner's Advisor. Should the work so opened be found in the opinion of the Owner's Advisor, faulty in any respect, the whole of the expense, including the cost of inspection, shall be borne by the Design-Builder, but if the work so opened up be found in perfect condition, the said expense shall be borne by the Owner.

All defective work or materials discovered by these or any other means must be forthwith wholly removed, and made good by the Design-Builder, to the satisfaction of the Owner's Advisor and the whole cost of such renewal, including the cost of materials, labour, and inspection shall be borne by the Design-Builder. Should the Design-Builder refuse to make such renewals as are ordered by the Owner's Advisor, then the Owner's Advisor will proceed

with the work in any manner they may deem fit. The cost of such work shall be paid by the Design-Builder or deducted from any monies due, or if necessary, deducted from the Design-Builder or their Surety jointly or severally in any court of competent jurisdiction as a debt due to the Owner.

10.7 SITE MEETINGS

The Design-Builder shall attend a pre-construction meeting and bi-weekly meetings (or other such frequency as deemed required by the Owner and Owner's Advisor) with the Owner's Advisor at the contract site or as directed by the Owner's Advisor to discuss the progress of the Work and co-ordinate the work of utilities. The Design-Builder's Superintendent shall attend this meeting. Minutes of Meetings shall be recorded and shall be binding on both parties to the Contract.

10.8 LABOUR CONDITIONS & FAIR WAGES

Labour Conditions and Fair Wages are to be in accordance with the current schedule.

10.9 WORKPLACE SAFETY & INSURANCE BOARD CLEARANCE CERTIFICATE

The Design-Builder shall provide the Owner's Advisor with a copy of the Workplace Safety and Insurance Board Clearance Certificate indicating the Design-Builder's good standing with the Board:

- Immediately prior to the Owner authorizing the Design-Builder to commence any Work.
- In support of a Proper Invoice.
- Prior to the issuance of the Certificate of Substantial Performance.
- Prior to the expiration of the Warranty Period.
- At any other time when requested by the Owner's Advisor.

10.10 SILTATION & EROSION CONTROL MEASURES

The Design-Builder shall install siltation and erosion control measures in accordance with OPSS.MUNI.805 as required and as directed by the Owner's Advisor, prior to the start of any construction work. All siltation and erosion control measures shall be inspected and maintained for the duration of the Contract.

11

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11 Special Provisions

SP1 GENERAL WORK

SP1.1 Scope of Work

The Design-Builder shall perform all the general work covered by the following specifications.

SP1.2 Schedule of Work

Upon being awarded the Contract, the Design-Builder shall forthwith supply to the Owner for their approval a copy of their detailed planned Schedule of Work, showing clearly that the Work will be completed within the stipulated time. No work shall commence on the Contract until the Owner has approved the Schedule of Work.

The Schedule of Work shall indicate proposed progress in 1-week periods. The same breakdown of Work items listed in the Schedule of Values shall be included in the Schedule of Work and proposed progress in 1-week periods for each of those Work items shall be provided on the Schedule of Work.

SP1.3 Performance Bond & Labour and Materials Payment Bond

The Design-Builder shall provide bonds in accordance with the Instructions to Bidders.

SP1.4 General Liability & Automobile Liability Insurance

The Design-Builder shall provide insurance in accordance with the Instructions to Bidders. Proof of this insurance must be provided to the Owner prior to commencing the Work.

SP1.5 Permits & Fees

The Design-Builder shall obtain all necessary permits and approvals required for this Contract and pay all respective fees.

SP1.6 Field Office

A field office is not required.

SP1.7 Layout Work

The Owner shall provide the benchmark elevations and horizontal alignment for the Design-Builder.

The Design-Builder shall be responsible for the detailed layout of the work in accordance with the Contract Documents and Construction Documents.

The Owner and Owner's Advisor shall be notified 24 hours in advance of any layout work carried out and shall check same if they so desire. Checking of layout or failure to do so on the part of the Owner or Owner's Advisor in no way relieves the Design-Builder of full responsibility for construction to the proper location, alignment and grade.

SP1.8 Winter Work

No payment will be made for protection of the Work as required by these Specifications for Winter Conditions. The Design-Builder shall schedule their work to avoid placing concrete in Winter Conditions and to avoid freezing of granular material during the operations employing these materials.

SP1.9 Recycled Materials

All material supplied by the Design-Builder shall be new, in no case remanufactured or factory reconditioned and in no case recycled from any site unless specifically approved and tested by the Owner and/or Owner's Advisor.

SP1.10 Temporary Water & Power

The Design-Builder shall make arrangements for the supply of temporary water and power.

SP1.11 Existing Utilities, Water Mains & Sewers

The Design-Builder's attention is drawn to the presence of underground and overhead utilities, sewers and water main in the area of the Contract.

The Design-Builder shall be responsible for obtaining information in regard to the exact location of buried utilities, sewers and water mains including existing service connections. This shall include excavation of inspection holes if necessary.

The Design-Builder must exercise necessary care in construction operations to safeguard utilities, water mains and sewers from damage. The Design-Builder will be liable for all damage to same occurring within or outside the Contract Limits caused by their operations.

The Design-Builder is hereby warned that the existing telephone and electrical cables will remain in their existing locations. Excavation in the vicinity of gas mains and telephone cable may require lighter machines and in some case handwork.

If a permanent relocation or replacement of an existing utility or existing sewer becomes necessary, at the discretion of the Owner or Owner's Advisor, during the Work the Design-

Builder shall co-operate with the Owner's forces or the Utility Company to allow them the opportunity to make the necessary alterations to their plant.

In the event that all necessary permanent relocations of utilities have not been completed prior to the time when the Design-Builder commences the Work, the Design-Builder will be required to co-operate with the Utility Companies and work around the utilities so that the existing services are protected until such time as such relocations are completed

It shall be the Design-Builder's responsibility to contact all Utility Companies regarding their scheduling of work.

SP1.12 Dust & Silt Control

The Design-Builder will be responsible for dust control at all times during construction by watering and calcium application as directed by the Owner or Owner's Advisor. No separate payment will be made for calcium and water but shall be part of the General Work of the Contract.

The Design-Builder shall make provision for maintenance of the internal roads and municipal roadway during weekends and other non-working days, including street cleaning and placing water and calcium chloride for dust control, as instructed by the Owner or Owner's Advisor.

The Design-Builder will be responsible for sediment control during construction by sealing of all catch basin inlets and providing temporary drainage swales equipped with sediment control devices. This work shall be part of the General Work of the Contract.

The Design-Builder shall be responsible for mud tracked off the site. The mud mats used to stop mud tracking off site shall be maintained throughout the construction and any mud/soil tracked off site shall be cleaned as required to keep external road systems clean and safe for all traffic.

SP1.13 Disposal of Materials

The Design-Builder shall dispose of all waste surplus materials in the areas approved by the Owner's Advisor. The Design-Builder shall be responsible for all work and costs involved in disposing waste or excess material including trucking, access roads and levelling.

SP1.14 Fencing

Snow fence shall be erected in areas where there exists, in the opinion of the Owner or Owner's Advisor, a danger to pedestrian or vehicular traffic. No separate payment will be made for fencing but shall be part of the General Work of the Contract.

SP1.15 Dewatering

The Design-Builder is responsible for all dewatering that may be required to produce a dry and stable conditions. No separate payment will be made for dewatering but shall be part of the General Work of the Contract. If an Environmental Activity and Sector Registry (EASR) or Permit to Take Water (PTTW) is required, the cost of the Registry or Permit shall be borne by the Owner and the dewatering measures by the Design-Builder.

SP1.16 Existing Water System

The Design-Builder shall not operate existing valves or hydrants without written authorization of the Municipal Operating Authority. The Design-Builder is responsible for suitable notification to all parties affected by an interruption in water source.

SP1.17 Road Occupancy Permits

Prior to any work being undertaken, the Design-Builder shall obtain and pay for any necessary road occupancy permits from the appropriate municipality or regional authority. The permits obtained shall be taken out in the name of the Design-Builder.

SP1.18 As-Built Drawings

The Design-Builder shall collect and provide as-built drawings and information through the course of the work ready for review by the Owner's Advisor at any time. The drawings and information shall be reviewed with every progress claim.

SP1.19 Safe Working Practices and Contingency Planning During COVID-19 Pandemic

Upon award of the Contract and prior to any work being undertaken, the Design-Builder shall provide the Owner with a detailed policy outlining the safe working practices to decrease potential hazards of exposure and/or contamination during the COVID-19 Pandemic. The policy may include, but is not limited to the following information:

- Responsibility of the Project Manager, Site Supervisors, Foreman, Operators and Labourers.
- Responsibility of all employees to be aware of all federal/provincial/municipal health authorities' policies, procedures and orders, as well as any relevant changes to the Occupational Health and Safety Act.
- Requirements for the use of applicable personal protective equipment, including a summary of the supplies and equipment that will be made available.

- Revisions to working protocol, as required to adhere with current federal or provincial guidelines, including, but not limited to separation requirements, disinfection of equipment, trailers, service vehicles, etc.
- Protocol for dealing with the public in the event it is required, such as the need for access to a home to confirm service locations.
- Changes to site or documentation protocol to protect the site in the event the site is shut down due to infection, government enforced shut down or other reasons associated with COVID-19.

The Design-Builder will be responsible to ensure the protocol, expectations and requirements are strictly followed by all staff and visitors to the site.

The Design-Builder shall also provide a detailed contingency plan outlining how they will manage the site in the event that members of their project team or construction staff become infected with the COVID-19 virus or need to quarantine for any reason and/or in the event of a government or municipal enforced shut down. The contingency plan shall outline replacement staff and measures to be taken in the field to ensure the site is maintained and monitored in a safe condition.

The detailed COVID-19 safe working practices policy and contingency plan will be reviewed by the Owner's Advisor and the Owner and the Design-Builder shall update these documents to address comments and concerns throughout construction as required.

SP1.20 Measurement & Payment

No measurement of quantities will be made for the General Work. No direct payment will be made for any of this General Work. The Design-Builder shall allow in the bid price for all labour, material and equipment necessary for the general work described herein or specified elsewhere in the contract.

**Appendix A:
CCDC 14 General Conditions of
Contract (2013)**

CCDC 14**Design-Build
Stipulated Price Contract****2 0 1 3**

Name of Work

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Private-Sector Owners

*The Association of Consulting Engineering Companies-Canada

*The Canadian Construction Association

*Construction Specifications Canada

*The Royal Architectural Institute of Canada

*Committee policy and procedures are directed and approved by the four constituent national organizations.

This document has also been endorsed by the Canadian Design-Build Institute.



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AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

For use when a stipulated price is the basis of payment.

This Agreement made on the _____ day of _____ in the year _____ .

by and between the parties:

hereinafter called the "*Owner*"
and

hereinafter called the "*Design-Builder*"

The *Owner* and the *Design-Builder* agree as follows:

ARTICLE A-1 DESIGN SERVICES AND THE WORK

The *Design-Builder* shall:

- 1.1 provide the *Design Services*, and
- 1.2 perform the *Work* for

insert above the name of the Work

located at

insert above the Place of the Work

for which the Agreement has been signed by the parties, and for which

insert above the name of the Consultant

is acting as, and is hereinafter called, the "*Consultant*", and for which

insert above the name of the Payment Certifier

is acting as, and is hereinafter called the *Payment Certifier*, and for which

insert above the name of the Owner's Advisor

is acting as, and is hereinafter called the *Owner's Advisor**,
(*Strike out if none appointed)

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1.3 subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work* by the _____ day of _____ in the year _____ .

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, including bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.

2.2 This *Contract* may be amended only as provided for in the *Contract Documents*.

ARTICLE A-3 CONTRACT DOCUMENTS

3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK:

- Agreement Between *Owner* and *Design-Builder*
- Definitions in this *Contract*
- General Conditions of this *Contract*
- *Owner's Statement of Requirements*, consisting of the following (list those written requirements and information constituting those documents intended to comprise the *Owner's Statement of Requirements*):

- *Construction Documents*

*

** (Insert here, attaching additional pages if required, a list identifying all other Contract Documents, e.g. Supplementary Conditions; Proposals; Specifications (giving a list of contents with section numbers and titles, number of pages, date and revision date(s), if any); Drawings (giving drawing number, title, date, revision date or mark); Addenda (giving title, number, date).*

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ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

/100 dollars \$

4.2 *Value Added Taxes* (of _____ %) payable by the *Owner* to the *Design-Builder* are:

/100 dollars \$

4.3 Total amount payable by the *Owner* to the *Design-Builder* is:

/100 dollars \$

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 Amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of _____ percent (_____ %), the *Owner* shall:

- .1 make progress payments to the *Design-Builder* on account of the *Contract Price* when due in the amount certified by the *Payment Certifier*, together with such *Value Added Taxes* as may be applicable to such payment, and
- .2 upon *Substantial Performance of the Work*, pay to the *Design-Builder* the unpaid balance of the holdback amount when due, together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Design-Builder* the unpaid balance of the *Contract Price* when due, together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler and machinery insurance policies, payments shall be made to the *Design-Builder* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of claims in dispute that are resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date on which the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

6.1 *Notices in Writing* will be addressed to the recipient at the address set out below.

6.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.

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- 6.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 6.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission.
- 6.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

*name of Owner**

Address

facsimile number

email address

Design-Builder

*name of Design-Builder**

Address

facsimile number

email address

Owner's Advisor**

*name of Owner's Advisor**

Address

facsimile number

email address

* If it is intended that the notice must be received by a specific individual, indicate that individual's name.

** Strike out this entry if no Owner's Advisor is designated as per GC 2.3 – OWNER'S ADVISOR.

ARTICLE A-7 LANGUAGE OF THE CONTRACT

- 7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French*** language shall prevail.

*** Complete this statement by striking out the inapplicable term.

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7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-8 SUCCESSION

8.1 This *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

WITNESS

OWNER

name of Owner

signature

signature

name of person signing

name and title of person signing

signature

name of person signing

WITNESS

DESIGN-BUILDER

name of Design-Builder

signature

signature

name of person signing

name and title of person signing

signature

name of person signing

- N.B. Where legal jurisdiction, local practice, or Owner or Design-Builder requirement calls for:
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
 - (b) the affixing of a corporate seal, this Agreement should be properly sealed.

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DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

Change Directive

A *Change Directive* is a written instruction signed by the *Owner* directing a change in the *Work* or in the *Design Services* within the general scope of the *Contract Documents*.

Change Order

A *Change Order* is a written amendment to the *Contract* signed by the *Owner* and the *Design-Builder* stating their agreement upon:

- a change in the *Work* or in the *Design Services*;
- an amendment to the *Owner's Statement of Requirements*, if any;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

Construction Documents

The *Construction Documents* consist of *Drawings*, *Specifications*, and other documents prepared by or on behalf of the *Design-Builder*, based on the *Contract Documents*, and accepted in writing by the *Owner* and the *Design-Builder* as meeting the *Owner's Statement of Requirements* and the general intent of the *Contract Documents*.

Construction Equipment

Construction Equipment means machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

Consultant

The *Consultant* is the person or entity identified as such in the Agreement. The *Consultant* is the architect, the engineer, or entity licensed to practise in the province or territory of the *Place of the Work* and engaged by the *Design-Builder* to provide all or part of the *Design Services*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities, and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK from the date of the Agreement to the date of *Substantial Performance of the Work*.

Design-Builder

The *Design-Builder* is the person or entity identified as such in the Agreement.

Design Services

Design Services are the professional design and related services required by the *Contract Documents*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Construction Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

Notice in Writing

A *Notice in Writing* is a written communication between the parties that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Other Consultant

Other Consultant is a person or entity, other than the *Consultant*, that may be engaged by the *Design-Builder* to perform part of the *Design Services*.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

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Owner's Advisor

The *Owner's Advisor*, if any, is the person or entity appointed by the *Owner* and identified as such in the Agreement.

Owner's Statement of Requirements

The *Owner's Statement of Requirements* consists of written requirements and information provided by the *Owner* and as listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Payment Certifier

The *Payment Certifier* is the person or entity identified as such in the Agreement responsible for the issuance of certificates for payment.

Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

Product

Product or Products means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the *Owner's* entire undertaking of which the *Work* may be the whole or a part thereof.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Design-Builder* provides to illustrate details of portions of the *Work*.

Specifications

The *Specifications* are that portion of the *Construction Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the necessary services for the *Work*.

Subcontractor

A *Subcontractor* is a person or entity having a direct contract with the *Design-Builder* to perform a part or parts of the *Work* at the *Place of the Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Owner* to supplement the *Contract Documents* as required for the performance of the *Work*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Design-Builder* to supply *Products*.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the *Work* but not incorporated into the *Work*.

Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the federal or any provincial or territorial government and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Design-Builder* by tax legislation.

Work

The *Work* means the total construction and related services required by the *Contract Documents*, but does not include *Design Services*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

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GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the design, the labour, the *Products* and other services necessary for the design and performance of the *Work* by the *Design-Builder* in accordance with these documents. It is not intended, however, that the *Design-Builder* shall supply products or perform services or work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between the *Owner* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, a *Supplier*, or their agent, employee, or any other person performing any portion of the *Design Services* or the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Design-Builder*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - the *Owner's Statement of Requirements*,
 - the *Construction Documents*,
 - .2 later dated documents shall govern over earlier documents of the same type, and
 - .3 amendments to documents shall govern over documents so amended.
- 1.1.7 Copyright for the design and *Drawings* and electronic media, prepared on behalf of the *Design-Builder* belongs to the *Consultant* or *Other Consultants* who prepared them. Plans, sketches, *Drawings*, graphic representations, and *Specifications*, including, but not limited to computer generated designs, are instruments of the *Consultant's* or *Other Consultant's* services and shall remain their property, whether or not the *Work* for which they are made is executed and whether or not the *Design-Builder* has paid for the *Design Services*. Their alteration by the *Owner* is prohibited.
- 1.1.8 The *Owner* may retain copies, including reproducible copies, of plans, sketches, *Drawings*, graphic representations, and *Specifications* for information and reference in connection with the *Owner's* use and occupancy of the *Work*. Copies may only be used for the purpose intended and for a one time use, on the same site, and for the same *Project*. Except for reference purposes, the plans, sketches, *Drawings*, electronic files, graphic representations, and *Specifications* shall not be used for additions or alterations to the *Work* or on any other project without a written license from the *Consultant* or *Other Consultants* who prepared the documents, for their limited or repeat use.
- 1.1.9 The *Owner* shall be entitled to keep original models or renderings specifically commissioned and paid for.
- 1.1.10 Should the *Owner* alter a *Consultant's* or *Other Consultant's* instrument of service, or use or provide them to third parties other than in connection with the *Work* without informing the *Consultant* and without the *Consultant's* or *Other Consultant's* prior written consent, the *Owner* shall indemnify the *Design-Builder* against claims and costs (including legal costs) associated with such improper alteration or use.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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- 1.3.2 No action or failure to act by the *Owner, Design-Builder, Consultant, Other Consultant, Payment Certifier, or Owner's Advisor* shall constitute a waiver of any right or duty afforded to either the *Owner* or the *Design-Builder* under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 CONFIDENTIALITY

- 1.5.1 Where a confidentiality agreement exists or as the *Owner* otherwise expressly identifies and requires, the *Owner* and the *Design-Builder* shall keep confidential all matters respecting technical and commercial issues relating to or arising from the performance of the *Contract* and shall not, without the prior written consent of the other party, disclose any such matters, except in strict confidence, to their respective professional advisors.

PART 2 OWNER'S RESPONSIBILITIES

GC 2.1 OWNER'S INFORMATION

- 2.1.1 The *Owner* shall furnish the information required to complete the *Contract* promptly to avoid delay in the performance of the *Contract*.
- 2.1.2 Unless the *Contract Documents* specifically state otherwise, the *Design-Builder* is entitled to rely on the accuracy of all information provided by or on behalf of the *Owner* without regard for the source of such information.
- 2.1.3 Notwithstanding any other provision of the *Contract*, the *Design-Builder* is not responsible for any design errors or omissions in any designs or *Specifications* provided by or on behalf of the *Owner* unless the *Design-Builder* has been specifically requested to review and has accepted in writing those designs and *Specifications* under the *Contract*.

GC 2.2 ROLE OF THE OWNER

- 2.2.1 The *Owner* will render any necessary decisions or provide instructions promptly to avoid delay in the performance of the *Contract*.
- 2.2.2 All communications between the *Owner* and the *Consultant, an Other Consultant, a Subcontractor, or a Supplier* shall be forwarded through the *Design-Builder*.
- 2.2.3 The *Owner* will be, in the first instance, the interpreter of the requirements of the *Owner's Statement of Requirements*.
- 2.2.4 The *Owner* will have authority to reject by *Notice in Writing* design or work which in the *Owner's* opinion does not conform to the requirements of the *Owner's Statement of Requirements*.
- 2.2.5 Whenever the *Owner* considers it necessary or advisable, the *Owner* will have authority to require a review of the *Design Services* and inspection or testing of the *Work*, whether or not such work is fabricated, installed or completed, in accordance with paragraph 2.5.5 of GC 2.5 – OWNER'S REVIEW OF THE DESIGN AND THE WORK.
- 2.2.6 During the progress of the *Design Services* or of the *Work* the *Owner* will furnish *Supplemental Instructions* related to the *Owner's Statement of Requirements* to the *Design-Builder* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Owner* and the *Design-Builder*.

GC 2.3 OWNER'S ADVISOR

- 2.3.1 When the *Owner* appoints an *Owner's Advisor*, the duties, responsibilities and limitations of authority of the *Owner's Advisor* shall be as set forth in the *Contract Documents*.
- 2.3.2 The duties, responsibilities and limitations of authority of the *Owner's Advisor* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.3.3 Subject to any notified limitations in authority, the *Design-Builder* may rely upon any written instructions or directions provided by the *Owner's Advisor*. Neither the authority of the *Owner's Advisor* to act, nor any decision to exercise or not exercise such authority, shall give rise to any duty or responsibility of the *Owner's Advisor* to the *Design-Builder, the Consultant, Other Consultants, Subcontractors, Suppliers, or their agents, employees or other persons performing any portion of the Design Services or the Work*.

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- 2.3.4 If the employment of the *Owner's Advisor* is terminated, the *Owner* may appoint or reappoint an *Owner's Advisor* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Owner's Advisor*.

GC 2.4 ROLE OF THE PAYMENT CERTIFIER

- 2.4.1 The *Owner* shall designate a *Payment Certifier* who will review the *Design-Builder's* applications for payment and certify the value of the *Design Services* and of *Work* performed and *Products* delivered to the *Place of the Work*.
- 2.4.2 The duties, responsibilities and limitations of authority of the *Payment Certifier* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.4.3 Neither the authority of the *Payment Certifier* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Payment Certifier* to the *Design-Builder*, the *Consultant*, *Other Consultants*, *Subcontractors*, *Suppliers*, or their agents, employees or other persons performing any of the *Design Services* or the *Work*.
- 2.4.4 The *Payment Certifier* will take all reasonable steps to be accessible to the *Design-Builder* during performance of the *Contract* and shall render any necessary decisions or instructions promptly as provided in GC 5.3 – PROGRESS PAYMENT to avoid delay in the processing of payment claims.
- 2.4.5 Based on the *Payment Certifier's* observations and evaluation of the *Design-Builder's* applications for payment, the *Payment Certifier* will determine the amounts owing to the *Design-Builder* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement – PAYMENT, GC 5.3 – PROGRESS PAYMENT and GC 5.7 – FINAL PAYMENT.
- 2.4.6 All communications between the *Payment Certifier* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, or a *Supplier* shall be forwarded through the *Design-Builder*.
- 2.4.7 The *Payment Certifier* will promptly inform the *Owner* of the date of receipt of the *Design-Builder's* applications for payment as provided in paragraph 5.3.1.1 of GC 5.3 – PROGRESS PAYMENT.
- 2.4.8 If the *Payment Certifier's* services are terminated, the *Owner* shall immediately designate a new *Payment Certifier* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Payment Certifier*.
- 2.4.9 The *Owner* may provide to the *Consultant*, *Other Consultants*, *Subcontractors* or *Suppliers*, through the *Payment Certifier*, information as to the percentage of the *Design Services* and *Work* that has been certified for payment.

GC 2.5 OWNER'S REVIEW OF THE DESIGN AND THE WORK

- 2.5.1 The *Owner* shall review the design as set out in the design development documents and proposed *Construction Documents* as the *Design Services* proceed, to confirm that the design is in compliance with the *Owner's Statement of Requirements* and the *Contract Documents*.
- 2.5.2 The *Owner* shall complete the reviews in accordance with the schedule agreed upon, or in the absence of an agreed schedule, with reasonable promptness so as to cause no delay.
- 2.5.3 The *Owner's* review shall not relieve the *Design-Builder* of responsibility for errors or omissions in the *Construction Documents* or for meeting all requirements of the *Contract Documents* unless the *Owner* accepts in writing a deviation from the *Contract Documents*.
- 2.5.4 No later than 10 days after completing the review, the *Owner* shall advise the *Design-Builder* in writing that the *Owner* has accepted or rejected the proposed *Construction Documents*. If rejected, the *Owner* shall inform the *Design-Builder* of the reasons of non-conformance and the *Design-Builder* shall revise the proposed *Construction Documents* to address such non-conformance. The *Design-Builder* shall inform the *Owner* in writing of any revisions other than those requested by the *Owner*.
- 2.5.5 The *Owner* may order any portion or portions of the *Work* to be examined to confirm that the *Work* performed is in accordance with the requirements of the *Contract Documents*. If the *Work* is not in accordance with the requirements of the *Contract Documents*, the *Design-Builder* shall correct the *Work* and pay the cost of examination and correction. If the *Work* is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay all costs incurred by the *Design-Builder* as a result of such examination and restoration.

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GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS

- 2.6.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform other design or other work with its own forces.
- 2.6.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Design Services* and the *Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Design-Builder* as it affects the *Design Services* and the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 2.6.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Design-Builder* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Owner* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Design Services* or of the *Work*, prior to proceeding with that portion of the *Design Services* or of the *Work*.
- 2.6.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Design-Builder* shall co-ordinate and schedule the *Design Services* and the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 2.6.5 Where a change in the *Design Services* or in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Design Services* or with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.6.6 Disputes and other matters in question between the *Design-Builder* and the *Owner's* other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Design-Builder* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owners* contains a similar agreement to arbitrate.

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES

GC 3.1 CONTROL OF THE DESIGN SERVICES AND THE WORK

- 3.1.1 The *Design-Builder* shall have total control of the *Design Services* and of the *Work* and shall direct and supervise the *Design Services* and the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Design-Builder* shall be solely responsible for the *Design Services* and construction means, methods, techniques, sequences, and procedures with respect to the *Work*.
- 3.1.3 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to the *Design Services* to be performed by the *Consultant* and *Other Consultants*, and shall enter into a contract with the *Consultant* and *Other Consultants* to perform *Design Services* as provided in the *Contract*, in accordance with laws applicable at the *Place of the Work*.
- 3.1.4 The *Design-Builder's* contract with the *Consultant* shall:
- .1 be based on the version of CCDC 15 – Design Services Contract between Design-Builder and Consultant in effect as at the date of this *Contract* or incorporate terms and conditions consistent with this version of CCDC 15, and
 - .2 incorporate terms and conditions of the *Contract Documents*, insofar as they are applicable.
- 3.1.5 Upon the *Owner's* request, the *Design-Builder* shall promptly provide the *Owner* with proof of compliance with paragraph 3.1.4.

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- 3.1.6 The *Design-Builder* shall be as fully responsible to the *Owner* for acts and omissions of the *Consultant* and *Other Consultants*, and of persons directly or indirectly employed by the *Consultant* and *Other Consultants*, as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.1.7 The *Design-Builder's* responsibility for *Design Services* performed by the *Consultant* and *Other Consultants* shall be limited to the degree of care, skill and diligence normally provided by consultants in the performance of comparable services in respect of projects of a similar nature to that contemplated by this *Contract*. The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* perform the *Design Services* to this standard.
- 3.1.8 The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* provide documentation required by authorities having jurisdiction in accordance with regulations and by-laws in effect at the *Place of the Work*.
- 3.1.9 The *Design-Builder* is solely responsible for the quality of the *Design Services* and of the *Work* and shall undertake any quality control activities specified in the *Contract Documents* or, if none are specified, as may be reasonably required to ensure such quality.
- 3.1.10 The *Design Builder* shall provide access to the *Work*, including parts being performed at locations other than the *Place of the Work* and to the location where the *Design Services* are performed, that the *Owner*, or the *Payment Certifier* may reasonably require to verify the progress of the *Work* or *Design Services* and their conformity to the requirements of the *Contract Documents*. The *Design-Builder* shall also provide sufficient, safe, and proper facilities at all times for such reviews of the *Design Services* or the *Work* and for inspection of the *Work* by authorized agencies.
- 3.1.11 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the instructions of the *Owner*, the *Consultant*, or *Other Consultants*, or the laws or ordinances of the *Place of the Work*, the *Design-Builder* shall give the *Owner* reasonable notice of when the work will be ready for review and inspection.
- 3.1.12 The *Design-Builder* shall arrange for and shall give the *Owner* reasonable notice of the date and time of inspections by other authorities.
- 3.1.13 If the *Design-Builder* covers, or permits to be covered, work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or, completed, the *Design-Builder* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and restore the covering work at the *Design-Builder's* expense.
- 3.1.14 The *Design-Builder* shall furnish promptly to the *Owner*, on request, a copy of certificates, test reports and inspection reports relating to the *Work*.

GC 3.2 DESIGN-BUILDER'S REVIEW OF OWNER'S STATEMENT OF REQUIREMENTS OR OTHER INFORMATION

- 3.2.1 The *Design-Builder* shall promptly notify the *Owner* of any significant error, inconsistency, or omission discovered in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*. The *Design-Builder* shall not proceed with the *Design Services* or *Work* affected until the *Design-Builder* and the *Owner* have agreed in writing how the information should be corrected or supplied.
- 3.2.2 The *Design-Builder* shall not be liable for damages or costs resulting from such errors, inconsistencies, or omissions in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*.

GC 3.3 ROLE OF THE CONSULTANT

- 3.3.1 The *Consultant* or *Other Consultants* will be, in the first instance, the interpreter of the requirements of the *Construction Documents* that they have prepared.
- 3.3.2 The duties, responsibilities and limitations of authority of the *Consultant* shall be in accordance with paragraph 3.1.4 of GC 3.1 – CONTROL OF THE DESIGN SERVICES AND THE WORK and shall be modified only with the written consent of the *Owner*, which consent shall not be unreasonably withheld.
- 3.3.3 If the *Consultant's* engagement is terminated, the *Design-Builder* shall immediately appoint or reappoint a *Consultant* against whom the *Owner* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

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GC 3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS

- 3.4.1 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
1. enter into contracts or written agreements with *Other Consultants* to require them to perform *Design Services* as provided in the *Contract Documents*;
 2. enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform *Work* as required by the *Contract Documents*;
 3. incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Other Consultants*, *Subcontractors* and *Suppliers* insofar as they are applicable; and
 4. be as fully responsible to the *Owner* for acts and omissions of *Other Consultants*, *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.4.2 The *Design-Builder* shall indicate in writing, at the request of the *Owner*, the names of *Other Consultants*, *Subcontractors*, or *Suppliers* whose proposals or bids have been received by the *Design-Builder* which the *Design-Builder* would be prepared to accept for the performance of a portion of the *Design Services* or of the *Work*. Should the *Owner* not object before signing the subcontract, the *Design-Builder* shall employ *Other Consultants*, *Subcontractors* or *Suppliers* so identified by the *Design-Builder* in writing for the performance of that portion of the *Design Services* or of the *Work* to which their proposal or bid applies.
- 3.4.3 The *Owner* may, for reasonable cause, at any time before the *Design-Builder* has signed the subcontract, object to the use of a proposed *Other Consultant*, *Subcontractor* or *Supplier* and require the *Design-Builder* to employ another proposed *Other Consultant*, *Subcontractor* or *Supplier* bidder.
- 3.4.4 If the *Owner* requires the *Design-Builder* to change a proposed *Other Consultant*, *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences resulting from such required change.
- 3.4.5 The *Design-Builder* shall not be required to employ any *Subcontractor*, *Supplier*, *Other Consultant*, person or firm to whom the *Design-Builder* may reasonably object.

GC 3.5 CONSTRUCTION DOCUMENTS

- 3.5.1 The *Design-Builder* shall submit the proposed *Construction Documents* to the *Owner* to review in orderly sequence and sufficiently in advance so as to cause no delay. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of proposed *Construction Documents*.
- 3.5.2 During the progress of the *Design Services*, the *Design-Builder* shall furnish to the *Owner* documents that describe details of the design required by the *Contract Documents*.
- 3.5.3 At the time of submission the *Design-Builder* shall advise the *Owner* in writing of any significant deviations in the proposed *Construction Documents* from the requirements of the *Contract Documents*. The *Owner* may or may not accept such deviations. Accepted deviations from the *Owner's Statement of Requirements* will be recorded in a *Change Order*.
- 3.5.4 When a change is required to the *Construction Documents* it shall be made in accordance with GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, or GC 6.3 – CHANGE DIRECTIVE.

GC 3.6 DESIGN SERVICES AND WORK SCHEDULE

- 3.6.1 The *Design-Builder* shall:
- .1 promptly after signing the Agreement, prepare and submit to the *Owner* a *Design Services* and *Work* schedule that indicates the timing of the major activities of the *Design Services* and of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Design Services* and the *Work* will be performed in conformity with the schedule;
 - .2 monitor the progress of the *Design Services* and of the *Work* relative to the schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
 - .3 advise the *Owner* of any revisions required to the schedule as a result of extensions to the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES IN THE CONTRACT.

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GC 3.7 SUPERVISION

- 3.7.1 The *Design-Builder* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.7.2 The appointed representative shall represent the *Design-Builder* at the *Place of the Work*. Information and instructions provided by the *Owner* to the *Design-Builder's* appointed representative shall be deemed to have been received by the *Design-Builder* except that *Notices in Writing* otherwise required under the *Contract* shall be given as indicated in Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Design-Builder* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with the *Contract Documents* and their use acceptable to the *Owner*.
- 3.8.3 The *Design-Builder* shall maintain good order and discipline among the *Design-Builder's* employees involved in the performance of the *Work* and shall not employ anyone not skilled in the tasks assigned.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Design-Builder* shall keep one copy of current *Owner's Statement of Requirements*, *Construction Documents*, *Shop Drawings*, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Design-Builder* shall provide *Shop Drawings* as described in the *Contract Documents* or as the *Owner* may reasonably request.
- 3.10.2 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Design-Builder* for approval.
- 3.10.3 The *Design-Builder* shall review all *Shop Drawings* before providing them to the *Owner*. The *Design-Builder* represents by this review that the *Design-Builder* has:
- .1 determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 checked and co-ordinated each *Shop Drawing* with the requirements of the *Contract Documents*.
- 3.10.4 If the *Owner* requests to review shop drawings, the *Design-Builder* shall submit them in an orderly sequence and sufficiently in advance so as to cause no delay in the *Design Services* or the *Work* or in the work of other contractors. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings*.
- 3.10.5 The *Owner's* review under paragraph 3.10.4 is for conformity to the intent of the *Contract Documents* and for general arrangement only. The *Owner's* review shall not relieve the *Design-Builder* of the responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents* unless the *Owner* expressly accepts a deviation from the *Contract Documents* by *Change Order*.

GC 3.11 NON-CONFORMING DESIGN AND DEFECTIVE WORK

- 3.11.1 Where the *Owner* has advised the *Design-Builder*, by *Notice in Writing*, that designs or *Specifications* fail to comply with the *Owner's Statement of Requirements*, the *Design-Builder* shall ensure that the design documents or proposed *Construction Documents* are promptly corrected or altered.
- 3.11.2 The *Design-Builder* shall promptly correct defective work that has been rejected by *Notice in Writing* by the *Owner* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, design, use of defective products, or damage through carelessness or other act or omission of the *Design-Builder*.
- 3.11.3 The *Design-Builder* shall promptly make good other contractors' work destroyed or damaged by such removals or replacements at the *Design-Builder's* expense.

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- 3.11.4 If, in the opinion of the *Owner*, it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Design-Builder* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Design-Builder* does not agree on the difference in value, the *Design-Builder* shall refer the dispute to Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 4 ALLOWANCES

GC 4.1 CASH ALLOWANCES

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Owner's Statement of Requirements*. The scope of work or costs included in such cash allowances shall be as described in the *Owner's Statement of Requirements*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Design-Builder's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner*.
- 4.1.4 Where the actual cost of the work performed under any cash allowance exceeds the amount of the allowance, the *Design-Builder* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the work performed under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Design-Builder's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between each cash allowance and the actual cost of the work performed under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Design-Builder* and the *Owner* shall jointly prepare a schedule that shows when the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Design Services* or of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Owner's Statement of Requirements*.
- 4.2.2 The contingency allowance includes the *Design-Builder's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Design-Builder*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Design-Builder* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Design-Builder Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT may be made monthly as the *Design Services* and the *Work* progress.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed to in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of the *Design Services* and of the *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.

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- 5.2.4 The *Design-Builder* shall submit to the *Payment Certifier*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Design Services* and of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Payment Certifier* may reasonably direct, and when accepted by the *Payment Certifier*, shall be used as the basis for applications for payment unless it is found to be in error.
- 5.2.6 The *Design-Builder* shall include a statement based on the schedule of values with each application for payment.
- 5.2.7 A declaration by the *Design-Builder* as to the distribution made of the amounts received using document CCDC 9A – Statutory Declaration of Progress Payment Distribution by Contractor shall be joined to each application for progress payment except the first one.
- 5.2.8 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Payment Certifier* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 After receipt by the *Payment Certifier* of an application for payment submitted by the *Design-Builder* in accordance with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT:
 - .1 the *Payment Certifier* will promptly inform the *Owner* of the date of receipt and value of the *Design-Builder's* application for payment,
 - .2 the *Payment Certifier* will issue to the *Owner* and copy to the *Design-Builder*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* amends the application, the *Payment Certifier* will promptly advise the *Design-Builder* in writing giving reasons for the amendment,
 - .3 the *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Payment Certifier* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Design-Builder* considers that the *Work* is substantially performed or, if permitted by the lien legislation applicable at the *Place of the Work*, a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Design-Builder* shall prepare and submit to the *Payment Certifier* appropriate documents as required by the *Contract Documents* together with a written application for a review by the *Payment Certifier* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include this information does not alter the responsibility of the *Design-Builder* to complete the *Contract*.
- 5.4.2 The *Design-Builder's* application for *Substantial Performance of the Work* shall include a statement from the *Consultant*, and *Other Consultants* in support of the submitted information and the date of *Substantial Performance of the Work* or designated portion of the *Work*.
- 5.4.3 The *Payment Certifier* shall, within 7 calendar days after receipt of the *Design-Builder's* application for *Substantial Performance of the Work*, issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion thereof or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.4 If the applicable lien legislation requires the *Consultant* to determine whether the *Work* has been substantially performed, the *Consultant* shall issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion of the *Work* or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.5 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder*, in consultation with the *Owner* will establish a reasonable date for completing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder* shall:
 - .1 submit an application for payment of the holdback amount,
 - .2 submits a CCDC 9A Statutory Declaration of Progress Payment Distribution by Contractor.

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- 5.5.2 After the receipt of an application for payment from the *Design-Builder* and the statement as provided in paragraph 5.5.1, the *Payment Certifier* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Design-Builder*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.2 In the Province of Quebec, where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Payment Certifier*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Design-Builder* shall ensure that such subcontract work or *Products* are protected pending the issuance of a *Substantial Performance of the Work* certificate and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Design-Builder* considers that the *Design Services* and the *Work* are completed, the *Design-Builder* shall submit an application for final payment.
- 5.7.2 The *Payment Certifier* will, no later than 10 calendar days after the receipt of an application from the *Design-Builder* for final payment, verify the validity of the application and advise the *Design-Builder* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Payment Certifier* finds the *Design-Builder's* application for final payment valid, the *Payment Certifier* will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Design-Builder* as provided in Article A-5 of the Agreement – PAYMENT.

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GC 5.8 DEFERRED WORK

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Design-Builder*, there are items of work that cannot be performed, payment in full for that portion of the *Design Services* or *Work* which has been performed as certified by the *Payment Certifier* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portions of the *Design Services* and *Work* are finished, only such amount that the *Payment Certifier* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9 NON-CONFORMING DESIGN SERVICES AND WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Design Services* and the *Work* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE CONTRACT

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Owner* without invalidating the *Contract*, may make:
- .1 changes to the *Work* or to the *Owner's Statement of Requirements* consisting of additions, deletions or revisions to the *Design Services* or to the *Work*, by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* by *Change Order*.
- 6.1.2 The *Design-Builder* shall not perform a change in the *Design Services*, *Construction Documents* or to the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change is proposed or required, the *Owner* or the *Design-Builder* shall provide a written description of the proposed change to the other party. The *Design-Builder* shall present, in a form acceptable to the *Owner*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change.
- 6.2.2 When the *Owner* and *Design-Builder* agree to the adjustments in the *Contract Price* and *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the *Design Services* or the *Work* performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 If the *Owner* requests the *Design-Builder* to submit a proposal for a change and then elects not to proceed with the change, a *Change Order* shall be issued by the *Owner* to reimburse the *Design-Builder* for all costs incurred by the *Design-Builder* in developing the proposal, including the cost of the related *Design Services*.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Design-Builder* to proceed with a change prior to the *Owner* and the *Design-Builder* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner* shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Design-Builder* shall proceed promptly with the change.
- 6.3.5 For the purpose of valuing *Change Directives*, changes that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Design-Builder's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Design-Builder's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Design-Builder's* cost, plus the *Design-Builder's* percentage fee on the net increase.

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- .2 If the change results in a net decrease in the *Design-Builder's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Design-Builder's* cost, without adjustment for the *Design-Builder's* percentage fee.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Design-Builder* under a salary or wage schedule agreed upon by the *Owner* and the *Design-Builder*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Design-Builder*, for personnel:
 - (1) stationed at the *Design-Builder's* field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, coordination drawings, and project record drawings; or
 - (4) engaged in the processing of changes in the *Design Services* or in the *Work*;
 - .2 contributions, assessments, or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the *Design-Builder* and included in the cost of the work as provided in paragraphs 6.3.7.1;
 - .3 travel and subsistence expenses of the *Design-Builder's* personnel described in paragraphs 6.3.7.1;
 - .4 all *Products* including cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*, and cost less salvage value on such items used but not consumed, which remain the property of the *Design-Builder*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work* whether rented from or provided by the *Design-Builder* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 all equipment and services required for the *Design-Builder's* field office;
 - .8 deposits lost;
 - .9 the cost of *Design Services* including all fees and disbursements of the *Consultant* and *Other Consultants* engaged to perform such services;
 - .10 the amounts of all subcontracts;
 - .11 quality assurance such as independent inspection and testing services;
 - .12 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .13 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefore subject always to the *Design-Builder's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .14 any adjustment in premiums for all bonds and insurance which the *Design-Builder* is required, by the *Contract Documents*, to purchase and maintain;
 - .15 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Design-Builder* is liable;
 - .16 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
 - .17 removal and disposal of waste products and debris; and
 - .18 safety measures and requirements.
- 6.3.8 Notwithstanding other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work*. Any cost due to failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work* shall be borne by the *Design-Builder*.
- 6.3.9 The *Design-Builder* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the work attributable to the *Change Directive* and shall provide the *Owner* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Design-Builder's* pertinent documents related to the cost of performing the work attributable to the *Change Directive*.

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- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is to be included in progress payments.
- 6.3.12 If the *Owner* and *Design-Builder* do not agree on the proposed adjustment in the *Contract Time* attributable to the change, or the method of determining it, the adjustment shall be referred to the provisions of PART 8 – DISPUTE RESOLUTION, for determination.
- 6.3.13 When the *Owner* and the *Design-Builder* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Design-Builder* discovers conditions at the *Place of the Work* which are:
 - .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Contract* and which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
 then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Owner* will promptly investigate such conditions. If the conditions differ materially from the *Contract Documents* and this would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Owner* is of the opinion that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Owner* will advise the *Design-Builder* in writing of the grounds on which this opinion is based.
- 6.4.4 The *Design-Builder* shall not be entitled to an adjustment in the *Contract Price* or the *Contract Time* if such conditions were reasonably apparent during the request for proposal period or bidding period and prior to proposal closing or bid closing.
- 6.4.5 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by an action or omission of the *Owner* or anyone employed or engaged by the *Owner* directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.2 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or any person employed or engaged by the *Design Builder* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.3 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by:
 - .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Design-Builder* is a member or to which the *Design-Builder* is otherwise bound), or
 - .2 fire, unusual delay by common carriers or unavoidable casualties, or
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Design-Builder's* control other than one resulting from a default or breach of *Contract* by the *Design-Builder*,
 then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Design-Builder* agrees to a shorter extension. The *Design-Builder* shall not be entitled to payment for costs

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incurred by such delays unless such delays result from actions of the *Owner*, or anyone employed or engaged by the *Owner* directly or indirectly.

- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Owner* no later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 Any adjustment to *Contract Price* and *Contract Time* required as a result of GC 6.5 – DELAYS shall be made as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Design-Builder* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party, to give the other party the opportunity to take actions to mitigate the claim.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
 - .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at regular intervals as agreed between the parties, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 If the *Owner* and *Design-Builder* are in disagreement regarding the basis for the claim or its valuation, the matter shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 7 RIGHT TO SUSPEND OR TERMINATE

GC 7.1 OWNER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR TERMINATE THE CONTRACT BEFORE THE WORK COMMENCES

- 7.1.1 The *Owner* may, at any time before the *Work* commences at the *Place of the Work*, suspend performance of the *Design Services* by giving *Notice in Writing* to the *Design-Builder* indicating the expected length of the suspension. Such suspension shall be effective in the manner as stated in the *Notice in Writing* and shall be without prejudice to any claims which either party may have against the other.
- 7.1.2 Upon receiving a notice of suspension, the *Design-Builder* shall, subject to any directions in the notice of suspension, suspend performance of the *Design Services*.
- 7.1.3 If the *Design Services* are suspended for a period of 20 *Working Days* or less, the *Design-Builder*, upon the expiration of the period of suspension, shall resume the performance of the *Design Services* in accordance with the *Contract Documents*. The *Contract Price* and *Contract Time* shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 – DELAYS.
- 7.1.4 If, after 20 *Working Days* from the date of delivery of the *Notice in Writing* regarding the suspension of the *Design Services*, the *Owner* and the *Design-Builder* agree to continue with and complete the *Design Services* and the *Work*, the *Design-Builder* shall resume the *Design Services* in accordance with any terms and conditions agreed upon by the *Owner* and the *Design-Builder*. Failing such an agreement, the *Owner* shall be deemed to have terminated the *Contract* and the *Design-Builder* shall be entitled to be paid for all *Design Services* performed and for such other damages as the *Design-Builder* may have sustained, including reasonable profit, as a result of the termination of the *Contract*.

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GC 7.2 OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDER'S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.2.1 If the *Design-Builder* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Design-Builder's* insolvency, or if a receiver is appointed because of the *Design-Builder's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Design-Builder's* right to continue with the *Design Services* or *Work*, by giving the *Design-Builder* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Design-Builder* neglects to properly perform the *Design Services* or *Work*, or otherwise fails to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Design-Builder* *Notice in Writing* that the *Design-Builder* is in default of the *Design-Builder's* contractual obligations and instruct the *Design-Builder* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.2.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Design-Builder* shall be in compliance with the *Owner's* instructions if the *Design-Builder*:
- .1 commences the correction of the default within the specified or agreed time, as the case may be, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.2.4 If the *Design-Builder* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Design-Builder* provided the *Payment Certifier* has certified such cost to the *Owner* and the *Design-Builder*, or
 - .2 terminate the *Design-Builder's* right to continue with the *Design Services* or *Work* in whole or in part, or
 - .3 terminate the *Contract*.
- 7.2.5 If the *Owner* terminates the *Design-Builder's* right to continue with the *Design Services* or *Work* as provided in paragraphs 7.2.1 and 7.2.4, or if the *Owner* terminates the *Contract*, the *Owner* shall be entitled to:
- .1 use the plans, sketches, *Drawings*, graphic representations and *Specifications* pursuant to paragraph 1.1.8 of GC 1.1 – CONTRACT DOCUMENTS, as reasonably required for the completion of design and construction of the *Project*, but unless otherwise agreed, the *Consultant* and *Other Consultants* shall not assume any responsibility or liability resulting from use of such documents which may be incomplete;
 - .2 take possession of the *Work* and *Products* at the *Place of the Work*, and subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*, and finish the *Design Services* and *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense;
 - .3 withhold further payment to the *Design-Builder* until final payment is determined in accordance with paragraphs 7.2.5.4 and 7.2.5.5;
 - .4 charge the *Design-Builder* the amount by which:
 - (1) the full cost of finishing the *Design Services* and the *Work*, as certified by the *Payment Certifier*, including compensation to the *Payment Certifier* for the *Payment Certifier's* additional services, plus
 - (2) a reasonable allowance as determined by the *Payment Certifier* to cover the cost of corrections to work performed by the *Design-Builder* that may be required under GC 12.5 – WARRANTY, together exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Design Services* and the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Design-Builder* the difference; and
 - .5 on expiry of the warranty period, charge the *Design-Builder* the amount by which the cost of corrections to the *Design-Builder's* work under GC 12.5 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Design-Builder* the difference.
- 7.2.6 The *Design-Builder's* obligation under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Design-Builder* up to the time of termination shall continue after such termination of the *Contract*.

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GC 7.3 DESIGN-BUILDER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.3.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.3.2 If the *Design Services* or *Work* are suspended or otherwise delayed for a period of more than 20 *Working Days* under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or of anyone directly or indirectly employed or engaged by the *Design-Builder*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.3.3 The *Design-Builder* may give *Notice in Writing* to the *Owner* that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Design-Builder*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Payment Certifier* fails to issue a certificate as provided in GC 5.3 – PROGRESS PAYMENT, or
 - .3 the *Owner* fails to pay the *Design-Builder* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree.
- 7.3.4 The *Design-Builder's* *Notice in Writing* to the *Owner* provided under paragraph 7.3.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, suspend the *Design Services* or the *Work*, or terminate the *Contract*.
- 7.3.5 If the *Design-Builder* suspends the *Work* pursuant to paragraph 7.3.4, the *Design-Builder* shall:
- .1 at the cost of the *Owner* maintain operations necessary for safety reasons and for care and preservation of the *Work*,
 - .2 make reasonable efforts to delay *Product* deliveries, and
 - .3 not remove from the *Place of the Work* any part of the *Work* or any *Products* not yet incorporated into the *Work*.
- 7.3.6 If the *Design-Builder* terminates the *Contract* under the conditions set out above, the *Design-Builder* shall be entitled to be paid for all *Design Services* and *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and for such other damages as the *Design-Builder* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute does arise, the parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.1.3 If the parties do not reach an agreement, either party shall send a *Notice in Writing* of dispute to the other party which contains the particulars of the matter in dispute, the relevant provisions of the *Contract Documents* and, if a Project Mediator has not already been appointed, a request that a Project Mediator be appointed. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing*, setting out particulars of the response and any relevant provisions of the *Contract Documents*.
- 8.1.4 If a dispute is not resolved promptly, the *Owner* will issue such instructions as necessary to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Design-Builder* costs incurred by the *Design-Builder* in carrying out such instructions which the *Design-Builder* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Design Services* or the *Work*.

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- 8.1.5 The parties shall, in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing, appoint a Project Mediator:
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.1.6 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.1.3, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 Rules for Mediation and Arbitration of Construction Disputes in effect at the time of proposal closing or bid closing.
- 8.1.7 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.1.6 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner* and the *Design-Builder*.
- 8.1.8 By giving a *Notice in Writing* to the other party not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.1.7, either party may refer the dispute to be finally resolved by arbitration conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.1.9 On expiration of the 10 *Working Days* stipulated in paragraph 8.1.8, the arbitration agreement under paragraph 8.1.8 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.1.8 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.1.10 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.1.8, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.1.8 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Design-Builder* has abandoned the *Design Services* or the *Work*, whichever is earlier; and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.1.8.

GC 8.2 RETENTION OF RIGHTS

- 8.2.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.4.
- 8.2.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.1.9 of GC 8.1 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.
- 8.2.3 Part 8 of the General Conditions – DISPUTE RESOLUTION shall survive suspension or termination of the *Contract*.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Design-Builder* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Design-Builder's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Owner's Statement of Requirements*, or
 - .2 acts or omissions by the *Owner*, the *Owner's* agents and employees.
- 9.1.2 Before commencing any work, the *Design-Builder* shall determine the location of all underground utilities and structures that are reasonably apparent in an inspection of the *Place of the Work*.

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- 9.1.3 Should the *Design-Builder* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Design-Builder* shall be responsible for making good such damage at the *Design-Builder's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Design-Builder* is not responsible, as provided in paragraph 9.1.1, the *Design-Builder* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Design-Builder* commencing the *Design Services* or *Work*, the *Owner* shall, subject to legislation applicable to the *Place of the Work*:
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Design-Builder* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.5 If the *Design-Builder* encounters toxic or hazardous substances at the *Place of the Work* or has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Design-Builder* shall:
- .1 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by legislation applicable to the *Place of the Work*, and
 - .2 immediately report the circumstances to the *Owner* in writing.
- 9.2.6 If the *Owner* and *Design-Builder* do not agree on the existence or significance of the toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert's report shall be delivered to the *Owner* and the *Design-Builder*.
- 9.2.7 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Work* by the *Design Builder* or anyone for whom the *Design Builder* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Design-Builder* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in 9.2.6 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substance was brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Design-Builder* shall promptly at the *Design-Builder's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;

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- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.

9.2.9 If either party does not accept the expert’s findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert’s determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided in paragraphs 9.2.7 or 9.2.8.

GC 9.3 ARTIFACTS AND FOSSILS

9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Design-Builder*, be deemed to be the absolute property of the *Owner*.

9.3.2 The *Design-Builder* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Owner* upon discovery of such items.

9.3.3 The *Owner* will investigate the impact on the *Design Services* or the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Design-Builder’s* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

9.4.1 Except as provided for in paragraph 2.6.2.2 of GC 2.6 – WORK BY OWNER OR OTHER CONTRACTORS, the *Design-Builder* shall assume overall responsibility for:

- .1 construction health and safety at the *Place of the Work* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, and
- .2 establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

9.5.1 If the *Design-Builder* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,

- .1 the observing party shall promptly report the circumstances to the other party in writing, and
- .2 the *Design-Builder* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould.

9.5.2 If the *Owner* and *Design-Builder* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert’s report shall be delivered to the *Owner* and *Design-Builder*.

9.5.3 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was caused by the *Design-Builder’s* operations under the *Contract*, the *Design-Builder* shall promptly, at the *Design-Builder’s* own expense:

- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
- .2 make good any damage to the *Work*, the *Owner’s* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.2, and
- .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.

9.5.4 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was not caused by the *Design-Builder’s* operations under the *Contract*, the *Owner* shall promptly, at the *Owner’s* own expense:

- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
- .2 reimburse the *Design-Builder* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
- .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in paragraph 9.5.2 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay, and

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.4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.

- 9.5.5 If either party does not accept the expert's finding under paragraph 9.5.2, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.3 or 9.5.4, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided in paragraphs 9.5.3 or 9.5.4.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the proposal closing or bid closing except for *Value Added Taxes* payable by the *Owner* to the *Design-Builder* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Design-Builder* due to changes in such included taxes and duties after the time of the proposal closing or bid closing shall increase or decrease the *Contract Price* accordingly, and either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Design Services* and the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for the permanent easements and rights of servitude.
- 10.2.3 Unless otherwise stated, the *Design-Builder* shall obtain and pay for the building permit and other permits, licences, or certificates necessary for the performance of the *Work* at the time of the proposal closing or bid closing. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Design-Builder* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the *Design Services* or the performance of the *Work* and which relate to the *Design Services* or the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Design-Builder* shall not be responsible for verifying that the *Owner's Statement of Requirements* is in substantial compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Design Services* or the *Work*. If after the time of the proposal closing or bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Design-Builder* shall advise the *Owner* in writing requesting direction immediately upon such variance or change becoming known. Changes shall be made as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Design-Builder* fails to advise the *Owner* in writing and fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes, the *Design-Builder* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of proposal closing or bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Design Services* or the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Design-Builder* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Design-Builder* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Design-Builder* or anyone for whose acts the *Design-Builder* may be liable.
- 10.3.2 The *Owner* shall hold the *Design-Builder* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan or design of which was supplied by the *Owner* to the *Design-Builder* as part of the *Contract Documents*.

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GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Design Services* or the *Work*, again with the *Design-Builder's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Design-Builder's* application for final payment, the *Design-Builder* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Design-Builder* shall provide such evidence of compliance by the *Design-Builder* and *Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.2 – INDEMNIFICATION, the *Design-Builder* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal closing or bid closing except as hereinafter provided:
- .1 Everywhere used in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the term “*Contractor*” shall be replaced with the term “*Design-Builder*”.
 - .2 General liability insurance in the name of the *Design-Builder* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner*, the *Consultant*, *Other Consultants*, the *Owner's Advisor*, and the *Payment Certifier* as insured but only with respect to liability arising out of the operations of the *Design-Builder* with regard to the *Design Services* or *Work*. All liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years.
 - .3 Automobile Liability Insurance from the date of commencement of the *Design Services* or the *Work* until one year after the date of *Substantial Performance of the Work*.
 - .4 If owned or non-owned aircraft and watercraft are used directly or indirectly in the performance of the *Design Services* or *Work*, Aircraft and Watercraft Liability Insurance from the date of commencement of the *Design Services* or *Work* until one year after the date of *Substantial Performance of the Work*.
 - .5 "All risks" property insurance in the joint names of the *Design-Builder*, the *Owner*, the *Consultant*, the *Owner's Advisor*, and the *Payment Certifier*. The policy shall include as Additional Insureds all *Subcontractors*. Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required or waive the insurance requirement. The “all risks” property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; or
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .6 Boiler and machinery insurance in the joint names of the *Design-Builder* and the *Owner*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .7 The “all risks” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Design-Builder* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Design-Builder* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Design-Builder* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Design-Builder* shall be entitled to such reasonable extension of *Contract Time* as agreed by the *Owner* and *Design-Builder*;
 - (2) the *Design-Builder* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions of the *Contract*. In addition the *Design-Builder* shall be entitled to receive from the payments made by the insurer the amount of the *Design-Builder's* interest in the restoration of the *Work*; and

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- (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces, or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, the *Owner* shall pay the *Design-Builder* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions of the *Contract*.
- .8 *Design-Builder's* Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- .9 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall carry professional liability insurance with limits of not less than \$1,000,000 per claim and with an aggregate limit of not less than \$2,000,000 within any policy year, unless specified otherwise in the *Contract Documents*. The policy shall be maintained continuously from the commencement of the *Contract* until 2 years after *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Design Services* or *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Design-Builder* shall promptly provide the *Owner* with confirmation of coverage and, if required, a true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Design Services* or *Work*.
- 11.1.3 The *Design-Builder* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Design-Builder's* responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY and GC 12.2 – INDEMNIFICATION.
- 11.1.4 If the *Design-Builder* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence of same to the *Design-Builder* and the *Consultant*. The *Design-Builder* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Design-Builder*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Design-Builder's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may require the increased coverage from the *Design-Builder* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to any revision of CCDC 41 – CCDC INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Design-Builder* shall, prior to commencement of the *Design Services* or *Work* or within such other time as may be specified in the *Contract Documents*, provide to the *Owner* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY

GC 12.1 DEFINITION AND SURVIVAL

- 12.1.1 For the purposes of Part 12 – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY, “claim” or “claims” shall mean claims, demands, losses, costs, damages, actions, suits or proceedings, whether in contract or tort.
- 12.1.2 Part 12 of the General Conditions – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY shall survive suspension or termination of the *Contract*.

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GC 12.2 INDEMNIFICATION

- 12.2.1 Without restricting the parties' obligations to indemnify one another as described in paragraph 12.2.4 and the Owner's obligation to indemnify as described in paragraph 12.2.5, the *Owner* and the *Design-Builder* shall each indemnify and hold harmless the other from and against all claims, whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) errors, omissions, or negligence of the party from whom indemnification is sought or anyone for whom that party is responsible, or
 - (2) a breach of this *Contract* by the party from whom indemnification is sought; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.3 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.2.2 The obligation of either party to indemnify as set forth in paragraph 12.2.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal or bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 of the Agreement – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
 - .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.2.2.1 and 12.2.2.2 shall apply.
- 12.2.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.2.1 and 12.2.2 shall be inclusive of interest and all legal costs.
- 12.2.4 The *Owner* and the *Design-Builder* shall indemnify and hold harmless the other from and against all claims arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS.
- 12.2.5 The *Owner* shall indemnify and hold harmless the *Design-Builder* from and against all claims:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Design-Builder's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.2.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Design-Builder*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known; and
 - .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this *Contract* to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES

- 12.3.1 Notwithstanding any other provisions of this *Contract*, the *Design-Builder's* liability for claims which the *Owner* may have against the *Design-Builder*, including the *Design-Builder's* officers, directors, employees and representatives, that arise out of, or are related to, the *Design Services*, shall be limited:
- .1 to claims arising from errors, omissions, or negligent performance of the *Design Services* by the *Consultant* or *Other Consultant* and
 - .2 where claims are covered by insurance the *Design-Builder* is obligated to carry pursuant to GC 11.1 – INSURANCE, to the amount of such insurance.

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GC 12.4 WAIVER OF CLAIMS

- 12.4.1 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Design-Builder* waives and releases the *Owner* from all claims which the *Design-Builder* has or reasonably ought to have knowledge of that could be advanced by the *Design-Builder* against the *Owner* arising from the *Design-Builder's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Design-Builder* by third parties for which a right of indemnification may be asserted by the *Design-Builder* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Design-Builder* pursuant to the provisions of paragraphs 12.2.4 or 12.2.5 of GC 12.2 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.2 The *Design-Builder* waives and releases the *Owner* from all claims referenced in paragraph 12.4.1.4 except for those referred in paragraphs 12.4.1.2 and 12.4.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.3 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Design-Builder* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Design-Builder* arising from the *Owner's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of paragraph 12.2.4 of GC 12.2 – INDEMNIFICATION;
 - .4 damages arising from the *Design-Builder's* actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.5 – WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.4 The *Owner* waives and releases the *Design-Builder* from all claims referred to in paragraph 12.4.3.4 except claims for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.4.5 The *Owner* waives and releases the *Design-Builder* from all claims referenced in paragraph 12.4.3.6 except for those referred in paragraph 12.4.3.2, 12.4.3.3 and those arising under GC 12.5 – WARRANTY and claims for which *Notice in Writing* has been received by the *Design-Builder* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.6 “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.4 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;

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- .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 12.4.7 The party giving “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.4.8 Where the event or series of events giving rise to a claim made under paragraphs 12.4.1 or 12.4.3 has a continuing effect, the detailed account submitted under paragraph 12.4.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.4.9 If a *Notice in Writing* of claim pursuant to paragraph 12.4.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.4.10 If a *Notice in Writing* of claim pursuant to paragraph 12.4.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.5 WARRANTY

- 12.5.1 Except for extended warranties as described in paragraph 12.5.6, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.5.2 The *Design-Builder* warrants that the *Work* is in accordance with the *Contract Documents*.
- 12.5.3 The *Owner* shall promptly give the *Design-Builder Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.5.4 The *Design-Builder* shall promptly correct, at the *Design-Builder's* expense, any work which is not in accordance with the *Contract Documents* or defects or deficiencies in the *Work* which appear at any time until the end of the warranty periods specified in the *Contract Documents*.
- 12.5.5 The *Design-Builder* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.5.4.
- 12.5.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.5.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor for the benefit of the *Owner*. The *Design-Builder's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.
- 12.5.7 The *Design-Builder* does not warrant against the effects of corrosion, erosion or wear and tear of any *Product* or failure of any *Product* due to faulty operations or maintenance by the *Owner* or conditions of operation more severe than those specified for the *Product*.
- 12.5.8 The warranties specified in GC 12.5 – WARRANTY or elsewhere in the *Contract Documents* are the only warranties of the *Design-Builder* applicable to the *Work* and no other warranties, statutory or otherwise, are implied.

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Appendix B: Owner's Statement of Requirements

EW-22-003 - Owner's Statement of Requirements

General Requirements

- 1) Design consultants (including but not limited to: architect, structural engineer, mechanical engineer, electrical engineer, servicing/civil engineer) shall be retained by the Design-Builder to complete the design of the building suitably to obtain a building permit and for construction.
- 2) Architectural design shall be completed by an architect registered with the Ontario Association of Architects and licensed to practice architecture in the Province of Ontario.
- 3) Structural, mechanical, electrical, and servicing/civil design shall be completed by an engineer registered with Professional Engineers Ontario and licensed to practice engineering in the Province of Ontario.
- 4) All design shall be completed in accordance with the 2012 Ontario Building Code and the requirements of all authorities having jurisdiction.
- 5) Architect shall specify OBC classification.
- 6) Design shall be completed to satisfy SB-10 of the Ontario Building Code. Based on the proposed use of the building, the building may be exempt. Architect to determine applicability of SB-10 and design shall be completed according to architect's requirements with respect to SB-10.
- 7) Design-Builder responsible for collecting and supplying all background information and/or existing site information required by the design consultants to complete their building designs, including topographic survey, legal survey, geotechnical investigations, etc.
- 8) Design consultants shall sign the commitment to general review form and complete construction review in accordance with the Ontario Building Code. Design consultants shall provide a signed and sealed letter of general conformance prior to occupancy.

Architectural Design

- 1) Building shall consist of a pre-engineered steel building with insulated metal panels for the walls and corrugated metal roof.
- 2) Exterior finish shall consist of corrugated metal siding/panels with a painted finish. Colour and style per Owner's selection.
- 3) A minimum of R20 insulation shall be provided in the walls. Insulation value shall be higher if/as required by the architect and SB-10 of the OBC.
- 4) A minimum of R24 insulation shall be provided in the roof. Insulation value shall be higher if/as required by the architect and SB-10 of the OBC.
- 5) Washroom and office walls shall consist of steel studs at 16" o/c (minimum 20 gauge) with a painted drywall finish, colour per Owner's selection. Minimum one coat of primer and two finish coats.
- 6) Washroom and office ceilings shall consist of dropped ceiling system with 2' x 4' panels.
- 7) All windows shall be sliders and shall be energy star rated and argon filled triple pane.
- 8) Overhead doors shall be 2" thick insulated steel sectional doors with one panel of glass lites.
- 9) Each overhead door shall be fitted with a hard wired door operator. Door operators shall have buttons requiring one push to open and one push to close. Photo eyes shall be provided for all overhead doors.
- 10) Exterior single doors shall be 1½" thick insulated steel doors with 24" x 36" insulated door lite.

- 11) Mechanical room and storage room shall be framed with 8" thick concrete block walls and cold formed steel ceiling joists with drywall ceiling.
- 12) At a minimum, at least 3 water closets and one universal washroom shall be provided however additional water closets shall be provided if required by architect/OBC to meet OBC.
- 13) Entire building shall be designed to be barrier free in accordance with the Ontario Building Code.
- 14) Floor shall consist of reinforced concrete slab on grade. Garage, storage room, and mechanical room floors shall be finished with a siloxane-based sealer.
- 15) Washroom and office floors shall be finished with wood look laminate flooring, colour per Owner's selection.
- 16) All block and steel stud partition walls shall be constructed a minimum of 10' high, or higher if/as required by design consultants.
- 17) Provide minimum 4' x 8' skylights in each garage bay. Skylights shall be mounted on roof curbs and fully flashed and sealed against water penetration.

Structural Design

- 1) Floors shall be a minimum of 7" thick reinforced concrete or greater and reinforced with 15M @ 12" o/c each way mid depth, or greater if/as required by structural engineer. Sub-base as per geotechnical engineer's requirements. C-2 exposure class concrete shall be used.
- 2) Garage slab on grade shall be sloped 1% to drains. Thresholds at overhead doors shall be sloped outward to drain to the exterior.
- 3) Foundations shall consist of strip/pad footings, walls, and piers, all as required by structural engineer. Foundations shall have proper coverage for frost protection. F-2 exposure class concrete shall be used for foundation walls/piers and 25 MPa N class concrete shall be used for strip/pad footings.
- 4) Strip footings shall be reinforced with 2 – 15M continuous minimum, or greater if/as required by structural engineer.
- 5) Interior side of foundation walls shall be lined with R10 rigid insulation, minimum 2'-0" deep, or greater if/as required by architect/OBC.
- 6) Perimeter of floors shall have R10 rigid insulation within 2'-0" of all perimeter walls below the floor, or greater if/as required by architect/OBC.
- 7) Slab on grade construction shall conform to geotechnical engineer's requirements.
- 8) Building shall be designed to all design loads as required in Part 4 of the Ontario Building Code.
- 9) Slab on grade floor shall be designed to support 12 kPa uniform design live load.
- 10) Trench drains shall consist of reinforced concrete or pre-fabricated drains and shall be capable of supporting wheel point loads due to the equipment and vehicles to be stored in the building.
- 11) Provide a mezzanine floor above the amenity spaces (storage room, office, washrooms, mechanical room) capable of supporting a storage live load of 100 psf.
- 12) Provide pre-fabricated galvanized steel stairs for access to the mezzanine level.
- 13) Mezzanine level shall include a 5' wide x 5' high operable window in the wall of the existing building.

Electrical

- 1) Electrical design drawings to include all electrical infrastructure for the new building and distribution tie-in to the existing west building power distribution system.
- 2) All designs must comply with the latest edition of the Ontario Building Code (OBC) and Ontario Electrical Safety Code requirements (OESC) and meet the requirements of the Authority having Jurisdiction.
- 3) Electrical installation to meet OBC SB-10 requirements as applicable to classification. Contractor's engineer is responsible for provide completed OBC SB-10 check list for the building department.
- 4) All internal electrical cables to be copper and in conduit. Minimum cable sizing #12AWG Cu., minimum conduit sizing 21mm.
- 5) Provide 240/120 Volt, 100 Amp underground feeder from the existing electrical panel in the west garage, include new 100 Amp, 2-pole breaker in existing panel. Cable to be sized for maximum voltage drop 3%. Aluminum cable is permitted.
- 6) Provide new 240/120 Volt, 100 Amp 42 circuit panel in the new building, include a 100 Amp, 2-pole main breaker. Breaker panel to be of bolt-on breaker design, including a minimum of 10 percent spare breakers.
- 7) Provide all breakers, disconnects, conduit and cable for all mechanical equipment.
- 8) Provide general purpose power receptacles, backboxes and cover plates as follows.

Garage	12 x 20 Amp 5-20R c/w stainless steel coverplate. 4 x 20 Amp, 2-pole breakers.
Mechanical Room	2 x 20 Amp 5-20R c/w stainless steel coverplate. 1 x 20 Amp, 2-pole breaker.
Washroom	1 x 20 Amp 5-20R GFI (counter height) c/w stainless steel coverplate. 1 x 20 Amp, 2-pole breaker.
Storage Room	2 x 20 Amp 5-20R c/w stainless steel coverplate. 1 x 20 Amp, 2-pole breaker.
Office	4 x 20 Amp 5-20R c/w stainless steel coverplate. 2 x 20 Amp, 2-pole breakers.
Exterior	4 x 20 Amp 5-20 GFI weatherproof c/w in-use cover. 2 x 20 Amp, 2-pole breakers.
- 9) Life safety equipment (exit and emergency lighting) as per the latest edition of the Ontario Building Code and the Ontario Electrical Safety Code. All equipment to have a minimum vapour tight rating. Include emergency lighting remote heads for means of egress and washroom.
- 10) All interior and exterior lighting to be DLC premium listed and include a minimum 10-year manufacturer's warranty. Photometric drawings to be submitted for review. If required engineer stamped exterior plans to be available for site plan approval submission.
- 11) Exterior lighting to be full cut-off wall pack LED lighting around the entire perimeter of the building. Lighting levels at 5 meters around the perimeter of the building to be 5 lux minimum (grade level) with a maximum to minimum uniformity of 15:1. Exterior lighting to be controlled with photosensor and astronomical timer controls.
- 12) Garage lighting to be LED high bay luminaires with a minimum vapour tight rating. Installation to use a rigid rod assembly to the roof structure. 3-way switching to be installed at both exit doors. Lighting levels to be 400 lux average (floor level) with a maximum / minimum uniformity of 3:1.
- 13) Supply and install two welding receptacles in the garage at locations to be confirmed by the Owner.

Mechanical

- 1) All work must comply with the requirements of the OBC, local by-laws, and the authorities having jurisdiction.
- 2) The mechanical design and installation shall meet OBC SB-10 requirements (as applicable). The mechanical consultant will be responsible for providing the completed OBC SB-10 check list to the building department's plans examiner.
- 3) The mechanical design shall include but not be limited to the following:
 - HVAC drawings and loading calculations.
 - Plumbing and drainage drawings, and fixture loading calculations.
 - Natural gas supply.
- 4) All drawings and calculations shall be stamped by a Professional Engineer licensed in the Province of Ontario and submitted to the local building authority.
- 5) The mechanical consultant shall be responsible for responding to questions posed by the building plans examiner during the permit submission review period.
- 6) Apply for all required permits. No construction work shall commence without permit issuance.
- 7) Ensure inspections during the construction phase are scheduled and completed by the authorities having jurisdiction including rough-ins and final sign off. The inspection dates shall be communicated to the Engineer and Owner prior to completion of the inspections.
- 8) The mechanical consultant shall provide ongoing site reviews to fulfill their obligations to the signed general commitment to review form and shall include at a minimum the following construction site reviews including reports with photos:
 - Rough-in review (one site visit)
 - Final review (one site visit)
 - Deficiency remedy review (one site visit) to confirm that all issues have been addressed.
- 9) All testing completing shall be in accordance with the OBC, authorities having jurisdiction, equipment manufacturer recommendations and industry best practices. Testing shall include but not be limited to pressure tests for plumbing systems and air balancing.
- 10) Provide training for building management and maintenance staff.
- 11) The mechanical consultant shall review the compiled operation and maintenance manual to ensure that it is organized, indexed and complete.
- 12) Provide an air supply system with dedicated air compressor mounted in the garage.

Domestic Water and Drainage

- 1) Mechanical consultant shall ensure domestic water supply and drainage systems align with the site services shown on the civil drawings.
- 2) Provide a complete sanitary drainage system to serve the new building including trench drainage system in the garage bay area.
- 3) It is the responsibility of the mechanical consultant to determine if an oil separator will be required for drainage leaving the building. Oil separator shall be supplied and installed if required.
- 4) The existing septic system shall be utilized to accommodate the addition. Sanitary sewers, maintenance holes, and pumps shall be provided as required. It is assumed the size and condition of the existing septic system is adequate to accommodate the addition.

- 5) Provide a complete domestic water distribution system for all plumbing fixtures including:
 - Barrier free water closet, lavatory and floor drain in washroom.
 - Domestic hot water heater and floor drain in mechanical room.
 - Trench drainage system in garage bay area.
 - Trap seal primers for floor and trench drains as required.
 - Four (4) interior non-freeze hose bib locations in the garage.
 - One hot and one cold non-freeze hose bibs in the storage room.
 - Eye wash station with shower and a dedicated floor drain below.

HVAC

Outdoor Ambient Air Temperatures:

- 1) Outdoor Design Conditions - OBC climate data for January (2.5%) and July (2.5%).

Office, Storage, Washroom, and Mechanical Room:

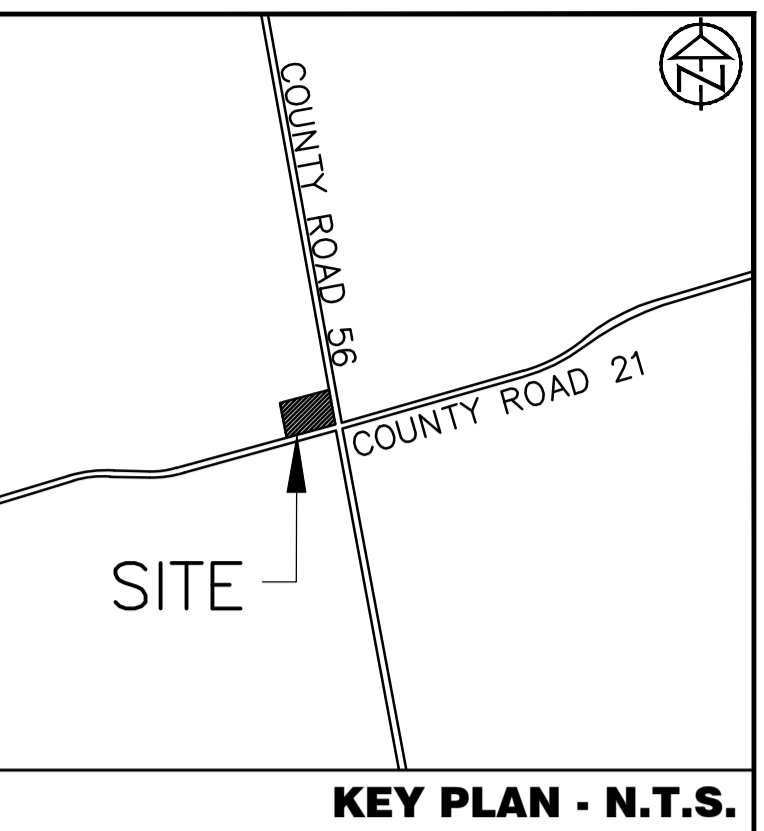
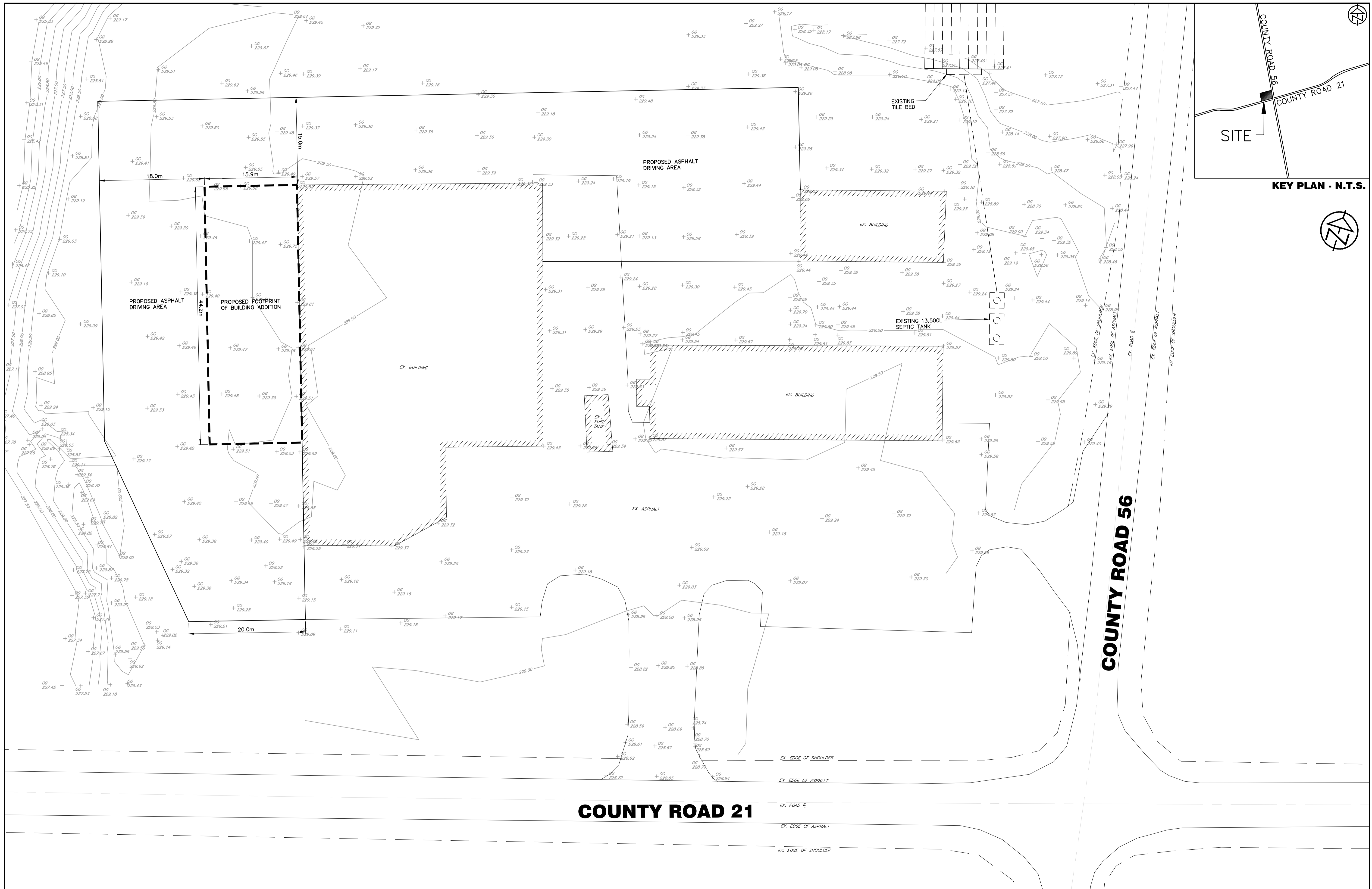
- 2) Heating load shall be based on an indoor temperature 22 °C (72°F).
- 3) Summer cooling load shall be based on indoor temperature conditions of 24°C (75°F) at 50% relative humidity.
- 4) Required ventilation shall be meet the minimum requirements of OBC 6.2.2.1 Required Ventilation and ASHRAE 62.1.
- 5) Heating and cooling shall be provided by an air source, heat pump system with auxiliary electric heat.
- 6) Ventilation shall be provided by an energy recovery ventilator (ERV) meeting the minimum energy recovery requirements of ASHRAE 90.1.

Garage Bays

- 7) Heating load shall be based on an indoor temperature of 22 °C (72°F).
- 8) Summer cooling is not required.
- 9) Required ventilation shall meet the minimum requirements of OBC 6.2.2.3 Ventilation of Storage and Repair Garages.
- 10) Heating shall be provided by natural gas fired, radiant tube heaters with separated combustion.
- 11) Provide ceiling mounted de-stratification fans.
- 12) Ventilation shall be provided by exhaust fans interlocked with outdoor air intake, motorized dampers. The ventilation system shall be activated by a CO/NOx detection system that includes provisions for manual control and humidistat operation.

Natural Gas

- 1) Provide a new natural gas meter and coordinate with local utility for the incoming service.
- 2) Complete the distribution network installation from the new meter to all systems utilizing natural gas including HVAC and domestic hot water heating (if applicable).



COUNTY ROAD 21

COUNTY ROAD 56

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TOPOGRAPHIC SURVEY WAS COMPLETED BY _____ ON _____ 2022.

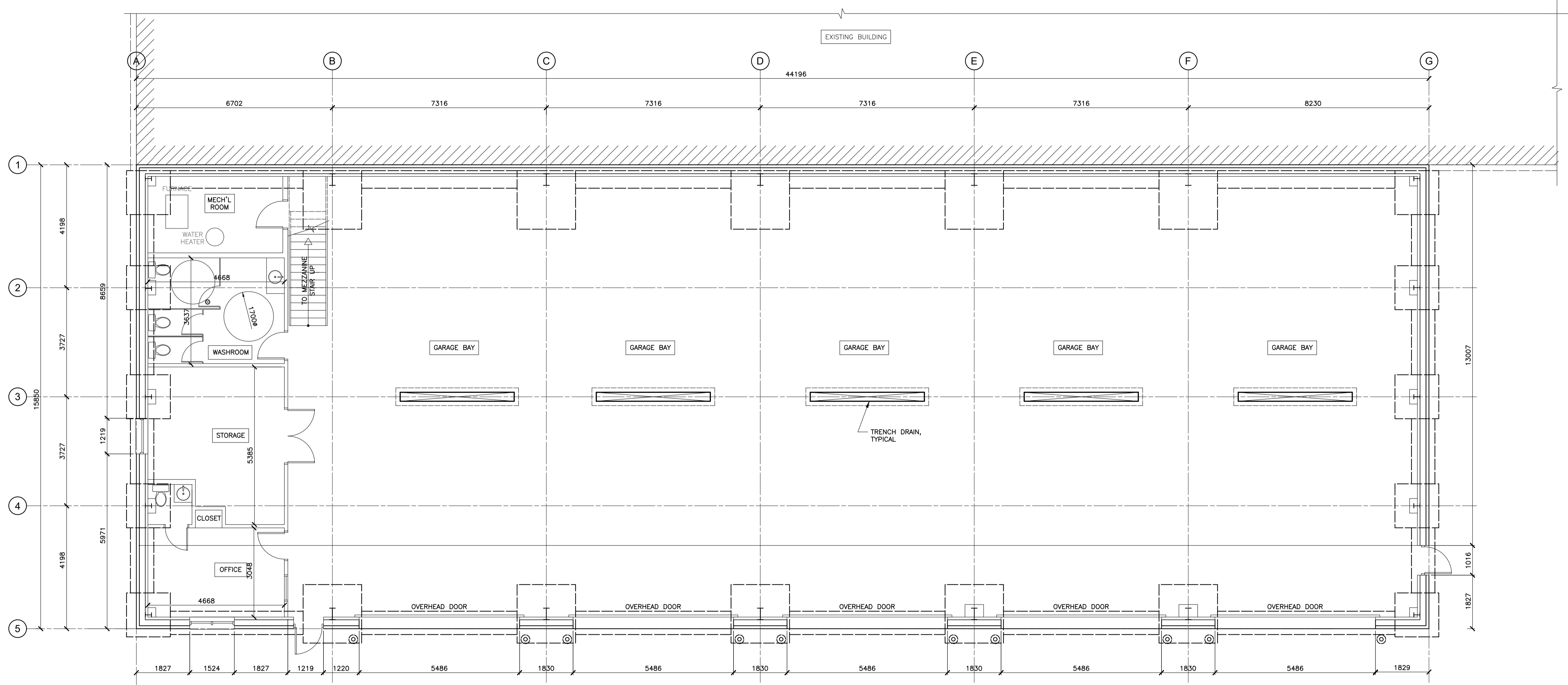
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1.	ISSUED FOR CLIENT REVIEW	MAY 3/22	
2.	REVISED - REISSUED FOR CLIENT REVIEW	AUG 9/22	
3.	REVISED - REISSUED FOR CLIENT REVIEW	SEP 1/22	
4.	ISSUED FOR RFP	SEP 20/22	

PUBLIC WORKS GARAGE ADDITION
5654 SIMCOE COUNTY ROAD 21
TOWNSHIP OF ESSA

SITE PLAN

TATHAM ENGINEERING

DESIGN: MS FILE: 422387 DWG:
 DRAWN: HY DATE: APR 2022 **SP-1**
 CHECK: MS SCALE: 1:300



GROUND FLOOR PLAN
1:75

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1.	ISSUED FOR CLIENT REVIEW	APR 25/22	
2.	REVISED - ISSUED FOR CLIENT REVIEW	AUG 9/22	
3.	REVISED - ISSUED FOR CLIENT REVIEW	SEP 1/22	
4.	ISSUED FOR RFP	SEP 20/22	

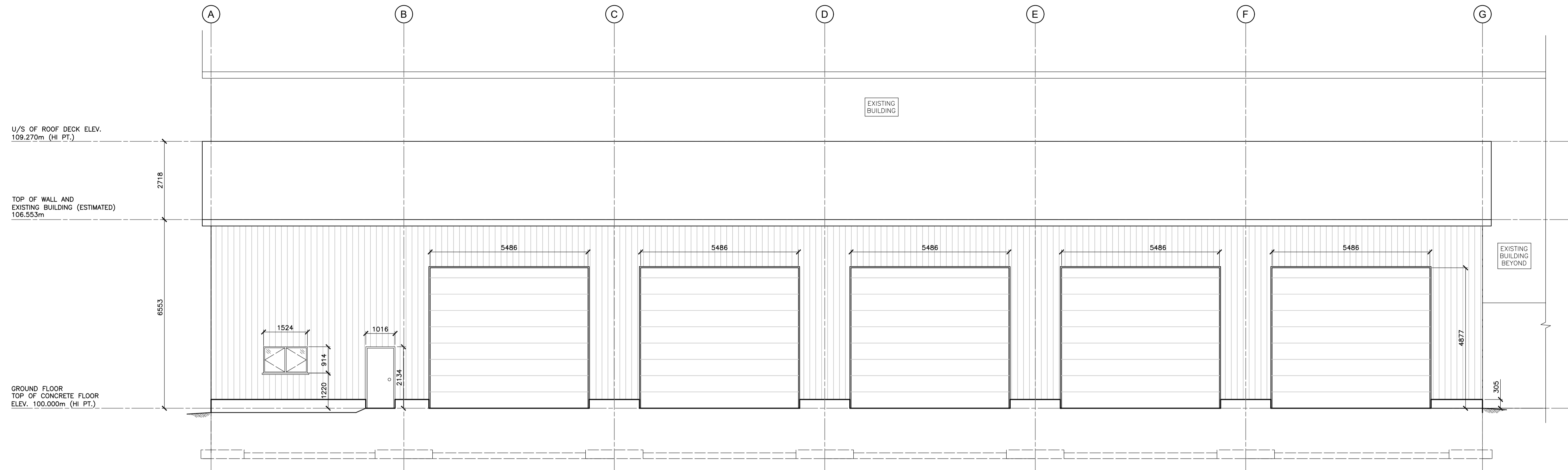
PUBLIC WORKS GARAGE
5654 COUNTY ROAD 21
TOWNSHIP OF ESSA

ARCHITECTURAL CONCEPT PLAN

TATHAM ENGINEERING

DESIGN: SA	FILE: 422387-1	DWG: C-1
DRAWN: WHG	DATE: MAR 2022	
CHECK: MAS	SCALE: AS NOTED	

Drawing Name: 422387 - C001.dwg, Plotted: Sep 20, 2022



WEST ELEVATION
1:75

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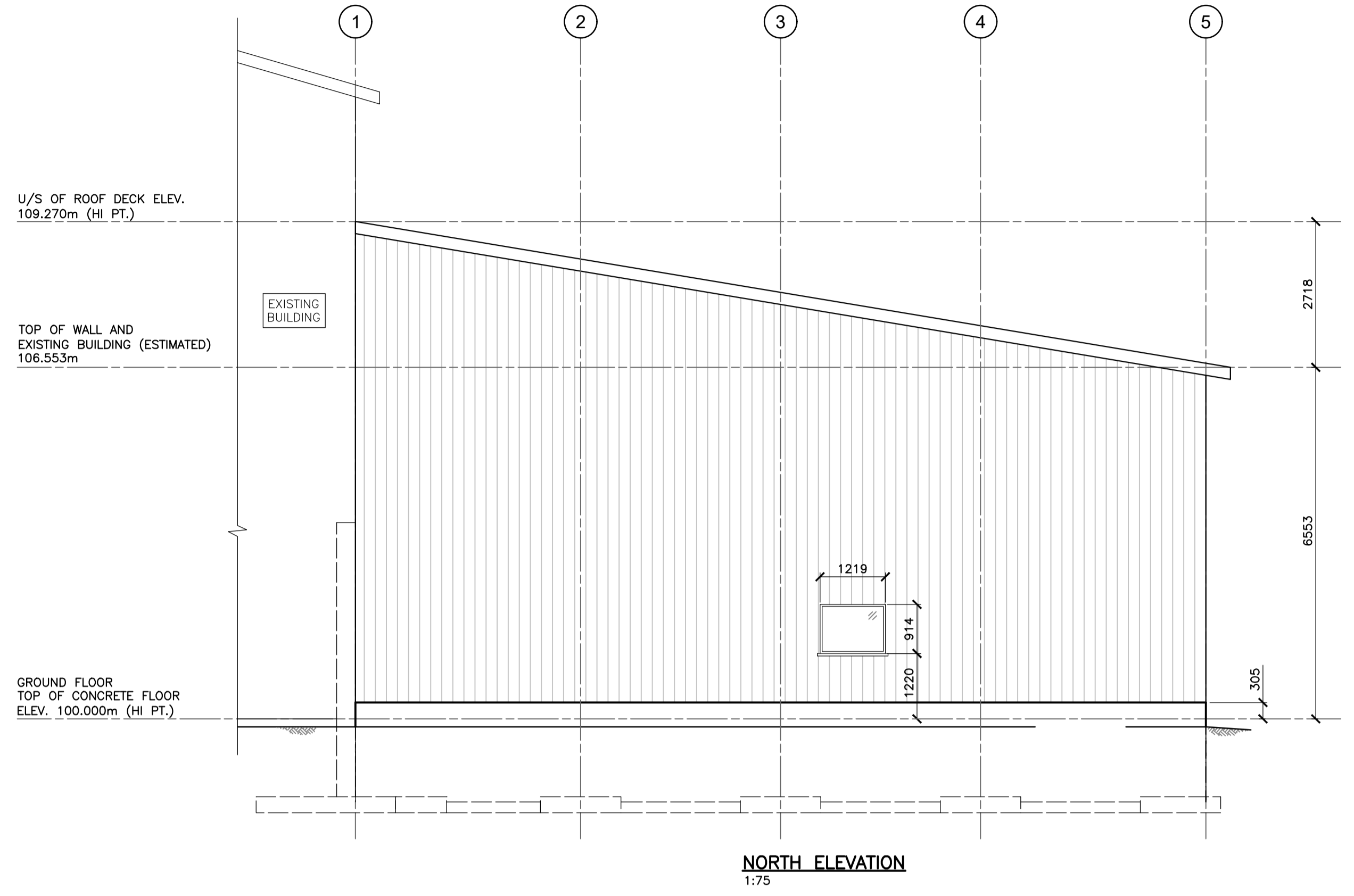
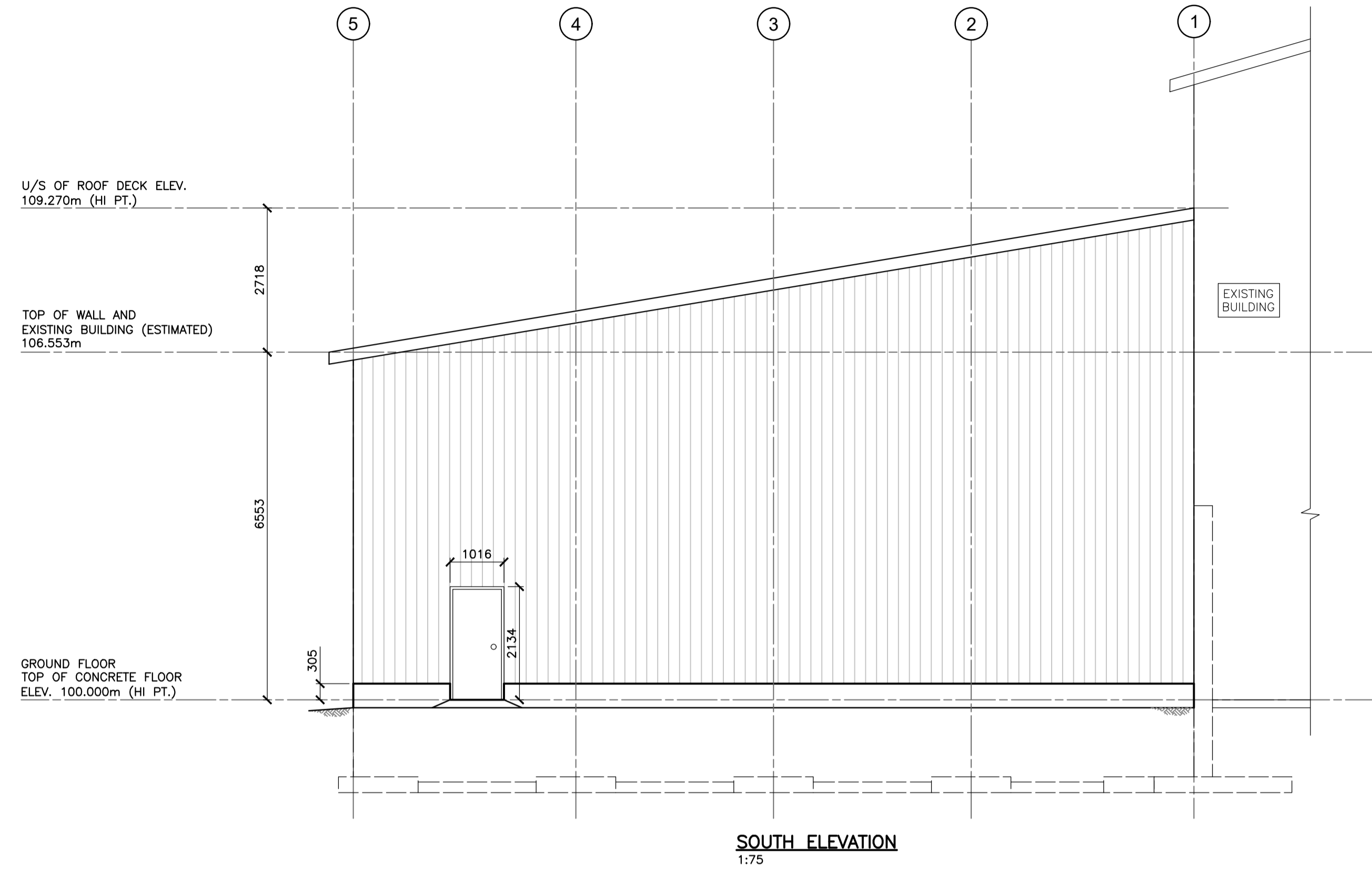
No.	REVISION DESCRIPTION	DATE	ENGINEER STAMP
1.	ISSUED FOR CLIENT REVIEW	APR 25/22	
2.	REVISED - ISSUED FOR CLIENT REVIEW	AUG 9/22	
3.	REVISED - ISSUED FOR CLIENT REVIEW	SEP 1/22	
4.	ISSUED FOR RFP	SEP 20/22	

PUBLIC WORKS GARAGE
5654 COUNTY ROAD 21
TOWNSHIP OF ESSA

ARCHITECTURAL CONCEPT
ELEVATIONS

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1.	ISSUED FOR CLIENT REVIEW	APR 25/22	
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3.	REVISED - ISSUED FOR CLIENT REVIEW	SEP 1/22	
4.	ISSUED FOR RFP	SEP 20/22	

PUBLIC WORKS GARAGE
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TOWNSHIP OF ESSA

ARCHITECTURAL CONCEPT
 ELEVATIONS

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DESIGN: SA	FILE: 422387-1	DWG: C-3
DRAWN: WHG	DATE: MAR 2022	
CHECK: MAS	SCALE: AS NOTED	