

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

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

This Agreement made on the 14th day of June in the year 2023.

by and between the parties:

City of Ottawa

hereinafter called the “*Owner*”

and

Envari Holding Inc.

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

The design, procurement and installation of the Charging and Electrical Infrastructure under ZEB Program

insert above the name of the Work

located at

1500 St-Laurent Complex, Ottawa

insert above the Place of the Work

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

N/A To be appointed at a later date by the Design-Builder, if required.

insert above the name of the Consultant

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

the City of Ottawa

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insert above the name of the Payment Certifier

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

N/A

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)

- 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 _____. **(see supplementary conditions)**

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*.

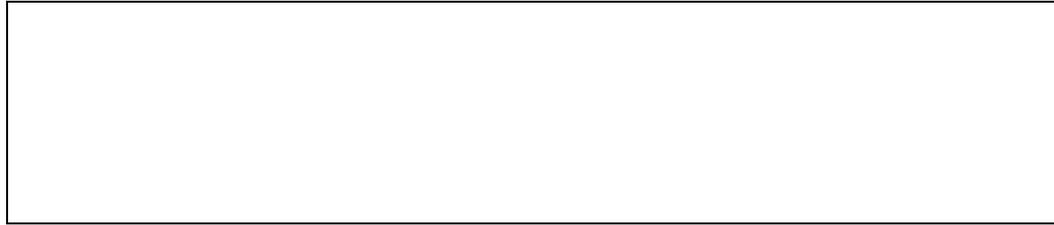
ARTICLE a-3 CONTRACT DOCUMENTS

- 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

See Supplementary conditions

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* (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).

ARTICLE a-4 CONTRACT PRICE

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

See Supplementary conditions /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 ten percent (10%), 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.

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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

Royal Bank of Canada

(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. **(See supplementary conditions)**

.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.

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

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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

Director, Engineering Services-Transit Services Dept.

City of Ottawa

1500 St-Laurent Boulevard, Ottawa ON K1G 0Z8

Address

n/a

richard.holder@ottawa.ca

facsimile number

email address

Design-Builder

Director, Infrastructure Products and Services

*Envari Holding Inc.**

2711 Hunt Club Road, Ottawa ON K1G 5Z9

Address

N/A

jimpegg@envari.com

facsimile number

email address

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Owner's Advisor (Note: To be appointed at a later date by the Owner if required)**

*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.*

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.

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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:

Approved for Execution

Per memo of: June 15, 2023

By: [Signature]
Borden Ladner Gervais LLP

WITNESS

OWNER

[Signature]
signature

City of Ottawa
Name of Owner
[Signature]
X
signature

RICHARD HOLDER, DIRECTOR TRANSIT ENGINEERING
Name and title of person signing

Renée Amilcar
General Manager, Transit Services Department

[Signature]
signature

JESS MANLEY, EXECUTIVE ASSISTANT (TSD)
Name and title of person signing

WITNESS

DESIGN-BUILDER

Leanne Thompson
signature

Envari Holding Inc.
[Signature]
Bryce Conrad
President and Chief Executive Officer

Leanne Thompson, Senior Executive Assistant to Bryce Conrad
signing

[Signature]
signature

[Signature]
Adnan Khokhar
Chief Energy and Infrastructure Services Officer

Grace Deschamps, Executive Assistant to Adnan Khokhar
Name and title 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.

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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*.

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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

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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 1.2LAW OF THE CONTRACT

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

GC 1.3RIGHTS 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.
- 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 1.4ASSIGNMENT

- 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 1.5CONFIDENTIALITY

- 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

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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

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- 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*.
- 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 2.4ROLE 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.

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- 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.

GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS

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- 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.

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- 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.
- 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.

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- 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

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- 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*.

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.

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- 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.

GC 3.7 SUPERVISION

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- 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

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.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.

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.

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- 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*.

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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 5.2APPLICATIONS 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.

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 5.3PROGRESS 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

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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*.

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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*.
- 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

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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.

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,

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only such amount that the *Payment Certifier* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9NON-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 6.1OWNER'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 6.2CHANGE 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 6.3CHANGE DIRECTIVE

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- 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.
 - .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

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- (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;

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- .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*.
- 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

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.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.

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- 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 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.

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- 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*.

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

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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;

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- .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*.

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.

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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.

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- 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*.
- 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

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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

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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*.
- 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*.

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- 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:

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- .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;
- .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

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- 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 CHANCE 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.

10.2.2 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.

10.2.3 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.

10.2.4 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.

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- 10.2.5 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.
- 10.2.6 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*.

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

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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

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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
 - (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-Builders*’ 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*.

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- 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.

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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*.

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.

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- .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*;

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- .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;
- .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.

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- 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.

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- 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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SUPPLEMENTARY CONDITIONS TO CCDC14

The following Supplementary Conditions are part of the *Contract Documents* and shall be read in conjunction with and supplement and amend the Canadian Standard Construction Document CCDC 14 - 2013, Design-Build Stipulated Price Contract (“CCDC 14”). Article and paragraph references are to the corresponding articles and paragraphs of CCDC 14. In the event of any conflict or inconsistency between any of the provisions of CCDC 14 and the following Supplementary Conditions, the following Supplementary Conditions shall prevail. For additional clarity: (a) these Supplementary Conditions and Amendments shall modify, delete and/or add to the Agreement between the *Owner* and the *Design-Builder*, Definitions and General Conditions of the CCDC 14; (b) where any article, paragraph or subparagraph in the Agreement, Definitions or General Conditions is supplemented by one of the following, the provisions of such article, paragraph or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto; and (c) where any article, paragraph or subparagraph in the Agreement, Definitions or General Conditions is amended, deleted, voided, or superseded by any of the following, the provisions of such article, paragraph or subparagraph not so amended, voided, deleted or superseded, shall remain in effect, and the numbering of the deleted item will be retained, unused.

AMENDMENTS TO THE AGREEMENT BETWEEN THE OWNER AND DESIGN-BUILDER

The following Supplementary Conditions shall amend and take precedence over the standard form Agreement between the *Owner* and *Design-Builder*.

ARTICLES

ARTICLE A-1 DESIGN SERVICES AND THE WORK

Delete Article 1.3 and replace with the following:

“Subject to adjustments in the *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work* for each *Work Activities* as set out in the *Work Plan protocol* by the dates set out in the attached Schedule A. The parties acknowledge that the dates may have been left blank at the time of execution of the *Contract* but the parties will complete these dates as part of the Annual Work Plan and *Project* construction process.

Add the following new Article 1.4:

“Subject to adjustments in the *Contract Time* as provided for in the *Contract Documents*, attain *Total Completion of the Work* for each *Work Activities* as set out in the *Work Plan protocol* by the dates set out in the attached Schedule A. The parties acknowledge that the dates may have been left blank at the time of execution of the *Contract* but the parties will complete these dates as part of the *Annual Work Plan* and *Project* construction process.

ARTICLE A-3 CONTRACT DOCUMENTS

Delete article 3.1 in its entirety and replace with:

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

- Supplementary Conditions to CCDC 14 - 2013
- Agreement Between *Owner* and *Design-Builder*
- Definitions in this *Contract*
- General Conditions in this *Contract*
- Owner's General Terms and Conditions
- *Owner's Statement of Requirements*
- Construction Documents
- *Protocols*

ARTICLE A-4 CONTRACT PRICE

Delete Article A-4 in its entirety and replace with the following:

“ARTICLE A-4 CONTRACT PRICE

- 4.1 The *Contract Price* shall be the *Design Services and Work Costs*, which excludes *Value Added Taxes*, as defined in the *Cost Recovery protocol* and shall be the actual costs reasonably incurred by the *Design-Builder* for the proper performance of the *Design Services and Work*.

ARTICLE A-5 PAYMENT

Delete the first sentence of paragraph 5.3.1. and replace with the following:

“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 prime rate only on such unpaid amounts shall also become due and payable until payment.”

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

Delete article 6.2 in its entirety and replace it with the following:

“6.2 The delivery of a *Notice in Writing* will be by hand, by courier, by electronic mail during the transmission of which no indication of failure of receipt is communicated to the sender, or by registered mail.”

Amend article 6.4 by deleting the words “facsimile or other form of electronic communication” and replacing it with “electronic mail”.

ARTICLE A-7 LANGUAGE OF THE CONTRACT

Delete article 7.1 in its entirety and replace with:

“7.1 The *Contract Documents* shall be in English. The English language version of the *Contract Documents* shall prevail.”

ARTICLE A-9 GENERAL

Add a new Article A-9 as follows:

“ARTICLE A-9 – GENERAL

9.1 Time is of the essence in respect of this *Contract*.

9.2 The *Design-Builder* shall be an independent contractor in performing its obligations under the *Contract*. The *Contract* does not create any partnership, joint venture or other relationship between the *Design-Builder* and the *Owner* other than the relationship of an independent contractor. Nothing contained in the *Contract* shall create any employment or contractual relationship between the *Owner* (or anyone acting on its behalf) and any of the *Design-Builder*'s personnel.

9.3 The *Design-Builder* shall be solely responsible for the performance of the *Design Services* and the *Work*.

9.4 No approval or consent of, or certification, inspection, review, comment, verification, confirmation, acknowledgement or audit by, any *Governmental Authority*, the *Owner* or anyone on their behalf, shall relieve the *Design-Builder* from performing or fulfilling any of its obligations under the *Contract* or make the *Owner* responsible for the design of the *Work*, the *Drawings* and *Specifications* or any other aspect of the *Work*. Without limitation, whenever any drawings, plans, procedures, programs or other work product of the *Design-Builder* requires any review, inspection, verification, certification, consent, comment or approval by any *Governmental Authority*, the *Owner* or anyone on their behalf, any such review, inspection, comment or approval shall not, in any way, reduce or modify any of the *Design-Builder*'s obligations under the *Contract* unless the *Design-Builder*'s actions were the direct result of reliance by the *Design-Builder* on false information provided by the *Governmental Authority*, *Owner* or anyone on their behalf in connection with such review, inspection, comment or approval or if the actions are a result of unknown factors, or elements that the *Design-Builder* would not reasonably be expected to know.

9.5 Nothing in this *Contract* shall be construed as making the *Owner* or anyone acting on its behalf, responsible for anything which is the responsibility of the *Design-Builder* under the *Contract* unless the *Design-Builder*'s actions were the result of reliance by the *Design-Builder* on false information provided by the *Owner* or anyone acting on its behalf or if the actions are a result of unknown factors, or elements that the *Design-Builder* would not reasonably be expected to know.

9.6 If any part of the *Contract* or the application of such part to any party, *Person* or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the *Contract*, or

the application of such part to any other party, *Person* or circumstance, shall not be affected thereby and each provision of the *Contract* shall be valid and enforceable to the fullest extent permitted by law.

9.7 The terms of the *Contract*, which by their nature are continuing, shall survive the termination or other expiration of the *Contract*.

9.8 The parties shall, from time to time, execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out, better evidence or perfect the full intent and meaning of the *Contract*.

9.9 The table of contents, titles, section headings, running headlines and margin notes contained in the *Contract Documents* are solely to facilitate reference to various provisions of the *Contract Documents* and in no way affect or limit the interpretation or construction of the provisions to which they refer.

9.10 All parties agree that this *Contract* may be executed in any number of counterparts and may be executed via electronic signature, provided that an electronic signature tool (such as DocuSign or OneSpan) is utilized for such an electronic signature. Each executed counterpart will be deemed to be an original. All executed counterparts taken together will constitute one agreement. To evidence the fact that it has executed this *Agreement*, a party may send a copy of its executed counterpart to the other party by electronic mail in Portable Document File (PDF) format.”

AMENDMENTS TO THE DEFINITIONS AND GENERAL CONDITIONS OF THE DESIGN – BUILD STIPULATED PRICE CONTRACT

The following Supplementary Conditions shall amend and take precedence over standard form Definitions and General Conditions of the Design – Build Stipulated Price Contract.

DEFINITIONS

Add the following Definitions

Act	<i>Act</i> means the <i>Construction Act</i> , R.S.O. 1990, c. C.30, as amended from time to time and any and all regulations thereto.
Annual Work Plan	The Annual Work Plan is the work plan developed every year in accordance with the Work Plan protocol as may be amended from time to time throughout the course of the Work pursuant to the terms of this Contract.
Applicable Law	<i>Applicable Law</i> means: (a) all laws, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws applicable and relevant to the <i>Project</i> , the <i>Work</i> or the <i>Design Services</i> ; (b) all judgments, orders, writs, injunctions, decisions, awards and directives of any <i>Government Authority</i> applicable and relevant to the <i>Project</i> , the <i>Work</i> or the <i>Design Services</i> ; and (c) all

policies, guidelines, notices and protocols of any *Government Authority* applicable and relevant to the *Project*, the *Work* or the *Design Services*. For greater certainty, *Applicable Law* includes without limitation any restrictive covenants registered on title to the *Place of the Work*, the terms and conditions of any permit, authorization, certificate or approval issued by a *Government Authority* for the *Project*, the *Work* or the *Design Services*, and the terms and conditions of any official plan, zoning by-law, development agreement or site plan agreement related to the *Project*, the *Work* or the *Design Services*.

Commissioning	<i>Commissioning</i> means the process of putting the <i>Work</i> or any part thereof into operation and includes start-up verification and performance testing as well as training as described in the <i>Contract Documents</i> .
Commissioning protocol	<i>Commissioning protocol</i> means the Commissioning Protocol for Charging Infrastructure Design Build Contract dated the 14th day of June 2023.
Construction Budget	The Construction Budget is the budget for the Design Services and the Work as may be amended from time to time in accordance with this Contract.
Cost Recovery protocol	<i>Cost Recovery protocol</i> means the Cost Recovery Protocol for Charging Infrastructure Design Build Contract dated the 14th day of June 2023.
Design Services and Work Costs	The Design Services and Work Costs is defined in the Cost Recovery protocol.
Detailed Design protocol	Detailed Design protocol means the Detailed Design Protocol for Charging Infrastructure Design Build Contract dated the 14th day of June 2023.
General terms and conditions	<i>General terms and conditions</i> mean the General terms and conditions adopted by the <i>Owner</i> and dated February 26, 2021 and enclosed herein as Schedule C.
OHSA	<i>OHSA</i> means the <i>Occupational Health and Safety Act</i> , SNS 1996, c 7, as amended and any and all regulations thereto.

Open Book Process	<i>Open Book Process</i> means a process whereby the <i>Design-Builder</i> and its team maintain a co-operative working relationship with the <i>Owner</i> throughout the term of the <i>Project</i> , characterized by an open exchange of information and documentation (including <i>Project</i> -specific documentation to confirm actual costs) and consultation with the <i>Owner</i> and a shared, efficient decision making and approvals process.
Person	<i>Person</i> includes any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or government agency, authority or entity howsoever designated or constituted.
Procurement protocol	<i>Procurement protocol</i> means the Procurement Protocol for Charging Infrastructure Design Build Contract dated the 14th day of June , 2023.
Program Manager	Program Manager means the program manager appointed by the <i>Owner</i> for the <i>Project</i> .
Project Schedule	<i>Project Schedule</i> is the schedule indicating the timing of the performance of the <i>Design Services</i> and the <i>Work</i> as may be amended from time to time pursuant to the terms of this <i>Contract</i> .
Proper Invoice	<i>Proper Invoice</i> has the meaning set out in s. 2.5 of the <i>Cost Recovery protocol</i> .
Protocols	<i>Protocols</i> mean all protocols agreed to by the parties and include, without limitation, the <i>Commissioning protocol</i> , the <i>Detailed Design protocol</i> , the <i>Procurement protocol</i> , the <i>Work Plan protocol</i> and the <i>Cost Recovery protocol</i> .
Submittals	Submittals are documents or items required by the Contract Documents to be provided by the Design-Builder such as: (a) samples, models, mockups to indicate details or characteristics, before the portion of the Work that they represent can be incorporated into the Work; and (b) as-built drawings, as-installed drawings and manuals to provide instructions to the operation and maintenance of the Work.
Total Completion of the Work	<i>Total Completion of the Work</i> means that the <i>Contract</i> is deemed to be completed in accordance with s 2 of the <i>Act</i> and all <i>Work</i> has been performed in accordance with the <i>Contract Documents</i> .

Work Plan protocol Work Plan protocol means the Work Plan Protocol for Charging Infrastructure Design Build Contract dated the 14th day of June, 2023.

Amend the definition of “Work” to include the following sentence at the end of the definition:

“Without limiting the foregoing and for greater certainty, the *Work* includes all the testing and *Commissioning* required to ensure *Products* comply with the *Contract Documents* and any *Applicable Laws*.”

Delete the definition of *Contract Price* and replace with the following:

“The *Contract Price*, which excludes *Value Added Taxes*, is equal to the sum of the *Design Services* and *Work Costs* as defined in the *Cost Recovery protocol*.”

GENERAL CONDITIONS

GC 1.1 CONTRACT DOCUMENTS

Delete paragraph 1.1.1 in its entirety and insert the following:

- 1.1.1. It is the intent of the *Contract Documents* that, unless otherwise expressly provided in the *Contract Documents*, the *Contract Price* covers all of the *Design-Builder’s* obligations under the *Contract* and all things necessary for the professional design and related services and the proper execution and completion of the *Work* in accordance with the *Contract* (together with anything reasonably inferable therefrom)

Delete subparagraph 1.1.6.1 in its entirety. Replace with:

“the order of priority of documents from highest to lowest, shall be

- Protocols
- Supplementary Conditions to CCDC 14 – 2013
- Agreement Between *Owner* and *Design-Builder*
- Definitions
- General Conditions
- *Owner’s Statement of Requirements*
- Construction Documents
- Owner’s General terms and conditions

Add a new subparagraph 1.1.6.4 as follows:

1. “.4 notwithstanding the order of priority set out in subparagraph 1.1.6.1, the following rules of interpretation shall govern the interpretation of all *Contract Documents*, including disputes regarding a particular *Contract Document*:

- (i) .1 if the *Contract Documents* contain inconsistent provisions dealing with the same matter, the *Design-Builder*

shall provide the better quality of *Work* or materials, as applicable, unless the *Owner* otherwise directs in writing;

(ii) .2 if any of the *Specifications, Drawings* or material and finishing schedules for the *Work* are inconsistent or in conflict:

(A) .1 any work necessary and described in (or reasonably inferred from) the *Specifications* but not shown on the *Drawings* or material and finishing schedules, or

(B) .2 any work necessary and shown on (or reasonably inferred from) the *Drawings* or material and finishing schedules but not described in the *Specifications*,

shall be deemed to be part of the *Work* and carried out as part of the *Contract*; and

(C) .3 in case of discrepancies, noted materials and annotation shall take precedence over graphic indications in the *Contract Documents*.”

Delete the second and third sentences from paragraph 1.1.8 in their entirety and replace with the following:

“1.1.8 ...The *Design-Builder* grants and shall cause the *Consultant* and *Other Consultants* to execute such documents as may be necessary to transfer ownership of the *Drawings*, graphic representations and *Specifications* to the *Owner*. The *Owner* will grant an irrevocable and perpetual licence to the *Design-Builder* to use plans, sketches, *Drawings*, graphic representations and *Specifications* retained or copied by the *Owner* for any purpose.”

Add the following new paragraphs 1.1.11 and 1.1.12:

“1.1.11 *Drawings* shall be prepared using compatible computer-aided drafting software. The final *Construction Documents* shall form a complete set, fully coordinated both between *Drawings* and *Specifications* and between architectural, structural, mechanical, electrical and other disciplines that pertain to the *Project*, all in a manner to ensure consistency as well as completeness of the *Contract Documents*.

1.1.12 The *Design-Builder* or their *Consultant* shall prepare all required as-built drawings using computer-aided drafting software, in accordance with the *Owner*’s CAD standards(showing all changes in the *Work* made during Construction based on *Change Orders*, the *Consultant*’s instructions, and on marked-up prints, drawings and other data furnished by the *Design-Builder* to the *Consultant*. As-built drawings shall accurately show in graphic form the as-built position of all revised building elements properly cross-referenced with revision notes as to their

origin. The Design-Builder or its *Consultant* shall turn over the computer-aided drafting software files for the as-built drawings to the *Owner*.”

GC 1.5 CONFIDENTIALITY

Delete GC 1.5 and replace with the following:

1.5.1 Each party agrees to (i) keep confidential all Confidential Information disclosed to it by the other party and (ii) not to disclose any of such Confidential Information to any third party or any of its Representatives except to such of them to whom disclosure is necessary in connection with this Agreement and who have agreed to be bound by the obligations of confidentiality under this Agreement. “**Confidential Information**” means any proprietary ideas, plans and information, including without limitation, information of a technical or business nature (including without limitation, all trade-secrets, technology, financial information, intellectual property, any information relating to human resources matters, data, summaries, reports, the terms of this *Contract* or customer lists, whether oral or written and if written, however produced or reproduced) of a party that is received by or otherwise disclosed by one party to the other party that is marked proprietary or confidential, or that would logically be considered proprietary or confidential under the circumstances of its disclosure. In addition, no party shall directly or indirectly use to its own advantage any such Confidential Information. If this *Contract* is terminated at any time, the parties agree that such Confidential Information provided and all copies thereof (excluding Confidential Information in oral form that has not been put into tangible form) will be immediately returned to the disclosing party or, at the disclosing party’s option, destroyed. Notwithstanding the foregoing, the receiving party shall be entitled to keep, subject always to all the provisions of this *Contract*, one copy of any notes, analyses, reports or other written material prepared by, or on behalf of, the receiving party that contain Confidential Information for its records. In the event of any destruction of Confidential Information as set forth above, the receiving party shall provide to the disclosing party, upon request, a certificate of one of its senior officers certifying such destruction.

1.5.2 Confidential Information shall not include information that: (a) is already known to the recipient at the time of disclosure; (b) is or becomes publicly known otherwise than by a breach of this *Contract* by the receiving party or its Representatives or any third person to whom it discloses such Confidential Information; (c) is communicated to a third party with the express written consent of the disclosing party; (d) is independently developed by the recipient without the benefit of having received said Confidential information; (e) is lawfully required to be disclosed, provided that, prior to making such disclosure, to the extent permitted by law, the recipient shall immediately give the disclosing party written notice and cooperate with the disclosing party in applying for an order to prohibit or restrict such disclosure and/or to assure confidential handling of such Confidential Information.

1.5.3 Each party shall be responsible for any breach of this *Contract* by the party and any Person to whom it discloses any Confidential Information. Full and faithful performance by each of the parties hereto of all obligations under this *Contract* is the essence of this *Contract*. Each of the parties hereto acknowledges that monetary damages are not an adequate remedy for violations of the obligations of confidentiality under this *Contract* and that any non-compliance or breach thereof may result in irreparable harm to the disclosing party, and that in such event the disclosing party shall be entitled to equitable relief, including injunctive relief, without prejudice to any other remedies available to the said disclosing party.

1.5.4 The obligations of confidentiality herein shall survive the termination or expiry of this *Contract*.

1.5.5 The *Design-Builder* acknowledges that the *Owner* is subject to the requirements of the Freedom of Information and Protection of Privacy legislation, including but not limited to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, the requirements of which supersede any of the provisions of this *Contract*.”

GC 1.6 PRIVACY AND CYBERSECURITY

Add a new GC 1.6 which will read as follows:

1.6.1 Each party shall establish and maintain safeguards against any security breach of the other party’s Confidential Information or data in the receiving party’s possession, care, or control. Those safeguards shall be no less rigorous than those data security policies in effect to protect the receiving party’s similar data or Confidential Information. In the event a receiving party discovers or is notified of a security breach or potential security breach of the disclosing party’s Confidential Information or data in its possession, care or control, the receiving party shall no later than forty-eight (48) hours after discovery of such security breach:

1.6.1.1 notify the disclosing party in writing of such breach or such potential breach; and

1.6.1.2 commence the investigation of such breach or such potential breach. Such investigation shall include, inter alia, a confidential investigation into the cause and consequences of such breach or such potential breach. The receiving party shall keep the disclosing party informed of the progress of said investigation and shall answer any and all inquiries made by the disclosing party in respect of the investigation.

Further, the receiving party shall use commercially reasonable efforts to provide the disclosing party with a written report on the results of such investigation within two weeks from the discovery of the security breach.

1.6.2 The receiving party shall comply with all reasonable directives from the disclosing party with regard to privacy and security of the disclosing party's Confidential Information or data in the receiving party's possession, care or control.

1.6.3 The receiving party agrees and acknowledges that nothing in the *Contract* limits or prevents the disclosing party from using the disclosing party's Confidential Information or data in any current or future program or agreement with another party.

1.6.4 The receiving party agrees that it shall not transfer or transmit outside of Canada any of the disclosing party's Confidential Information or data without the disclosing party's prior written consent.

1.6.5 In the event of a security breach, the receiving party shall render assistance, if so requested by the disclosing party, in returning the disclosing party's Confidential Information to a fully secure and operational state. If such security breach is not caused or contributed to directly by a default, or an act or omission of the receiving party, the receiving party may recover from the disclosing party all reasonable costs of rendering such assistance.

1.6.6 The receiving party shall be liable to the disclosing party for any security breach when such security breach results directly from the default or act or omissions of the receiving party. Such liability by the receiving party shall be subject to the disclosing party having exercised data security and data management procedures in accordance with good practice in the information technology industry, as appropriate (including taking back-up copies of data as shall be reasonably necessary and appropriate to ensure security and continued operation of the software), to avoid such loss or corruption where possible and to mitigate the effects thereof.

1.6.7 In the case of a security breach which results directly from the default or act or omissions of the receiving party, the receiving party agrees and acknowledges that:

1.6.7.1 The disclosing party shall lead and direct any investigation into the cause of the security breach and any actions necessary to remediate the security breach; and

1.6.7.2 It shall fully cooperate with the disclosing party and shall render any and all information and assistance necessary to remediate the security breach

1.6.8 Design-Builder shall comply with all reasonable directives from the Owner with regards to privacy and security of the Owner's Confidential Information in the Design-Builder's possession, care and control

1.6.9 Design-Builder shall maintain proper safeguards to protect its data to ensure that any data reasonably requested by the Owner is readily available when needed

including, without limitation, any data required by the Owner to satisfy any third-party funder or financier.

GC1.7 FRAUD AND BRIBERY

Add a new GC 1.7 which will read as follows:

“1.7.1 Should the *Design-Builder* or any of its agents give or offer any gratuity to, or attempt to bribe any employee, officer or servant of the *Owner*, or to commit fraud against the *Owner*, the *Owner* shall be at liberty to invoke the provisions of termination contained herein.”

GC 1.8 PROJECT REQUIREMENTS:

Add a new GC 1.8 which will read as follows:

“1.8.1 The *Design-Builder* represents, covenants and warrants to the *Owner* that:

.1 it has the necessary degree of experience and expertise required to perform the *Work*;

.2 the personnel it assigns to the *Project* are experienced and it has and will have a sufficient staff of qualified and competent personnel to replace its designated *Contract* personnel referred to in GC 3.4, subject to the *Owner*'s approval, in the event of death, incapacity, termination or resignation; and

.3 there are no pending, threatened or anticipated claims or litigation involving the *Design-Builder* that would have a material adverse effect on the financial ability of the *Design-Builder* to perform the *Work*.”

GC 2.1 OWNER'S INFORMATION

Delete paragraph 2.1.2 in its entirety and replace with:

“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* when that information is provided in writing by the *Owner* or the *Owner*'s representative.”

GC 2.3 OWNER'S ADVISOR

Add to the end of paragraph 2.3.2:

“In all cases, the *Owner* may assign any of its duties, responsibilities and limitations under the *Contract* to the *Owner*'s *Advisor*; however, 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.”

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

Amend paragraph 2.5.2 by adding the following words at the beginning of the paragraph:

“Provided *Design-Builder* submits all documents to be reviewed in accordance with the schedule agreed upon, or in absence of an agreed schedule, with reasonable promptness then such review by the *Owner* will be conducted diligently in accordance with the procedure set out in the Detailed *Design protocol*”.

Amend paragraph 2.5.5 by deleting the last sentence and replacing it with the following:

“If the *Work* is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the costs incurred by the *Design-Builder* as a result of such examination and restoration; provided that the *Design-Builder* shall correct the work and pay the cost of examination if the *Design-Builder* knew the requirements of the *Contract Documents* would not satisfy or be compatible with other portions of the *Work*, and in either such case the *Design-Builder* failed to report such matter in writing to the *Owner*.”

GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS

Delete subparagraph 2.6.2.1 entirely.

Delete subparagraph 2.6.2.2 entirely.

Add the following new subparagraph 2.6.2.6 as follows

“2.6.2.6 Where the *Design-Builder* assumes overall responsibility for compliance with all aspects of the *OHSA* under subparagraph 2.6.3.4, ensure that its forces and other contractors are contractually required to comply with the *Design-Builder’s* health and safety program and to take direction from the *Design-Builder* with respect to all matters of health and safety at the *Place of the Work*.”

Add new subparagraphs 2.6.3.4 and 2.6.3.5 as follows:

“2.6.3.4 with respect to work performed by other contractors or by the Owner’s own forces, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation of the Place of the Work including all responsibilities as “constructor” under the OHSA with respect to the Project.

2.6.3.5 provide for the coordination of the activities and work of other contractors and Owner’s own forces with the Design Services and the Work.”

GC 3.1 CONTROL OF THE DESIGN SERVICES AND THE WORK

Add the following at the end of 3.1.1:

“The *Design Services* shall be provided by the *Design-Builder* in accordance with the terms and conditions contained in the Detailed *Design protocol*.”

Delete GC 3.1.7 in its entirety and replace as follows:

“The *Design-Builder’s* responsibility for *Design Services* performed by the *Consultant* and *Other Consultants* shall be consistent with the Standard of Care set out in the Detailed *Design protocol*. The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* perform the *Design Services* to this standard.”

Add the following new paragraphs 3.1.15, 3.1.16 and 3.1.17:

“3.1.15 Promptly after signing the *Contract*, the *Design-Builder* shall prepare and submit to the *Owner* for approval by the *Owner* a *Construction Budget* that indicates the budgeted costs for all milestones and deliverables of the *Work* including sufficient details regarding the projected cost of all *Products*, *Design Services* and other major cost components. The *Design-Builder* shall at all times monitor the *Contract Price* and track *Contract Price* against the *Construction Budget*. The *Design-Builder* shall provide the *Owner* with *Notice in Writing* if, in the *Design-Builder’s* reasonable opinion, the costs in any line item in the *Construction Budget* will or is likely to exceed the amount allocated for such item in the *Construction Budget*. The *Construction Budget* and the *Contract Price* may not be amended or otherwise adjusted without the approval of the *Owner* and the *Design-Builder*.

3.1.16 Subject to paragraph 3.1.7, the *Design-Builder* covenants and agrees that, in performing its obligations under this *Contract*, the *Design-Builder* shall at all times exercise a standard of care, skill and diligence that would be provided by an experienced and prudent design-builder supplying similar services for similar projects in the City of Ottawa. The *Design-Builder* acknowledges and agrees that throughout the *Contract*, the *Design-Builder’s* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Design-Builder* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel or procedures which it may recommend to the *Owner*. The *Design-Builder* shall ensure the *Consultant* performs to this standard. Without limiting the generality of the foregoing, the *Design-Builder* shall perform the *Design Services* and the *Work* required hereunder:

(i) .1 using new materials except for any *Work* that requires the *Design-Builder* to leverage any existing infrastructure.

(ii) .2 with orderly progress of the *Design Services* and the *Work* in order to meet and maintain the *Annual Work Plan*, and not to delay the *Design Services*, the *Work* or the *Project*.

3.1.17 Prior to commencing individual procurement, fabrication and construction activities, the *Design-Builder* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents* and shall employ an experienced and licensed land surveyor to establish and check grades, benchmarks, references, elevations, points and lines as from time to time may be required for the purposes of the *Design Services* and the *Work* or the layout of same, and the *Design-Builder* shall at every appropriate stage of the *Design Services* and the *Work*, take all proper steps to have all proper checks and surveys made so as to ensure that the *Work* and all components thereof will be wholly within the boundaries of the site and in the exact position (or respective positions) established for such *Work* and shall assume full responsibility for the correctness of all such levels and measurements. Where dimensions are not included, contradictions exist, or exact locations are not apparent, the *Design-Builder* shall immediately notify the *Owner* in writing and obtain written instructions from the *Owner* before proceeding with any part of the affected *Work*.”

GC 3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS

Delete paragraphs 3.4.2 and 3.4.3 and replace with the following:

“3.4.2 The *Design-Builder* shall proceed with the selection of the *Other Consultants*, *Subcontractors* and *Suppliers* in accordance with the terms and conditions contained in the *Procurement protocol*.

3.4.3 The *Owner* may object to the selection of any *Other Consultant*, *Subcontractor* or *Supplier* that was not selected in accordance with the terms and conditions of the *Procurement protocol*.

In paragraph 3.4.5, add the following after the word “object”:

“, unless necessary to meet specific requirements of the *Owner’s Statement of Requirements*.”

GC 3.6 DESIGN SERVICES AND WORK SCHEDULE

Delete GC 3.6 DESIGN SERVICES AND WORK SCHEDULE in its entirety and replace it with the following:

“GC 3.6 ANNUAL WORK PLAN

3.6.1 The *Design-Builder* shall:

- .1 promptly after signing the Contract, prepare and submit to the Owner a Project Schedule that indicates the timing of the major activities of the Design Services and the Work and provides sufficient details of the critical events and deliverables and their inter-relationship to the demonstrate that the Design Services and the Work will be performed in accordance with the Project Schedule;
- .2 complete the Design Services and the Work in accordance with the terms and conditions of the Work Plan protocol;
- .3 before commencing any part of the Work, submit to the Owner for approval by the Owner, an itemized schedule of values allocated to various portions of the Design Services and the Work (“Schedule of Values”),
- .4 monitor the progress of the Work at a minimum on a weekly basis relative to the Annual Work Plan, the Schedule of Values reviewed and accepted pursuant to subparagraph 3.6.1.2, or any successor or revised Project Schedule or Schedule of Values accepted by the Owner; and
- .5 update the Annual Work Plan on a monthly and annual basis and advise by Notice in Writing the Consultant and the Owner of any variation from the baseline or slippage in the Project Schedule or changes in Schedule of Values.

3.6.2 If, at any time

- .1 the *Design-Builder* is delayed in the performance of the *Work* for any reason other than a reason for which an extension is granted as provided in the *Contract*; or
- .2 the *Design-Builder* does not perform the *Work* substantially in accordance with the agreed *Project Schedule* for any reason other than a reason for which an extension is granted as provided in the *Contract*,

the *Design-Builder* shall take whatever measures are necessary at its own costs, including taking all appropriately preventative and corrective action and steps to cause the actual progress of the *Work* to conform to the *Project Schedule*, including taking such extra measures as shift work, double or “stacked” shifts or an expanded work force, to maintain the *Project Schedule*, and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Design-Builder* will achieve the recovery of the *Project Schedule*. All costs of taking such preventative and corrective action and steps, as well as any costs reasonably incurred or

damages suffered by the *Owner* arising out of or as a result of any such delay, shall be for the account of the *Design-Builder*.

3.6.3 In addition to the preparation of the *Project Schedule*, the *Design-Builder* will prepare and maintain an *Annual Work Plan* in accordance with the terms of the *Work Plan protocol*.

3.6.4 The parties agree that the date of attainment of the *Substantial Performance of the Work as set out in Article 1.3* will not be adjusted unless such adjustment is approved expressly in a *Change Order* or a *Change Directive*.”

GC 3.7 SUPERVISION

Amend paragraph 3.7.1 by adding the following words at the end of the paragraph:

“and upon the prior written consent of the *Owner*, which consent shall not be unreasonably withheld.”

GC 3.8 LABOUR AND PRODUCTS

Add the following new paragraph 3.8.4:

“The *Design-Builder* shall be responsible for the protection and security of *Products* stored at the *Place of the Work*, or any other storage facility as approved by the *Owner* or the *Consultant*, and shall replace any material damaged or stolen from the *Place of the Work* at no cost to the *Owner*.”

GC 3.9 DOCUMENTS AT THE SITE

Add the following new paragraph 3.9.2:

“The *Design-Builder* shall:

.1 keep the *Design-Builder*’s records and books relating specifically to the performance of the *Work*, including as to (i) *Work* performed and scheduled to be performed, (ii) the calculation or computation of the *Design-Builder*’s actual *Design Services* and *Work Costs* (iii) timesheets for the *Design-Builder*’s and *Subcontractor*’s personnel when the *Subcontractor*’s personnel performs work on a “time and materials” basis, (iv) invoices, receipts and delivery records relating to the *Work*; and all other matters requiring proper records under this *Contract*, at the *Design-Builder*’s office;

.2 keep its records and books for the *Work* in accordance with a recognized and consistent accounting basis satisfactory to the *Owner* and must be available and open to inspection by the *Owner* at all reasonable times during the performance of the *Work* and for two years following completion of the *Work* for verification of invoicing and for audit purposes;

.3 provide the Owner a copy of all invoices relating to the performance of the Work. If requested by the Owner, the Design-Builder shall provide a copy (and originals where required by the Owner for any tax law) of all other accounting records to the Owner on or prior to the issue of the final payment or on the earlier termination of this Contract. The cost of making these copies for the Owner shall be paid by the Owner; and

.4 work closely and cooperatively with the Owner to provide input at each stage of the design and construction process. The Design-Builder shall employ an Open Book Process in connection with the accounts and records pertaining to the Design Services and Work Costs.

GC 3.10 SHOP DRAWINGS

Add a new subparagraph 3.10.3.3 as follows:

“3.10.3.3 had the Shop Drawings reviewed by the *Consultant* and *Other Consultants* as appropriate.”

GC 3.11 NON-CONFORMING DESIGN AND DEFECTIVE WORK

Add new paragraphs 3.11.5 to 3.11.9 as follows:

“3.11.5 The *Design-Builder* shall rectify in a manner acceptable to the *Owner* all defective work and deficiencies identified throughout the *Work*, whether or not they are specifically identified by the *Owner*.

3.11.6 The *Design-Builder* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day-to-day operation of the *Owner*.

3.11.7 Acceptance of the *Work* by the *Owner* or the *Consultant* shall not release the *Design-Builder* from responsibility for correcting deficiencies of which it was aware but had not been identified at the time of drawing up the deficiency list or of which it becomes aware during any warranty period provided for in this *Contract*.

3.11.8 Upon notification of a deficiency in the *Work*, the *Design-Builder* shall promptly correct the deficiency, and if the deficiency cannot be corrected promptly, then within five (5) *Working Days*, provide a written statement outlining the proposed remedial measures and a schedule for implementation. Once the implementation schedule is approved by the *Owner*, the *Design-Builder* shall proceed with the remedial measures.

3.11.9 Notwithstanding any rejection of the *Work* by the *Owner* or deduction of an amount otherwise due to the *Design-Builder* by the *Owner* as a result of the deficiency in the *Work* that is not rectified in accordance with this GC 3.11, the *Design-Builder* is required to continue the *Design Services* and *Work* in accordance with the *Contract Documents*.”

GC 3.12 AS-BUILT DRAWINGS

Add a new GC 3.12 as follows:

“3.12.1 As the *Work* progresses, the *Design-Builder* shall prepare and maintain a complete and accurate record of all *Construction Documents* and the *Contract Documents* clearly indicating the *Work* as actually built and installed (the “as-built drawings”).

3.12.2 The as-built drawings shall be kept at the *Place of the Work* for review by the *Consultant* or the *Owner* with each application for progress payment.

3.12.3 At the completion of the *Work*, the *Design-Builder* shall deliver the as-built drawings in hard-copy and electronic format, to the *Owner* prior to being entitled to final payment.”

GC 4.1 CASH ALLOWANCES

Delete the last sentence in paragraph 4.1.4 and replace it with the following:

“Where there are multiple cash allowances, at the *Owner*’s direction, funds may be transferred from one cash allowance to another by *Change Order* at no increase in *Contract Price*.”

Delete paragraph 4.1.5 in its entirety and replace with the following:

“4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference in the total value of all cash allowances and the actual cost of the *Work* performed under all cash allowances.”

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

Delete paragraphs 5.1.1 and replace with the following:

“The *Owner* shall, at the request of the *Design-Builder* promptly from *time* to time, furnish a statement or declaration from a proper City official that funding has been obtained”

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

Delete paragraph 5.2.1 and substitute with the following:

“As a condition precedent to payment, the *Design-Builder* shall only make monthly applications for payment by giving a *Proper Invoice* to the *Owner*. Where a *Proper Invoice* is not given to the *Owner* as required, the *Owner* shall have no obligation to make payment.

Add the following to the end of paragraph 5.2.3:

“Claims for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* will be paid on an individual basis, provided such *Products* are *Project*-specific and cannot readily be used elsewhere and are supported by such evidence as the *Owner* may reasonably require to establish the value and delivery of the *Products*. The *Owner* and *Design-Builder* shall make satisfactory arrangements such that said materials can be readily identified where they are stored.”

GC 5.3 PROGRESS PAYMENT

Delete the words” “calendar days” in subparagraph 5.3.1.2, and replace them with the words:

“10 *Working Days*”.

Delete subparagraph 5.3.1.3 in its entirety and replace with the following:

“5.3.1.3 Subject to its rights under the *Contract* and at law, the *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement - PAYMENT on or before 28 calendar days after receipt of a *Proper Invoice*.”

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

Add new paragraph 5.4.6:

“5.4.6 The *Design-Builder* acknowledges and agrees that the *Work* will not be considered to have been substantially performed until all of the items listed below in subparagraphs 5.4.6.1 and 5.4.6.2 have been completed or provided in respect of the *Work*. The *Design-Builder* further agrees that its failure to complete or to provide any of the following items will constitute sufficient grounds for the *Owner* to reject the *Design-Builder’s* certificate of *Substantial Performance of the Work* (the “Certificate”):

- .1 evidence of approval to occupy the completed phase of the *Work* from authorities having jurisdiction if the applicable authorities provide written confirmation of such approval; and
- .2 any materials or documentation required to be submitted by the *Contract Documents* which are necessary for the *Owner’s* occupation and use of the *Work* and which are available at the time of the issuance of the *Certificate* have been submitted to the reasonable satisfaction of the *Owner* including, without limitation, any warranty material and operating manuals.”

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

Amend subparagraph 5.5.1.1 by adding the following to the end of the sentence, “by giving a *Proper Invoice* to the *Owner*. ”

Add to following words to the end of paragraph 5.5.2:

“to the *Owner* for review and acceptance”.

Delete paragraphs 5.5.4 and 5.5.5 and new paragraph 5.5.4:

“5.5.4 Subject to the *Owner* giving notice of non-payment of holdback in the prescribed form and manner, and subject to GC 5.10 WITHHOLDING OF PAYMENT, the holdback amount authorized by the certificate for payment of holdback referred to in paragraph 5.5.2 is due and payable following the expiry of the applicable time period for the preservation of construction liens, provided that no construction liens or certificates of action have been registered against the title to the *Place of the Work*, and the *Owner* has not received any written notices of lien in respect of the *Work*. ”

GC 5.7 FINAL PAYMENT

Delete paragraph 5.7.1 in its entirety and replace with the following:

“When the *Design-Builder* considers that the *Work* is completed and satisfies all of the requirements of the *Contract*, the *Design-Builder* shall submit an application for final payment by giving a *Proper Invoice* to the *Owner*. The *Design-Builder*’s application for final payment shall be accompanied by any documents or materials not yet delivered, where the *Owner* has agreed to late delivery in writing, pursuant to paragraph 5.4.7 together with fully complete *as-built drawings*. ”

Delete paragraphs 5.7.4 and 5.7.5 in their entirety and substitute new paragraphs 5.7.4 and 5.7.5:

“5.7.4 Subject to the other requirements of the *Contract*, the unpaid balance of the *Contract Price* shall become payable to the *Design-Builder* within 28 days of the *Design-Builder* giving a *Proper Invoice* in accordance with paragraph 5.7.1, provided that the applicable lien period has expired and no construction liens or certificates of action have been registered against the title to the *Place of the Work*, and the *Owner* has not received any written notices of lien in respect of the *Work*, and subject to the *Owner*’s right to withhold payment from the unpaid balance of the *Contract Price* for any amounts required pursuant to GC 5.10 WITHHOLDING OF PAYMENT or otherwise under the *Contract*, and any sums required to satisfy any lien or trust claims arising from the *Work*, and subject to the *Owner*’s right to set-off under the *Contract*.

- 5.7.5 As additional preconditions for release of the final payment, the *Design-Builder* shall submit the following documentation:
- .1 Design-Builder's written request for release of final payment, including a declaration that no written notices of lien have been received by it;
 - .2 Design-Builder's Statutory Declaration CCDC 9A-2001; and
 - .3 Design-Builder's WSIB certificate"

GC 5.10 LIENS

Add a new GC 5.10 Liens including paragraphs 5.10.1 through 5.10.5 as follows:

- “5.10.1 Notwithstanding anything else in this Part 5, the *Owner* shall be entitled to withhold from any payment otherwise due to the *Design-Builder*:
- .1 the amount claimed in any claim for lien which has been registered against the Projects;
 - .2 the amount claimed in any written notice of lien received by the *Owner* or mortgagee of the Project; and
 - .3 an amount representing the value of *Products* or materials in respect of which the *Design-Builder* has made an application for payment where the *Owner* has received a written notice that any party has purported to retain title to the *Products* or materials, until such time as such claims have been resolved to the satisfaction of the *Owner*;
 - .4 the amount claimed in legal proceedings commenced to enforce a lien against the statutory holdback for the *Project*.
- 5.10.2 In the event that a claim for lien/construction lien is delivered to the *Owner*, the *Design-Builder* shall, within ten (10) calendar days, at its sole expense, vacate or discharge the lien. If the lien is only vacated and not discharged, the *Design-Builder* shall be responsible, on a full indemnity basis, for the costs of the defence of any lawsuit commenced in respect of the lien by the *Owner*.
- 5.10.3 In the event that the *Design-Builder* fails, delays or refuses to vacate or discharge a claim for lien/construction lien, to have dismissed any legal proceedings commenced to enforce a lien against the statutory holdback for the *Project*, or have withdrawn any written notice of lien within the time prescribed above, the *Owner* shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the *Owner* in so doing (including, without limitation, legal fees on a full indemnity basis and any payments which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the *Design-Builder* and the *Owner* may deduct

such amounts from amounts otherwise due or owing, or accruing due to the *Design-Builder*.

- 5.10.4 Without limiting any of the foregoing, the Design-Builder agrees to and does hereby indemnify and save harmless the *Owner* for all costs (including without limitation, legal fees on a full indemnity basis) it may incur in connection with any written notice of lien, claim for lien/construction lien, or subsequent lawsuit brought in connection with the lien by any person that provided services or materials to the improvement or the *Project*.
- 5.10.5 This GC 5.10 – LIENS does not apply to any written notice of lien, legal proceedings commenced to enforce a lien against the statutory holdback for the *Project*, or claim for lien/construction lien which may be asserted by the *Design-Builder*. Notwithstanding the non-application of the GC 5.10-LIENS to such written notices of lien and/or claims of lien/construction liens, if any such lien shall be asserted and found or determined to be untimely or invalid then the *Design-Builder* shall indemnify and save harmless the *Owner* of all costs, including legal fees on a full indemnity basis.”

Add the following new GC 5.11 – WITHHOLDING OF PAYMENT as follows:

GC 5.11 WITHHOLDING OF PAYMENT

- “5.11.1 Notwithstanding the provisions of GC 5.3 PROGRESS PAYMENT and GC 5.7 FINAL PAYMENT, the *Owner* may withhold a payment, in whole or in part, to the extent as may be necessary in the reasonable opinion of the *Owner* to protect it from loss because of:
- .1 defective portions of the Work not rectified by the Design-Builder in accordance with this Contract;
 - .2 third party claims commenced against the Owner arising out of the negligent acts or omissions of the Design-Builder;
 - .3 errors and/or omissions in the Design Services not rectified by the Design-Builder in accordance with this Contract; or
 - .4 amounts required to be withheld by the Owner under the Act
- 5.11.2 Where the Owner has withheld payment of any portion of the Contract Price pursuant to paragraph 5.11.1 once the matter has been addressed by the Design -Builder, the Owner shall pay such withheld amounts to the Design-Builder without interest.
- 5.11.3 Where the Owner has withheld payment of any portion of the Contract Price pursuant to the provision of paragraph 5.11.1, the Owner shall be entitled to apply as a set-off or backcharge such withheld portion towards any costs or damages suffered by the Owner.

- 5.11.4 Where the Owner disputes a Proper Invoice, the Owner may refuse to pay all or any portion of the amount alleged as payable if the Owner gives to the Design-Builder a notice of non-payment in the form and manner prescribed by the Act, specifying the amount of the Proper Invoice that is not being paid and detailing all of the reasons for non-payment, no later than 14 calendar days after receiving the Proper Invoice.
- 5.11.5 Where the Owner refuses to pay any portion of the holdback, the Owner shall publish a notice in the form and manner prescribed by the Act by no later than 40 calendar days after the date on which,
- .1 the applicable certification or declaration of substantial performance is published under section 32 of the Act, or
 - .2 if no certification or declaration of substantial performance is published, the date on which the Contract is completed, abandoned or terminated,
- and the *Owner* shall notify the *Design-Builder* of the publication of the notice within 3 calendar days after publication.”

GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

Add new paragraph 6.1.3 as follows:

- “6.1.3 Where, as a result of any change that results in an increase in *Contract Price* that is eligible for additional overhead, profit or a percentage fee (inclusive of such amounts charged by subcontractors and suppliers), the total of all overhead, profit and percentage fees for the change shall be calculated in accordance with the terms of the *Cost Recovery protocol*.”

GC 6.2 CHANGE ORDER

Add new paragraph 6.2.5 as follows:

- “6.2.5 Where a change includes an extension of time to the overall *Contract* duration, no further claim for indirect, impact or overhead costs will be accepted as having resulted from the *Change Order*, after the *Change Order* has been accepted by the *Owner*.”

GC 6.3 CHANGE DIRECTIVE

Delete paragraphs 6.3.6, 6.3.7 and 6.3.8 in their entirety and replace with the following:

- “6.3.6 The adjustment to the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the *Design Services and Work Costs* for the actual expenditures and savings attributable to the *Change Directive* valued in accordance with the terms of the *Cost Recovery protocol*.”

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

Insert in paragraph 6.4.4 the following words after the words "... reasonably apparent":

"or could have reasonably been determined through diligent investigations in accordance with industry standards"

and replace the words "... proposal closing or bid closing." with "... award of contract."

GC 6.5 DELAYS

Add the following to the end of paragraph 6.5.1 and to the end of paragraph 6.5.2 "but excluding any special, indirect or consequential losses or damages, including but not limited to, loss of use, loss of productivity, loss of revenue, loss of opportunity, overhead and/or profit (other than *Project-specific overhead*)".

Delete paragraph 6.5.3 and replace with the following:

"6.5.3 If the *Design-Builder* is delayed in the performance of 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 severe weather conditions in the area of the Place of the Work; severe weather conditions shall mean, (1) weather conditions which prevent Work on the critical path of the construction schedule from being performed safely under such weather conditions, or (2) weather conditions for which Environment Canada issues a weather warning for the area of the Place of the Work, or (3) cumulative weather conditions which delay the Work and which the Design-Builder could not have reasonably anticipated, 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 actual time lost as a 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

incurred by such delays unless such delays result from the acts or omissions of the *Owner*, or anyone employed or engaged by the *Owner* directly or indirectly. If requested by the *Owner* in such circumstances, and provided the *Design-Builder* is actually able to do so, the *Design-Builder* will employ whatever acceleration measures are necessary in order to recapture any delay, such as overtime, double shifts, or the use of additional manpower and/or equipment, and the *Design-Builder* shall be compensated for the costs of such acceleration measures in accordance with GC 6.1

Amend paragraph 6.5.4 by adding the following after the last sentence:

“A *Notice in Writing* with respect to any delay shall indicate the reasons for such delay and the best estimate of the *Design-Builder* as to its estimated duration and the likely effect upon the time to complete the *Design Services* and the *Work*. The *Design-Builder* shall give the *Owner Notice in Writing* once the circumstances giving rise to the delay cease.”

Add new paragraphs 6.5.6 to 6.5.10 as follows:

- “6.5.6 The *Design-Builder* shall not be entitled to any extension of the *Contract Time* in respect of any delay referred to in GC 6.5.1 or GC 6.5.2 or to any extension of the *Contract Time* in respect of any delay referred to in GC 6.5.3, unless the *Design-Builder* is able to demonstrate that:
- .1 the *Design-Builder* has taken all reasonable steps required to mitigate the effect of the delay; and
 - .2 the delay has a material adverse impact on the ability of the *Design-Builder* to complete the *Work* in accordance with the *Annual Work Plan*.

In such case, the *Contract Time* will be extended for such reasonable period which reflects the time lost as a result of such impact.

- 6.5.7 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by an act or omission of the *Design-Builder* or anyone employed or engaged by the *Design-Builder* directly or indirectly, or by any cause within the *Design-Builder's* control, then the *Contract Time* shall be extended for such reasonable time as the *Owner* may decide in consultation with the *Design-Builder*. The *Owner* shall be reimbursed by the *Design-Builder* for all reasonable costs incurred by the *Owner* as the result of such delay. For greater certainty, costs resulting from delays due to the non-availability of specified items shall be covered by this paragraph 6.5.7 where non-availability of such items would have been avoided had the *Design-Builder* taken such steps as would have been taken by an experienced and prudent design-builder supplying similar services for projects similar to the *Project* and in

market conditions similar to those existing upon commencement of the *Design Services* or the *Work*.

- 6.5.8 No extension shall be made for delay arising from a labour dispute that is decreed for its members by a recognized design-builder's/construction manager's association of which *Design-Builder* is a member or to which the *Design-Builder* is otherwise bound if the *Design-Builder*, before entering into this *Contract* or commencing the *Design Services* and the *Work*, had or should have had knowledge or reasonable grounds for believing that the *Design Services* or the *Work* would be delayed by such a labour dispute and did not so inform the *Owner*.
- 6.5.9 If there is a delay in the performance of any portion of the *Design Services* or the *Work*, the *Design-Builder* shall use its reasonable best efforts to re-arrange and re-schedule the *Design Services* or the *Work* so as to minimize the ultimate delay in the completion of the *Design Services* or the *Work*. The *Design-Builder* shall be responsible for the care, maintenance and protection of the *Work* in the event of any shutdown.
- 6.5.10 Notwithstanding anything to the contrary in this GC 6.5 - DELAYS, the *Owner* and the *Design-Builder* agree that any delay or failure of the *Design-Builder* to perform its obligations under this *Contract* to the extent such delay or failure was caused, directly or indirectly, by the outbreak of the 2019 novel coronavirus disease and pandemic, including subsequent or multiple waves thereof (“**COVID 19**”), or any future pandemics/epidemics, shall be determined in accordance with the following principles:
- .1 in this paragraph 6.5.10, the term “**Pandemic Change in Law**” means any change in *Applicable Law* that:
 - .1 came into effect after the date of this *Contract*;
 - .2 is directly the result of and is directly related to the occurrence, control, spread or ending of a pandemic (including COVID 19) or epidemic;
 - .3 directly affects (i) the performance of the *Work*; or (ii) the cost of labour, *Products*, *Supplies* or other materials required to perform the *Work*.

For the purposes of this *Contract*, this definition shall include any new *Applicable Law* or any amendment or other modification to or repeal or replacement of any *Applicable Law* that satisfies the foregoing requirements of subparagraphs 6.5.11.1.1 to 6.5.11.1.3 (inclusive) (collectively, “**Pandemic Rules**”).

- .2 With respect to the impact of COVID 19, the Design-Builder shall assume the known conditions of COVID 19 (including all Pandemic Rules in force) at the time of execution and delivery of this Contract. The Owner and the Design-Builder agree that any delay or failure of either party to perform its obligations under this Contract to the extent such delay or failure was caused directly or indirectly, by the known conditions of COVID 19 (including all Pandemic Rules in force at the time of execution and delivery of this Contract), including, but not limited to, the financial inability to perform, will not excuse performance by such party under this Contract or constitute a cause a delay in the performance of the Design Services or the Work under this Contract.
- .3 Subject to a stop work order in accordance with GC 6.5.11 .5, relief shall be provided to the Design-Builder for delays in the performance of the Design Services or the Work that affect the progress of the Work in accordance with the Annual Work Plan which arise as a result of a Pandemic Change in Law that changes and imposes more onerous requirements than the Pandemic Rules in force at the time of execution and delivery of this Contract, such relief shall be provided in accordance with GC 6.5.3. There shall be no unjust enrichment from a Pandemic Change in Law.
- .4 In the event of a Pandemic Change in Law, the Design-Builder shall prepare and submit a plan (the “Pandemic and Epidemic Response and Mitigation Plan”) (which Pandemic and Epidemic Response and Mitigation Plan shall be incorporated by reference into and shall become part of this Contract), outlining how the Design-Builder will respond to any Pandemic Change in Law that may affect the Design Services or Work, including where related to a subsequent outbreak of COVID 19. The Pandemic and Epidemic Response and Mitigation Plan (and all updates thereto) shall:
 - .1 demonstrate how potential impacts will be reduced if risks of future pandemics materialize;
 - .2 set out the activities and reporting to the Owner that the Design-Builder will implement as part of the Design Services and the Work to respond to any Pandemic Change in Law that may affect the Work (including where related to a subsequent outbreak of COVID 19), including the detailed steps that the Design-Builder and its Consultant, Other Consultants, Subcontractors and suppliers will undertake to prepare

for and respond to a Pandemic Change in Law which affects the Design Services and the Work, including where related to a subsequent outbreak of COVID 19; and

.3 be subject to review and comment by the Owner.

In the event that, at any time prior to *Substantial Performance of the Work*, a specific pandemic or epidemic (including a subsequent outbreak of COVID 19) is reasonably foreseeable and likely to occur and affect the *Design Services* or the *Work* or otherwise occurs and affects the *Design Services* or the *Work*, the *Design-Builder* shall, at its cost, promptly (at the request of the *Owner* or of its own volition) prepare and update the *Pandemic and Epidemic Response and Mitigation Plan* on a monthly basis and submit each such update to the *Owner* until such time as the *Owner* agrees, acting reasonably, that either the pandemic or epidemic has ended or no longer affects the *Design Services* and the *Work* and no further updates to such plan are required. Following the review by the *Owner* of each updated *Pandemic or Epidemic Response and Mitigation Plan*, the *Design-Builder* shall implement such plan in accordance with its terms.

.5 If pursuant to GC 6.5.2, a stop work order is issued by a court or other Governmental Authority as a result of COVID 19 or a future pandemic/epidemic, the Design-Builder shall be entitled to relief pursuant to GC 6.5.2.

.6 This paragraph 6.5.11 is at all times subject to paragraph 6.5.6.”

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

Replace in paragraphs 7.1.3 and 7.1.4 the words “20 Working Days” with “30 Working Days.”

Add the following new paragraphs 7.1.5 to 7.1.11:

“7.1.5 The *Owner* may suspend performance of the Work at any time by giving 5 Working Days’ prior written notice to that effect to the *Design-Builder* identifying the reason for the suspension and the expected length of the suspension. Such suspension shall be effective in the manner specified in said notice and shall be without prejudice to any claims which either party may have against the other.

7.1.6 The *Design-Builder* upon receiving notice of suspension from the *Owner* under paragraph 7.1.5 shall suspend all operations as soon as reasonably possible except *Work* which, in the *Design-Builder*’s opinion, is necessary for the safety of personnel and for the care and preservation of the Work, the materials and plant. Subject to any directions in the notice

of suspension, the *Design-Builder* shall discontinue ordering materials, facilities, and supplies and make every reasonable effort to delay delivery of existing orders.

- 7.1.7 During the period of suspension under paragraph 7.1.5, the *Design-Builder* shall not remove from the site any part of the *Work*, or any *Product* or materials without the consent of the *Owner*.
- 7.1.8 If the *Work* should be suspended under paragraph 7.1.5 for a period of 30 *Working Days* or less, the *Design-Builder*, upon the expiration of the period of suspension, shall resume the performance of the *Work* in accordance with the *Contract Documents*. If the suspension was not due to a failure of the *Design-Builder* to comply with a material term of the *Contract*, the *Contract Price* and the *Contract Time* shall be adjusted as provided in the *Contract*.
- 7.1.9 If, after 30 *Working Days* from the date of notice of suspension of the *Work* under paragraph 7.1.5, the *Owner* and the *Design-Builder* agree to continue with and complete the *Work*, the *Design-Builder* shall resume the *Work* 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 *Work* 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*.”

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

Replace in paragraph 7.3.4 the words “5 Working Days” with “15 *Working Days*”.

GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION

Add new paragraph 8.1.9 as follows:

“8.1.9 Notwithstanding anything in GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION, *Interim Adjudication Matters*, as defined below, shall be subject to GC 8.3 INTERIM ADJUDICATION and the *Act*, as applicable.”

GC 8.3 INTERIM ADJUDICATION

Add new GC 8.3 INTERIM ADJUDICATION as follows:

“8.3.1 Subject to Part II.1 of the *Act*, any party may, at its sole and entire option, refer *Interim Adjudication Matters*, as defined below, to be determined by adjudication in accordance with GC 8.3 INTERIM ADJUDICATION.

8.3.2 Subject to Part II.1 of the *Act*, the *Owner* and *Design-Builder* may refer disputes respecting the following matters to adjudication:

- .1 Compliance with respect to the form and substance of any document required to be given under the *Contract* and/or *Act*;
- .2 The valuation of services or materials provided under the *Contract*;
- .3 Payment under the *Contract*, including in respect of a change order, whether approved or not, or a proposed change order;
- .4 Disputes that are the subject of a notice of non-payment under Part I.1 of the *Act*;
- .5 Amounts retained under section 12 of the *Act* (set-off by trustee) or under subsection 17(3) of the *Act* (lien set-off);
- .6 Payment of a holdback under section 26.1 or 26.2 of the *Act*; and
- .7 Non-payment of holdback under section 27.1 of the *Act*

(collectively, “*Interim Adjudication Matters*”).

- 8.3.3 Adjudication shall be commenced by the delivery of a notice of adjudication in the prescribed form and manner as defined in the *Act*.
- 8.3.4 Where the *Design-Builder* commences adjudication, following the selection or appointment of an adjudicator in accordance with the *Act*, the *Design-Builder* shall, within 5 calendar days, deliver to the adjudicator and the *Owner* in an organized, indexed, compiled, and bound fashion, a copy of the notice of adjudication, the *Contract Documents* being relied upon, any other documents the *Design-Builder* intends to rely on during the adjudication, and a written statement of issues which describes the aforesaid documents relied upon and the basis for such reliance as it relates to the issues in dispute.
- 8.3.5 Where adjudication is commenced by either party and the parties wish to retain the same law firm in respect of an *Interim Adjudication Matter*, the parties agree to waive any conflict of interest as may be required to allow such law firm to represent both parties, subject to appropriate steps being taken by such law firm to protect confidential information of the respective parties. Should the parties wish to use the same lawyer in respect of an *Interim Adjudication Matter*, the parties agree that neither party will use such lawyer unless otherwise agreed in writing.”

GC 9.1 PROTECTION OF WORK AND PROPERTY

Add at three locations in paragraph 9.1.1 after the word “... damage”:

“... and nuisances including dust and noise ...”

Delete the period at the end of subparagraph 9.1.1.2 and replace with a semicolon and add to the end of the paragraph:

“provided the foregoing shall not relieve the *Design-Builder* from its own negligence or the negligence of those for whom the *Design-Builder* is at law responsible nor for any breach of the *Contract* by the *Design-Builder*.”

GC 9.4 CONSTRUCTION SAFETY

Delete paragraph 9.4.1 in its entirety and replace it with the following:

“9.4.1 The *Design-Builder* acknowledges that upon execution of this *Contract* and until *Substantial Performance of the Work*, the *Design-Builder* shall have the greatest degree of control of construction health and safety at the *Place of the Work* and shall therefore be primarily responsible for construction health and safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation. The *Design-Builder* shall be solely responsible for initiating, maintaining and supervising all health and safety precautions and programs in connection with the performance of the *Design Services* and the *Work*. For the purpose of the *Contract*, the *Design-Builder* agrees to act in the capacity of “constructor” as defined by the *OHSA*, and to undertake all duties and responsibilities under section 15 of the *OHSA* and all applicable regulations. As “constructor”, the *Design-Builder* shall be responsible for taking every precaution reasonable in the circumstances for the protection of workers associated with the *Work* performed, whether those workers are employed by the *Design-Builder*, the *Owner*, the *Consultant*, *Other Consultants* or a third party. In the event that the *Owner* engages other contractors at the *Place of the Work* or performs works with its own forces, the *Owner* undertakes to include in its contracts with other contractors and/or in its instructions to its own forces the requirement that the other contractor or own forces, as the case may be, must comply with directions and instructions from the *Design-Builder* as “constructor” with respect to occupational health and safety related matters.”

Add new paragraphs 9.4.2 to 9.4.6 as follows:

“9.4.2 The *Design-Builder* has the authority to stop the progress of the *Work* whenever in its opinion:

- .1 there is an emergency where such stoppage may be necessary to ensure the safety of life, the *Work* or neighboring property; or

- .2 the *Owner* becomes aware that the *Design-Builder* is not in compliance with its obligations under the *OHSA*.

9.4.3 The *Design-Builder* as “constructor” shall ensure that it has implemented a comprehensive worksite-specific safety program for the *Work* performed under this *Contract* at the *Place of the Work*. This shall include, but shall not be limited to, such matters as:

- .1 providing training to its supervisors and employees on all applicable provincial or municipal occupational health and safety legislative requirements, all applicable regulations, and all applicable industry standards and guidelines pertaining to the *Work*;
- .2 developing and implementing written policies and procedures relating to health and safety aspects of the *Work* for employees of the constructor and any Subcontractor;
- .3 carrying out effective control and supervision of work performed at the *Place of the Work* by employees of the constructor and any Subcontractor to ensure that all safety aspects of the *Work* are met; and
- .4 monitoring and enforcement of its safety program to ensure that employees of the *Design-Builder* and any Subcontractor follow appropriate policies and procedures and applicable occupational health and safety legislative requirements and applicable industry standards and guidelines pertaining to the *Work*.

9.4.4 Although the *Owner* shall not be in control of the *Place of the Work* and *Work* performed thereon, the *Owner* and its authorized representatives shall have access to the *Place of the Work* at all times for the purposes of inspecting the *Place of the Work* to determine compliance with the terms of this *Contract*, provided that the *Owner* and its authorized representatives comply with all health and safety instructions and policies of the *Design-Builder* at the *Place of the Work*. It is understood and agreed that such access by the *Owner* and its representatives shall not be for the purpose of inspecting for and reviewing any health and safety aspect of the *Place of the Work* or performance of the *Work*. Further, it is understood and agreed by the *Design-Builder* that by attending at the *Place of the Work*, no representative of the *Owner* is performing a supervisory or inspection function with respect to health or safety requirements at the *Place of the Work*, or controlling the *Work* at the *Place of the Work*. For greater certainty, the parties intend to avoid simultaneous compliance with the *OHSA* by the *Owner* and the *Design-Builder* where such compliance would result in unnecessary duplication of effort and expense. The parties therefore agree that, subject to the *Owner's* obligation under Section 19 of the *OHSA* and

except to the extent the *Owner* becomes aware of a breach by the *Design-Builder* of its duties and obligations under the *OHSA* as “constructor” with the greatest degree of control of the *Place of the Work*, the *Owner* shall be relieved under this *Contract* of its obligations to dually comply with a duty or requirement imposed on it under the *OHSA*.

- 9.4.5 The *Design-Builder* hereby represents and warrants to the *Owner* that appropriate health and safety instructions and training have been provided and will be provided to the *Design-Builder’s* employees, the *Consultant*, *Other Consultants*, *Subcontractors* and *Suppliers*, before each commences performing the *Work* and agrees to provide the *Owner*, if requested, proof of such instruction and training.
- 9.4.6 To the maximum extent permitted by *Applicable Law*, the *Design-Builder* shall indemnify and save harmless the *Owner* and its agents, officers, directors, employees, consultants, successors and assigns from and against any and all liability, costs, expenses, fines, damages and all other consequences arising from any and all safety infractions on the *Project*, except for any such infractions caused by the negligent acts or omissions of the *Owner* or its agents, officers, directors, employees, consultants, successors and assigns, including the payment of legal fees and disbursements on a full indemnity basis. The indemnity contained in this paragraph shall survive the completion of the *Work* and the termination of the *Contract* for any reason whatsoever.”

GC 10.2 LAWS, NOTICES, PERMITS AND FEES

Delete paragraph 10.2.3 in its entirety and replace with the following:

- “10.2.3 The *Design-Builder* shall apply for and be responsible for obtaining and paying for all permits, licenses, or certificates necessary for performance of the *Work*. The *Owner* shall pay for the development permit, site plan application fees and the building permit by direct payment to the authority having jurisdiction. The *Design-Builder* shall be responsible for all associated deposits or costs for work required to meet the conditions imposed by the authority having jurisdiction and the costs thereof are included in the *Contract Price*. The *Contract Price* includes the cost of all permits, licenses, inspections and certifications, and their procurement except for the costs of the development permit, site plan application fees and the building permit. The *Design-Builder* will keep the *Owner* informed of the progress of all applications for permits and licenses and will promptly notify the *Owner* of any issues with obtaining such permits and licenses.”

Add new paragraph 10.2.7 as follows:

“10.2.7 The *Design-Builder*’s compliance with applicable statutes or regulations made there under, or by-laws, shall not relieve the *Design-Builder* of obligations set out in the *Contract Documents* which may be more onerous or extensive than the requirements of those statutes, regulations or by-laws.”

GC 11.1 INSURANCE

Delete Section 11.1. in its entirety and replace with the following:

- “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 the Supplementary Conditions to the CCDC 41-2020 – CCDC INSURANCE REQUIREMENTS attached herein as Schedule B. Coverage is to be in effect at the time the Contract is awarded to the *Design-Builder* except as hereinafter provided.
- 11.1.1.1 General liability insurance in the name of the *Design-Builder* endorsed to name the *Owner*, the *Consultant*, *Other Consultants*, the *Owner’s Advisor*, and the *Payment Certifier* as additional insureds 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. Coverage shall be in accordance with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Item 1).
- 11.1.1.2 Automobile Liability Insurance from the date of commencement of *Design Services* or the *Work* until one year after the date of *Substantial Performance* of the *Work*. Coverage shall be in accordance with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Item 2).
- 11.1.1.3 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*. Coverage shall be in accordance with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Items 3 and 4).
- 11.1.1.4 Contractor’s Equipment Floater Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*. Coverage shall be in accordance with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Item 5)
- 11.1.1.5 Project-Specific Professional Liability Insurance shall include as Named Insureds *Consultants* of all tiers providing professional services on the *Project*. The named insureds are to be approved and accepted for coverage by the insurer. Coverage shall be maintained continuously from the commencement of the *Contract* until 2 years after *Substantial Performance of the Work*. Coverage shall be in accordance

with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Item 6)

- 11.1.2 At least 10 *Working Days* prior to commencement of the *Design Services* or *Work* and upon the placement, renewal, amendment, or extension of all or any part of the *Design-Builder's* 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*.
- Where available, each of the policies of insurance shall also contain a provision requiring not less than 30 days' written notice to *Owner*, the *Consultant*, *Other Consultants*, the *Owner's Advisor*, and the *Payment Certifier* prior to cancellation or any change that would reduce coverage.
- The *Owner* may withhold payment of any monies due to the *Design-Builder* under this or any other contract until the *Design-Builder* has provided the *Owner* with a valid Certificate of Insurance as required by this condition.”
- 11.1.3 The *Design-Builder* shall be responsible for deductible amounts under the policies outlined in sections 11.1.1.1., 11.1.1.2, 11.1.1.3, 11.1.1.4, and 11.1.1.5. The *Owner* will bear no costs towards these deductibles.
- 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 the *Design-Builder's* required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 The *Design-Builder* shall ensure all *Subcontractors* provide, maintain, and pay for insurance as set out in sections 11.1.1.1., 11.1.1.2, 11.1.1.3, 11.1.1.4.
- 11.1.7 The *Owner* shall provide, maintain, and pay for the following insurance coverages, the minimum requirements of which are specified in the Supplementary Conditions to the CCDC 41-2020 – CCDC INSURANCE REQUIREMENTS. Coverage is to be in effect at the time the *Contract* is awarded to the *Design-Builder* except as hereinafter provided and shall be complied with by the *Owner* and the *Design-Builder*.
- 11.1.7.1 Wrap-Up Liability Insurance from commencement of the *Work* until *Substantial Performance of the Work*. The Products-Completed Operations Hazard coverage shall be for not less than 24 months after *Substantial Performance of the Work*. Terms and conditions are for this anticipated period at commencement of the *Work* and any extension to this period will be subject to change based on market

conditions. Such insurance shall cover the *Owner*, the *Design-Builder*, *Subcontractors*, and anyone employed directly or indirectly by the *Owner*, *Design-Builder* or his *Subcontractors* to perform a part of the *Work* but excluding suppliers whose only function is to supply and/or transport products to the site. The insurance shall also include the *Consultant* and *Other Consultants* excluding their professional liability. Coverage shall be in accordance with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Item 8)

- 11.1.7.1.1 Claims under this insurance shall be subject to a maximum deductible of \$50,000 per claim and shall be paid by the *Design-Builder* and any *Subcontractor(s)* responsible for the loss. The *Owner's* representative shall be the sole judge as to how the deductible is apportioned.
- 11.1.7.2 “All Risks” Builders’ Risk and Boiler & Machinery insurance from the date of commencement of the *Work* until *Substantial Performance of the Work*. Such insurance shall be written in the joint names of the *Owner*, *Owner’s Advisor*, *Payment Certifier*, *Design-Builder*, *Subcontractors* of all tiers, and the *Consultant* and *Other Consultants* but excluding suppliers whose only function is to supply and/or transport products to the site and who do not perform any installation or construction at the *Place of Work*. Coverage shall be in accordance with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Item 9).
- 11.1.7.2.1 Coverage shall contain a waiver of the insurer’s subrogation rights against all insureds and their officers, employees, servants, and agents, with the exception of the *Consultant* and *Other Consultants* for their errors or omissions in professional services.
- 11.1.7.2.2 Each claim under this insurance policy shall be subject to a maximum deductible of \$250,000 except for earthquake, flood, water damage, Design Error, and other extensions of cover as notified by the *Owner*, which shall be subject to higher maximum deductibles, and shall be paid by the *Design-Builder* and any *Subcontractor(s)* responsible for the loss. The *Owner's* representative shall be the sole judge as to how the deductible is apportioned.
- 11.1.7.3 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* as their respective interests may appear and as trustees for the benefit of any and all insureds. In the event of loss or damage 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*.
- 11.1.7.4 Project-specific Pollution Liability Insurance in the name of the *Owner* and including the *Design-Builder*, *Consultants*, *Other Consultants*, and *Subcontractors*

as insureds. The named insureds are to be approved and accepted for coverage by the insurer. Coverage shall be maintained continuously from the commencement of the *Work* until 2 years after *Substantial Performance of the Work*. Coverage shall be in accordance with Supplementary Conditions to the CCDC 41-2020 CCDC INSURANCE REQUIREMENTS (Item 9).

- 11.1.7.4.1 Claims under this insurance shall be subject to a maximum deductible of \$50,000 per claim and shall be paid by the *Design-Builder* and any *Subcontractor(s)* responsible for the loss. The *Owner's* representative shall be the sole judge as to how the deductible is apportioned.
- 11.1.7.5 Upon notification of a claim being made for either policies as set out in 11.1.7.1 or 1.1.7.4, the *Owner* shall, at its sole discretion, be entitled to retain the amount of the deductible in whole or in part from payment to the *Design-Builder*. Such amount will be applied by the *Owner* in satisfaction of that claim and excess amounts, if any, will be paid to the *Design-Builder* in the event and at such time as the claim is settled, dismissed, or withdrawn. Notwithstanding the foregoing, the *Owner* may, at its sole discretion, issue an invoice to the *Design-Builder* for the actual amount of the claim settlement up to the amount of the deductible, and if the invoice is not paid within thirty (30) days, the *Owner* shall deduct such amount from a future payment due to the *Design-Builder*.

GC 11.2 CONTRACT SECURITY

Add paragraph 11.2.3 as follows:

- “11.2.3 The *Design-Builder* shall be required to obtain the following *Contract Security* in the form required by the *Act*:
- .1 50% Labour and Materials Payment Bond
 - .2 50% Performance Bond.”

The amount of the bonding will be calculated based on the budgeted amount for the total value of the *Work* or such other amount determined by the *Owner*. The *Owner* reserves the right to request that bonding be obtained by Work Activity as opposed to a bond for the entire *Contract*. All bonds must be in electronic form and must be verifiable by the *Owner* with respect to the totality and wholeness of the bond form, including: the content; all digital signatures; all digital seals; with the surety company, or an approved verification service provider of the surety company. The performance security will be retained until *Total Completion of the Work*. The performance security may be adjusted at various stages of the *Project*, at the discretion of the *Owner*.”

GC 12.4 WAIVER OF CLAIMS

Add new subparagraph 12.4.1.5 as follows:

“.5 claims that have been the subject of an adjudication under GC 8.3 INTERIM ADJUDICATION or the Act, for which a *Notice in Writing* has been received by the *Owner* from the *Design-Builder*, disputing the adjudicator’s determination, within 30 calendar days of communication of the adjudicator’s determination.”

GC 12.5 WARRANTY

Amend paragraph 12.5.1 by replacing the words “one year” for the words “a minimum of thirty months” and by adding the following at the end of the provision: “The actual warranty period for each *Work Activity* will be determined by the parties, acting reasonably, and inserted in the chart in Schedule A.”.

Add the following words to end of paragraph 12.5.4:

“The term “defect” shall not be construed as embracing such imperfections as would naturally follow misuse, failure to perform recommended maintenance, accident, or the wear and tear of normal use.”

Amend paragraph 12.5.6 by deleting the words “one year warranty period as” in the first sentence and replacing them with the words “warranty period”.

GC 13 OWNER’S GENERAL TERMS AND CONDITIONS

Add a new GC 13 OWNER’S GENERAL TERMS AND CONDITIONS which will read as follows:

“13.1 The following provisions in the *Owner’s General terms and conditions* are incorporated by reference into this *Contract*: Sections 2.1.2; 2.8; 2.11; 2.12.3; 2.13.2; 2.13.4; 2.22; 2.27.2; 2.27.3; 4.3; 4.4; 7.3; 7.4; 7.5; 7.6, 7.7 and 7.12.

The parties confirm that they have read the said provisions of the *Owner’s General terms and conditions* and agree to be bound by them under this *Contract*, where applicable in accordance with paragraph 1.1.6.”

GC14 NON-INTERFERENCE WITH OWNER’S OPERATIONS

Add a new GC 14NON-INTERFERENCE WITH OWNER’S OPERATIONS which will read as follows:

“14.1 In performing the *Design Services* and the *Work* in accordance with the *Contract Documents*, the *Design-Builder* agrees that it shall not, except with the prior written consent of the *Owner*, interfere with any of the *Owner’s* or any third party’s existing facilities and ongoing operations or other operations located in the area adjacent to, in the vicinity of or proximate to the *Place of the Work*, including, without limitation, any concourse areas, walkways or loading docks.”

SCHEDULE A

Substantial Performance of the Contract Dates, Total Completion of the Work dates and Warranty Commencement Dates

Work Activity	Warranty Period	Proposed Commencement Date of Warranty	Target Substantial Performance Date*	Completion of Work Target Date
30 Bus Charging Fit up South Garage				
Electricity Cost Optimization Strategy	N/A			
Energy Management System (EMS)				
St. Laurent Substation				
Hydro Ottawa off-site 44kV Supply	N/A			
On site 13kV and 44kV Distribution				
Existing Building Cut Over				
On site Generation Back-up - New				
Remaining Buses Charging Fit up South Garage				
Bus Charging Fit Up North Garage				
Bus Charging Fit Up New Building				

* To be completed as part of workplan process.

SCHEDULE B
SUPPLEMENTARY CONDITIONS TO THE
CCDC 41-2020 – CCDC INSURANCE REQUIREMENTS

The following Supplementary Conditions are part of the *Contract Documents* and shall be read in conjunction with and supplement and amend the Canadian Standard Construction Document CCDC 41 - 2020, CCDC Insurance Requirements ("CCDC 41"). Paragraph references are to the corresponding paragraphs of CCDC 41. In the event of any conflict or inconsistency between any of the provisions of CCDC 41 and the following Supplementary Conditions, the following Supplementary Conditions shall prevail. For additional clarity: (a) these Supplementary Conditions and Amendments shall modify, delete and/or add to the Agreement between the *Owner* and the *Design-Builder*, Definitions and General Conditions of the CCDC 14; (b) where any article, paragraph or subparagraph in the Agreement, Definitions or General Conditions is supplemented by one of the following, the provisions of such article, paragraph or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto; and (c) where any article, paragraph or subparagraph in the Agreement, Definitions or General Conditions is amended, deleted, voided, or superseded by any of the following, the provisions of such article, paragraph or subparagraph not so amended, voided, deleted or superseded, shall remain in effect, and the numbering of the deleted item will be retained, unused.

AMENDMENTS TO THE AGREEMENT BETWEEN THE OWNER AND DESIGN-BUILDER

The following Supplementary Conditions shall amend and take precedence over the standard form Agreement Between the *Owner* and *Design-Builder*.

Delete items 1 to 8 on CCDC 41 (2020 version) and replace with the following:

***Design-Builder* Insurance Policy Requirements:**

- “1. General Liability insurance shall be with limits of not less than \$10,000,000 per occurrence, an aggregate limit of not less than \$10,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$10,000. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Design-Builder*, the *Owner* may agree to increase the deductible amounts. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC form 2320 including but not limited to:
 - A. Bodily injury, death, and property damage including loss of use thereof.
 - B. Premises and operations liability.
 - C. Products and completed operations liability.

- D. Blanket contractual liability.
 - E. Cross liability and severability of interest clauses.
 - F. Contingent employer's liability.
 - G. Personal injury liability.
 - H. Owner's and Contractor's protective coverage.
 - I. Broad form property damage.
 - J. Elevator and hoist liability.
 - K. Liability for attached machinery, including loading and unloading.
 - L. Extension of coverage shoring; blasting; excavation; underpinning; demolition; pile driving; caisson work; below ground surface work, including tunneling and grading, if applicable to the *Project*.
2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the *Design-Builder*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Design-Builder* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Design-Builder*.
 3. Manned Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the *Work*), including use of additional premises, shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$10,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*.
 4. Unmanned aerial vehicle liability insurance with respect to owned or non-owned aircraft (if used directly or indirectly in the performance of the *Work*), shall have limits of not less than \$5,000,000 per occurrence or accident for bodily injury, death and damage to property or such amounts as required by any applicable law or regulation.
 5. Contractors' equipment insurance coverage written on an "all risks" basis covering *Construction Equipment* used by the *Contractor* for the performance of the *Work*, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may agree to waive the equipment insurance requirement.
 6. Project-Specific Professional liability Insurance. This policy shall cover risks of errors, omissions or negligent acts in the performance of professional services for the *Project*. The Named Insureds are to be approved and accepted for coverage by the Insurer. This policy shall provide for a limit of liability of not less than \$15,000,000 each claim and in the aggregate (inclusive of defence costs and expenses) and shall cover only this Project.

7. Technology Liability Insurance for financial loss arising out of an error, omission, or negligent act in the rendering of services in an amount not less than **\$5,000,000** per claim and **\$5,000,000** aggregate. Such policy shall be on a claims made basis and shall provide coverage for damages and defense costs; The Technology Professional Liability policy will also include an insuring agreement for cyber or network security and privacy liability insurance, covering financial loss arising out of actual or potential unauthorized access, unauthorized use, and a failure to protect confidential information which results in loss or misappropriation of such information in both electronic and non-electronic format. Such insurance will have a limit of an amount not less than \$5,000,000 per claim and \$5,000,000 aggregate. *Design-Builder* shall maintain said liability coverage in place for a three-year period after termination of the *Contract* by way of annual policy renewal, or purchase of extended reporting period

Owner-Controlled Insurance Policy Requirements:

8. Wrap-Up Liability Insurance shall be with limits of not less than \$25,000,000 per occurrence, an aggregate limit of not less than \$25,000,000 within any policy year with respect to completed operations. To achieve the desired limit, umbrella or excess liability insurance may be used. The insurance does not extend to any activities, works, jobs, or undertakings of the covered parties noted other than those directly related to the *Work* or *Design-Services* of this *Contract*. The insurance coverage shall not be less than the insurance provided by IBC Forms 2100 and 2320 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) including but not limited to:
- A. Bodily injury, death, and property damage including loss of use thereof.
 - B. Premises and operations liability.
 - C. Products and completed operations liability.
 - D. Blanket contractual liability.
 - E. Cross liability and severability of interest clauses.
 - F. Contingent employer's liability.
 - G. Personal injury liability.
 - H. Owner's and Contractor's protective coverage.
 - I. Broad form property damage.
 - J. Broad form completed operations
 - K. Firefighting expenses
 - L. Elevator and hoist liability.
 - M. Tenants legal liability
 - N. Extension of coverage for shoring; blasting; excavation; underpinning; demolition; pile driving; caisson work; below ground surface work, including tunneling and grading, if applicable to the *Project*.
9. "All Risks" Builders Risk and Boiler & Machinery Insurance shall have limits of not less than the sum of 1.1 times *Contract Price*, plus any property the *Owner* provides for incorporation into the *Work*. This policy shall cover all risks of direct physical loss or damage to the *Project*, including but not limited to the perils of earthquake and flood, subject

to policy sub limits, warranties and exclusions and shall not be less than the insurance provided by IBC Forms 4042 and 4047 or their equivalent replacement. This insurance shall cover all property forming part of the *Project*, and goods and materials to be incorporated in the *Project* while at the *Place of the Work*, in transit, or while in off-site storage. It shall not provide coverage for the *Design-Builder's* or *Subcontractors'* equipment other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins and temporary buildings in connection with the *Work*.

10. Project-Specific Pollution Liability Insurance for an amount not less than \$10,000,000 per occurrence and in the aggregate. This policy shall be written on either an Occurrence, or Claims Made Form, and will provide coverage on a sudden and accidental, and gradual pollution events basis for on-site cleanup and remediation as well as on-site and off-site third-party claims for bodily injury and property damage, cleanup and remediation.”

**SCHEDULE C
OWNER'S GENERAL TERMS AND CONDITIONS**



GENERAL TERMS AND CONDITIONS

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1 DEFINITIONS – in addition to any terms defined within the Contract, the following terms shall have their respective meanings indicated below.

- 1.1 “**Contract**” means the undertaking by the Parties to perform their respective duties, responsibilities and obligations, as set out in the Contract Documents.

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GENERAL TERMS AND CONDITIONS

- 1.2 “**Contract Documents**” means the documents listed in the City’s formal agreement which set out the Parties’ respective duties, responsibilities and obligations. To the extent of any inconsistency or conflict among the Contract Documents, the inconsistency or conflict shall be resolved in favor of the document which appears first on the list.
- 1.3 “**Contract Price**” means the price to be paid by the City to the Contractor for the Work, subject to any adjustments provided by the Contract.
- 1.4 “**Work**” means the whole of the goods, services, materials required to be done, furnished and/or performed by the Contractor in order to carry out the Contract.
- 1.5 “**Contractor**” means an individual, corporation, or partnership contracted with for the purposes of performing the Work.
- 1.6 “**City**” means the City of Ottawa and where applicable all its directors, officers, and employees.
- 1.7 “**Parties**” means the City and the Contractor.

2 GENERAL CLAUSES

2.1 Interpretation

- 2.1.1 Documents forming the Contract are complementary; what is required by any one document will be as binding as if required by all;
- 2.1.2 The Contract has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party, does not apply to the construction or interpretation of the Contract;
- 2.1.3 In the Contract the word “dollar” and the “\$” sign refer to Canadian currency; and
- 2.1.4 The words “including” and “include” shall each mean “including without limitation” and shall not be construed as limiting any general statement which they follow to the specific or similar items or matters immediately following such words.



GENERAL TERMS AND CONDITIONS

2.2 Conduct of Work

- 2.2.1 The Contractor represents and warrants that it is competent to perform the Work and that it has the necessary qualifications, including knowledge, skill and experience to perform the Work, together with the ability to use those qualifications effectively for that purpose.
- 2.2.2 The Contractor shall supply everything necessary for the performance of the Work.
- 2.2.3 The Contractor shall: (a) carry out the Work in a diligent and efficient manner; (b) ensure the Work: (i) is of proper quality, material and workmanship; (ii) is in full conformity with the specifications; and (iii) meets all other requirements of the Contract.
- 2.2.4 The Contractor represents and warrants that the Work will be free from any defect in manufacture, material and workmanship. Notwithstanding prior acceptance of the Work by the City, the Contractor shall replace or repair, at its option and its own expense, any Work which becomes defective or which fails to conform to the requirements set out in the Contract as a result of faulty manufacture, material or workmanship. The warranty period shall commence on the date the Work is delivered and accepted by the City and shall extend for one (1) year or as otherwise identified in the Contract.

2.3 Time of the Essence

- 2.3.1 Time is of the essence of the Contract.



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2.4 Award

- 2.4.1 Any award of a contract will be in accordance with the City's Procurement By-Law, as amended, and may be subject to City Council approval.

2.5 Subcontracting

- 2.5.1 Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the City in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.
- 2.5.2 Notwithstanding subsection 2.5.1, the Contractor may, without prior consent of the City, subcontract such portions of the Work as is customary in the carrying out of similar contracts.
- 2.5.3 In any subcontract, the Contractor shall ensure that the subcontractor is bound by the terms and conditions of the Contract.
- 2.5.4 Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the City in writing, prior to changing any of the subcontractors named in the Contract.

2.6 Assignment

- 2.6.1 The Contract, or the right to receive payment hereunder, shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the City and any purported assignment made without that consent shall be void and of no effect.
- 2.6.2 Assignment of the Contract shall not relieve the Contractor from any obligation under the Contract or impose any liability upon the City, unless otherwise agreed to in writing by the City.
- 2.6.3 The Contract shall be binding on the parties hereto and their respective successors and assigns.

2.7 Replacement of Personnel

- 2.7.1 When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
- 2.7.2 If, at any time, the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person who is of similar ability and attainment.



GENERAL TERMS AND CONDITIONS

- 2.7.3 The Contractor shall, before replacing any specific person named in the Contract, provide notice in writing to the City. The replacement must be acceptable to the City.

2.8 Conflict of Interest

- 2.8.1 The Contractor is required to disclose to the City any potential conflict of interest prior to commencing the Work.
- 2.8.2 If a conflict of interest does exist as referred to above, the City may, at its discretion, withhold the Work from the Contractor until the matter is resolved to the satisfaction of the City.
- 2.8.3 If, during the Contract, the Contractor is retained by another client giving rise to a potential conflict of interest, then the Contractor shall so inform the City and if a significant conflict of interest is deemed to exist by the City, then the Contractor shall:
- 2.8.3.1 Refuse the new assignment, OR;
- 2.8.3.2 Take such steps as are necessary to remove the conflict of interest.

2.9 Force Majeure

- 2.9.1 If the Contractor is delayed in completion of the Contract by reasons of labor disputes, strikes, lock-outs, fire, or by any cause of any kind whatsoever beyond the Contractor's control, then the time of delivery shall be extended for a period of time equal to the time lost due to such delays, at no cost or penalty to the City.
- 2.9.2 No delivery time extension shall be granted for delays unless written notice of the delay is given to the City within three (3) business days of its commencement. In the case of a continuing cause of delay, only one notice shall be necessary.

2.10 Excusable Delay

- 2.10.1 Any delay by a Party to the Contract in the performance of its obligations hereunder that is caused by an event beyond its control and which could not have been avoided by means reasonably available to it shall be an Excusable Delay. In the event of an Excusable Delay, the Party delayed shall, within three (3) business days, give notice to the other Party of the events that caused the delay indicating the reasons for the delay and showing what portion of its obligations hereunder are affected, and how. Within five (5) further business days the Party delayed will give the other Party a further written notice detailing its plans to prevent further delay and recovery plan for lost time. Notwithstanding the times set out herein for provision of notices the Party delayed shall act promptly when any event causing an Excusable Delay occurs and use all reasonable means to prevent further delay and recover lost time.



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2.11 Invoice Submission

- 2.11.1 Invoices must be submitted in the Contractor's name. The Contractor must submit invoices for each delivery or shipment. Each invoice must indicate whether it covers partial or final delivery.
- 2.11.2 The Contractor is required to ensure it identifies the following information on all invoices:
- a. Contractor name, mailing address, email address and telephone number
 - b. Invoice date
 - c. Unique Invoice number
 - d. Payment terms
 - e. Description of the good or service purchased
 - f. Purchase order number (if applicable)
 - g. Identification of the City contact by full name and email address or established City client/customer
 - h. Unit cost, quantity, subtotal, taxes and total amount due
 - i. Contractor's tax registration number where applicable.
- 2.11.3 Unless indicated otherwise in the Contract, Contractors who are enabled on SAP Ariba are required to submit invoices through the SAP Ariba network.
- 2.11.4 If the Contract indicates that invoices shall be submitted by email, Contractors are required to submit invoices to AP-CF@ottawa.ca in PDF (PDF v1.7 or lower, Black and White, minimum 300 DPI resolution) or TIFF (Black and White, minimum 300 DPI resolution) file format. Supplemental documentation supporting an invoice must be merged into a single file.
- 2.11.5 By submitting an invoice, the Contractor certifies that the invoice is consistent with the Work delivered and is in accordance with the Contract.

2.12 Payment Period

- 2.12.1 The City follows a policy whereby in the absence of prompt payment discount terms, all invoices will be paid on a Net 30 basis meaning payments will be made by the City within thirty (30) calendar days of receipt and acceptance of the invoice, or the acceptance of the goods and services, whichever date is later.
- 2.12.2 Contractors are encouraged to offer a cash discount for prompt payment.
- 2.12.3 Contractors are required to receive payment via Direct Deposit (EFT) unless indicated otherwise in the Contract. Information regarding how to register is available at the following link: http://www.ottawa.ca/en/city_hall/accounts_payable.



GENERAL TERMS AND CONDITIONS

2.13 Accounts and Audit

- 2.13.1 The Contractor shall keep proper accounts and records of transactions and activities associated with the Contract, in addition to all expenditures or commitments made by the Contractor in connection therewith and shall keep all documents, invoices, receipts and vouchers relating thereto. All such accounts, records, invoices, receipts and vouchers shall at all times during the contract period be open to audit, inspection and examination by the City.
- 2.13.2 Copies of said records shall be provided to the City when requested by the employee responsible for the Contract so that they can be maintained in accordance with the City's Records Management Policy and Records Retention and Disposition By-Law 2003-527, as amended.
- 2.13.3 When activities requiring the collection or handling of personal information are contracted out, the Contract shall set out the privacy protection and security obligations assumed by the Contractor. Those obligations shall be at least as stringent as those applicable to the Contractor under the Contract.
- 2.13.4 The Contractor represents, warrants and covenants to the City that it is not aware of any actions, suits or proceedings pending or to its knowledge threatened against or adversely affecting it, which might materially affect its financial condition or its ability to perform and meet all duties, liabilities and obligations as may be required of it under this Contract.

2.14 Survival

- 2.14.1 All Contractor representations and warranties set out in the Contract as well as the provisions concerning indemnity against third party claims, accounts and audit, and confidentiality shall survive the expiry of the Contract or the termination of the Contract, as shall any other provision of the Contract which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.

2.15 Severability

- 2.15.1 If any provision of this Contract becomes illegal or unenforceable in whole or in part, the remaining provisions shall nevertheless be valid, binding and subsisting.



GENERAL TERMS AND CONDITIONS

2.16 Successors and Assigns

2.16.1 The Contract shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the City and of the Contractor.

2.17 Entire Agreement

2.17.1 The Contract shall constitute the entire and sole agreement between the parties with respect to the subject matter of the Contract and shall supersede all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There shall be no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.

2.18 Status of the Contractor

2.18.1 The Contractor is engaged as an independent contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of the City.

2.19 Amendments

2.19.1 No amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment executed by the authorized representatives of the City and the Contractor.

2.20 Waiver

2.20.1 No Party will be deemed to have waived the exercise of any right that it holds under this Contract unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

2.21 Staff and Methods

2.21.1 The Contractor shall perform the Work to a professional standard in accordance with current "best practices" and shall employ only skilled and competent staff who shall be under the supervision of a senior member of the Contractor's staff.

2.22 Publication

2.22.1 The Contractor shall obtain the consent in writing of the City before publishing or issuing any information regarding the Work.



GENERAL TERMS AND CONDITIONS

2.23 Drawings and Documents

2.23.1 Drawings and documents or copies thereof required to perform the Work shall be exchanged between the parties on a reciprocal basis. Drawings and documents, including all drawings and documents delivered in an electronic, digital or other than paper format, prepared by the Contractor for the City, shall be the property of the City free of all claims by the Contractor of any nature and kind.

2.24 Notice

2.24.1 Any notice, demand or other communication required or permitted to be given to any Party to this Contract shall be in writing and may be delivered by hand, courier, mail, facsimile or other electronic method that provides a paper record of the text of the notice. It must be sent to the Party for whom it is intended at the address stated in the Contract. Subject to the provisions set out below, any notice will be effective on the day it is delivered to that address.

- a. If a notice is sent by email, the notice is effective on the day the Party sending the notice receives an email delivery receipt confirming delivery of the notice to the other Party's email address.
- b. If a notice is sent by courier, registered mail or facsimile, the notice is effective on the day indicated on the delivery confirmation.
- c. If a notice is sent by regular mail, the notice is effective on the fifth (5th) day after the notice was placed in the mail.



GENERAL TERMS AND CONDITIONS

2.25 Deviations

2.25.1 The Contractor will not make any deviations from the Contract Documents without the prior written permission of the City. Unauthorized deviations shall be corrected at Contractor's expense.

2.26 Insurance

2.26.1 The Contractor shall provide and maintain, at its sole expense, during the term of the Contract, Commercial General Liability insurance issued on an occurrence basis for an amount of not less than \$5,000,000 per occurrence for any negligent acts or omissions by the Contractor. Such insurance shall include, but is not limited to, bodily injury, death and property damage including loss of use; premises, property and operations liability; products and broad form completed operations liability; blanket contractual liability; cross liability; severability of interest clause; contingent employers liability; personal injury liability; owner's and Contractor's protective coverage; non-owned automobile liability; broad form property damage; employees as additional insured and occurrence property damage. The Commercial General Liability insurance policies shall be in the name of the Contractor and shall name the City of Ottawa as an Additional Insured. Such insurance shall contain an endorsement to provide the City of Ottawa with 30 days prior written notice of cancellation. Evidence of insurance satisfactory to the City shall be provided upon request.

2.27 Ownership

2.27.1 Unless otherwise provided in the Contract, the Work or any part of the Work shall belong to the City after delivery and acceptance by or on behalf of the City.

2.27.2 If any payment is made to the Contractor for or on account of any Work or any part of the Work either by way of progress or milestone payments, that Work or any part of the Work paid for by the City shall belong to City upon such payment being made. This transfer of ownership does not constitute acceptance by the City of the Work or any part of the Work and does not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.

2.27.3 Despite any transfer of ownership, the Contractor is responsible for any loss or damage to the Work or any part of the Work until it is delivered to and accepted by the City in accordance with the Contract. Even after delivery, the Contractor remains responsible for any loss or damage to any part of the Work caused by the Contractor or any subcontractor.

2.27.4 Upon transfer of ownership of the Work or any part of the Work to the City, the Contractor must, if requested by the City, establish to the City's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances. The Contractor must execute any conveyances and other instruments necessary to perfect the title that the City may require.

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GENERAL TERMS AND CONDITIONS

3 ACCEPTANCE OF THE WORK**3.1 Inspection of the Work**

3.1.1 The Work and any and all parts thereof shall be subject to inspection and acceptance by the City.

3.2 Approval of the Work

3.2.1 Before advancing any payment to the Contractor, the City reserves the right to determine, in its sole and absolute discretion, whether the Work was performed to the satisfaction of the City.

3.2.2 The method of approving the Work done will be in writing through electronic mail, courier, fax or traditional mail.

3.2.3 In the event that the Work was not performed to the satisfaction of the City, the City may take such action as it deems necessary to correct the Contractor's default, including, without limitation, the following:

3.2.3.1 Direct Contractor to re-perform the Work in whole or in part for the Work that was not completed to the City's satisfaction;

3.2.3.2 Withhold payment due or accrued due to the Contractor for the Work performed pursuant to the Contract;

3.2.3.3 Set off any expenses incurred by the City in remedying any or all default or failures of the Contractor in having performed the Work satisfactorily against payment due or accrued due to the Contractor;

3.2.3.4 Terminate the contract for default and /or seek indemnification from the Contractor for losses suffered by the City as a result of such default.

3.3 Final Acceptance

3.3.1 Final acceptance shall occur when the City is satisfied that all work defects have been rectified.

4 TERMINATION OF CONTRACT**4.1 Suspension of the Work**

4.1.1 The City may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to 180 calendar days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. At any time prior to the expiration of the 180 calendar days, the City shall either rescind the order or terminate the Contract, in whole or in part, under the provisions for termination under the Contract.



GENERAL TERMS AND CONDITIONS

4.2 Termination for Contractor Default

- 4.2.1 Notwithstanding anything to the contrary in this document, should the Contractor fail to comply with a direction or decision of the City properly given under the terms of the Contract, or where the Contractor is deemed by the City to be in default in any other manner as set forth by the following reasons constituting default, the City may, after giving ten (10) calendar days prior written notice to the Contractor of the default, immediately terminate this Contract, in whole or in part, and without charge with respect to all or any part of the Contract. The City shall provide notice in writing to the Contractor of the termination. Reasons constituting default include:
- 4.2.1.1 The Contractor commits a material breach of its duties and obligations under this Contract, unless, in the case of such breach, the Contractor, within ten (10) calendar days after delivery of the written notice set out in Section 4.2.1 above,, and in a manner satisfactory to the City in its sole, absolute and non-reviewable discretion, (a) cures such breach and (b) indemnifies the City for any resulting damage or loss;
 - 4.2.1.2 The Contractor commits numerous breaches of its duties under the Contract that collectively constitutes a material breach;
 - 4.2.1.3 A change in control of the Contractor where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Contractor are acquired, by any entity, or the Contractor is merged with or into another entity to form a new entity, unless the Contractor demonstrates to the satisfaction of the City that such event will not adversely affect its ability to perform the services under the Contract;
 - 4.2.1.4 The Contractor commits fraud or gross misconduct; or
 - 4.2.1.5 Where the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding up of the Contractor.
- 4.2.2 In the event of a termination notice being given under the provisions of this section, the Contractor shall be liable to the City for any milestone payments paid by the City for unfinished work, including all losses and damages which may be suffered by the City by reason of the default or occurrence upon which the notice was based, and also including any increase in the cost incurred by the City in procuring the Work from another source.



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- 4.2.3 In the event of a termination notice being given under the provisions of this section, the City may do such things and incur such costs as it deems necessary to correct the Contractor's default, including without limitation the withholding of payment due or accrued due to the Contractor for services rendered pursuant to this Contract, which moneys may be set off by the City against any expenses that it may incur in remedying a default or failures as described above.
- 4.2.4 In the event of a termination notice being given under the provisions of this section, the Contractor shall agree to repay immediately to the City the portion of any advance payment that is unliquidated at the date of the termination. In the event of a termination notice being given under the provisions of this section, and subject to the resolution of any claim or claims which the City may have against the Contractor as set forth in the previous three paragraphs, payment will be made within thirty (30) calendar days of the date of the invoice from the City to the Contractor for the value of all finished work delivered and accepted by the City, such value to be determined in accordance with the rate(s) specified in the Contract.
- 4.2.5 No specific remedy expressed in the Contract is to be interpreted as limiting the rights and remedies which the City may be entitled to under the Contract or otherwise in law.

4.3 Termination for Convenience

- 4.3.1 Notwithstanding anything contained in the Contract, the City may, at any time prior to the completion of the Work, by giving notice to the Contractor, terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given under this section, the Contractor shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The City may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.
- 4.3.2 In the event of a termination notice being given pursuant to this section, the Contractor shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Contractor has not already been so paid or reimbursed by the City:
- 4.3.2.1 on the basis of the Contract Price, for all completed Work that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in, the termination notice;



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- 4.3.2.2 the cost to the Contractor for all Work terminated by the termination notice before completion, the cost to the Contractor being determined in accordance the Contract Price and percentage completed.
- 4.3.3 The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the City under this section, except to the extent that this section expressly provides.

4.4 Term of Council

- 4.4.1 Where a contract may extend beyond the term of Council and the subsequent Council not approve sufficient funds to complete the Contract, notwithstanding anything contained in the Contract, the City may, by giving notice to the Contractor, terminate the Contract in accordance with section 4.3 Termination for Convenience.



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5 INDEMNITY**5.1 Infringement**

5.1.1 The Contractor warrants that no Work furnished in accordance with this Contract shall infringe upon any patent, registered industrial design, trademark, trade secret, copyrighted work or other intellectual property right. The Contractor, at its sole cost and expense, shall defend and hold harmless the City, its agents, employees and customers against any and all suits, actions and claims arising out of any and every charge of infringement. Where any of the Work furnished in accordance with this Contract is subject to a claim of infringement, the Contractor shall, at the City's option, procure for the City the right to use the Work, modify amend or replace the Work, provided the replacement Work is substantially the same or comparable; or provide to the City a full refund for the applicable Work.

5.2 Indemnification

The Contractor will at all times, defend, indemnify and save harmless the City from and against all actions, whether in contract, tort or otherwise, claims, demands, losses, costs, damages, suits or other proceedings by whomsoever brought, which are in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by, or arising directly or indirectly from the performance of this Contract, the breach of any term or condition of this Contract by the Contractor, or any negligence or wilful misconduct on the part of the Contractor in performing the Contract.

5.2.1 Neither Party shall be liable for indirect, special, incidental or consequential damages or damages for loss of profits arising directly or indirectly from any contract breach, fundamental or otherwise.

5.3 Royalties and Infringement

5.3.1 In this section, "Royalties" includes:

5.3.1.1 License fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other intellectual property right, and any costs or expenses incurred as a result of the exercise by any person of Moral Rights.

5.3.2 The Contractor shall indemnify and save harmless the City and its employees and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by the City of anything furnished by the Contractor under the Contract.



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- 5.3.3 The City shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the use by the Contractor of equipment, Specifications or other information not prepared by the Contractor and supplied to the Contractor by or on behalf of the City, provided that the Contractor notifies the City immediately of any such claim, action, suit or other proceeding, but the City shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless the City has consented to the settlement.

6 CONFIDENTIALITY

6.1 Confidentiality

- 6.1.1 **“Confidential Information”** means all information within the custody or control of the City that is relevant to the Work that is of a proprietary or confidential nature regardless of whether it is identified as proprietary or confidential or not including, without limitation, the terms of the Contract, any information which is confidential or proprietary to third parties, any personal information regarding the City’s employees or residents. all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to the City under the Contract. Without limiting the foregoing, any such information that a reasonable person would determine to be confidential shall be deemed Confidential Information hereunder. Notwithstanding the foregoing, Confidential Information shall not include information that:
- 6.1.1.1 Is or becomes generally available to the public without fault or breach on the part of the Contractor, including, without limitation, breach of any duty of confidentiality owed by the Contractor to the City or to any third party, but only after that information becomes generally available to the public;
 - 6.1.1.2 The Contractor can demonstrate was rightfully obtained by the Contractor, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence;
 - 6.1.1.3 The Contractor can demonstrate was rightfully known to or in the possession of the Contractor at the time of disclosure free of any obligation of confidence; or
 - 6.1.1.4 Is independently developed by the Contractor without the use of any Confidential Information.



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- 6.1.2 The Contractor agrees that it will keep the Confidential Information provided to it by the City strictly confidential and will not use the Confidential Information in any way for its own account or the account of any third Party, nor will the Contractor disclose Confidential Information without the City's prior written consent. Further, the Contractor agrees it will not use such Confidential Information for any purpose other than as may be reasonably necessary for the performance of its duties pursuant to the Contract. The Contractor may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential in accordance with the requirements of this Section and that the Confidential Information will be used only to perform the subcontract.

6.2 Municipal Freedom of Information and Protection of Privacy Act

- 6.2.1 The City is subject to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M.56, as amended ("MFIPPA") with respect to, and protection of, information under its custody and control. Accordingly, all documents provided to the City by the Contractor pursuant to this Contract may be available to the public unless the Party submitting the information requests that it be treated as confidential.
- 6.2.1.1 All information is subject to MFIPPA and may be subject to release under the Act, notwithstanding the Contractor's request to keep the information confidential.

7 COMPLIANCE WITH LAWS AND POLICIES

7.1 Applicable Laws

- 7.1.1 This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 7.1.2 The Contractor shall comply with all laws applicable to the performance of the Work.

7.2 Occupational Health And Safety Act

- 7.2.1 Contractors should note that, where the provisions of the Province of Ontario's Occupational Health and Safety Act, R.S.O. 1990, c. O.1, as amended, and Regulations thereunder apply to the services to be provided under the Contract, all of the responsibilities and obligations imposed upon the "constructor" under the Act must be assumed by the Contractor. All costs for services/materials required to fulfill these obligations shall be included in the Contract Price. Should the City become aware of any violations of this Act and Regulations, a notification will be made to the appropriate authorities. Where so warranted work could be suspended or indeed terminated without cost to the City.

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- 7.2.2 The Contractor shall fulfill all of its obligations in compliance with the Occupational Health and Safety Act, and further agrees to take responsibility for any health and safety violation that may occur. Furthermore, if the City (or any of its council members or employees) shall be made a party to any charge under the Occupational Health and Safety Act in relation to any violation of the said Act arising out of this Contract, the Contractor shall indemnify and save harmless the City from any and all charges, fines, penalties, and costs that may be incurred or paid by the City.

7.3 Employees in Receipt of a Severance Package

- 7.3.1 Contractors must comply with the City of Ottawa's policy regarding former City employees in receipt of a severance package. In accordance with this policy, a former employee may not be re-employed on a permanent, temporary, fee for service or contract basis, whether independently or as part of a consulting firm, until the complete period of time equal to the length of their notice period and/or payment at departure has expired. A former employee may be employed by a consulting firm but may not be assigned to work on a City contract by the firm until their combined notice period and/or payment at departure has expired.

7.4 Sustainable Procurement

- 7.4.1 The City is committed to principles of sustainability, including improving the environment and building stable, resilient communities, and will apply environmentally and socially sound practices in fulfilling its mandate in the planning and provision of materials, services and programs. To further endorse this commitment, Contractors are strongly encouraged to adopt and promote environmentally and socially sound practices and introduce environmentally and socially sound goods, materials and services when dealing with the City. The City may at any time, by written notice, request that the Contractor demonstrate to the City measures taken by the Contractor to promote environmental and social sustainability in its goods, materials, services and operations.

7.5 Equity and Diversity

- 7.5.1 In May 2017, the City of Ottawa Council approved Ottawa's updated "Equity and Diversity Policy". To further endorse this policy, the City of Ottawa strongly encourages all contractors, employing fifty (50) employees or more, to establish an Equity and Diversity program. The City may at any time, by written notice, request that the Contractor demonstrate to the City, the Equity and Diversity Program or measures taken by Contractor's firm.



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7.6 Ethical Procurement

- 7.6.1 The City is committed to procuring goods and services from responsible producers that supply quality products at competitive prices and abide by ethical standards and norms. The updated Ethical Purchasing Policy adopted by City Council on July 8, 2019 ensures that procurement activities are aligned with the City's values and that workplaces producing goods for the City respect human and workers rights.
- 7.6.2 The Supplier Code of Conduct sets the minimum performance standards for the City's Ethical Purchasing Policy. The Contractor and its subcontractors agree to comply with the minimum labour standards set out in the Supplier Code of Conduct. The Ethical Purchasing Policy and the Supplier Code of Conduct are located on the Procurement page of Ottawa.ca. <http://ottawa.ca/en/ethical-purchasing>
- 7.6.3 Where federal law differs from the principles set out in the Ethical Purchasing Policy, the standard that provides the greater right, benefit or protection to the worker shall apply.

7.7 Bilingualism

- 7.7.1 The City of Ottawa recognizes both official languages as having the same rights, status and privileges, and is committed to providing equal treatment to people with respect to the use and benefit of City services, programs, and goods in a manner that respects their linguistic preferences. The Contractor undertakes to perform all of the duties of this Contract while meeting the requirements and provisions of the City of Ottawa's Bilingualism Policy, such as they apply to the active delivery of goods and services in both official languages.

7.8 Extensions of Hospitality

- 7.8.1 City employees are prohibited from accepting gifts, favours, hospitality or entertainment, except as specifically provided in the City of Ottawa Employee Code of Conduct.

7.9 Patents

- 7.9.1 Contractor shall make a prompt written disclosure of any patentable invention, improvement or discovery conceived or first actually reduced to practice in the performance of the Work and shall submit separately, or as part of the final report on the Work, a complete list of all such inventions, improvements and discoveries, including those previously disclosed.
- 7.9.2 Subject to the provisions of this Section, any patentable rights or other rights in any invention, improvement or discovery conceived or actually reduced to practice in the performance of the Work, shall be the property of the Contractor.



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7.9.3 The Contractor, upon request in writing, shall grant to the City, for itself, pursuant to any statute of the Province of Ontario, an irrevocable, non-exclusive, royalty-free license to practice any invention, improvement or discovery conceived or actually reduced to practice, in the performance of the Work, in the manufacture, use and disposition, according to law, of any article or material, and in the use of any method, but such license shall not include the right to sub-license.

7.10 Laws, Permits, Notices, and Fees

7.10.1 The Contractor shall comply with all City of Ottawa by-laws, policies, ordinances, legal requirements, rules, regulations, codes and orders during the performance of the Work.

7.10.2 The Contractor shall give required notices and comply with laws, ordinances, rules, regulations, codes and orders of authorities other than the City which may have proper jurisdiction in relation to the Work which are or come into force during the performance of Work.

7.10.3 The Contractor shall obtain and pay for licences and certificates required for the performance of the Work.

7.10.4 The City will obtain and pay for building permits on behalf of the Contractor when required.

7.10.5 The City will be responsible for verifying Contract Documents are in compliance with applicable laws, ordinances, rules, regulations and codes relating to the Work.

7.10.6 If subsequent to the time of bid closing, changes are made to applicable laws, statutes, regulations, By-laws, ordinances, rules or codes by authorities having jurisdiction to make such changes, and such changes affect the Contract Price, the Contractor shall immediately notify the City in writing requesting direction on variance or change.

7.10.7 If the Contractor fails to notify the City and performs Work knowing it to be contrary to laws, by-laws, ordinances, rules, regulations, codes and orders of authorities having proper jurisdiction, the Contractor shall be responsible for costs, changes, modifications and correction of damages attributable to its failure to comply with those provisions.



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7.11 Workplace Safety and Insurance Board

- 7.11.1 The Contractor shall pay to the appropriate provincial Board/Commission all assessments and levies owing to the Board/Commission in respect to the Contract and any unpaid assessments or levies shall be the sole responsibility of the Contractor.
- 7.11.2 Prior to commencing the Work, Contractors required to be registered in Ontario, must provide evidence of compliance with the requirements of the Province of Ontario with respect to worker's compensation insurance.
- 7.11.3 Out-of-province Contractors are not exempt from having to register and must comply with the requirements of the Workplace Safety and Insurance Board of Ontario. Prior to commencing the Work, out-of-province Contractors NOT required to be registered in Ontario shall provide:
- 7.11.3.1 written confirmation from the Workplace Safety and Insurance Board of Ontario stating the Contractor is not required to be registered in Ontario; and,
- 7.11.3.2 evidence of compliance with the requirements of the province or territory of the Contractor's place of business with respect to workers compensation insurance.
- 7.11.3.3 at any time during the term of the Contract, when requested by the City, the Contractor shall provide such evidence of compliance by himself/herself and his/her Subcontractors. Failure to provide satisfactory evidence in respect to workers compensation insurance shall result in payment being withheld until satisfactory evidence of compliance has been provided by the Contractor.

7.12 The Accessibility for Ontarians With Disabilities Act, 2005 (AODA)

- 7.12.1 The City of Ottawa is committed to providing equal treatment to people with disabilities with respect to the use and benefit of City services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public. All contractors with the City must comply with all laws applicable to the performance of the work.
- 7.12.2 Third party Contractors who deal with the public or other third parties on behalf of the City, as well as contractors who participate in developing City policies, practices or procedures governing the provision of goods and services to members of the public or other third parties, must conform with the Accessibility for Ontarians With Disabilities Act, 2005 ("AODA"), in particular the Accessibility Standards for Customer Service, O. Reg. 429/07 as well as the Integrated Accessibility Standards, O. Reg. 191/11.



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- 7.12.3 Pursuant to section 6 of Ontario Regulation 429/07, Accessibility Standards for Customer Service (the "Customer Service Regulation"), made under the AODA, Contractors who deal with the public or other third parties on behalf of the City, as well as Contractors who participate in developing City policies, practices or procedures governing the provision of goods and services to members of the public or other third parties shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training about the provision of goods and services provided to people with disabilities. The Accessible Customer Service Training shall be provided in accordance with section 6 of the Customer Service Regulation and shall include, without limitation, a review of the purposes of the AODA and the requirements of the Customer Service Regulation, as well as instruction regarding all matters set out in section 6 of the Customer Service Regulation.
- 7.12.4 Pursuant to section 7 of Ontario Regulation 191/11, Integrated Accessibility Standard (the "Integrated Regulation"), made under the AODA, Contractors who provide goods, services or facilities on behalf of the City shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training on the requirements of the accessibility standards referred to in the Integrated Regulation and on the Human Rights Code as it pertains to persons with disabilities.
- 7.12.5 The Contractor shall submit to the City or Ministry, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees. The City reserves the right to require the Contractor, at the Contractor's expense, to amend its accessibility policies, practices and procedures if the City deems them not to be in compliance with the requirements of the Customer Service Regulation and/or the Integrated Regulation. The Contractor shall only assign those employees who have successfully completed training in accordance with such Regulations to provide services to, or on behalf of, the City.
- 7.12.6 The Contractor shall ensure that any information, products, deliverables and/or communication (as defined in the Integrated Regulation) produced pursuant to the Contract shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF, etc.

STATEMENT OF REQUIREMENTS

Project Name: 350 Zero-Emission Bus (ZEB) Program (the "ZEB Program") at St-Laurent Complex

Description of the ZEB Program:

The Transit Services 2020 Business Plan approved by the Commission on February 19, 2020 identifies the Alternative Fuels Program for the OC Transpo fleet as one of the 12 priority projects for 2020. In 2020, the City purchased four 40-foot battery-electric buses for delivery and entry into service in early 2022 as part of its e-bus pilot program. To further support this goal, City Council directed staff on June 23, 2021 to introduce electric buses to the OC Transpo fleet, examine approaches for conversion to a full low-emission fleet, develop a transition plan, and pursue funding opportunities to achieve this goal.

The next phase (following the e-bus pilot program) is to convert 350 diesel fueled buses to battery electric ZEBs.

Description of the Project Scope:

The ZEB Program contains many elements of work within its overall scope, as well as several associated elements of work that will enable the entirety of the ZEB Program to function in a congruent and effective manner for the City. As part of the ZEB Program, the provision of charging and electrical infrastructure component (the "Project") is a key element of the overall ZEB Program.

As such, and solely for the purposes of providing a high-level definition for this Contract, the scope of work for the Project is as follows:

- The design, procurement and installation of fully functional Electrical infrastructure and charging equipment required at the OC Transpo's 1500 St Laurent Complex to accommodate the implementation of 350 battery electric buses to be delivered from 2024 to 2026.
- Various work is to be completed at various areas within the 1500 St. Laurent complex;
 - South Garage – All work required to install the Electrical Distribution Infrastructure and Charging Equipment and electrical rooms as required in the existing building, excluding physical building upgrades.
 - North Garage - All work required to install the Electrical Distribution Infrastructure and Charging Equipment and electrical rooms as required in the existing building, excluding physical building upgrades
 - New Parking Facility – All work required to install the Electrical Distribution Infrastructure and Charging Equipment in the new parking facility.
 - On-Site Substation – Installation of an On-site Substation which will be the connection point between the Hydro Distribution system and Electrical Distribution Infrastructure on-site carrying electricity to the existing facilities as well as the new infrastructure.
 - On-Site Generation - Installation of on-site power generation to be integrated with the On-site Substation.
 - Energy Management System to be integrated with charging infrastructure as well as on-site generation and electrical infrastructure.
- All off-site work on the Hydro Substation and Hydro Distribution system required to support the electricity requirement for the complete Complex at 1500 St. Laurent.
- The Electrical infrastructure and charging equipment components of the on-site and off-site work is described at a high-level below and will be aligned with the various phases of bus purchases. Also included is the planning and activities related to electricity cost optimization. A detailed scope of work will be developed during the different phases of the Project.
 - Planning works (to include electricity cost optimization);

STATEMENT OF REQUIREMENTS

- Design & Engineering works;
- Procurement works;
- Installation works; and
- Commissioning works.

Off and On-site Electrical infrastructure and charging equipment components

Off-Site Electrical components

The connection to the local distribution network is a key component of the ZEB Program. For this Project there exist two main elements, the 44kV distribution system physical circuits and the transformation capacity feeding the 44kV circuits. As this Project has a potential to drive on-site electrical load to a peak demand at the St-Laurent Complex facility of 44MW, the scope of work includes the construction by Hydro Ottawa of a new 230kV/44kV Hydro Substation to feed the distribution circuits.

Hydro Substation

The Hydro Ottawa owned substation is planned to come online in 2026. Utility Substations of this size take multiple years to engineer, design and construct. In the interim, existing supply capacity will be used as the onsite capacity needs ramp up.

Hydro Distribution

As a result of the magnitude of the capacity required at the St-Laurent Complex, Hydro Ottawa is planning to make use of the 44kV distribution system providing circuit(s) to feed two parallel transformers. To enable this, new distribution circuit(s) will need to be constructed to the St. Laurent Complex. The plan is to construct the distribution circuit(s) to be fed from the existing capacity as the load ramps up and then move them over to the new substation once it has been constructed

On-Site Electrical components

The on-site electrical scope of work includes all the electrical infrastructure required to take the power from the electrical distribution system and distribute that power around the site at St-Laurent Complex.

On-Site Substation

Scope of work includes the construction of the onsite substation that is required to be the connection point between the distribution system 44kV and the power distribution on-site carrying electricity to the existing buildings, the new parking facility as well as the new charging infrastructure.

Scope of work includes all key associated equipment including, but not limited to, transformers, switchgear, switches, metal clad switchgear, protection and control equipment and structures to name a few. Substations of this size can take 2-3 years to complete depending on long lead equipment timelines.

Electrical Distribution Infrastructure

The electrical distribution at the 1500 St Laurent complex is made up of long runs of concrete encased duct banks and manholes containing electrical cabling running beneath the various road surfaces on the site. The purpose of this infrastructure is to distribute the high voltage electricity from the on-site substation to the various step-down transformers. From there the system feeds the various loads including existing buildings as well as new charging infrastructure through a network of 600V power distribution.

- On-Site High Voltage: The total preliminary estimated duct bank length for the high voltage runs of the duct bank is 2000m. This is based on multiple circuits around the site.

STATEMENT OF REQUIREMENTS

- On-Site Transformation: Work required to convert the high voltage to 600V. This requires a number of padmount transformers, manholes and transformer connections and cut overs.
- Installation of 600V Electrical System: Key elements consist of the main incoming system from the on-site transformers, the main switchboards, and all the wiring required for the charger power packs as well as the overhead pantographs throughout the garage. Planning, design, detail drawings and ultimately construction tenders will refine the overall scope of work for each area within the complex. This portion of the Project requires significant wiring and thus large amounts of copper cabling are involved. Included in this scope is the possible requirement for electrical rooms to be constructed within the existing facilities.

Charging Equipment

The charging infrastructure to be installed in the garages will consist of charging packs that receive the electricity from the on-site electrical distribution network in the garage and connections between the charging packs and the buses themselves. The connections can be either cables from ground mounted charging packs that plug into a connection point somewhere on the bus (referred to as plug-in dispensers), or overhead pantographs with charging packs that connect to receiving points on the roof of the bus. OC Transpo plans to mostly use overhead pantographs for electric bus charging requirements because the ground mounted infrastructure will reduce the bus storage space available in the garage. A ratio of 1:1.5 has been assumed during conceptual planning to determine the estimated number of charger packs that will be used, however, final equipment specifications, quantities and location are to be determined during the planning and design stages of the Project. The sequential charging standard has been approved as of February 2023 and is expected to be released for use by the end of Q2 2023.

On-Site Generation

The utility provider is expected to provide two 44kV circuits to feed two parallel transformers. If fault occurs on Hydro Ottawa's system, the intent is to have a means to switch to another circuit to supply power to ensure service reliability. In addition to the system redundancy to be provided by Hydro Ottawa, the scope of work includes the installation of on-site natural gas fired generators to serve as a backup power source. If both Hydro Ottawa circuit(s) are out of service due to failures in their distribution systems or upstream transmission systems owned by Hydro One, the backup generators will be able to provide emergency power to support a reduced number of chargers.

Smart charging software and energy management

The scope of work includes the integration of systems to monitor all charging equipment and charge buses based on their real time state of charge and the amount of energy required to complete charging to ensure buses are available for assigned routes.

Energy management will play a critical role in operating a zero-emissions bus fleet, to ensure that buses are being charged at times that do not coincide with the times of peak electricity consumption.

Key Performance Indicators Requirements

The charging infrastructure will be compared against the following Key performance indicators during the various warranty phases aligning with the in-service dates of the chargers:

1. Overall Annual Charger Availability

Target - Average charger availability 95% for each phase.

*(not including planned shutdowns for items like maintenance or capital programs,)

STATEMENT OF REQUIREMENTS

2. On-site standby generation availability - For bus charging support

Target - Average annual availability of 98%

*(not including planned shutdowns for items like maintenance or capital programs)

Charger/Dispenser Service-level KPIs:

1. Critical charger fault (Charger offline) monthly average response times:

Target - Average time for a technician to be on site troubleshooting is 12 hours or less if virtual troubleshooting does not resolve the issue first.

2. Medium Risk charger faults (no outage but the risk exists) monthly average response times:

Target - Average time for a technician to be on site troubleshooting is 24 hours or less if virtual troubleshooting does not resolve the issue first.

3. Minor Issues (no outage, low risk) monthly average response times:

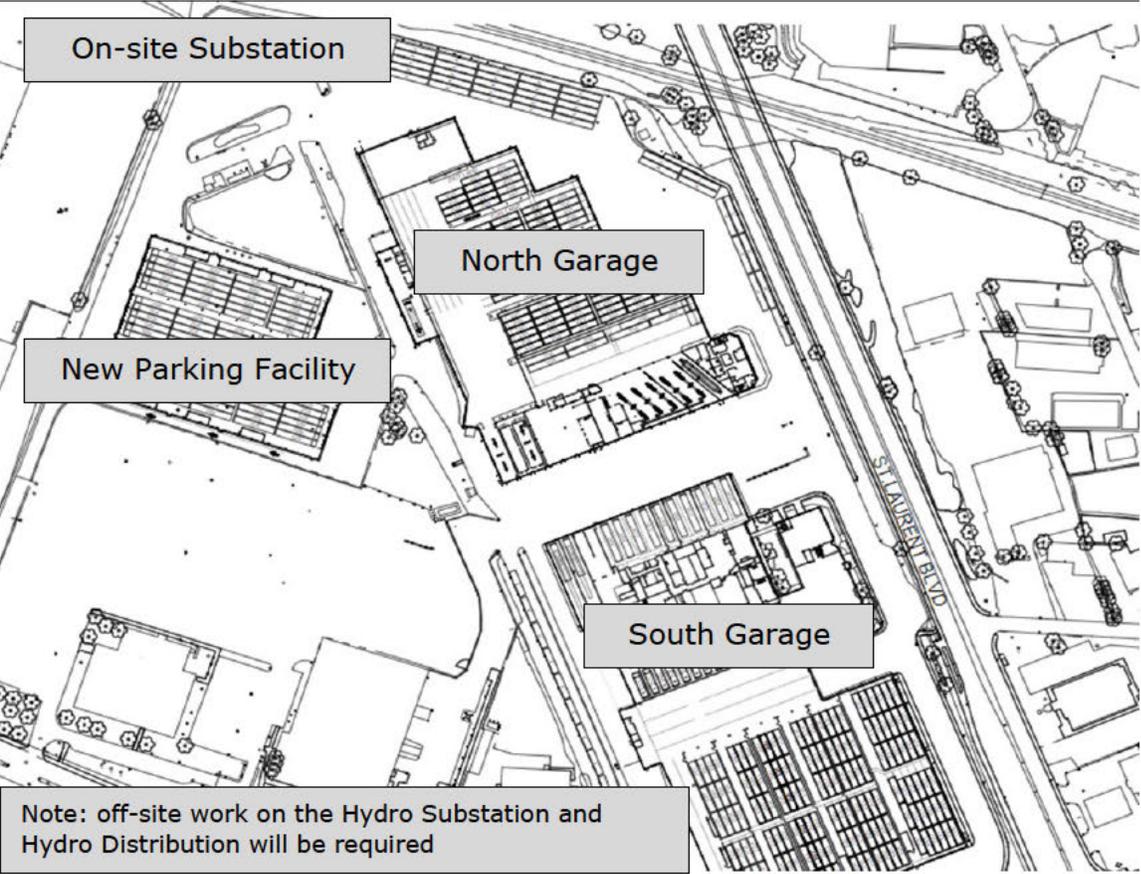
Target - On Site Troubleshooting within 48 hours if virtual troubleshooting does not resolve the issue first.

*Any charger outage, or fault determined to be caused by an external error such as operator error or determined to be a bus issue will not be counted towards any of the above KPI's in either Overall Charger Availability or Service-Level KPI's. Hydro / Enviri will work with the City to further develop and refine metrics that will provide a good gauge of performance. Note: For Comparison purposes, not to drive penalties.

See Figure 1 for Indicative Site Map of the St-Laurent Complex.

STATEMENT OF REQUIREMENTS

Figure 1 - St-Laurent Complex Site Map (indicative)



City of Ottawa ZEB Program

**Commissioning Protocol for Charging Infrastructure Design
Build Contract (the “Contract”) with Envari (the “Design-Builder”)
Dated June 14, 2023**

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Schedule A-Commissioning Plan-Minimum requirements

1 Background and Context

- | | |
|-------------------------------------|--|
| 1.1 <u>Purpose of this Document</u> | 1.1.1 The Commissioning Protocol will govern the process to be followed by the Design-Builder for the Commissioning of the Charging Infrastructure related activities as part of the Contract. |
| <hr/> | |
| 1.2 <u>Definitions</u> | 1.2.1 Any defined term not defined in this protocol is defined in the Definition section of the Contract or the Protocols. |
-

2 Commissioning Protocol

- | | |
|--------------------|---|
| 2.1 <u>General</u> | 2.1.1 The Design-Builder will prepare and deliver to the Owner a detailed plan (the “ Commissioning Plan ”) setting out the testing, Commissioning, training, and other activities. |
| | 2.1.2 The Commissioning Plan shall be specific and be applied to each component of the Charging Infrastructure to be delivered to the Owner. For clarity, the Commissioning Plan should be regularly updated and reflect updates in any of the parameters noted in Section 2.1.3. |
| | 2.1.3 The Commissioning Plan will include, among other things: <ol style="list-style-type: none">1 a description of the specific equipment and systems to be tested and commissioned and the associated Commissioning requirements;2 the process to be followed to develop a cost loaded detailed schedule;3 reference to standards, codes, specifications, and acceptance criteria.4 cost control procedures;5 a description of the inspection, testing and recommended monitoring activities;6 a description of the recommended frequency of inspections, tests, and monitoring including those provided by the manufacturers or required under Applicable Law;7 a list of reports and checklists required;8 an outline of any information management systems to be used;9 approach to obtain all necessary approvals, licenses and permits;10 frequency and form of status reports including escalation procedures;11 stakeholder communications management;12 traffic control plans (if required); |
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- 13 matters related to safety and emergency measures;
 - 14 matters related to safety management and certification;
 - 15 testing and Commissioning process;
 - 16 site access provisions to be applied when working on Owner facilities;
 - 17 a review of the equipment manufacturer's requirement to ensure validity of manufacturer's warranty;
 - 18 a description of the training and education that the Design-Builder intends to provide to the Owner's staff to enable the Owner to properly utilize the equipment and systems installed;
 - 19 the name of the Commissioning agent and the names of other persons to be involved in testing, witnessing such testing or inspection, as applicable;
 - 20 a description of the Design-Builder's system for managing records of test, inspections, quality assurance and training;
 - 21 a general description of the Design-Builder's transition plans for handover to the Owner;
 - 22 a schedule, showing the timing of all testing and Commissioning, training, and acceptance testing; and
 - 23 a matrix of all equipment and systems, including all integrated equipment and systems, and how they integrate with each other, along with an overview of the procedures that will be followed to demonstrate the integration of all equipment and systems has been and will be achieved.

2.2 Review Process

- 2.2.1 The Commissioning Plan must be reasonable having regard to the requirements of this Commissioning Protocol, and will be developed and finalized as follows:
 - 1 The Design-Builder will deliver a preliminary draft of the Commissioning Plan to the Owner no less than one hundred and twenty (120) days before the projected date of Substantial Performance of the Work;
 - 2 The Owner will provide its comments, if any, on the preliminary draft of the Commissioning Plan to the Design-Builder within thirty (30) days of receipt of the preliminary draft;
 - 3 The Design-Builder will deliver a revised draft of the Commissioning Plan to the Owner within thirty (30) Business Days after receipt of the Owner's comments on the preliminary draft;
 - 4 The Owner will, within fifteen (15) Business Days of receipt of the revised draft, advise the Design-Builder whether the Owner accepts the Commissioning Plan and if the Owner does not accept it, the Owner will provide its reasons for such non-acceptance in sufficient detail to allow the Design-Builder to address them within fifteen (15) Business Days of receipt of notice thereof.

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- 2.3 Commissioning Agent
- 2.3.1 The Design-Builder will retain a qualified independent Commissioning agent (acceptable to the Owner, acting reasonably) to either test and commission all equipment and systems related to Charging Infrastructure and/or witness and review the testing and Commissioning performed by the Design-Builder to confirm to the Owner that the Charging Infrastructure equipment and systems, including all major systems, are fully operational and that the Owner may use the Charging Infrastructure for its intended use. The Commissioning agent will prepare a written report to confirm the foregoing and confirm completion of all Commissioning activities before use.
- 2.3.2 Testing and Commissioning will include, among other things, the following:
- 1 The minimum requirements set out in Schedule A to this Protocol;
 - 2 The timing of all testing and Commissioning and training;
 - 3 The date upon which the Design-Builder anticipates achieving the requirements; and
 - 4 A matrix of all equipment and systems, including all integrated equipment and systems, and how they integrate with each other, along with an overview of the procedures that will be followed to demonstrate the integration of all equipment and systems has been and will be achieved.
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- 2.4 Commissioning Report
- 2.4.1 Once the Commissioning is completed, the Design Builder shall provide the Owner with a Commissioning Report setting out, among other things:
- 1 the result of all tests and inspections performed;
 - 2 a detailed summary of the training provided by the Design-Builder;
- The actual content of the Commissioning Report will be determined by the Parties.
-

3 Role of Owner

- 3.1 Peer Review and Third-Party Oversight
- 3.1.1 The Owner shall have the right to audit all information related to the Commissioning of the Charging Infrastructure. The Owner shall be responsible for the cost of the audit unless the audit reveals substantial error and omissions in the information that was the subject of the audit
- 3.1.2 The Design-Builder shall assist the Owner in responding to any Access to Information requests for the Design Services related to the Charging Infrastructure.
- 3.1.3 As part of the Owner's review process, the Owner has the right to engage an external third-party (e.g., engineering consultants) at its own expense to support its peer review and oversight
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process of the Commissioning and related documents including the Design-Builder's compliance with the terms and conditions of the Contract. Any external party engaged by the Owner as part of its review process will be considered an extension of the Owner and the Design-Builder shall provide the necessary documentation and coordination as part of this review. The Owner shall ensure that all external third parties comply with the Confidential Information obligations under the Contract.

3.1.4 Owner-led peer review or third-party audits can be performed at the Owner's discretion periodically (e.g., as part of Annual Work Plan submission) or regularly as part of the monthly reporting process

3.2 Obligation to provide equipment

3.2.1 The Owner will cooperate with the Design Builder in the Commissioning process including, providing the Design-Builder with e-buses with required charge levels to properly test all electrical infrastructure as a completed integrated system and coordinating any shutdowns or generator testing; provided the Design-Builder will use its best effort to reduce the impact of such commissioning activities on the Owner's operations at the relevant site.

SCHEDULE A
COMMISSIONING PLAN –MINIMUM REQUIREMENTS

General Requirements

- Equipment identification
- Proposed Startup Procedure
- Startup and commissioning schedule
- Manufacturers Installation Certification
- Equipment Test Reports
- Equipment Testing and Commissioning Tracking Report

Equipment Testing

- Field Verification Testing
- Functional Testing
- Performance Testing

Testing and Commissioning

- Equipment Startup
- Final Commissioning Testing (Operation test)

- Witnessing of starting and Testing
- Manufacturers Involvement
- Startup procedures
- Startup documentation
- Maintenance documentation
- Training
- Maintenance Materials, spare parts and special tools.

Sample Commissioning Requirements provided further discussion to reduce this to a requirement list for Envari is required.

City of Ottawa ZEB Program

**Cost Recovery Protocol for Charging Infrastructure Design Build
Contract (the “Contract”) with Envari (the “Design-Builder”)
dated June 14, 2023**

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1 Background and Context

- 1.1 Purpose of this Document
- 1.1.1 The procedures described in this Cost Recovery Protocol shall be followed by the Design-Builder to recover costs of the Design Services and Work as part of the Contract.
- 1.1.2 The Cost Recovery Protocol will be used by the Design-Builder as part of the Contract to:
- 1 Define the cost of the Design Services and Work;
 - 2 Define agreed rates for Design Services and Work performed by the Design-Builder employees;
 - 3 Define agreed cost recovery rate(s) to be applied for any corporate overhead and profit on the direct costs incurred by the Design-Builder; and
 - 4 Outline invoicing process to be followed by Design-Builder.
- 1.1.3 The Design-Builder shall ensure the procedures described in this Cost Recovery Protocol are considered with the related requirements captured in the Work Plan Protocol including requirements related to the Master Budget and related detailed budgets.
- 1.1.4 The Cost Recovery Rate(s) set out in Schedule “B” will be reviewed and assessed semi-annually or in line with the completion of Work Activities by the parties.
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- 1.2 Definitions
- 1.2.1 “Cost Recovery Rate” means the percentage markup added to the Direct Costs in accordance with Section 2.3 and calculated at the rates set out in Schedule “B”.
- 1.2.2 “Design Services and Work Costs” shall mean the Direct Resources Costs and the Direct Costs incurred by the Design-Builder in performing the Design Services and Work pursuant to the Contract.
- 1.2.3 “Direct Resources” are the personnel directly employed by the Design-Builder.
- 1.2.4 “Direct Resources Cost” means the cost of the Design Services and Work performed by the Direct Resources at the rates set out in Schedule “A”
- 1.2.5 “Direct Costs” are the costs incurred by the Design-Builder in performing the Design Services and Work as calculated pursuant to Section 2.2 of this Cost Recovery Protocol.
- 1.2.6 “Hydro Ottawa Works” means the Design Services and Work performed by Hydro Ottawa Limited and charged to the Design-Builder.
- 1.2.7 “Major Product Purchases” means the purchase by the Design-Builder pursuant to the Contract of chargers (power pack,
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dispenser), substations, transformers and generators and Products of similar size and scope.

1.2.8 "Third Party Consulting Services" means the Design Services and Work performed by consultants retained by the Design-Builder.

1.2.9 Any capitalized term not defined in this Cost Recovery Protocol shall have the meaning given to such term in the Contract or the other Protocols

2 Cost Recovery Approach

- 2.1 General principles
- 2.1.1 The total compensation or payment to which Design-Builder is entitled to under the Contract shall be limited to, and shall only be, the Design Services and Work Costs as calculated and substantiated in accordance with the Cost Recovery Protocol and the Contract.
- 2.1.2 The Design Services and Work Costs, which exclude Value Added Taxes, shall be actual costs incurred by the Design-Builder for the proper performance of the Design Services and Work, and is limited to the actual cost of the items.
- 2.1.3 Design-Builder's costs shall include only costs related to Design-Builder Direct Resources, as calculated in accordance with Section 2.3.1, and Direct Costs together with applicable Cost Recovery Rates as set out in Section 2.3.2 and Section 2.3.3.
- 2.1.4 All dollar amounts related to the Cost Recovery Protocol shall be expressed in Canadian dollars by the Design-Builder. If any purchase is made in a currency other than the Canadian dollar, the exchange rate for conversion of currency shall be calculated on the day payment is made, or the preceding Business Day if payment is not made on a Business Day, according to the dollar exchange rate for such currency published in by the Bank of Canada.
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- 2.2 Calculation of Direct Costs
- 2.2.1 The Direct Costs, which exclude Value Added Taxes, shall be the actual costs reasonably incurred by the Design-Builder for the proper performance of the Design Services and Work, including but not limited to the actual cost of the following items:
- .1 all Products including cost of transportation thereof;
 - .2 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;
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- .3 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;
 - .4 all equipment and services required for setting up any site office required by the Design-Builder;
 - .5 deposits lost;
 - .6 the cost of Third Party Consulting Services;
 - .7 the amounts of all subcontracts;
 - .8 quality assurance such as independent inspection and testing services;
 - .9 charges levied by authorities having jurisdiction at the Place of the Work;
 - .10 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;
 - .11 cost of premiums for all bonds which the Design-Builder is required, by the Contract Documents, to purchase and maintain;
 - .12 any adjustments to the insurance normally maintained by the Design-Builder as required by the Contract Documents
 - .13 any adjustment in taxes, other than Value Added Taxes, and duties for which the Design-Builder is liable;
 - .14 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the Work;
 - .15 removal and disposal of waste products and debris;
 - .16 safety measures and requirements;
 - .17 legal costs incurred by the Design-Builder in relation to the performance of the Work but not including any legal costs incurred by the Design-Builder in connection with the preparation, negotiation and interpretation of the terms of this Contract or any legal costs incurred by the Design-Builder in connection with any dispute between
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the Design-Builder and the Owner with respect to this Contract or the Design Services or the Work;

- .18 the cost of auditing when requested by the Owner except as provided under the Protocols;
- .19 the cost of removal or containment of toxic or hazardous substances pursuant to GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES;
- .20 additional insurance floaters, as required and requested by the Owner;
- .21 site plan approval, development and building permit applications (it being acknowledged that all fees and other charges levied by authorities having jurisdiction at the Place of the Work will be paid directly by Owner and will not form part of the Design Services and Work Costs); and
- .21 the cost of bonding premiums incurred by the Design-Builder for bonds issued to Subcontractors as subcontract security, and it is acknowledged that the Owner receives a direct benefit from such Subcontractor bonds.

2.2.2 The following costs shall not be included in the Direct Costs:

- .1 overhead, profit and general expenses, except as may be expressly included in Section 2.3;
- .3 the Design-Builder's capital expenses, including interest on the Design-Builder's capital employed in the Work;
- .4 costs due to the breach of contract or negligence of the Design-Builder, including but not limited to, costs incurred for the correction of damaged, defective or non-conforming work, disposal and replacement of Products, materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work; unless such costs are recovered through insurance;
- .5 fines, penalties, sanctions or impositions assessed or imposed by any government body, instrumentality or tribunal to the extent caused or contributed to by the action or inaction of the Design-Builder, or any person for whom it is responsible in law;
- .6 the cost of accelerating the Work to the extent required by the negligence or breach of this Contract by the Design-Builder;

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- .7 costs resulting from the failure of the Design-Builder or any Subcontractor or Supplier to procure and maintain insurance as required by the Contract;
 - .8 overtime to the extent required by the negligence or breach of this Contract by the Design-Builder;
 - .9 except where a court or an arbitrator awards costs in favour of the Design-Builder, the costs (including legal fees and expenses) of (i) any bonding used as security for vacating liens by Subcontractors, Suppliers or sub-Subcontractors arising from a default by the Design-Builder in properly making payment in connection with the Work, and (ii) defending claims filed by Subcontractors, Suppliers or sub-Subcontractors arising from a default by the Design-Builder in properly making payment in connection with the Work, unless such default by the Design-Builder is due to the failure by the Owner to make payments to the Design-Builder;
 - .10 any fines levied against the Design-Builder or the Owner due to the Design-Builder's (or any Subcontractor's or Supplier's) violation of federal, provincial or local laws, regulations or ordinances which fines shall be paid by the Design-Builder, the Design-Builder hereby indemnifying, defending and agreeing to hold harmless the Owner from and against any loss, cost, expense or damage arising out of such violation or fine; and
 - .11 losses for which the Design-Builder is compensated by insurance.

- 2.2.3 Direct Costs shall be quantifiable and supported by evidence and proper documentation such as invoices, and proof of payments. Any Direct Cost item claimed as a percentage of other Direct Costs will not be permissible, unless approved by the Owner in writing.
- 2.2.4 Direct Costs shall be net of all discounts, rebates, and other price reductions or benefits which relate to the Direct Costs incurred.
- 2.2.5 The Design Services and Work included in the Direct Costs will be procured in accordance with the procurement procedures set out in the Procurement Protocol.
- 2.2.6 Notwithstanding other provisions contained in the Contract, it is the intention of the parties that the cost of any item under any cost element referred to in Section 2.2 shall cover and include any and all costs or liabilities attributable to the Direct Costs 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.

- 2.3 Cost Recovery Rate
- 2.3.1 Design-Builder shall charge Cost Recovery Rates on Direct Costs as set out in Schedule "B" hereto (such amounts calculated on the basis of the applicable Direct Costs).
- 2.3.2 For clarity, the Cost Recovery Rates as outlined in Schedule "B" are intended to cover the Design-Builder Direct Costs related to items such as, but not limited to:
- 1 Corporate Office overheads; and profit
 - 2 Financial costs such as interest, financing, and banking charges;
 - 3 Taxes;
 - 4 Research and development;
 - 5 Legal, advice, fees, and services;
 - 6 Training;
 - 7 Stock options and employees' benefits;
 - 8 Franchises, royalties, and licenses;
 - 9 Warranty management (administration);
 - 10 Documentation (administration);
 - 11 IT licenses and tools (software);
 - 12 Accounting and marketing costs;
 - 13 Corporate office staff not principally engaged in the project (management, technical, administration and service);
 - 14 Project specific recruitment costs; and
 - 15 Ongoing costs for any site office including office rent, operation, repair and maintenance, essential supplies, hardware/software, security, phones, etc.
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- 2.4 Calculation of Direct Resources Cost
- 2.4.1 For compensation paid to Design-Builder for the Direct Resources engaged in performing the Design Services and Work, the Owner will reimburse the Design-Builder based on hourly charge rates at the rates set out in Schedule "A":
- 1 Hourly charge rates shall be actual time expended to provide the Design Services and Work;
 - 2 Hourly charge rates shall align with the Work Activity Budget, Monthly Cost Schedule for Design-Builder Direct Resources as set out in the Work Plan Protocol;
 - 3 There shall be no additional compensation method to Design-Builder for Direct Resources performing Design Services and Work.
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- 2.5 Proper Invoice
- 2.5.1 Design-Builder shall provide the Owner with a Proper Invoice once per calendar month.
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2.5.2 Proper Invoice has the same definition as defined in the Act and, in addition to the required information listed in the Act, shall contain the following additional information and documentation, and meet the following requirements:

1 The Proper Invoice shall only include amounts incurred by the Design-Builder for the Design Services and the Work performed as of the last calendar day of the prior month; and

2 Envari will provide Proper Invoices on a prompt manner and target the 3rd or 4th day of each month. If the third and fourth calendar days of the month both fall on a weekend, Envari will target the fifth calendar day of the month.

3 For Direct Costs with various Work phases, a detailed breakdown of the various Work components based on any Schedule of Values provided for the Work;

4 Breakdown of all Work performed by Subcontractors and Suppliers included in the Proper Invoice;

5 Back-up materials to support the information required pursuant to subparagraphs (1), (3) and (4) above; and

6 The information and documentation required to be submitted pursuant to Part 5 -PAYMENT of the Contract;.

2.5.3 Schedule "C" includes a sample Proper Invoice for Design-Builder's reference for the minimum breakdown required by the Owner. For clarity, the Proper Invoice shall be supported by a monthly Budget Status Report

2.5.4 With each Proper Invoice, Design-Builder shall prepare a Budget Status Report which shall include:

1 For costs related to Design-Builder Direct Resources: breakdown of i) actual hourly charge rates expended to provide the Design Services and Work, and ii) actual hourly charge rates relative to Work Activity Budget, Monthly Cost Schedule as set out in the Work Plan Protocol for Design-Builder Direct Resources.

2 Tracked costs invoiced to date, and those forecasted to year end against Monthly Cost Schedule.

2.6 Issuance of Purchase Orders

2.6.1 The Owner will issue purchase orders on a calendar year basis and renew annually at the Owner's acceptance of the Annual Work Plan identified in the Work Plan Protocol and associated components (e.g., Work plan Budget, Work plan Schedule). No Design Services and Work Costs shall be payable unless a proper purchase order has been issued in relation thereto.

2.6.2 Purchase orders will be organized by a) Design-Builder Direct Resources, and b) Direct Costs as part of Work Activities as identified in Section 2.2.2 of the Work Plan Protocol. For clarity, for a given calendar year, there will be one (1) purchase order that relates to Design-Builder Direct Resource Costs and one (1) purchase order for Direct Costs per Work Activity (x9).

Purchase orders related to Direct Costs per Work Activity will be sub-categorized based on key cost sources. These cost sources include categories such as Third Party Consulting Services, Hydro Ottawa Works, Major Product Purchases and all other Direct Costs.

2.6.3 The value of the purchase orders will be determined based on the Owner's acceptance of the Annual Work Plan and associated Work plan Budget for the calendar year.

1 The value of the purchase order for each Design-Builder Direct Resources for a given calendar year shall be fixed for the calendar year once agreed upon with the Owner and Design-Builder. Subject to any changes in the Direct Resources Costs as a result of a Change Order, the fixed amount shall represent a 'Total firm price' and Contract procedures must be followed prior to drawing down on the value of the purchase order.

.2 The value of the purchase order for each Work Activity for given calendar year shall represent a budget once agreed upon with the Owner and the Design-Builder and shall represent a "Total upset limit" and Contract payment procedures must be followed prior to drawing down on the value of the purchase order. The Owner acknowledges purchase order values for Direct Costs (under the various Work Activity) will need to be updated once various contracts with Subcontractors and Suppliers have been awarded – once the values are confirmed based on market tender information, Subject to any changes in the Direct Costs as a result of a Change Order, they shall be fixed for the calendar year and the Design-Builder has the obligations to meet associated Contract performance requirements.

2.7 Payments 2.7.1 Payments of Design Services and Work Costs will be made in accordance with the terms of this Protocol and the relevant provisions of the Contract.

2.8 Holdback 2.8.1 The Owner shall retain from each payment an amount corresponding to the holdback required to be retained pursuant to the Act and Article A5 of the Contract.

2.9 Peer Review and Third-Party Oversight 2.9.1 The Owner shall have the right to audit all information related to the Design Services and Work Costs. The Owner shall be responsible for the cost of the audit unless the audit reveals substantial error and omissions in the information that was the subject of the audit.

2.9.2 The Design-Builder shall assist the Owner in responding to any Access to Information request for the Design Services and Work Costs.

2.9.3 As part of the Owner's review process, the Owner has the right to engage an external third-party (e.g., Cost Assurance

Consultant) at its own expense to support its peer review and oversight process of the Design Services and Work Costs and related documents including the Design-Builder's compliance with the terms and conditions of the Contract. Any external party engaged by the Owner as part of its review process will be considered an extension of the Owner and the Design-Builder shall provide the necessary documentation and coordination as part of the review. The Owner shall ensure that all external third parties comply with the Confidential Information obligations under the Contract.

- 2.9.4 Owner-led peer review or third-party audits can be performed at the Owner's discretion periodically (e.g., as part of the Master Work Plan or Annual Work Plan submission) or regularly as part of the monthly reporting process.
-

Schedule "A"

Rates to Design-Builder Direct Resources

Resource	Calendar Year			
	2023	2024	2025	2026



[REDACTED]

Schedule "B"

Applicable Margins

Source of Direct Costs	Cost Recovery Rate (as % of Direct Costs)
Cost of Third-Party Consulting Services	15%
Cost of Major Product Purchases	15%
Cost of Hydro Ottawa Work	15%
All other Direct Costs	15%

The Cost Recovery Rate(s) set out above will be reviewed annually in line with the completion of Work Activities by the parties.

The Parties agree that the following Direct Costs will not be subject to the Cost Recovery Rate:

1. S. 2.2.1.5-Deposits lost
2. S. 2.2.1.9-charges levied by authorities having jurisdiction in the Place of the Work
3. S. 2.2.1.10royalties, 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
4. S. 2.2.1.11- cost of premiums for all bonds which the Design-Builder is required, by the Contract Documents, to purchase and maintain
5. S.2.2.1.12- any adjustments to the insurance normally maintained by the Design-Builder as required by the Contract Documents
6. S.2.2.1.13- any adjustment in taxes, other than Value Added Taxes, and duties for which the Design-Builder is liable
7. S. 2.2.1.14- charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the Work
8. S. 2.2.1.20-additional insurance floaters, as required and requested by the Owner
9. S. 2.2.22- the cost of bonding premiums incurred by the Design-Builder for bonds issued to Subcontractors as subcontract security, and it is acknowledged that the Owner receives a direct benefit from such Subcontractor bonds.

Schedule “C”

Sample Proper Invoice – Direct Costs (Illustrative only)

Design Builder to work with the Owner to ensure all invoices are formatted to meet the needs of the Owner and the Design Builder.

Interim Billing Invoice/Facture

BE-XXXXXX

City of Ottawa
 Attn :
 Accounts Payable PO Box 3426 Stn D
 Ottawa ON K1P 0B9
 Canada

Reference Number/Numéro de Référence
 0000xxxx 02EN 0000xxxx
 Project Name/Nom du Projet
 Zero Emission Bus
 Total Amount Due/ Montant Total Dû
 \$ ###,###.##

Customer Number Numéro de client	Customer PO Bon de commande du client	Project Number Numéro Projet	Billing Date Date de facturation	Payment Terms Mode de paiement
#####	#####	PR-#####	DD-MM-YYYY	Net 30 days

Description Description	Quantity Quantité	Unit Price/Rate Prix Unitaire/Taux	Amount Montant
Work Activity 1 / Task A - Third party consulting fees	#	\$ ###.##	\$ ###,###.##
Cost Recovery Rate (15%): Work Activity 1 / Task A - Third party consulting fees	#	\$ ###.##	\$ ###,###.##
Work Activity 1 / Task A - Major Products Purchase	#	\$ ###.##	\$ ###,###.##
Cost Recovery Rate (15%): Work Activity 1 / Task A - Major Products Purchase	#	\$ ###.##	\$ ###,###.##
Work Activities 1 / Task A - Hydro Ottawa Work	#	\$ ###.##	\$ ###,###.##
Cost Recovery Rate (15%): Work Activities 1 / Task A - Hydro Ottawa Work	#	\$ ###.##	\$ ###,###.##
Work Activity 1 / Task A – Other Direct Cost	#	\$ ###.##	\$ ###,###.##
Cost Recovery Rate (15%): Work Activity 1 / Task A – Other Direct Cost	#	\$ ###.##	\$ ###,###.##
Work Activity 1 / Task A – Other Direct Costs (no CRR)	#	\$ ###.##	\$ ###,###.##

Summary Amount/Montant Récapitulatif : \$ ###,###.##

Sub-Total/Sous-Total: \$ ###,###.##

HST (72236 3710 RT 0001): \$ #,###.##

Total Amount Due/Montant Total Dû: \$ ###,###.##

*Except as otherwise stipulated in a definitive agreement between the parties, outstanding balances will be charged 1.5% interest per month (19.56% per annum).
 Sauf stipulation contraire dans un accord définitif entre les parties, des frais d'intérêt de 1,5% par mois s'appliquent au solde impayé (19,56% par année).*



City of Ottawa
 Attn :
 Accounts Payable PO Box 3426 Stn D
 Ottawa ON K1P 0B9 Canada

Reference Number/Numéro de Référence
 0000xxxx 02EN 0000xxxx
 Total Amount Due/ Montant Total Dû
 \$ ###,###.##

Information on how to pay your bill is available on the reverse side of this invoice.

Les modes de paiement offerts sont présentés en détail au verso de cette facture.

Sample Proper Invoice – Design-Builder Direct Resources (Illustrative only)

Interim Billing Invoice/Facture

BE-XXXXXX

City of Ottawa
 Attn :
 Accounts Payable PO Box 3426 Stn D
 Ottawa ON K1P 0B9
 Canada

Reference Number/Numéro de Référence
 0000xxxx 02EN 0000xxxx
 Project Name/Nom du Projet
 Zero Emission Bus
 Total Amount Due/ Montant Total Dû
 \$ ##,###.##

Customer Number Numéro de client	Customer PO Bon de commande du client	Project Number Numéro Projet	Billing Date Date de facturation	Payment Terms Mode de paiement
#####	#####	PR-#####	DD-MM-YYYY	Net 30 days

Description	Quantity Quantité	Unit Price/Rate Prix Unitaire/Taux	Amount Montant
February 2023 Envari Resource Labour Work Activity #1 (details attached) City PO #####	#		\$ ##,###.##
February 2023 Envari Resource Labour Work Activity #3 (details attached) City PO #####	#		\$ ##,###.##
February 2023 Envari Resource Labour Work Activity #4 (details attached) City PO #####	#		\$ ##,###.##
Summary Amount/Montant Récapitulatif :			\$ ##,###.##
Sub-Total/Sous-Total:			\$ ##,###.##
HST (72236 3710 RT 0001):			\$ ##,###.##
Total Amount Due/Montant Total Dû:			\$ ##,###.##

*Except as otherwise stipulated in a definitive agreement between the parties, outstanding balances will be charged 1.5% interest per month (19.56% per annum).
 Sauf stipulation contraire dans un accord définitif entre les parties, des frais d'intérêt de 1,5% par mois s'appliquent au solde impayé (19,56% par année).*



City of Ottawa
 Attn :
 Accounts Payable PO Box 3426 Stn D
 Ottawa ON K1P 0B9
 Canada

Reference Number/Numéro de Référence
 0000xxxx 02EN 0000xxxx
 Total Amount Due/ Montant Total Dû
 \$ ##,###.##

Information on how to pay your bill is available on the reverse side of this invoice.

Les modes de paiement offerts sont présentés en détail au verso de cette facture.

City of Ottawa ZEB Program

**Detailed Design Protocol for Charging Infrastructure Design Build
Contract (the “Contract”) with Envari (the “Design-Builder”)
dated June 14, 2023**

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1 Background and Context

- 1.1 Purpose of this Document
- 1.1.1 The Detailed Design Protocol will govern the process to be followed by the Design-Builder in performing the Design Services under the Contract.
- 1.1.2 The Detailed Design Protocol shall
- 1 Describe the design process to be followed by the Design-Builder in providing the Design Services;
 - 2 Outline the implementation of a risk management strategy;
 - 3 List applicable design standards and guidelines to be applied by the Design-Builder; and
 - 4 Describe the quality control and assurance procedures to be followed by Design-Builder in providing the Design Services.
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- 1.2 Definitions
- 1.2.1 Any defined term not defined in this protocol is defined in the Definition section of the Contract or in the Protocols.
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2 General Design Requirements

- 2.1 Review Procedure
- 2.1.1 The review procedure outlined in this Protocol will apply to all Submittals and the parties will comply with the requirements of that review procedure.
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- 2.2 General
- 2.2.1 The Design-Builder is responsible for the means, methods, techniques, sequences, and procedures necessary to properly complete the Design Services in conformance with the Contract, including the Design Management Plan and schedule for Design Services.
- 2.2.2 The Design-Builder will:
- 1 Ensure that the Work and the Design Services are fully compliant with all requirements of this Protocol, the Contract and all Applicable Laws; and
 - 2 Perform and complete the Design Services and the Work so that the completed Project is fit for its intended uses.
- 2.2.3 The Design-Builder will:
- 1 ensure all portions and aspects of the Drawings and Specifications shall be prepared under the direction of, and to be sealed under the professional seal of the Consultant;
 - 2 ensure the Consultant confirms to the Owner, under his or her professional seal (if applicable), that, in the opinion of the Consultant:
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- i. the Drawings and Specifications implement and otherwise conform to the requirements under the Contract;
 - ii. the Drawings and Specifications have been prepared in accordance with, and substantially comply with all Applicable Laws and the Standard of Care;
 - iii. the Consultant has carried out the general reviews of the progress of construction, to the extent necessary, to confirm to the Owner that the Work has been completed in general conformity with the requirements of the Contract the Drawings and Specifications, the Standard of Care, and Applicable Laws; and
 - 3 provide the Owner with all letters of professional assurance as required pursuant to all Applicable Laws.
- 2.2.4 The Design-Builder will construct any part of the Work in strict compliance with the most recent Drawings and Specifications or other requirements of the Contract. To the extent that the Drawings and specifications conflict with, modify or deviate from the requirements of the Contract, the Design-Builder will revise the Drawings and Specifications and submit them to the Owner for its review.
- 2.2.5 The Design-Builder will make, or cause the Consultant to make, any revisions to the Drawings and Specifications as are necessary from time to time due to a Change Order or Change Directive and, for clarity, the Design-Builder will comply with Section 2.2.3 of this Protocol with respect to any such revisions.
- 2.2.6 Nothing in this Protocol, or otherwise in or under the Contract makes the Owner, or any other person on behalf of the Owner responsible for the Design of the Project, including compliance of the Drawings and Specifications with all Standard of Care and Applicable Law, and the Design-Builder will, notwithstanding any review or acceptance under the review procedure set out in this Protocol or other act of the Owner, remain solely liable and responsible for compliance of the Drawings and specifications with all Standards and Applicable Law unless such error, omission or deficiency was the result of reliance by the Design-Builder on false information provided by the Owner or if the omission or deficiency is a result of concealed or undisclosed factors that the Design-Builder would not reasonably be expected to know.
- 2.2.7 Without limiting any of the obligations of the Design-Builder under the Contract, the duties, and responsibilities of the Design-Builder with respect to the Design Services include:
- 1 A review of the documents, reports, drawings, and other information provided by the Owner and reporting promptly to the Owner any error, inconsistency or omission the Design-Builder may discover;
 - 2 the preparation of a Design that meets the requirements of all Applicable Laws and all terms of the Contract;
 - 3 the coordination required to integrate all part of the Design Services in the Work;
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- 4 preparation of all reports, documents, information, schemes and presentation materials as required by the Contract;
 - 5 inspecting the progress of the construction to determine that the Work complies with the requirements of the Drawings, Specifications and all terms of the Contract;
 - 6 liaising with the City of Ottawa and local authorities having jurisdiction as required during the performance of the Work and providing copies of all correspondence with such local authorities to the Owner; and
 - 7 providing all required assurances to local authorities having jurisdiction respecting substantial conformance of the Work with all Applicable Laws and as may be required for the issuance of or compliance with any permits, licenses, or approvals.

2.2.8 Design-Builder will use its best efforts to ensure that the Consultant and all other architects, professional engineers and other professionals performing professional services related to the Design Services fulfill their duties and responsibilities in accordance with Applicable Laws and the Standard of Care. Any failure by any of the Consultant or other architects, professional engineers or professionals performing professional services in relation to the Design Services will not relieve the Design-Builder of any responsibility for ensuring that the Work is carried out in conformance with the Contract including the requirements, the Design, and all Standards unless such error, omission or deficiency was the result of reliance by the Design-Builder on false information provided by the Owner or if the omission or deficiency is a result of concealed or undisclosed factors, or elements that the Design-Builder would not reasonably be expected to know.

2.2.9 If the Consultant's engagement is terminated, the Design-Builder will engage a new Consultant to provide the Design Services. The Design-Builder will notify the Owner in writing before appointing or re-appointing the Consultant, and the Design-Builder will not appoint a Consultant to whom the Owner may reasonably object.

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- 2.3 Design Management Plan
- 2.3.1 Within 30 days following the Effective Date, the Design-Builder will submit a Design Management Plan (the “**Design Management Plan**”) to the Owner’s Program Manager.
- 2.3.2 The Design Management Plan will include:
- 1 An organization chart, including identification of all key discipline design leads on the Project and the designer of record for each discipline (as available);
 - 2 a schedule for all Design Services;
 - 3 the contents and format of each Submittals;
 - 4 details of the plans for implementing, and verifying the implementation of the Design Services throughout construction, including a communications plan on how changes will be managed and how the Owner will be informed of these changes;
 - 5 a design review comment resolution tracking system to record all comments from the Owner’s team, identifying each comment and tracking how each comment is addressed through design revisions;
 - 6 a reports submission schedule; and
 - 7 appropriate metrics to measure the progress of the Design Services for each design discipline.
- Any subsequent amendments or updates to the Design Management Plan will be submitted to the Owner’s Program Manager for approval.
- 2.3.3 The Design-Builder will implement and comply with the Design Management Plan, and any amendments or updates which have been accepted by the Owner’s Program Manager in accordance with any review procedure, in connection with all Drawings and Specifications prepared or adopted in connection with the Design Services and Work.
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- 2.4 Design Process
- 2.4.1 Unless otherwise agreed by the Owner, the Design-Builder will submit Drawings and Specifications and supporting information for each work activity to the Owner for review under the review procedure outlined in the Contract at the following design stages:
- 1 30% (Preliminary Design Report);
 - 2 60% (Detailed Design Report);
 - 3 90% (Detailed Design Report); and
 - 4 100% (Final Design Submission Report).
- The Owner will have fifteen (15) Working Days to review the Drawing and Specifications at each of the design stages.
- 2.4.2 After review of Submittals at the pre-tender Drawings and Specifications stage by the Owner, the Design-Builder will finalize and complete the Final Design Submission Report, the
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Drawings and Specifications. The Design-Builder will provide 3 copies of the Final Design Submission Report Drawings and Specifications, and any revisions, to the Owner together with a certificate from the Consultant that the Final Design Submission Report Drawings and Specifications conform to the requirements of this Contract and Submittals from the pre-tender Drawings and specifications stage.

The Design-Builder will provide the Drawings in CAD/PDF/hard copies format and provide the Specifications in WORD/PDF/Hard copies format all as acceptable to the Owner, acting reasonably.

2.4.3 Without limiting the generality of Section 2.4.1, each of the Submittals in this Section 2.4 must be formatted in a manner and contain detail that is satisfactory to the Owner, acting reasonably. As applicable, the Submittals must have clearly identified sections for:

- 1 Architectural design;
- 2 Site development and landscaping;
- 3 Civil design;
- 4 Structural design;
- 5 Mechanical design; and
- 6 Electrical design.

2.4.4 Unless otherwise required by the Owner, the Design-Builder will provide and use, and make available to the Owner and representatives of the Owner, a secure and confidential internet-based system for the storage and exchange of design documentation in electronic format acceptable to the Owner.

2.5 Ownership of the Documents

2.5.1 The Design-Builder acknowledges and agrees that this Protocol contains intellectual property that is protected by copyright and that this intellectual property is intended to be used solely for the purposes of the Project. The Design-Builder will obtain prior written permission and will require the Consultant and any Other Consultants to obtain prior written permission for any other use.

2.5.2 The Owner shall be the owner of the Drawings. The Design-Builder may retain copies, including reproducible copies, of all plans, sketches, Drawings, graphic representations and Specifications and other design material. The Owner hereby grants to the Design-Builder a non-exclusive, royalty-free, fully paid, worldwide, perpetual and irrevocable license to use the Drawings and any and all such material for any purpose. The Design-Builder, at the Owner's request, and prior to any payment after such request is made, will deliver to the Owner a consent and acknowledgement signed by the Consultant confirming ownership of the Drawings.

2.5.3 Models and renderings furnished by the Design-Builder are the property of the Owner.

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| 2.6 | <u>Errors in Design</u> | 2.6.1 | The Design-Builder is responsible for the Design Services, including all errors, omissions, or deficiencies in the Drawings and Specifications. |
| | | 2.6.2 | The Design-Builder will give written notice to the Owner immediately upon becoming aware of any error, omission, or deficiency in the Drawings, Specifications or Design Services. |
| | | 2.6.3 | The Design-Builder will remedy at its own cost any error, omission or deficiency identified in the Drawings, including any resulting error, omission, or deficiency in the Design Services or Drawings that results in defects or deficiencies in any part of the Work that has been commenced or completed unless such error, omission or deficiency was the result of reliance by the Design-Builder on false information provided by the Owner or if the omission or deficiency is a result of unknown factors, or elements that the Design-Builder would not reasonably be expected to know. The Design-Builder will ensure that such remediation will conform to the requirements of the Contract. |
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|-----|---|-------|--|
| 2.7 | <u>Applicable Design Standards and Guidelines</u> | 2.7.1 | All Drawings are to be in AutoCad format in order to comply with the Owner's format for title block and layering based on the Owner ISWD Design & Construction Division CADD Procedures and Layering Manual (latest revision). A base drawing title sheet will be provided by the Owner to the Design Builder after execution of the Contract. |
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3 Role of Owner

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|-----|--|-------|--|
| 3.1 | <u>Additional Requirements and Processes</u> | 3.1.1 | As part of the Design Services, and specifically Section 2.3 and prior to providing approval, the Owner will review the contemplated Design Management Plan. Owner's review shall consider the requirements and process to be undertaken by the Design-Builder to ensure compliance with other program agreements (e.g., Infrastructure Canada Contribution Agreement). The Owner shall provide the Design Builder with the requirements under the contribution agreements that will have an impact on the Design Services to be provided by the Design Builder. |
| | | 3.1.2 | To support the Design-Builder's assessment of risks, as part of the Design-Builder's Annual Work Plan preparation the Owner will direct the Design-Builder on any specific parameters and constraints related to the Design Services for the relevant calendar year. Specific parameters and constraints may include but are not limited to the Owner's Annual Work Plan approval cycle, Owner's internal Budget approval requirements, and equipment / service delivery requirements. |
| 3.2 | <u>Peer Review and Third-Party Oversight</u> | 3.2.1 | The Owner shall have the right to audit all information related to the design of the Charging Infrastructure. The Owner shall be responsible for the cost of the audit unless the audit reveals |
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substantial error and omissions in the information that was the subject of the audit.

- 3.2.2 The Design-Builder shall assist the Owner in responding to any Access to Information requests for the Design Services for the Charging Infrastructure.
 - 3.2.3 As part of the Owner's review process, the Owner has the right to engage an external third-party (e.g., engineering consultants) at its own expense to support its peer review and oversight process of the Design Services and related documents including the Design-Builder's compliance with the Contract. Any external party engaged by the Owner as part of its review process will be considered an extension of the Owner and the Design-Builder shall provide the necessary documentation and coordination as part of this review. The Owner shall ensure that all external third parties comply with the Confidential Information obligations under the Contract.
 - 3.2.4 Owner-led peer review or third-party audits can be performed at the Owner's discretion periodically (e.g., as part of Annual Work Plan submission) or regularly as part of the monthly reporting process.
-

City of Ottawa ZEB Program

**Procurement Protocol for Charging Infrastructure Design Build
Contract (the “Contract”) with Envari (the “Design-Builder”) dated
June 14,2023**

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- Schedule A- Copies of existing policies

1 Background and Context

- 1.1 Purpose of this Document
- 1.1.1 The procedures described in this Procurement Protocol shall be followed by the Design-Builder to make any contract awards or recommendation of a contract award as part of Contract.
- 1.1.2 The Procurement Protocol will be used by the Design-Builder as part of the Contract to:
- 1 Identify the Design-Builder procurement policy that will be followed including the process to be used regarding competitive procurements;
 - 2 Define key suppliers that will be directly engaged without a competitive procurement process;
 - 3 Identify risks related to supply chains and items requiring long lead times;
 - 4 Identify the components that will be self-performed by the Design-Builder;
 - 5 Describe the role, if any, of the Owner during the procurement process.
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- 1.2 Definitions
- 1.2.1 Any defined term not defined in this protocol is defined in the Definition section of the Contract or in the Protocols.
-

2 Procurement Activities

- 2.1 General
- 2.1.1 All procurement process shall follow the Design-Builder's governing corporate procurement procedure and policy documents including but not limited to Contract Procurement Process (PRO-Fi-013), Procurement Policy (POL-Fi-003), and Approval Authority (POL-Fi-010), each as the same may be amended from time to time (the "**Policies**"). Copies of the Policies in effect at time of execution of this Protocol are attached as Schedule A. Design-Builder shall provide the Owner with any amended version of the Policies promptly following amendments to the Policies. In addition, the Design-Builder will comply with all provisions of the Canadian Free Trade Agreement (the "CFTA"), as amended from time to time, that apply to municipalities
- 2.1.2 Where either party wants to deviate from the Policies, it shall require the approval of the other party. Where approval is required from either party, the other party will ensure a reasonable and sufficient review period is provided to the reviewing party for approval of relevant documentation. The
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parties recognize that there may be times when a short review period will be required and the parties will work cooperatively to meet the review deadline.

2.2 Competitive Procurements

- 2.2.1 The Design-Builder will make best efforts to competitively procure any goods and services, when available, related to the Contract.
- 2.2.2 The Policies shall apply for all procurements under \$121,200.00 for goods and services and under \$302,900.00 for construction, per project, exclusive of tax.
- 2.2.3 For amounts over \$121,200.00 for goods and services and \$302,900.00 for construction, the Design-Builder shall post the solicitation on an open electronic tendering site, such as MERX, unless an alternative method of advertising has been approved by the Owner. This provision does not apply if the Design-Builder can support why the CFTA is not applicable and shall seek Owner approval to deviate from this provision.
- 2.2.4 Design-Builder will ensure it has obtained the necessary written approval of Owner's Program Manager prior to going to market, prior to issuing any addendum/changes and prior to any contract award. The Owner agrees to provide such approval within a reasonable time from receipt of the request. Any review shall include but not limited to a review of the scope of services including equipment specifications, evaluation methodology and Work schedule.

2.3 Non-competitive Procurements

- 2.3.1 The Design-Builder will notify the Owner's Program Manager in writing if it intends to procure any goods and services under a non-competitive basis (e.g., sole-source or direct source to vendor). The notification shall clearly illustrate the rationale to proceed under a non-competitive basis for the good or service and the contemplated vendor(s) and their relevant qualifications including a reference to the provision in the Design-Builder's Policies that permits such direct or sole source procurement.
- 2.3.2 The Design-Builder will ensure it has obtained the necessary written approval of Owner's Program Manager prior to engaging with vendors and prior to any contract award. The Owner agrees to provide such approval within a reasonable time from receipt of the request. Any review shall include but not limited to a review of the scope of services including equipment specification and Work schedule.

2.4 Self-performed Procurements

- 2.4.1 As part of the provisions of the Work Plan Protocol and the Annual Work Plan and the monthly reporting, the Design-Builder
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will identify any components that it intends to self-perform.

- 2.5 Supply Chain Risks and Long Lead Items As part of the Annual Work Plan submission, the Design-Builder shall identify indicative a) supply chain risks, and b) long lead items for the Work to be completed over the relevant year or period. The indicative risk identification should also include a quantitative estimate of the risk (e.g., +/- 10%) associated with each potential risk factor.
- 2.5.1 As part of the monthly reporting process (e.g., payment recovery), the Design-Builder will provide a more detailed assessment of the risks identified in the Annual Work Plan.
- 2.5.2 The reporting shall include an assessment of risks, any corresponding mitigation plan and any contingencies that may be required for the Owner or the Design-Builder to manage.
-

3 Owner's Role in the Procurement Protocol

- 3.1 Requirements and processes 3.1.1 As part of The Design-Builder's notifications under Section 2.2, 2.3, 2.4 and prior to providing approval, the Owner shall consider the requirements and process to be undertaken by the Design-Builder to ensure compliance with other program agreements (e.g., Infrastructure Canada Contribution Contract). Owner shall provide the Design-Builder with any specific procurement requirements contained in those program agreements within a reasonable time after they are known to the Owner.
- 3.1.2 To support the Design-Builder's assessment of risks, as part of the Design-Builder's Master Work Plan and Annual Work Plan preparation, the Owner will direct the Design-Builder on any specific parameters and constraints related to procurement activities for the relevant calendar year. Specific parameters and constraints may include, but not be limited to, Owner's annual budget approval cycle, Owner's internal budget approval requirements, and equipment / service delivery requirements.
- 3.2 Best value determination 3.2.1 The Design-Builder shall follow its governing corporate procurement policies and procedures as defined in Section 2.1.1 including determination of best value for all procurement activities under the Contract.
- 3.2.2 The Owner as part of its review and approval process has the right to ensure procurement activities and related documents follow the agreed upon Contract's cost recovery approach.
- 3.3 Peer review and Third- 3.3.1 The Owner shall have the right to audit all information related to procurement processes used by the Design-Builder in performing its
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Party
Oversight

obligations under the Contract. The Owner shall be responsible for the cost of the audit unless the audit reveals substantial error and omissions in the information that was the subject of the audit.

- 3.3.2 The Design-Builder shall assist the Owner in responding to any Access to Information requests for the procurement activities for Charging Infrastructure.
- 3.3.3 As part of the Owner's review process, specifically under Section 2.2, 2.3, 2.4, the Owner has the right to engage an external third party (e.g., engineering consultants) at its own expense to support its peer review and oversight process of procurement activities and related documents. Any external party engaged by the Owner as part of its review process will be considered an extension of the Owner and the Design-Builder shall provide the necessary documentation and coordination as part of this review. The Owner shall ensure that all external parties comply with the Confidential Information obligations under the Contract.
- 3.3.4 Owner-led peer review or third-party audits can be performed at the Owner's discretion periodically (e.g., as part of Master Work Plan or Annual Work Plan submission) or regularly as part of the monthly reporting process.
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SCHEDULE A

COPY OF EXISTING POLICIES

NOTE: WARNING-: any person reviewing the following policies must ensure that he or she is reviewing the current policy in effect at that time and should request a copy from the Design-Builder.

CORPORATE PROCEDURE

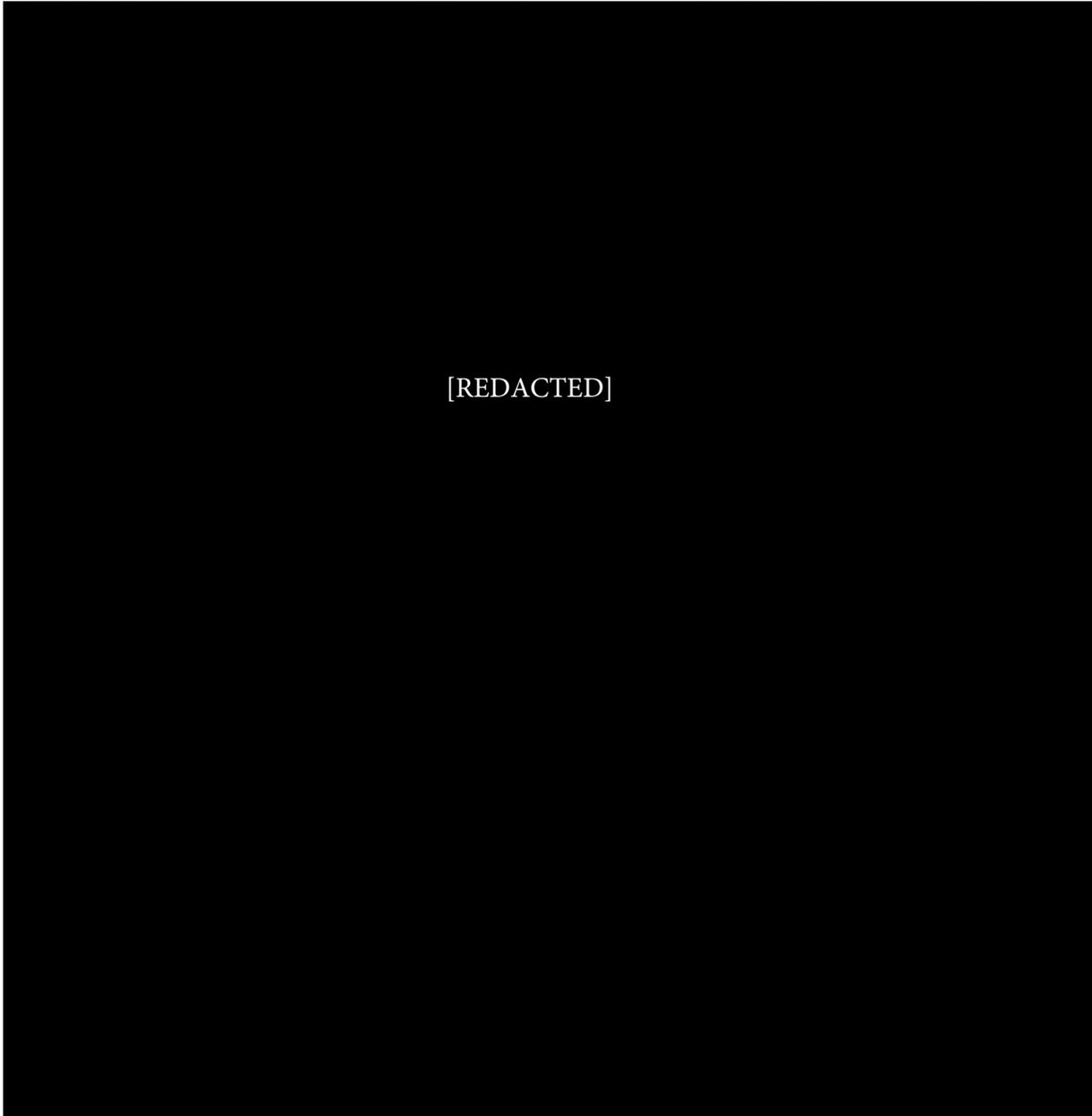
Subject: Contract Procurement Process		
Category: Finance	Procedure Number: PRO-Fi-013.00	
Policy Ref: POL-Fi-003.00 Procurement	Administrator Director of Finance	Owner Chief Financial Officer



[REDACTED]

HYDRO OTTAWA CORPORATE POLICY

Subject: Procurement		
Category: Finance		Policy Number: POL-Fi-003.02
Administrator: Director of Finance	Owner: Chief Financial Officer	Approver: President and CEO



[REDACTED]

HYDRO OTTAWA CORPORATE POLICY

Subject: Approval Authority		
Category: Enterprise		Policy Number: POL-Fi-010.02
Administrator: Director Finance	Owner: Chief Financial Officer	Approver: President and CEO



[REDACTED]

City of Ottawa ZEB Program

**Work Plan Protocol for Charging Infrastructure Design Build
Contract (the “Contract”) with Enviri (the “Design-Builder”)
dated June 14, 2023,**

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Schedule A-Owner’s guidelines in preparing Work Plan/Schedule

1 Background and Definitions

- 1.1 Purpose of this Document
- 1.1.1 The procedures described in this Work Plan Protocol shall be followed by Design-Builder prior to engaging in the Work and Design Services as part of the Contract.
- 1.1.2 The Work Plan Protocol will be used by Design-Builder as part of the Contract to:
- 1 Identify Work to be completed over the Term of the Contract including specific schedule requirements as identified in this protocol;
 - 2 Identify schedule, resources required, costing and budget details of the Work as required under this protocol;
 - 3 Describe and assess risks, any corresponding mitigation plan, and any contingencies that may be required for the Owner or Design-Builder to manage; and
 - 4 Describe the role, if any, of the Owner during the initial and ongoing work plan development process.
- 1.1.3 The Work Plan Protocol will apply to all Work and Design Services under the Contract and Design-Builder is responsible for sufficiently meeting requirements of this protocol including, without limitation, the requirements in Section 2 – Master Work Plan and Section 3 – Annual Work Plan.
- 1.1.4 Design-Builder shall ensure it obtains the approval of the Owner’s Program Manager prior to commencing on any Work activities as required pursuant to the Master Work Plan and Annual Work Plan.
- 1.1.5 All documentation to be provided by the Design-Builder pursuant to this Work Plan protocol will be provided in a format approved by the Owner, acting reasonably.
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- 1.2 Definitions
- 1.2.1 “Project Schedule” means the detailed baseline schedule to be provided to the Design-Builder to the Owner in accordance with the terms of the Contract
- 1.2.2 “Work Activity Schedule” has the meaning set out in Section 3.4 of this protocol
- 1.2.3 “Schedules” means both the Project Schedule and the Work Activity Schedule
- 1.2.4 Any defined term not defined in this protocol is defined in the Definition section of the Contract or in the Protocols
-

2 Master Work Plan

- 2.1 General
- 2.1.1 Design-Builder shall provide the Owner an all-inclusive Work Plan (the “**Master Work Plan**”) which describes all Work and Design Services activities to be undertaken under the Contract throughout the Term.
- 2.1.2 The Master Work Plan shall include the following key components:
- 1 Action Report as described in Section 2.3;
 - 2 Workflow as described in Section 2.4;
 - 3 Master Budget as described in Section 2.5; and
 - 4 Master Risk Assessment as described in Section 2.6.
- 2.1.3 The Master Work Plan and all related documents will be prepared in accordance with the Owner’s guidelines set out in Schedule A
-
- 2.2 Work Activity
- 2.2.1 As part of the Master Work Plan, Design-Builder will define, with guidance from the Owner as well as their consultants, the scope included in all principal phases of the Work (the “**Work Activities**”). All Work Activities will be labeled as “Work Activity - X” and include major components within the Work activity category such as Work at the South Garage (e.g., “Work Activity – South Garage”). Categories of Work Activities together with their scopes may be amended during the Term as required.
- 2.2.2 Work Activities identified at the beginning of the Design Services and Work will include the following:
- 1 Work Activity – 30 Bus Charging Fit Up South Garage
 - 2 Work Activity –Electricity Cost Optimization Strategy
 - 3 Work Activity – Energy Management System (EMS)
 - 4 Work Activity – St Laurent Substation
 - 5 Work Activity – Hydro Ottawa off-site 44kV Supply
 - 6 Work Activity – On Site 13kV and 44kV Distribution
 - 7 Work Activity – Existing Building Cut Over
 - 8 Work Activity – On Site Generation Backup -New
 - 9 Work Activity – Remaining Buses Charging Fit Up South Garage
 - 10 Work Activity – Bus Charging Fit Up North Garage
 - 11 Work Activity – Bus Charging Fit up New Building
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- 2.3 Action Report
- 2.3.1 As part of the Master Work Plan, Design-Builder will provide a report (the “**Action Report**”) for each Work Activity (i.e., for each of the items in Section 2.2.2).
- 2.3.2 For each Work Activity, the Action Report will describe the following:
- 1 Description of the scope and objectives;
 - 2 Feasibility analysis;
 - 3 Resource requirements; and
 - 4 Scheduling.
-

- 2.4 Workflow
- 2.4.1 As part of the Master Work Plan, Design-Builder will provide workflows (“**Workflow**”) for each Work Activity (i.e., for each of the items in Section 2.2.2).
- 2.4.2 For each Work Activity, the Workflow will describe the following:
- 1 Detailed tasks and schedules;
 - 2 Detailed budgets allocated to specific Work tasks;
 - 3 Project reviews and approval requirements; and
 - 4 Other appropriate Project documentation.
- 2.4.3 Detailed Workflows and schedules as covered in Section 2.4.2 for each Work Activity shall be organized in the following categories:
- 1 Planning
 - 2 Design
 - 3 Equipment purchasing; and
 - 4 Installation & Commissioning.
- 2.4.4 Detailed budgets allocated to specific Work Activities as covered in Section 2.4.3 shall be organized in the following categories, as applicable:
- 1 Design-Builder Direct Resources;
 - 2 3rd Party Consulting Services;
 - 3 3rd Party Contracting Services;
 - 4 Equipment /Major Material Purchases; and
 - 5 Hydro Ottawa Limited Offer to Connect for the onsite Substation work activity.
- 2.4.5 For clarity, each Work Activity shall include detailed work tasks and schedules in the four categories (planning, design, equipment purchasing, and installation & commissioning) covered in Section 2.4.3 and detailed budgets organized for each of the three categories organized by the five categories identified above in Section 2.4.4.
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- 2.5 Master Budget
- 2.5.1 Design-Builder shall provide a consolidated budget (“**Master Budget**”) which captures the summation of the detailed budgets to be provided as part of Section 2.4.4.
 - 2.5.2 The Master Budget shall be considered a schedule to the submission of the Master Work Plan and associated timing and review process will be applicable as described in Section 2.7.
 - 2.5.3 The Master Budget shall be submitted in editable Microsoft Excel format and Adobe PDF format.
 - 2.5.4 The Design-Builder shall provide further budget submissions as are outlined in Schedule A
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- 2.6 Master Risk Assessment
- 2.6.1 Design-Builder will provide an assessment of risks (the “**Master Risk Assessment**”) for each Work Activity (i.e., for each of the items in Section 2.2.2).
 - 2.6.2 For each Work Activity, the Master Risk Assessment will describe the following:
 - 1 Identification and description of key risks expected over the Term organized in key risk categories applicable to the Owner and its stakeholders; and
 - 2 Assessment of risks with corresponding mitigation plan and any contingencies that may be required for the Owner or Design-Builder to manage.
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- 2.7 Timing and Review Process
- 2.7.1 The Master Work Plan must be reasonable having regard to the requirements of this Work Plan Protocol, and will be developed and finalized as follows:
 - 1 Design-Builder will provide a preliminary draft of the Master Work Plan to the Owner in advance of the execution of the Contract;
 - 2 Design-Builder, with feedback from the Owner, will deliver a revised draft of the Master Work Plan no more than fifteen (15) Working Days after the execution of the Contract;
For clarity, Design-Builder is responsible for delivering the revised draft of the Master Work Plan and ensuring comments required from the Owner are solicited in a timely manner.
 - 3 The Owner will, within fifteen (15) Working Days of receipt of the revised draft Master Work Plan, advise Design-Builder whether the Owner accepts the Master Work Plan: if the Owner does not accept the Master Work Plan, the Owner will provide its reasons for such non-acceptance in sufficient detail to allow Design-Builder to address them; and
 - 4 Design-Builder will address comments, if any, from the Owner and deliver a final copy of the Master Work Plan no more than fifteen (15) Working Days after receiving Owner’s comments ensuring the Owner’s comments have been addressed to the satisfaction of the Owner.
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3 Annual Work Plan

- 3.1 General
- 3.1.1 Following finalization of the Master Work Plan (including Master Budget), Design-Builder shall provide an Annual Work Plan which will describe in detail the Work activities under each Work Activity for the relevant calendar year.
- 3.1.2 The Annual Work Plan will include a Work Activity brief (the “**Work Activity Brief**”) for each Work Activity described in Section 2.2.2.
- 3.1.3 The Work Activity Brief(s) shall include the following key components:
- 1 Work Activity Action Report as described in Section 3.3;
 - 2 Work Activity Schedule as described in Section 3.4;
 - 3 Work Activity Budget as described in Section 3.5; and
 - 4 Work Activity Risk Assessment as described in Section 3.6.
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- 3.2 Owner’s Approval
- 3.2.1 Design-Builder shall obtain in writing from the Owner’s Program Manager approval of the Annual Work Plan prior to undertaking any of the tasks or Work captured within the plan.
- For clarity, any Work undertaken by Design-Builder prior to obtaining the necessary Owner approval will be considered ineligible for cost recovery under the Contract.
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- 3.3 Work Activity Action Report
- 3.3.1 As part of the Annual Work Plan and each Work Activity Brief, Design-Builder shall provide a report (the “**Work Activity Action Report**”) to describe the Work related to the Work Activity for the relevant calendar year.
- 3.3.2 The Work Activity Action Report will describe in detail the following:
- 1 Description of the scope and objectives;
 - 2 Feasibility analysis;
 - 3 Resource requirements;
 - 4 Detailed site analysis;
 - 5 Procurement plan; and
 - 6 Scheduling.
- To the extent appropriate, the Work Activity Action Report should be organized in monthly periods for the items listed above.
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- 3.4 Work Activity Schedule
- 3.4.1 As part of the Annual Work Plan and each Work Activity Brief, Design-Builder shall provide a Work Activity schedule (the “**Work Activity Schedule**”) to describe the Work related to the Work Activity for the relevant calendar year.
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- 3.4.2 The Work Activity Schedule shall include, without limitation, the following key components:
- 1 Monthly schedule of tasks required to complete the Work in a Gantt chart format identifying key requirements and when each task is expected to be performed;
 - 2 Tasks shall be organized in major Work Activity grouping such as: planning, detailed design, equipment purchasing, and installation & commissioning.
 - 3 Highlights of key construction activities and milestones within the major Work Activity groupings and associated dependencies; and
 - 4 Roles and responsibility of the party undertaking each task.
- 3.4.3 The Work Activity Schedule shall be an extension of the Project Schedule and the Master Work Plan and where applicable, retain similar organization of information as it relates to key task categories, responsible party, and other related information as required in Section 2.

3.5 Work Activity Budget

- 3.5.1 As part of the Annual Work Plan and each Work Activity Brief, Design-Builder shall provide a budget (the “**Work Activity Budget**”) to describe the Work related to the Work Activity for the relevant calendar year.
- 3.5.2 The Work Activity Budget shall be organized with consideration for the following components, as applicable:
- 1 Tasks required under each major Work Activity grouping such as: detailed planning/design, equipment purchasing and installation & commissioning.
 - 2 Monthly Cost Schedule for tasks with consideration for the following:
 - Resource category required (e.g., Design-Builder Direct Resources, 3rd Party Consultant) and associated level of effort;
 - Bottom up cost details (e.g. level of effort) on all cost categories based on the agreed upon cost recovery approach for the resource category as defined in the Cost Recovery Protocol; and
 - Identification of fixed costs and variable costs and those that are subject to final cost confirmation based on procurement process.
- 3.5.3 Design-Builder shall provide a consolidated budget which reconciles the total of the individual Work Activity Budget with the Master Budget with an explanation of the annual variance, if applicable.
- 3.5.4 The Work Activity Budget(s) shall be submitted in editable Microsoft Excel format and PDF format.
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- 3.6 Work Activity Risk Assessment
- 3.6.1 As part of the Annual Work Plan and each Work Activity Brief, Design-Builder shall provide a risk assessment (the “**Work Activity Risk Assessment**”) to describe the Work related to the Work Activity for the relevant calendar year.
- 3.6.2 For each Work Activity, the Work Activity Risk Assessment will describe the following:
- 1 Identification and description of key risks expected over the relevant calendar year organized in key risk categories applicable to the Owner and its stakeholders; and
 - 2 Assessment of risks, any corresponding mitigation plan and any contingencies that may be required for the Owner or Design-Builder to manage.
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- 3.7 Timing and Review Process
- 3.7.1 The Annual Work Plan must be reasonable having regard to the requirements of this Work Plan Protocol, and will be developed and finalized as follows:
- 1 Design-Builder will provide a preliminary draft of the Annual Work Plan to the Owner no less than thirty [30] Working Days prior to beginning of the relevant year, with the exception of 2023 which will be done immediately following the execution of the Contract.
 - 2 The Owner will, within ten (10) Working Days of receipt of the preliminary draft, advise Design-Builder whether the Owner accepts Annual Work Plan, and if the Owner does not accept the Annual Work Plan, the Owner will provide its reasons for such non-acceptance in sufficient detail to allow Design-Builder to address them;
 - 3 Design-Builder, with feedback from the Owner, will deliver a revised draft of the Annual Work Plan no more than five [5] Working Days after having received feedback from the Owner. For clarity, Design-Builder is responsible for delivering the revised draft of the Annual Work Plan and ensuring comments required from the Owner are solicited in a timely manner.
 - 4 The Owner will, within five (5) Working Days of receipt of the revised draft, advise Design-Builder whether the Owner accepts the Annual Work Plan. If the Owner does not accept the revised Annual Work Plan, the Owner will provide its reasons for such non-acceptance in sufficient detail to allow Design-Builder to address them; and
 - 5 Design-Builder will address comments, if any, from the Owner and deliver a final copy of the Annual Work Plan no more than five (5) Working Days after receiving Owner’s comments, ensuring the Owner’s comments have been addressed to the satisfaction of the Owner.
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4 City of Ottawa's role in the Work Plan Protocol

- 4.1 Requirements and processes
- 4.1.1 As part of Design-Builder's submission of the Master Work Plan and Annual Work Plan, and prior to providing approval, the Owner will review the contemplated approach and plan provided by Design-Builder. Owner's review shall consider the requirements and process to be undertaken by Design-Builder to ensure feasibility of the plan, compliance with other Work agreements including Owner's other Work activities.
- 4.1.2 To support Design-Builder's assessment of risks, as part of Design-Builder's Master Work Plan and Annual Work Plan preparation, the Owner will direct Design-Builder on any specific parameters and constraints related to the tasks for the Term of the Contract or relevant calendar year. Specific parameters and constraints may include but not be limited to Owner's annual budget approval cycle, Owner's internal budget approval requirements, and equipment / service delivery requirements including schedule requirements.
-
- 4.2 Peer review
- 4.2.1 The Owner shall have the right to audit all information related to the submission from Design-Builder related to the Work Plan Protocol. The Owner shall be responsible for the cost of the audit unless the audit reveals substantial error and omissions in the information that was the subject of the audit.
- 4.2.2 Design-Builder shall assist the Owner in responding to any Access to Information requests for the procurement activities for Charging Infrastructure.
- 4.2.3 As part of the Owner's review process for the activities described in this Work Plan Protocol, the Owner has the right to engage at its own expense an external third-party (e.g., engineering consultants) to support its peer review and oversight process of work plan and related documents. Any external party engaged by the Owner as part of its review process will be considered an extension of the Owner and the Design-Builder shall provide the necessary documentation and coordination as part of this review. The Owner shall ensure that all external third parties comply with the Confidential Information obligations under the Contract
- 4.2.4 Owner-led peer review or third-party audits can be performed at the Owner's discretion periodically (e.g., as part of Annual Work Plan submission) or regularly as part of the monthly reporting process.
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SCHEDULE A

OWNER GUIDELINES IN PREPARING WORK PLAN / SCHEDULES

1. Work Plan / **Schedule**:

- a. The Owner expects a high level of quality control, cost management, coordination and schedule administration to effectively deliver the Project.
- b. The Design-Builder shall utilize experience planning and scheduling personnel for the preparation of "Critical Path Method" (CPM) schedules and accompanying narrative
- c. In preparing the detailed Work Plan, the Design-Builder should consider restrictions of access, availability of Place of the Work, and availability and use of manpower, materials and equipment. The Project Schedule is to be a resource-loaded schedule, with labour resources provided at activity level, or as required by the Owner.
- d. The initial Project Schedule will include all tasks associated with planning, design, and procurement including all sub-consultants.
- e. The schedule shall include tasks such as planning approvals, agreements, permits or other authorities having jurisdiction and their independency with other tasks.
- f. The Work Plan shall Identify dates for planned milestones including, without limitation; schematic design, design development, contract documents, tender, construction start (each phase within an Activity), Substantial Performance of the Work, ready for use (each phase within a Work Activity) and completion.
- g. The Schedules shall include the following City's design review periods:
 - i. Schematic Design
 - ii. 30% Design Development
 - iii. 60% Contract Documentation
 - iv. 95% Contract Documentation
 - v. 100% Tender Ready Contract Documentation
- h. The Project Schedule will then be updated at the implementation phase to provide detailed construction, equipment installation and post construction tasks.
- i. The construction schedule will include tasks to monitor; Shop Drawing submission and review, equipment ordering and delivery.
- j. The schedule shall show the sequence and interdependencies of all tasks, as well as project-related activities reasonably required to complete the Work.

2. **Level of Effort**

- a. Using the tasks developed for each Work Activity, the Work Plan shall describe the level of effort for each of the individual team members in sufficient detail to allow a complete understanding as to how and by whom each task or assignment is to be carried out. Team members will include specific staff from; Design-Builder, Sub-consultants, Subcontractors and other required resources.
- b. The level of effort presented should be expressed in hours, not days. For Sub-consultants and other service providers providing Design Services or Work on fixed contract prices, the level of effort will be based on their proposals broken down by task or deliverables.
- c. This level of effort will be the basis for issuance of purchase order for each Work Activity, progress monitoring and identifying any changes in scope.
- d. Each Work Activity with level of effort can then be uploaded into the Master Work Plan to provide detailed reporting on workflow and costs on a monthly and annual basis.

3. **Schedule Monitoring and Reporting**

- a. The Work Plan will be reviewed at regular Project meetings.
- b. The Work Plan shall include the appropriate amount of time within the Schedules to allow the Owner to conduct a detailed review and response on the identified deliverables of each Work Activity. The Consultant shall respond to all issues, inquiries or requirement with the necessary revisions to the Project to the satisfaction of the Owner. The Design Builder will work with the Owner to address the Owner's comments and issues without affecting the Project Schedule.

4. **Monthly Schedule Updates**

- a. Each month, the Design-Builder shall provide a Schedules update which shall record and report actual completion and /or start dates for each completed or in-progress task, physical percent complete for in-progress tasks and forecast task completion date for each Work Activity that are not yet completed. If it appears that the Schedules submitted by the Design-Builder no longer represents the actual sequencing or duration of the Work, the Owner may instruct the Design-Builder to revise the Schedules.
- b. A complete Schedules update submission (to be submitted along with each monthly progress payment application) must include the Schedules and progress reports:
 - i. Updated Schedules, comparing targeted and actual progress, as required by this schedule;
 - ii. A schedule narrative that will include, among other things, detailed descriptions of progress since last update, including key deliveries to the Place of Work, construction, testing and Commissioning, a description of the critical path progress photographs, any area of concerns including details regarding schedule delays with description of reason for the delay and any other information reasonably required by the Owner
- c. When requested by the Owner, the Design-Builder shall incorporate and logically connect approved Work Changes into the Schedules.
- d. In the case of delay or Schedule slippage, the Design-Builder shall provide Schedules update as requested by the Owner.

5. **Look-Ahead Schedules**

- a. The Design-Builder shall provide short interval "look ahead" schedules every two weeks identifying Work that has been performed during the last two weeks and activities that are planned for the next four weeks for each Work Activity. The short interval schedule shall be consistent with the progress schedule in force.
- b. The Look-ahead schedule shall generally reflect the Work associated with the detailed monthly Schedule updates. The activities in the Look-ahead Schedules shall be identified by the same number coding as the detailed Project Schedule and revised as necessary. When required by the Owner, the Design-Builder will include further breakdown to the tasks shown in the detailed progress schedule.

6. **As-built Schedule**

- a. At Total Completion of the Work, the Design-Builder shall provide an As-Built Schedule of the Project with actual completion dates of the various Work Activities. These dates will be verified against as-built dates recorded during monthly schedule review meeting through the course of the Project.