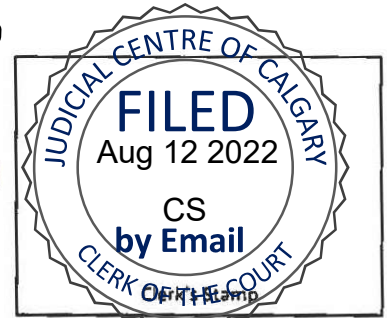


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COURT

Queen's Bench of Alberta

JUDICIAL CENTRE

Calgary

MATTER

IN THE MATTER OF THE BANKRUPTCY OF NORTH AMERICAN STEEL ERECTORS INC.

COM
Aug 25 2022

APPLICANT

TRISURA GUARANTEE INSURANCE COMPANY

RESPONDENT

NORTH AMERICAN STEEL ERECTORS INC. by its Trustee in Bankruptcy MNP LTD.

DOCUMENT

AFFIDAVIT OF STUART DETSKY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Rose LLP
2100, 440 – 2nd Avenue SW
Calgary, Alberta T2P 5E9
Telephone: (403) 776-0538
Attention: Andrew Wilkinson
File No.: 10774-025

AFFIDAVIT OF STUART DETSKY
Sworn on August 12, 2022

I, Stuart Detsky, of the City of Toronto, in the Province of Ontario, SWEAR AND SAY THAT:

1. I am Vice President, Surety and Warranty Claims at Trisura Guarantee Insurance Company ("Trisura"), the Plaintiff in the within Action, and as such have personal knowledge of the matters and facts deposed to, portions of which have come through my review of corporate records kept or obtained in Trisura's ordinary course of business as a result of bond claims as set out below.
2. As a result of my position at Trisura, I have the authority to swear this Affidavit on its behalf.

Trisura as creditor of North American Steel Erectors Inc.

3. Pursuant to an Indemnity Agreement, dated October 30, 2017, (the "Indemnity Agreement"), at section 2, North American Steel Erectors Inc. ("North American") and its principals, agreed, among other things, to indemnify Trisura against any and all losses, charges, expenses, costs, claims, demands and liabilities (the "Indemnity Losses") of whatsoever kind or nature (including, but not limited to, the fees and disbursements of adjusters, consultants and counsel and the establishment or increase of a reserve to cover any possible Indemnity Loss) which Trisura may sustain or incur:
 - (a) by reason of having executed or procured the executions of any Bond(s) (or an allegation that the Surety should have done so); or

- (b) by reason of the failure of the Indemnitors to perform or comply with the Indemnity Agreement or any bonding facility, or
- (c) in enforcing any of the covenants and conditions within the Indemnity Agreement.

Attached and marked as **Exhibit "A"** to this Affidavit is a copy of the Indemnity Agreement.

4. In reliance upon the Indemnity Agreement and at the request of one or more of North American, Trisura, as Surety, issued Performance Bond No. MSC1150074 (the "**Bond**") on behalf of North American as Principal in respect of North American's contract dated May 30, 2019, with the obligee, PCL Construction Management Inc. ("**PCL**") with respect to the installation of structural steel for the 9th Avenue bridge replacement in Calgary, Alberta (the "**Bonded Contract**" and the "**Project**" respectively). The Bond expressly stated that Trisura shall not be liable to PCL for a sum greater than \$462,000.00 (the "**Penal Sum**"). Attached and marked as **Exhibit "B"** to this Affidavit is a copy of the Bond.
5. Attached and marked as **Exhibit "C"** to this Affidavit is a copy of the Bonded Contract. The Bonded Contract had an initial value of \$4,648,509.00 excluding GST.
6. On or about July 29, 2021, North American was adjudged bankrupt pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3. MNP Ltd. was appointed as the trustee of the estate of the bankrupt pursuant to the Bankruptcy Order (the "**Trustee**"). As a result, North American failed or neglected to complete and otherwise defaulted in its performance of the Bonded Contract.
7. On or about July 30, 2021, PCL noted North American in default under the Bonded Contract. Attached and marked as **Exhibit "D"** to this Affidavit is a copy of the notice of default.
8. On the same date, PCL called upon Trisura to complete the outstanding work under the Bonded Contract and otherwise respond pursuant to Trisura's obligations under the Bond (the "**Bond Claim**"). Attached and marked as **Exhibit "E"** to this Affidavit is a copy of this correspondence.
9. Trisura took steps to investigate the Bond Claim which included obtaining information with respect to the accounting of the Bonded Contract. Attached and marked as **Exhibit "F"** to this Affidavit is a copy of North American's Application for Payment, dated July 16, 2021, which shows at that time the value of the Bonded Contract had increased to \$6,570,615.05 excluding GST and North American believed it had completed 82.61% of the work under the Bonded Contract.
10. Further, PCL provided Trisura with a summary of its estimated cost to complete the remaining work under the Bonded Contract in the approximate amount of \$4,791,554.00. Attached and marked as **Exhibit "G"** to this Affidavit is a copy of this summary.
11. As a result of North American's default, pursuant to its obligations under the Bond, on or about April 21, 2022, Trisura paid PCL the amount of the Penal Sum, namely \$462,000.00. Attached as **Exhibit "H"** to this Affidavit is an email from Trisura to PCL advising PCL of an electronic fund transfer in the amount of \$462,000.00. Attached as **Exhibit "I"** to this Affidavit is a printout listing all of Trisura's electronic fund transfers from its Bank of Montreal account on April 21, 2022 (with any unrelated transfers redacted), evidencing to PCL in the amount of \$462,000.00.

12. As an indemnitor to the Indemnity Agreement, North American is liable to Trisura for repayment of the \$462,000.00.
13. Attached and marked as **Exhibit "J"** to this Affidavit is a copy of Trisura's executed Proof of Claim (without the Indemnity Agreement attached) as provided to the Trustee.

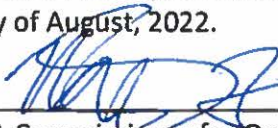
The Shield Litigation

14. On or around August 19, 2021, the Trustee issued its preliminary report (the "**Preliminary Report**") advising that North American has commenced litigation against Shield Industries Ltd. ("**Shield**") and Wynward Insurance Group ("**Wynward**") in the Court of Queen's Bench of Alberta Court File No. 2001-16202 (the "**Shield Litigation**"). Attached as **Exhibit "K"** to this Affidavit is a copy of the preliminary report released by the Trustee.
15. On or around July 6, 2022, the Trustee issued a "First Report of the Trustee, MNP Ltd." (the "**First Report**") providing additional details with regards, *inter alia*, the Shield Litigation. Attached as **Exhibit "L"** to this Affidavit is a copy of the First Report released by the Trustee, but without Appendices H to Q.
16. Paragraph 11 of the First Report details that, the Shield Litigation is related to Project as Shield is alleged to have agreed to fabricate and supply steel for the Project (the "**Shield Work**") and Wynward is alleged to have issued a performance bond with respect to the Shield Work in which North American was named Obligee, Shield was the named Principal, and Wynward was the named Surety.
17. Attached as **Exhibit "M"** to this Affidavit is a copy of an Affidavit sworn by Steeve Toupin on April 20, 2022 which explains he was a principal of North American and that North America entered into a purchase order with Shield for the Shield Work on the Project, that Wynward issued a performance bond in respect of the same, and Shield failed to meet its obligations under the purchase order (the "**Toupin Affidavit**").
18. Paragraph 12 of the First Report specified that the Shield Litigation was commenced by way of a Statement of Claim filed on behalf of NASE in the amount of \$3,673,856.02. The Shield Litigation was defended by Wynward, who filed a Statement of Defence. Counsel for North American informed the Trustee that Shield was insolvent and did not defend the Shield Litigation.
19. Attached as **Exhibit "N"** to this Affidavit are copies of the copies of the Statement of Claim of North American, filed December 9, 2020, the Statement of Defence of Wynward, filed January 28, 2021, and the Reply to the Statement of Defence of Wynward, filed February 11, 2021 (collectively, the "**Pleadings**").

The Trustee's Refusal to Proceed with the Shield Litigation

20. As shown at Appendices F and G to the First Report, on or around February 23, 2022 and on or around April 13, 2022, the Trustee delivered a Notices to the Creditors of North American that advised the Trustee did not have the funds to prosecute the Shield Litigation and that any one or more of the creditors could apply to take over the Shield Litigation in its own name and at its own expense and risk.

This is EXHIBIT "A" referred to in the Affidavit of Stuart Detsky, sworn before me this 12^m day of August, 2022.

 NEDA FOROUSHIAN

A Commissioner for Oaths in and for the
Province of Ontario



Bay Adelaide Centre
333 Bay Street, Suite 1610, Box 22
Toronto, ON M5H 2R2
Phone (416) 214-2555
Fax (416) 214-9597

**INDEMNITY AGREEMENT
IN FAVOUR OF**

TRISURA GUARANTEE INSURANCE COMPANY

made under the laws of the Province of Alberta as of **October 30, 2017**

**BY: North American Steel Erectors Inc.
Steve Toupin
Gordon Spalding**

(the person(s) listed above being collectively the "Indemnitors" and each an "Indemnitor")

WHEREAS

- (A) one or more of the Indemnitors, in his, its or their own name(s) or as joint venturer(s) with others, may desire, or be required, to procure the execution and delivery by Trisura Guarantee Insurance Company (the "Surety") of Bonds as hereinafter defined or one or more of the Indemnitors may request the Surety to refrain from cancelling or attempting to cancel such Bonds as the Surety may already have executed or procured the execution of;
- (B) each of the Indemnitors understands that the Surety expressly requires the delivery of this Agreement as part of the consideration for the execution by the Surety of such Bonds which may already have been furnished by the Surety in reliance upon a representation that this Agreement would be executed, or which may hereafter be furnished, or for the refraining from cancelling or attempting to cancel said Bonds; and
- (C) each of the Indemnitors hereby represents to the Surety that such Indemnitor has a substantial, material and beneficial interest in the obtaining of Bonds (whether or not such Indemnitor is a principal under any Bond(s) as hereinafter defined) or in the Surety's refraining from cancelling or attempting to cancel Bonds.

NOW THEREFORE, in consideration of the sum of Two Dollars (\$2.00) and other good and valuable consideration paid or furnished by the Surety to each of the Indemnitors (the receipt and sufficiency of which are hereby acknowledged) and of the Surety having executed in the past, presently executing or procuring the execution of Bonds for which application is now pending, or which may be hereafter applied for, or executing in the future one or more Bonds, or of any alteration, renewal, continuation or extension thereof, or of the Surety's refraining from cancelling or attempting to cancel the same, the Indemnitors jointly, severally and for each other do hereby covenant and agree with the Surety as follows:

1. DEFINITIONS

In the present Agreement:

- (a) "Bond" means a contract of suretyship, guarantee or indemnity, an agreement or consent to provide such a contract and the continuation, extension, alteration, amendment, increase, decrease, renewal or substitution of such a contract, agreement or consent, in respect of the Indemnitor(s) (or any or all of them, if more than one, or any affiliate(s) and/or partner(s) of any of them, or any other principal for which the same is requested by an Indemnitor), whether issued by the Surety, any successor of the Surety, or any Beneficiary as defined by section 8 below, and whether issued before, on or after the date of this Agreement;
- (b) "Bonded Contract" means a Contract in respect of which any Bond(s) is or may at any time hereafter be issued;
- (c) "Bonding Facility" means any past, present or future agreement or arrangement between the Surety and the Indemnitors or any of them providing for the issuance of any Bond(s);
- (d) "Contract" includes all documents comprising the contract documents including but not limited to general and special conditions, specifications and drawings, and every change, addition, substitution, successor or new contract;
- (e) "Contract Equipment and Material" includes all Equipment and Material which are now or may hereafter be in, about or upon the site of work contemplated by any Bonded Contract or Unbonded Contract, including supplies and materials now or hereafter purchased for or chargeable to any such contract which may be in progress of construction, or in storage elsewhere, or in transportation to any such site;
- (f) "Equipment and Material" includes machinery, equipment, plant, tools, supplies, inventory and materials;
- (g) "Event of Default" is defined in clause 15(d);
- (h) "execute" and "execution" include procure and procurement for execution;
- (i) "hereof", "herein", "hereto" and similar expressions mean and refer to this Agreement and not to any particular section, subsection, clause or subclause;
- (j) "Other Contract Assets" means all assets other than Equipment and Materials which are, or may hereafter be, used or useful for the performance or completion by any Indemnitor of any Contract (whether a Bonded Contract or an Unbonded Contract), whether or not such assets are specific to any such Contract, and including without limitation licences, intellectual property rights, computer hardware, software and data, and storage media;
- (k) "person" means and includes individuals, partnerships, joint ventures, trusts, corporations and associations;
- (l) "principal" means, in relation to any Bond or Bonded Contract, each and all of the principal(s) named therein or a party thereto;
- (m) "Unbonded Contract" means a Contract to which any Indemnitor is a party and in respect of which, as at the time in question, there is no Bond in force, whether or not any Bond(s) have previously been issued in respect thereof, and whether or not any bond has been issued in respect thereof by any other surety;
- (n) the singular form includes the plural and the plural includes the singular, and the word "Indemnitors" or any pronoun referring thereto, whether singular or plural, is to be construed as referring to the undersigned person(s), though they be or include one or more individuals, partnerships, associations or corporations;
- (o) the neuter pronoun shall be read as masculine or feminine, as circumstances require; and
- (p) the division of this Agreement into sections, subsections, clauses and subclauses, and the insertion of headings, are for convenience of reference only and shall not affect the interpretation or construction hereof

2. INDEMNITY

Each of the Indemnitors shall indemnify and keep indemnified the Surety, against any and all losses, charges, expenses, costs, claims, demands and liabilities (hereinafter called "Indemnity Losses") of whatsoever kind or nature (including, but not limited to, the fees and disbursements of adjusters, consultants and counsel and the establishment or increase of a reserve to cover any possible Indemnity Loss) which the Surety may sustain or incur:

- (a) by reason of having executed or procured the execution of any Bond(s) (or an allegation that the Surety should have done so); or
- (b) by reason of the failure of the Indemnitors to perform or comply with this Agreement or any Bonding Facility; or
- (c) in enforcing any of the covenants and conditions hereof

3. PERFORMANCE AND FEES

- (a) The Indemnitors covenant to perform all the conditions of each Bond, Bonded Contract and Unbonded Contract, and any and all alterations, modifications, renewals, continuations and extensions thereof
- (b) Without limiting the generality of the foregoing, the Indemnitors shall pay to the Surety
 - (i) all fees related to Bonds,
 - (ii) any annual fee, setup fee or prequalification fee related to any Bonding Facility, and
 - (iii) any other expenses incurred by the Surety in relation to the establishment and maintenance of a Bonding Facility for the Indemnitors or any of them.

4. APPLICATION OF THIS AGREEMENT

- (a) This Agreement shall apply to all Bonds executed by or on behalf of the Surety, and any Bonding Facility relating thereto, on behalf of:
 - (i) any Indemnitor(s);
 - (ii) any present or future affiliate(s) or partner(s) of any Indemnitor; or
 - (iii) any other principal at the request of an Indemnitor;in each case in its own name or as joint venturer with others, from time to time, whether prior to or subsequent to the execution and delivery hereof, and over an indefinite period of years, until this Agreement shall be terminated in accordance with the terms hereof, and the Indemnitors agree that notice of the execution of such Bonds need not be communicated to them. For greater certainty, and without limiting the generality of any other provision hereof, this Agreement shall also apply to any other matter arising out of or connected with any such Bond (including any Bond applied for but not issued) or any Bonded Contract or Unbonded Contract relating to any such party.
- (b) This Agreement shall bind:
 - (i) any present or future affiliate or partner of any of the Indemnitors, and
 - (ii) any participant in any joint venture or other form of common enterprise of which the Indemnitor was a member (or was to become a member) at the time a Bond was furnished;and the Indemnitors shall, upon the request of the Surety, cause any such affiliate, partner or participant to execute and deliver to the Surety an adhesion, in such form and terms as may be required by the Surety, agreeing to be bound by this Agreement.

5. AUTHORITY TO EXECUTE BONDS

Requests to the Surety to execute any Bond(s) may be made by any of the Indemnitors or (where an Indemnitor is not an individual) any officer, employee or partner of any of the Indemnitors, or by any agent or broker reasonably believed by the Surety to be representing any of the Indemnitors. Such requests, whether made in writing (mailed, delivered or telecopied), by telegraph, by personal interview or by telephone, shall be regarded as sufficient and ample authority for the Surety to execute any such Bond(s).

6. ABSOLUTE RIGHT TO DECLINE TO ISSUE BONDS

- (a) The Surety, at its option and in its sole discretion, may decline to execute, or provide any Bond(s) applied for without incurring any liability whatever to the Indemnitors or any of them or affecting the liability of the Indemnitors or any of them hereunder to the Surety.
- (b) Each of the Indemnitors acknowledges that:
 - (i) the Surety is under no obligation to issue any Bond(s);
 - (ii) such Indemnitor is not relying and will not rely on any agreement, assurance, understanding, warranty, representation, condition precedent, collateral agreement or other commitment of any kind whatsoever (including without limitation any letter setting out terms and conditions for a Bonding Facility) purporting to be made or entered into by or on behalf of the Surety obliging the Surety to issue any Bond(s);
 - (iii) issuance of any Bond(s) shall not estop the Surety from declining to issue any other Bond(s) or constitute a waiver of the Surety's absolute right to decline to issue any Bond(s); and
 - (iv) if the Surety issues a bid bond, agreement to bond (or "surety's consent") or similar undertaking and the applicant is successful in bidding the project, the Surety may nevertheless decline to issue the performance bond, the payment bond, or any other bond required by the awarding entity, without incurring any liability to the Indemnitors, who hereby agree that such a bid bond, agreement or undertaking is a Bond to which this Agreement applies.

7. PARTIAL INVALIDITY OF EXECUTION

- (a) If any of the persons named herein as an Indemnitor fails to execute this Agreement or if the execution hereof by any of the Indemnitors shall be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner diminish or otherwise affect the obligation or liability hereunder of any other of the Indemnitors.
- (b) Failure of the principal to sign any Bond shall not relieve the Indemnitors of liability under this Agreement.

8. PROTECTION OF OTHER SURETIES

If the Surety issues any Bond with a co-surety, reinsures any portion of a Bond with any other company, or procures the issuance of any Bond by any other company (whether or not the Surety issues, or retains any portion of, such Bond), the Indemnitors agree with any and all such co-sureties, reinsurers or issuing companies (hereinafter collectively referred to as the "Beneficiaries") that the benefits hereof shall extend to and protect each of the Beneficiaries. The Surety hereby declares that it is the trustee of all of the rights of the Beneficiaries under the foregoing covenant.

9. DEFENCE-RESERVE – DEPOSIT

- (a) If the Indemnitors desire that a claim or demand against the Surety shall be resisted and litigated, the Indemnitors shall:
- (i) give notice to the Surety to this effect; and
 - (ii) if requested, at any time, by the Surety, deposit with the Surety cash (or collateral satisfactory to the Surety) in an amount sufficient to cover the expenses and fees of defence; and
 - (iii) if requested, at any time, by the Surety, deposit with the Surety cash (or collateral satisfactory to the Surety) in an amount sufficient to cover the claim or demand and interest thereon to the probable date of disposition.
- (b) If for any reason the Surety deems it necessary to establish or to increase a reserve (the amount of which shall be in the sole discretion of the Surety, as from time to time revised) to cover any possible Indemnity Loss (including, for greater certainty, the costs of

investigating and defending any claim or demand and interest on the amount thereof at the rate or rates claimed on or applicable to such claim or demand, to the probable date of its resolution), the Indemnitors shall deposit with the Surety immediately upon demand (and make such further deposits as may be required of) cash or collateral satisfactory to the Surety in an amount equal to such reserve

or such increase. The Indemnitors acknowledge that the failure of the Indemnitors to deposit with the Surety, immediately upon demand, the sum demanded by the Surety shall cause irreparable harm to the Surety for which the Surety has no adequate remedy at law, and that the Surety shall be entitled to injunctive relief (including specific performance of the obligation to make such deposit with the Surety), and hereby waive any claims or defences to the contrary

- (c) The Surety may:
- (i) hold any deposit made under this section 9 in such form as the Surety may in its absolute discretion decide, and shall have no obligation to invest, or provide any income or return on, any such deposit; and
 - (ii) in its sole discretion, use all or any part of such deposit, and of any income earned thereon, in payment, settlement or compromise of any Indemnity Loss.
- (d) The Indemnitors shall be entitled to the return of any unused portion of the deposit, and the income (if any) earned on the balance of the deposit outstanding from time to time (to the extent such income has not been used in payment or compromise of an Indemnity Loss), upon termination of the liability of the Surety on the Bonds and the performance by the Indemnitors of all obligations to the Surety under the terms hereof. The Surety's calculation of the income, if any, attributable to any such deposit shall be final and binding on the Indemnitors.

10. SETTLEMENT OF CLAIMS

- (a) The Surety shall have the sole right to pay, settle or compromise, without any prior obligation to notify the Indemnitors, any charge, expense, cost, claim, demand, suit, judgment or liability under any Bond(s), and any such payment, settlement or compromise shall be binding upon the Indemnitors and included as an Indemnity Loss.
- (b) In the event of any such payment, settlement or compromise by the Surety, an itemized statement thereof sworn to by any officer of the Surety, or the voucher(s), cancelled cheque(s) or other evidence of such payment, settlement or compromise, shall be prima facie evidence of the fact and amount of the liability of the Indemnitors under this Agreement in respect of such payment, settlement or compromise.
- (c) In the event of any payment by the Surety, the Indemnitors agree that in any accounting between the Surety and the Indemnitors, the Surety shall be entitled to charge for any and all disbursements made by it in and about the matters contemplated by this Agreement.

11. ADVANCES BY SURETY

The Surety, at its sole election and discretion, is authorized and empowered, but not obligated, to advance or loan to a principal any money which the Surety may see fit to advance to such principal, and to guarantee re-payment of such loans made by others, and all moneys so advanced or loaned, as well as all costs, counsel fees and expenses incurred by the Surety in connection with such advances or loans, unless repaid with legal interest by the principal, shall be included as Indemnity Losses.

12. ACKNOWLEDGEMENT OF CONTINUING LIABILITY

- (a) Each of the Indemnitors acknowledges that this Agreement shall remain in full force and effect, even if such Indemnitor never had or no longer has any interest in the principal, as long as this Agreement has not been terminated by such Indemnitor in accordance herewith; without limiting the generality of the foregoing, the rights of the Surety under this Agreement and any other agreement with any of the Indemnitors shall be cumulative, and this Agreement shall not be construed as having merged with or been cancelled, limited or superseded by any other agreement, whether or not in the same form as this Agreement, unless such other agreement is in writing, expressly states that this Agreement is terminated thereby, and is signed by an officer of the Surety.
- (b) The Indemnitors shall continue to remain bound under this Agreement, notwithstanding the occurrence at any time or from time to time, with or without notice to or knowledge of the Indemnitors, and whether by prior agreement or otherwise, of any or all of the following events, which are in addition to any other rights of the Surety, and which shall not in any way release, limit or abridge any right or remedy which the Surety may have under this Agreement, and this Agreement shall remain in full force and effect after such event:
- (i) the acceptance by the Surety of payment for any Bond(s);
 - (ii) the acceptance or release by the Surety of other agreements of indemnity, collateral security or guarantees, from any or all of the Indemnitors or from others;
 - (iii) the Surety's assent to any act of the principal;
 - (iv) a suit or a settlement deriving from this Agreement;
 - (v) any waiver, extension, or indulgence granted by the Surety to any of the Indemnitors or to others; or
 - (vi) any failure or refusal by the Surety to pursue any remedy or take proceedings against any person or property.

13. INFORMATION TO BE PROVIDED TO SURETY

- (a) Each of the Indemnitors shall:
- (i) forward immediately to the Surety every letter, document, advice, statement of claim or writ received by him from or on behalf of any person who asserts or threatens; and
 - (ii) whenever requested by the Surety, aid in securing information and evidence and the attendance of any witness for, and cooperate fully with the Surety in the defence of,
- any claim or demand arising out of or in connection with any Bond(s)
- (b) The Indemnitors shall furnish to the Surety fully, accurately and promptly all such information as it may request from time to time concerning:

- (i) the financial condition of the Indemnitors;
 - (ii) the status of any Bonded Contract(s), Unbonded Contract(s) or other obligations of the Indemnitors and the condition of the performance thereof;
 - (iii) the payment of obligations incurred in connection with any Bonded Contract(s), Unbonded Contract(s) or other obligations; and
 - (iv) all such other information as the Surety may from time to time reasonably request.
- (c) The Surety and any representative, agent or advisor authorized in writing by the Surety may at reasonable times and places and from time to time, examine and copy the books, records and accounts of the Indemnitors.
- (d) Any of the Indemnitors who are individuals shall notify the Surety of any change in their respective marital circumstances which might affect their ownership of any assets or confer on their respective spouses any right, actual or potential, to claim an interest in any of their respective assets.
- (e) Each of the Indemnitors shall notify the Surety immediately of any change in his or its name.
- (f) If any of the Indemnitors merges, amalgamates, consolidates, reorganizes, forms a partnership or joins with, or sells, transfers or leases all or substantially all of its undertaking, property and assets to, any other person, firm, corporation, trust, partnership or venture

(hereinafter called a "Successor") and, where an Indemnitor is a partnership, if there is any change in the constitution of the partnership, including (but not limited to) the death, retirement, or addition of a member or members, or subsequent incorporation (the partnership so reconstituted or incorporated being included in the term "Successor"), then:

- (i) such Indemnitor shall immediately notify each of the other Indemnitors and the Surety; and
- (ii) whether or not such notice is given, this Agreement shall extend and apply to any Bonds theretofore issued (to the extent that such Bonds relate to the Successor) and any Bonds thereafter issued in respect of the Successor as principal.

14. CONSENT TO CHANGES

The Surety is authorized and empowered, without notice to or knowledge of the Indemnitor, notice being hereby expressly waived:

- (a) to correct any mistakes herein or in any Bond(s);
- (b) to assent or refuse to any change whatsoever in any Bond(s), any Bonded Contract(s) and any Bonding Facility, including but not limited to any change in the time for the completion of any Bonded Contract(s) and for payments or advances thereunder and/or in the general conditions, plans or specifications which accompany said Bonded Contract(s) and any increase or decrease in the limit of any Bonding Facility; and
- (c) to assent to or to take any assignment or assignments, to execute or consent to the execution of any continuations, extensions, renewals, enlargements, modifications, change or alterations of any Bond(s) or Bonding Facility or Bonding Facilities, and to execute any substitute or substitutes therefor, with the same or different conditions, provisions and obligations and with the same or larger or smaller penalties;

and the Indemnitors shall remain bound under the terms hereof even though any such correction, assent or refusal by the Surety does or may substantially increase the liability of the Indemnitors.

15. CONTRACT ASSETS

(a) The Indemnitors shall obtain, maintain and make available all Equipment and Material and Other Contract Assets necessary for the performance of all Bonded Contract(s) and Unbonded Contracts.

(b) Each of the Indemnitors hereby assigns and transfers to the Surety, as collateral, to secure the obligations herein of the Indemnitors and all other indebtedness or liabilities of the Indemnitors to the Surety, whether heretofore or hereafter incurred, all the right, title and interest of the Indemnitors in and to:

- (i) every:
 - (A) Contract, whether a Bonded Contract or an Unbonded Contract, and whether or not any Event of Default has occurred with regard to any of the Indemnitors in respect of such Contract, including all retained percentages, holdbacks, progress payments, deferred payments, earned moneys, compensation for extra work, proceeds of damage claims, insurance policies and claims thereunder, and all other funds and properties whatever (whether or not similar to the foregoing) that may be due or become due under any Contract(s) or that may be due, become due, awarded or allowed in connection with or under circumstances growing out of any Contract(s) or work done thereunder;
 - (B) subcontract let or that may be let in connection therewith;
 - (C) claim which the Indemnitors may have or acquire against any person furnishing or agreeing to furnish any labour, Equipment and Material or Other Contract Assets in connection with any such Contract or any such subcontract; and
 - (D) bond securing any such subcontract or claim;
- (ii) all Contract Equipment and Material;
- (iii) all Equipment and Material; and
- (iv) all Other Contract Assets.

(c) Such assignment shall be effective as of the date of execution and delivery of:

- (i) this Agreement, as to each Bonded Contract covered by any Bond(s) heretofore issued (but nothing herein shall limit the Surety's right to claim under any prior assignment) and as to any Unbonded Contract in force at such date;
- (ii) each Bond hereafter issued, as to each Bonded Contract covered by such Bond; or
- (iii) each Unbonded Contract entered into after the date hereof, as to such Unbonded Contract.

(d) The Surety shall take proceedings to enforce such assignment only in the event (an "Event of Default") of:

- (i) any breach or alleged breach of any of the covenants and agreements herein contained, or of any term or condition of any Bonding Facility; or
- (ii) any abandonment, forfeiture or breach of, or failure, refusal or inability to perform, any Bonded Contract or any liability under a Bond; or
- (iii) any failure, refusal or inability of a principal to pay bills or other indebtedness incurred in, or in connection with, the performance of any Bonded Contract or Unbonded Contract; or
- (iv) any assignment by any of the Indemnitors for the benefit of creditors, or the appointment, or any application for the appointment, of a receiver or trustee for any of the Indemnitors, whether insolvent or not; or
- (v) any proceeding or the exercise of any right which deprives any of the Indemnitors of the use of any of the Contract Equipment and Material or any Other Contract Assets; or
- (vi) any change or threat of change in the character, identity, control, management, beneficial ownership or existence of a principal; or

- (vii) any other occurrence, condition or circumstance (whether or not similar to any of the foregoing) which in the sole opinion of the Surety may expose the Surety to loss, cost or expense.
- (c) Each of the Indemnitors hereby authorizes and empowers the Surety, if an Event of Default has occurred and is continuing, to:
- (i) in its sole discretion, take possession of the work under any Bonded contract and to complete such contract, or cause the same to be completed, or to consent to the completion thereof, and to take any other action which the Surety may deem appropriate to obtain the discharge of the Surety's obligations as surety including, but not limited to, a monetary settlement with the obligee, and all losses, charges, expenses and costs incurred by the Surety in so doing shall be included as Indemnity Losses;
 - (ii) execute in the name of any Indemnitor any instruments deemed necessary or desirable by the Surety to provide absolute title to the Surety of any funds, property and rights as are hereby assigned, transferred or conveyed, and the Surety and such person(s) as the Surety may designate for this purpose are hereby authorized to take immediate possession of such funds, property and rights;
 - (iii) instruct any obligee(s) under any Bonds, and/or any owners under any Unbonded Contracts, to withhold further payment to any Indemnitor or other person who is a party to the relevant Contract(s);
 - (iv) collect any cheque, draft, warrant or other instrument made or issued in payment of any monies due on any Bonded Contract(s); and
 - (v) endorse in the name of an Indemnitor as payee and to cash any such instruments and to retain or disburse the proceeds thereof.

16. TRUST FUNDS

- (a) Each Indemnitor agrees and hereby expressly declares that all funds due or to become due under any Bonded Contract, are, whether in the possession of the Indemnitor or another, trust funds for the benefit of and payment to all persons to whom the Indemnitor incurs, in the performance of such Bonded Contract, obligations for which the Surety would be liable under such Bond. If the Surety assumes or discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds.
- (b) Each Indemnitor shall, upon demand by the Surety and in implementation of any trust hereby created, open an account or accounts with a bank or similar depository designated by the Indemnitor and approved by the Surety, which account or accounts shall be designated as a trust account or accounts for the deposit of such trust funds, and shall deposit therein all monies received pursuant to said Bonded Contract or contracts. Withdrawals from such accounts shall be by cheque or similar instrument signed by the Indemnitor and countersigned by a representative of the Surety.
- (c) Said trust or trusts shall terminate on the payment by the Indemnitor of all the contractual obligations for the payment of which the trust or trusts are hereby created or upon the expiration of twenty years from the date hereof, whichever shall first occur.

17. POWER OF ATTORNEY

Each of the Indemnitors hereby irrevocably nominates, constitutes, appoints and designates the Surety, or any person or persons designated by the Surety, as its attorney to exercise all of its rights assigned, transferred or set over to the Surety by this Agreement, and in its name to execute and deliver (and without limiting the generality of the foregoing, to complete any blanks and insert dates in) any and all additional or other assignments, instruments or documents deemed necessary or desirable by the Surety:

- (a) to vest in the Surety or its designees absolute title to any and all monies, property and rights hereby assigned; and
- (b) to provide the protections and rights to the Surety contemplated by all the provisions hereof

Each of the Indemnitors hereby expressly declares that such power of attorney may be exercised during any subsequent legal incapacity on the part of such Indemnitor.

18. DISCLOSURE AND REGISTRATION

The Indemnitors consent to:

- (a) the service hereof at any time upon any person, firm or corporation (but nothing herein shall be construed as permitting the Surety to take enforcement proceedings contrary to subparagraph above), and
- (b) the registration hereof (or of a notice or other instrument in respect hereof) under any scheme or system of registration for any purpose.

19. ACTIONS TO ENFORCE THIS AGREEMENT

- (a) In the event of any claim or demand being made by the Surety against the Indemnitors, whether or not proceedings have been commenced against one or more of the Indemnitors, the Surety is hereby expressly authorized to:
- (i) bring separate suits on this Agreement as causes of action accrue against any or all of the Indemnitors, and the bringing of a suit or the recovery of judgment upon any cause of action shall not prejudice nor bar the bringing of other suits upon other causes of action, whether theretofore or thereafter arising; and
 - (ii) settle or compromise any claim based upon this Agreement with any one or more of the Indemnitors individually without reference to the others, and such settlement or compromise shall not affect the liability of any of the rest of the Indemnitors, and each of the Indemnitors hereby expressly waives the right to be discharged and released by reason of the release of one or more of the other Indemnitors, and consents to any settlement or composition that may hereafter be made.
- (b) Any settlement or agreement concluded with an Indemnitor following a claim against him by the Surety under this Agreement shall not create a new agreement nor extinguish the Indemnitor's obligations under this Agreement, and this Agreement shall remain in full force and effect in case of default on the part of an Indemnitor to fulfill the terms of such settlement or agreement with the Surety

20. COSTS AND INTEREST

- (a) In the event the Surety commences proceedings to enforce the terms hereof, the Surety shall be entitled to recover (but without duplication) its solicitor and own client costs (on a full indemnity basis), judicial and extra-judicial costs and the fees and disbursements of its solicitors and counsel in connection with such proceedings.
- (b) Any and all amounts which the Surety is entitled to be paid under this Agreement shall bear interest at a rate of 10% per year, calculated monthly from the date on which demand for payment therefor is made (or deemed to have been made) to the date of payment; the Surety's claim for such interest shall not merge in any judgment against any of the Indemnitors, and any such judgment shall bear interest at such rate until payment.

21. WAIVER OF NOTICE AND OTHER RIGHTS

- (a) Each of the Indemnitors hereby waives notice of the execution of any Bond and of any act, fact or information concerning or affecting the rights or liabilities of the Surety or the rights or liabilities of the Indemnitors, including without limitation the release of any other Indemnitor, the admission hereto of any additional Indemnitor, and any change in the terms of any Bonding Facility
- (b) The Indemnitors waive the benefit of division between themselves and of discussion of any principal.

22. SUBORDINATION OF INDEMNITORS

None of the Indemnitors shall enforce any rights of contribution or indemnity against any Indemnitor or its property and undertaking until such Indemnitor's obligations to the Surety under this Agreement have been satisfied in full.

23. EXCLUSION OF LIABILITY

None of the Indemnitors shall have any claim against the Surety, for indemnity or otherwise, in respect of any alleged error or omission on the part of the Surety in issuing or failing to issue any Bond

24. DISCHARGE FROM SURETYSHIP

- (a) The Indemnitors shall, at any time upon the request of the Surety, procure the discharge of the Surety from any Bond and from all liability by reason thereof.
- (b) The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond.

25. TERMINATION

- (a) An Indemnitor may give thirty (30) days' prior written notice of termination to the Surety by registered mail to the Surety at its head office, specifying the effective date of such termination. No such notice of termination shall be deemed to have been received by the Surety, and such thirty (30) day period shall not commence, unless and until such notice is actually delivered to the Surety and the Surety has given a written acknowledgement of such delivery. Any such notice shall not operate to modify, bar, limit, affect, impair or discharge the liability of the Indemnitor(s) so terminating or the remaining Indemnitors (if any), upon or by reason of any and all such Bonds executed:
- (i) before the effective date of termination, or
 - (ii) executed after the effective date of termination
 - (A) upon the award of a contract on a bid, proposal or tender with respect to which the Surety has executed a bid bond, agreement to bond (or "surety's consent") or similar undertaking prior to such date; or
 - (B) which the Surety has become obligated, prior to such date, to execute.
- (b) Such a notice of termination shall operate only with respect to the Indemnitor(s) giving it. This Agreement shall remain in full force and effect, with respect to the other Indemnitor(s), without obligation for the Surety to notify such other(s) of the termination by one or more of the Indemnitors.
- (c) It shall be the responsibility of the terminating party to ascertain the correct address for the time being of the head office of the Surety. Such address is always a matter of public record. The head office of the Surety is now at Bay Adelaide Centre, 333 Bay Street, Suite 1610, Box 22 Toronto ON, M5H 2R2

26. ADDITIONAL INDEMNITORS

Any person may, by completing, executing and delivering to the Surety an Adhesion in the form annexed to this Agreement, become bound as an Indemnitor hereunder as if such person had been an original signatory hereto

27. DEMANDS BY SURETY

Any demand by the Surety on any of the Indemnitors may be hand delivered, telecopied, telexed or sent by registered mail to such party at the address shown above, or to such other address as such party may have notified to the Surety in writing (including any address shown in an Adhesion), and shall be conclusively deemed to have been received:

- (a) if hand delivered, telecopied or telexed:
- (i) on the date of delivery or transmission, if prior to 4:00 p.m. (local time) on a day (other than a Saturday) on which chartered banks in the municipality named in such address are open for business during normal business hours (a "Business Day"); or
 - (ii) otherwise, on the next following Business Day; or
- (b) if mailed, on the second Business Day after mailing.

28. GOVERNING LAW AND JURISDICTION

This Agreement is made under, and shall be interpreted in accordance with, the laws of the province named on the first page hereof and the laws of Canada applicable in such province; each of the Indemnitors hereby expressly submits to the non-exclusive jurisdiction of the Courts of such province.

29. SEVERABILITY

If any provision or provisions hereof are held to be void or unenforceable under the laws governing its construction or enforcement, this Agreement shall not be void or unenforceable thereby but shall continue in effect and be enforced as though such provision or provisions were omitted.

30. ENUREMENT

This Agreement is binding jointly and severally upon the Indemnitors, their heirs, executors, personal representatives, successors and assigns. This Agreement shall enure to and benefit any successor to the Surety (including without limitation any person to whom the Surety may in future transfer all or any substantial part of its business assets).

31. RIGHTS AND REMEDIES OF SURETY

The rights, powers and remedies afforded to the Surety by the terms hereof may not be waived or modified orally and no written change or modification shall be effective until signed by an authorized officer of the Surety. No agent or broker is authorized to sign any such change or modification on behalf of the Surety. All rights and remedies of the Surety under this Agreement shall be cumulative, and the exercise of or failure to exercise any right or remedy at any time shall not be an election of remedy or a waiver of any other right or remedy or of the same right or remedy as at any other time. The Surety is not required to exhaust its remedies or rights against the principal or to await receipt of any dividends from the legal representatives of the principal before asserting its rights under this Agreement against the Indemnitors, and



Bay Adelaide Centre
 333 Bay Street, Suite 1610, Box 22
 Toronto, ON M5H 2R2
 Phone: (416) 214-2555
 Fax: (416) 214-9597

may assert such rights against one or more of the Indemnitors without asserting them against all or other Indemnitors. The rights, powers and remedies conferred upon the Surety by this Agreement are in addition to any other rights the Surety may have or acquire against the Indemnitors or others, whether arising by the terms of any other agreement, by operation of law or otherwise.

32. CHOICE OF LANGUAGE

The parties hereto have requested that the present Agreement be drafted in the English language. Les parties aux présentes ont requis que la présente entente soit rédigée dans la langue anglaise.

33. ENTIRE AGREEMENT

EACH OF THE INDEMNITORS REPRESENTS TO THE SURETY THAT SUCH INDEMNITOR HAS CAREFULLY READ THE ENTIRE AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.

34. CONSENT TO SURETY'S OBTAINING INFORMATION



Each of the Indemnitors:

- (a) authorizes the Surety to obtain any credit or other information concerning the affairs and operations of each of the Indemnitors (including any "personal information", as defined by the *Personal Information Protection and Electronic Documents Act* (Canada) and other applicable personal information laws) and any transaction between or among any of the Indemnitors from any banks, depositories, sureties, obligees of the Bonds, materialmen, supply houses, credit reporting agencies, brokers or other persons (collectively, "Sources");
- (b) expressly instructs all such Sources to furnish such information to the Surety (and for greater certainty, instructs any broker(s) to release to the Surety any information relating to any Bond(s) or Bonding Facility), and
- (c) consents to the collection, use and disclosure by the Surety of any personal information about such Indemnitor for the purposes of the entering into, administration and enforcement of this Agreement and any Bond(s).

IN WITNESS WHEREOF the Indemnitors have executed and delivered these presents as their respective deeds, each who is an individual having hereunto set his or her hand (and having, by so signing, adopted the word ("seal") hereon as his or her personal seal), and each which is a partnership, joint venture, trust, corporation or unincorporated association having caused this Agreement to be duly executed by its duly authorized representative or representatives, as of the date shown on the first page hereof, which date each of the Indemnitors hereby affirms as the effective date of this Agreement, regardless of the date on which such Indemnitor in fact executed this Agreement.

SIGNED, SEALED AND DELIVERED.





Corporations and/or Partnerships Sign Hereunder

<p>Witness</p> <p> (Signature)</p> <p><u>ROBERT SMITH</u></p> <p>Print name</p> <p><u>2285 Lake Shore Bl. W</u></p> <p>Address of Witness</p> <p><u>Toronto M8V 3X9</u></p> <p>City, Postal Code</p> <p><u>(416) 488 0557</u></p> <p>Phone number</p>	<p>Name of Corporation</p> <p><u>North American Steel Erectors Inc.</u> (Seal)</p> <p> (Signature)</p> <p>Print Name: <u>Steve Toppin</u></p> <p>Print Title: <u>president</u></p> <p>I have the authority to bind the corporation</p> <p><u>163 Row Ridge Dr</u></p> <p>Address of Corporation</p> <p><u>Calhoun, Alberta T4C 1V7</u></p> <p>City, Postal Code</p> <p><u>888-339-7591</u></p> <p>Phone number</p>
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Bay Adelaide Centre
 333 Bay Street, Suite 1610, Box 22
 Toronto, ON M5H 2R2
 Phone: (416) 214-2555
 Fax: (416) 214-9597

Personal Indemnitors Sign Hereunder

<p>Witness  (Signature) <u>ROBERT SMITH</u> Print name <u>2285 Lake Shore Bl. W</u> Address of Witness <u>TORONTO M8V3X9</u> City, Postal Code <u>(416) 453 0557</u> Phone number</p>	<p>Name of Indemnitor <u>Steele Toupin</u>  (Signature) <u>162 Bow Ridge Dr</u> Address of Indemnitor <u>Cochrane, Alberta T4C 1V7</u> City, Postal Code <u>808-339-7591</u> Phone number <u>1975-01-17</u> Date of Birth (YYYY-MM-DD)</p>
<p>Witness  (Signature) <u>ROBERT SMITH</u> Print name <u>2285 Lake Shore Bl. W.</u> Address of Witness <u>Toronto Ont. M8V3X9</u> City, Postal Code <u>(416) 453 0557</u> Phone number</p>	<p>Name of Indemnitor <u>Gordon Spalding</u>  (Signature) <u>10432 Glenrose Dr</u> Address of Indemnitor <u>Delta, British Columbia V4C 0A6</u> City, Postal Code <u>604 588-5000</u> Phone number <u>58/11/02</u> Date of Birth (YYYY-MM-DD)</p>

Special Instructions:

Signatures should be witnessed unless corporate officers are signing with corporate seal.

If the Indemnitor is a corporation execute in full corporate name by proper officers, affix corporate seal and attach a Directors' Resolution.

If the Indemnitor is a Partnership, set forth name in full, with the signature(s) of the partner(s) executing on its behalf set out immediately below. Each partner should also separately sign as an Indemnitor.

If Alberta is specified on page 1, or the Indemnitor is an Alberta resident or governed by Alberta law, comply with The Guarantees Acknowledgement Act (Alberta).

This is EXHIBIT "B" referred to in the Affidavit of Stuart Detsky, sworn before me this 12^m day of August, 2022.

 Neil Forciniti

A Commissioner for Oaths in and for the
Province of Ontario

Bond No. MCS1150074 (the "Bond")
 Bond Amount \$462,000.00 (the "Bond Amount")

Performance Bond

NORTH AMERICAN STEEL ERECTORS INC as Principal (the "Principal") and Trisura Guarantee Insurance Company a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety (the "Surety") are held and firmly bound unto PCL Construction Management Inc. as Oblige (the "Obligee") in the amount of Four Hundred Sixty-Two Thousand And 00/100 Dollars (\$462,000.00) lawful money of Canada for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal entered into a written contract (the "Contract") with the Obligee, dated this 1st day of June, in the year 2019 for INSTALLATION OF STRUCTURAL STEEL FOR 9TH AVENUE BRIDGE REPLACEMENT, CALGARY ALBERTA.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect.

I - Pre-Demand Conference

Prior to a Demand (as defined in Section II 3) below) under this Bond, the Obligee may notify the Surety and the Principal in writing that it is considering declaring the Principal to be in default under the Contract and request a pre-demand conference (the "Pre-Demand Conference"). Upon receipt of such request the Surety and Principal shall participate in a Pre-Demand Conference meeting or telephone conference call, on a without prejudice basis, with the Obligee which shall be arranged by the Surety and held at a mutually agreeable time and place not later than fifteen (15) calendar days after receipt of such notice, unless otherwise mutually agreed to by each of the Obligee, Surety and Principal.

The purpose of the Pre-Demand Conference is to allow the Obligee to express its concerns about the Principal's performance pursuant to the Contract and to allow the Principal to respond to such concerns prior to the Obligee exercising its rights under the Contract or this Bond. It should not be construed as an alternative to any dispute resolution provisions which may appear in the Contract. Neither the participation by any party in the Pre-Demand Conference, nor any statement or position taken by any party during the Pre-Demand Conference or any follow-up Pre-Demand Conference, may be relied on by any other party as a waiver or compromise of the rights or duties of the Obligee, the Surety or the Principal under the Contract, this Bond or applicable law.

II - Conditions Precedent to Liability

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

1. The Principal is, and is declared by the Obligee to be, in default under the Contract; and
2. The Obligee has performed the Obligee's obligations under the Contract; and
3. The Obligee has made a Demand under the Bond. In this Bond, "Demand" means a clear and unequivocal written statement by the Obligee, delivered to the Surety in accordance with Section XI below, that the Principal is in default of its obligations under the Contract and requesting that the Surety fulfill its obligations under this Bond; and
4. The Obligee has agreed to make available the Balance of the Contract Price to the Surety in accordance with the terms and conditions of the Contract. In this Bond, "Balance of the Contract Price" means the total amount payable by the Obligee to the Principal under the Contract less the amount properly paid by the Obligee to the Principal.

III - Surety's Investigation and Response

Upon receipt of a Demand from the Obligee, the Surety shall be entitled to a reasonable time within which to conduct an investigation of the Demand and determine its liability under the Bond, if any. Within five (5) business days of receipt of the Demand the Surety shall acknowledge receipt of the Demand in writing and request from the Obligee the information and documentation the Surety shall require to complete its investigation (the "Information") and access to the site where the work is being performed, if necessary. Upon receipt of the Surety's acknowledgement, the Obligee shall promptly provide the requested information and site access to the Surety.

Upon receipt of all the information, and completion of the site visit, if required, the Surety shall have twenty-one (21) calendar days to complete its investigation and advise the Obligee, in writing, of its position on liability pursuant to the Bond and to choose an option for discharging its obligation hereunder, if appropriate. In the event that the Surety is unable to complete its investigation and take a position on liability within such twenty-one (21) calendar days it shall write to the Obligee prior to the expiration of such twenty-one (21) calendar days and provide the Obligee with an update which sets out the status of the Surety's investigation and the Surety's estimate of when the investigation will be completed and its position delivered to the Obligee. In the event that the Surety denies that it has any liability pursuant to this Bond, the Surety shall explain its reasons therefor to the Obligee in writing.

IV - Emergency Remedial Action by the Obligee

If during the time the Surety is investigating a Demand, circumstances dictate that the Obligee must undertake emergency remedial work which is necessary to:

- a) ensure public safety; or
- b) preserve or protect the work under the Contract from deterioration or damage,

the Obligee may, acting with due diligence and upon giving written notice to the Surety, undertake such emergency remedial work provided that:

1. reasonable costs incurred by the Oblige in undertaking such emergency remedial work shall be reimbursed by the Surety in accordance with the terms and conditions of this Bond and subject to the Principal's default and the Surety's liability being subsequently established. Any payments made by the Surety in respect of such work shall form part of its obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments; and
2. any such emergency remedial work shall be limited to work which is within the scope of the Contract and which is reasonably required to mitigate the potential costs or damages of the Oblige in the circumstances; and
3. any such emergency remedial work shall be undertaken without prejudice to the rights of the Oblige, the Principal or the Surety under the Contract, this Bond or applicable law.

V - Post-Demand Conference

Following a Demand, the Surety and the Principal shall participate in a meeting or telephone conference call (the "Post Demand Conference") with the Oblige, on a without prejudice basis, which shall be arranged by the Surety and held at a mutually agreeable time and place not later than ten (10) calendar days after receipt of the Demand, unless otherwise mutually agreed to by the Oblige and the Surety.

The purpose of the Post Demand Conference shall be to determine what remedial action, if any, the Oblige believes must be taken while the Surety is conducting its investigation. If the Oblige reasonably believes that the work of the Contract must proceed for the benefit/protection of the Project overall and in mitigation of any damages the Oblige intends to seek from the Surety hereunder, while the Surety is conducting its investigation and provides reasonable evidence thereof to the Surety, the Oblige may engage an appropriate contractor(s) to continue the work of the Contract (the "Remedial Work") subject to the following conditions:

1. the Oblige shall pay the costs of the Remedial Work on terms the same as or similar to those of the Contract;
2. the Oblige shall keep separate records of all amounts related to the Remedial Work it intends to seek as damages from the Surety hereunder; and
3. the Oblige shall allow the Surety and/or its consultant(s) access to the Project during the course of the Remedial Work for the purpose of preserving evidence and monitoring the progress of the Remedial Work.

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

The reasonable costs incurred by the Oblige in undertaking the Remedial Work shall be reimbursed by the Surety in accordance with the terms and conditions of this Bond subject to the Principal's default and the Surety's liability being subsequently established. Any payments made by the Surety in respect of the Remedial Work shall form part of its obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments.

So long as the Oblige has attended a Post Demand Conference and otherwise complied with all of the conditions of this Bond the Oblige may proceed with the Remedial Work and the Surety shall not raise the mere fact that the Remedial Work proceeded as a defence to any claim by the Oblige hereunder.

Neither the participation in the Post-Demand Conference, nor any statement or position taken by either party during the Post-Demand Conference or any follow-up Post-Demand Conference, shall be relied on by any other party as a waiver or compromise of the rights or duties of any the Oblige, the Surety or the Principal under the Contract or this Bond.

VI- Surety's Options

Following the completion of the Surety's investigation, if the Conditions Precedent have been satisfied by the Oblige and the Surety has accepted liability pursuant to this Bond, subject to Sections VII and VIII below, the Surety shall promptly:

1. remedy the default; or
2. complete the Contract in accordance with its terms and conditions; or
3. obtain a bid or bids for submission to the Oblige for completing the Contract in accordance with its terms and conditions and upon determination by the Oblige and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the Oblige and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to complete the Principal's obligations in accordance with the terms and condition of the Contract and to pay those expenses incurred by the Oblige as a result of the Principal's default relating directly to the performance of the work under the Contract, less the Balance of the Contract Price; or
4. pay the Oblige the lesser of : (1) the Bond Amount, or (2) the Oblige's proposed cost of completion less the Balance of Contract Price.

VII - Limitation on the Surety's Liability

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

In the province of Québec, the coverage period of this Bond begins at the date of commencement of the Contract work and ends two (2) years following acceptance of such work pursuant to Article 2110 of the Civil Code. Only defaults declared by the Oblige in writing to the Principal during such period shall be subject to coverage under this Bond.

VIII- Commencement of Action

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of : (1) the date of Substantial Performance of the Contract as defined in the lien legislation where the work under the Contract is taking place, or, if no such definition exists, the date when the work is ready for use or is being used for the purpose intended, or (2) the date on which the Principal is declared in default by the Oblige.

IX- Right of Action

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

X- Headings for Reference Only

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

XI- Notices

All Demands and notices under this Bond shall be delivered by facsimile and registered mail at the addresses set out below. All other correspondence may be delivered by any of facsimile, regular mail, registered mail, email or courier at the addresses set out below.

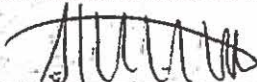
The Surety:
Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610
Toronto, ON M5H 2R2
Fax: 514-845-6876
Email: surety@trisura.com


The Oblige:
PCL Construction Management Inc.
2882 11th Street NE
Calgary, AB T2E 7S7
Fax: N/A
calgarycontracts@pcl.com

The Principal:
NORTH AMERICAN STEEL ERECTORS INC
162 BOW RIDGE DR.
COCHRANE, AB T4C 1V7
Fax: N/A
Email: stoupin@nasteelerectors.com


IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond this 12th day of August in the year 2019.

NORTH AMERICAN STEEL ERECTORS INC


By: 
Name: Steve Stoupin
Title: president
I have authority to bind the corporation.

Witnessed by:

Name of Witness: MANJARI GOSWAMI
Address of Witness: 160 GRIFFIN RANCH rd
Cochrane, Ab

Trisura Guarantee Insurance Company

By:  (seal)
Name: Liane Secours,
Attorney-in-Fact

This is EXHIBIT "C" referred to in the Affidavit of Stuart Detsky, sworn before me this 12th day of August, 2022.

 NEDA KOROGHIAN

A Commissioner for Oaths in and for the
Province of Ontario



SUBCONTRACT #463022 - OS
PCL Construction Management Inc.

This Agreement made on May 30, 2019 by and between:

PCL Construction Management Inc.
2882 11th Street NE
Calgary, AB T2E 7S7

Branch: Calgary

Project No: 0400463
Requested By: AMS CH
Prepared By: CJC
Cost Code: 051001
Subcontractor Fax:
File Number: 0400463

hereinafter called the "Contractor"
and

North American Steel Erectors Inc.
162 Bow Ridge Drive
Cochrane, AB T4C 1V7

Steeve Toupin
(514) 775-2211
stoupin@nasteelerectors.com

hereinafter called the "Subcontractor"

THIS SUBCONTRACT IS ALSO SUBJECT TO THE GENERAL CONDITIONS AND SPECIAL CONDITIONS ATTACHED HERETO

RECITALS:

1. The Contractor has entered into a contract together with all general conditions, special conditions, plans, drawings, specifications, schedules, addenda and other documents (as developed from time to time) forming or by reference made a part of such contract and as amended from time to time, (the "Prime Contract") dated March 11, 2019 for the performance of certain work (the "Work") for City of Calgary (together with its successors and assigns, the "Owner") in relation to a project described as 9th Ave Vehicle Bridge Replacement (the "Project").

Owner Address:
City of Calgary
2 FLR-677 25 AVE SE BLDG U
CALGARY, AB T2G 4K8

Project Address:
9th ave SE over Elbow River
Calgary, AB

2. The Subcontractor wishes to undertake a portion of the Work (the "Subcontract Work", as defined below) as Subcontractor to the Contractor.
3. The Subcontractor and the Contractor have agreed to enter into this Subcontract, which sets out the terms and conditions upon which the Subcontractor will perform the Subcontract Work.

COPY TO:

A. AGREEMENT TO PERFORM THE SUBCONTRACT WORK

The Subcontractor agrees to perform the Subcontract Work in accordance with the terms and conditions of this Subcontract and to the satisfaction and approval of the Contractor and of the Owner or its architect or engineer (the "Consultant").

B. WORK TO BE PERFORMED

It is agreed that the materials to be furnished and the work to be done by the Subcontractor are as follows:

Supply, fabricate and install structural steel as per plans, specifications, and all addenda.

All in accordance with the requirements of the Prime Contract and all instructions of the Owner or the Consultant pursuant to the Prime Contract in relation to such materials and such work (hereinafter called the "Subcontract Work"). The Subcontract Work includes any and all acts, operations, obligations, duties and responsibilities as are necessary for the Subcontractor to perform the scope of the Subcontract Work and to satisfy its obligations under this Subcontract, including the provision and performance, and all supervision, of all necessary labour, materials (Freight Terms DDP - Delivered Duty Paid 9th Ave SE (Inglewood) Bridge Rehab - Incoterms 2010, includes offloading by subcontractor), plant, tools, equipment, services, supplies, permits and licenses.

C. SUBCONTRACT PRICE

The estimated amount to be paid to the Subcontractor for the performance of the Subcontract Work is **four million six hundred forty-eight thousand five hundred nine DOLLARS (\$4,648,509.00)** in Canadian Funds (the "Subcontract Price") exclusive of the Goods and Services Tax and inclusive of all other federal, provincial, territorial and municipal taxes of any kind whatsoever and which amount shall be subject to adjustment in accordance with the terms hereof.

Cost Breakdown - Schedule of Unit Prices

Cost Code	Description	Quantity	UoM	Unit Price	Estimated Total
051001	3.5.1 Supply Coated Steel Arch Ribs & Cross Bracing	1	LS	\$1,640,361.45	\$1,640,361.45
051002	3.5.2 Supply Galv. Arch Tie Beams	1	LS	\$501,828.03	\$501,828.03
051003	3.5.3 Deliver & Erect Steel Arches (Ribs, Cross Bracing, Tie Beams)	1	LS	\$26,100.78	\$26,100.78
051004	3.5.4 S&I Arch Rib Coated Cladding Panels	1	LS	\$46,064.80	\$46,064.80
051005	3.5.5 S&I Arch Cross Bracing Coated Cladding Panels	1	LS	\$23,720.60	\$23,720.60
051006	3.5.6 Supply Galv. Steel Deck Beams & Stringers	1	LS	\$2,095,356.84	\$2,095,356.84
051007	3.5.7 Deliver & Install Steel Deck Beams & Stringers	1	LS	\$78,302.35	\$78,302.35
051008	3.5.8 S&I Galv. Steel Arch Hangers	28	EA	\$6,896.3679	\$193,098.30
051009	3.5.9 S&I Coated Steel Plate Hangers	4	EA	\$4,791.7125	\$19,166.85
014200	50% Performance bond – Shield Industries (0.0115 x 0.5 x \$2,600,000) = \$14,950.00	1	LS	\$14,950.00	\$14,950.00
014200	50% Labour and Material bond - Shield Industries (0.0115 x 0.5 x \$1,100,000) = \$6,325.00	1	LS	\$6,325.00	\$6,325.00
014200	50% Performance bond – North American Steel Erectors (0.007 x 0.5 x \$924,000) = \$3,234.00	1	LS	\$3,234.00	\$3,234.00
					\$4,648,509.00

UNLESS SPECIFICALLY EXCLUDED HEREIN, SUBCONTRACTOR INCLUDES ALL COSTS ASSOCIATED WITH THE EXECUTION OF SUBCONTRACTOR'S WORK

The quantities as shown in the Schedule of Unit Prices are estimated quantities only. The final Subcontract Price shall be the sum of the products of the actual quantities of work performed or materials furnished as determined by counts and measurements made by the Contractor and approved by the Owner multiplied by the applicable Subcontract Unit Prices. It is mutually agreed that the quantities of work to be done or materials to be furnished may vary from the estimated quantities and such variances shall not be considered as a waiver of any condition of the Subcontract, nor as invalidating any of the provisions thereof, nor shall any changes be made to the Subcontract Unit Prices on account of such variations, but the same Unit Price shall apply as if no variations had occurred.

D. PAYMENT

The Contractor agrees to pay the Subcontractor for the performance of the Subcontract Work as follows:

1. Provided that no lien has been filed in respect of the Subcontract Work that has not been released, vacated or discharged by the Subcontractor in accordance with the requirements of this Subcontract, payments will be made monthly on progress estimates submitted by the Subcontractor as approved by the Contractor covering 90.00% of the value of the Subcontract Work completed by the Subcontractor to the end of the previous month, such payments to be made within the earlier of five (5) days after the Contractor receives payment for such work from the Owner, or sixty (60) days from the end of the month in which the Subcontract Work included in the progress estimate was completed.
2. Subject to the expiry of the applicable holdback period pursuant to the applicable builders', mechanics', or construction lien legislation, and provided that no lien has been filed in respect of the Subcontract Work that has not been released, vacated, or discharged in accordance with the requirements of this Subcontract, payment of the balance of 10.00% owing under this Subcontract will be made within the earlier of five (5) days after final payment has been received by the Contractor from the Owner for the Project or sixty (60) days after final acceptance of the Project by the Owner or its Consultant.

3. Due performance by the Subcontractor shall be a condition precedent to all payments by the Contractor.
4. The Contractor's payment obligations shall be subject to Article 12 of the General Conditions.
5. Payments will not be due and owing nor shall any interest accrue thereon until all required documents, including but not limited to this Subcontract, Subcontract revisions, statutory declarations (if required pursuant to this Subcontract), certificates of insurance, Workers' Compensation Board letters of account, Workers' Compensation Board letters of clearance, such documentation in respect of safety as may be required pursuant to Article E(2)(b), quality control documentation, an invoice setting out the payment sought, and any other documents as required by this Subcontract, are provided to the Contractor in the format requested and, if required, fully executed by the Subcontractor.
6. Subcontractor hereby represents to Contractor that it is not a non-resident of Canada for purposes of the Income Tax Act (Canada). Any and all payments made under this Subcontract shall be made subject to withholding and deduction on account of taxes where required by applicable laws or the administration thereof by relevant governmental authorities, including without limitation withholding on account of Canadian federal or provincial taxes from a payment to a non-resident of Canada in respect of services rendered in Canada. Where an amount is so withheld or deducted, such amount will be treated for all purposes of this Subcontract as having been paid by Contractor to Subcontractor at the time it was withheld or deducted, and Contractor shall remit such amount to the relevant governmental authorities. Notwithstanding the foregoing, the Subcontractor may, no later than 30 days prior to commencing the Subcontract Work, provide the Contractor with a letter from the Canada Revenue Agency ("CRA") authorizing an exemption from a withholding required by applicable law. If the Subcontractor provides such letter from the CRA, the Contractor shall not reduce payments made under this Subcontract by any withholding and deduction on account of taxes exempted by such letter.

E. INVOICING PROCEDURE

1. Three copies of invoices in a format acceptable to the Contractor covering progress claims referencing this Project must be received by the Contractor at the Contractor's address set forth on the first page hereof, not later than the twenty-fifth day of the month in which materials were supplied or work performed. In the event invoices are received later than this, the Contractor may postpone payment to the month following that in which it would otherwise have been due, notwithstanding anything contained elsewhere in this Subcontract.
2. No progress payment or final payment shall be due or payable nor shall any interest accrue thereon until the Subcontractor furnishes the Contractor with:
 - (a) a Statutory Declaration stating:
 - (i) in the case of a progress payment, that all obligations incurred by the Subcontractor in the performance of this Subcontract up to the end of the previous month have been paid, or stating particulars of any obligations remaining unpaid; and
 - (ii) in the case of final payment, that all obligations incurred by the Subcontractor in the performance of this Subcontract have been paid, or stating particulars of any obligations still remaining unpaid, and stating that all Workers' Compensation Board assessments have been paid; and a certificate of the Workers' Compensation Board to that effect shall be attached to the Statutory Declaration;
 - (b) such documentation in respect of safety as may be required in accordance with the Contractor's safety policy, a copy of which has been delivered to the Subcontractor or is posted at the Project site (the "Site"), together with such revisions of which the Subcontractor may be notified by the Contractor from time to time (the "Contractor's Safety Policy").
3. The Contractor may require invoices and back up to invoices to be submitted electronically. If so required, spreadsheets will be submitted in Microsoft Excel and documents will be submitted in Microsoft Word forms. Invoices and back up may be submitted by disk delivered to the address, or via e-mail to the e-mail address, designated for such purpose by the Contractor in writing.

F. GENERAL

1. Except to the extent otherwise expressly provided in this Subcontract, if there is a conflict between provisions of this Subcontract or provisions incorporated into this Subcontract, the order of priority, from highest to lowest, shall be:
 - (a) the agreement of this Subcontract (being Articles A to F, inclusive);
 - (b) the Special Conditions of this Subcontract;
 - (c) the General Conditions of this Subcontract;
 - (d) the specifications incorporated into this Subcontract; and
 - (e) the drawings incorporated into this Subcontract. Drawings of a larger scale shall govern over those of small scale of the same date. Dimensions shown on drawings shall govern over dimensions scaled from drawings.

Later dated documents shall govern over earlier documents of the same type. To the extent that this Subcontract and the Prime Contract deal with the same subject matter in respect of the Subcontract Work, both such provisions shall apply except to the extent that such provisions are contradictory. To the extent that a provision in this Subcontract contradicts a provision in the Prime Contract, the provision in this Subcontract shall prevail to the extent necessary to avoid such contradiction.

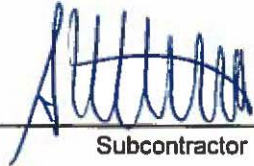
2. The Subcontractor and the Contractor for themselves, their heirs, executors, administrators, successors and permitted assigns, do hereby agree to the full performance of the covenants and agreements contained in this Subcontract.
3. This Subcontract is the entire agreement between the parties relating to the Subcontract Work and replaces any earlier agreements, and the parties agree that there are no other agreements, representations, collateral agreements or warranties other than as expressed herein. The Subcontractor acknowledges that it has not entered into this Subcontract on the basis of, and has not relied upon, any statement or representation, whether or not negligently made, whether oral, written, express or implied, except as expressly set forth in this Subcontract. No amendment to this Subcontract shall be valid and binding unless set forth in a Subcontract Revision, a Contractor Directive or an instrument in writing signed by the parties.
4. Time is of the essence of this Subcontract and any time specified for the completion of the Subcontract, the Subcontract Work or any portion thereof is a material provision of this Subcontract.
5. The Contractor and the Subcontractor are independent contractors. This Subcontract does not create or establish between the Contractor and the Subcontractor or between the Subcontractor and the Owner any relationship as partners, fiduciaries, joint venturers, employer and employee, master and servant or principal and agent.
6. Each provision of this Subcontract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Subcontract shall be invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Subcontract. If any such provision of this Subcontract is invalid, unenforceable or illegal, the parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Subcontract as nearly as possible to its original intent and effect.
7. This Subcontract shall be governed by and construed in accordance with the laws of the place of the Subcontract Work and shall be treated in all respects as a contract in that place without regard to conflict of laws principles.
8. Subject to Article 20(b) of the General Conditions, the courts of the place of the Subcontract Work shall have jurisdiction to hear and determine any action, suit, proceeding or dispute in connection with this Subcontract, and the parties hereby irrevocably attorn to the jurisdiction of those courts.
9. Each party shall do all things and execute all further documents necessary to give full effect to this Subcontract.
10. This Subcontract shall be interpreted neutrally and without regard to which party drafted it and, in particular, no rule of

construction shall be applied that would result in the resolution of an ambiguity herein on the basis of which party drafted this Subcontract.

11. Any notice required or permitted under this Subcontract shall be in writing and (a) delivered personally, (b) sent by recognized express mail or courier service, with delivery receipt requested, or (c) sent by facsimile transmission with telephonic confirmation, if to the Subcontractor, at the address set forth on the first page hereof, and if to the Contractor, at the Contractor address set forth on the first page hereof, Attention: Manager, Finance and Administration; Fax number: 403-250-2332.
12. In this Subcontract, the word "including" shall mean "including, without limitation," and the words "include" and "includes" shall have corresponding meanings.
13. The General Conditions and Special Conditions attached hereto form part of this Subcontract.

IN WITNESS WHEREOF the parties hereto have executed this Subcontract by their proper officers or duly authorized agents.

North American Steel Erectors Inc.



Subcontractor

PCL Construction Management Inc.



Contractor

GENERAL CONDITIONS

ARTICLE 1.

- (a) The Subcontractor shall perform its obligations under this Subcontract at its own cost and risk except as expressly provided in this Subcontract.
- (b) The Subcontractor agrees to begin, carry on and complete the Subcontract Work in a prompt and diligent manner and in accordance with the Contractor's schedule for the Project and so as not to interfere with or delay the work of the Contractor or the work of any other subcontractors. The Contractor shall have the right to adjust the Contractor's schedule for the Project, or direct the Subcontractor to accelerate the Subcontract Work to ensure compliance with the Contractor's schedule, from time to time provided however that, if: (1) such adjustment is not undertaken in response to an act or omission of the Subcontractor or a party engaged by or through the Subcontractor; (2) such adjustment reduces the time that the Subcontractor has to carry out the Subcontract Work prior to such adjustment; and (3) the Contractor has not previously reimbursed the Subcontractor for such adjustment, the Contractor shall pay the reasonable expenses incurred by the Subcontractor in accelerating the Subcontract Work to adhere to Contractor's schedule (as adjusted) The Subcontractor shall, if requested by the Contractor, furnish adequate evidence to substantiate its ability to meet the performance schedules and planned progress of the Subcontract Work, including periodic reports setting forth the status of the Subcontract Work. Without limiting any other right or remedy of the Contractor, if the Subcontractor fails to observe any provision of this Article 1(b) and by reason thereof the Contractor becomes liable for penalties or damages (including liquidated damages), the Subcontractor shall pay to the Contractor such penalties or damages for which it has been responsible.
- (c) The Subcontractor represents and warrants that it is experienced and knowledgeable in the performance of work such as the Subcontract Work and has the required ability, experience, skills, qualifications, capability, manpower, and financial resources to perform the Subcontract Work in a timely manner in accordance with the terms of this Subcontract.
- (d) The Subcontractor has:
 - (i) conducted its own independent inspection and analysis of the Site and all other locations relevant to the performance of the Subcontract Work and accepts the conditions of the Site and such other locations as they are (except as otherwise provided in the Prime Contract);
 - (ii) conducted its own independent inspection and analysis of all drawings, reports, studies, data, documents or other information given or made available by the Contractor, the Owner or the Consultant ("Background Information"); and
 - (iii) relied solely on its own independent inspection and analysis and has not relied on any Background Information or any representation given or made by the Contractor, the Owner or the Consultant, except as expressly set forth in this Subcontract or as otherwise provided in the Prime Contract.
- (e) Subcontractor personnel remaining at or returning to the Site outside regular project working hours must have prior authorization to do so from the Contractor.

ARTICLE 2.

- (a) The Subcontractor is deemed to have full knowledge of the provisions of the Prime Contract, other than the provisions relating to payment to the Contractor under the Prime Contract and other than any other provisions of the Prime Contract which are identified in the Special Conditions of this Subcontract to be excluded from the knowledge of the Subcontractor or which the Contractor, in its sole and absolute discretion, determines are confidential.
- (b) To the extent that the Contractor is required under the Prime Contract to obtain rights, powers or remedies for the direct benefit of the Owner as against the Subcontractor, the Subcontractor hereby grants such rights, powers or remedies to the Owner. The Subcontractor agrees that the Owner is a third party beneficiary of this Subcontract in respect of all rights, powers and remedies granted by the Subcontractor to the Owner and the Contractor is contracting as agent for the Owner in respect of the granting of such rights, powers and remedies in favour of the Owner. Except for rights, powers and remedies granted by the Subcontractor in favour of the Owner pursuant to this Subcontract, nothing herein shall be construed as creating any privity of contract between the Subcontractor and the Owner.

- (c) To the extent that the Contractor is required under the Prime Contract to include certain terms or conditions in this Subcontract, such terms and conditions shall be deemed to be incorporated herein. To the extent that the Contractor is required under the Prime Contract to ensure that its subcontractors include certain terms and conditions in their sub-subcontracts or purchase orders, the Subcontractor shall include such terms and conditions in its sub-subcontracts and purchase orders.
- (d) Except as expressly provided to the contrary herein:
- (i) the Subcontractor shall assume and perform all the duties, responsibilities and liabilities of the Contractor under the Prime Contract in relation to the performance of the Subcontract Work as if the Contractor was the Owner and the Subcontractor was the Contractor under the Prime Contract;
 - (ii) the Subcontractor shall have, in respect of the performance of the Subcontract Work, the same duties, responsibilities, obligations and liabilities to the Contractor under this Subcontract as the Contractor has to the Owner under the Prime Contract as if the Contractor was the Owner and the Subcontractor was the Contractor under the Prime Contract;
 - (iii) the Contractor shall have, in respect of the performance of the Subcontract Work, the same rights, powers and remedies against the Subcontractor under this Subcontract as the Owner has against the Contractor under the Prime Contract as if the Contractor was the Owner and the Subcontractor was the Contractor under the Prime Contract;
 - (iv) the Subcontractor shall be bound by all rulings of the Consultant or the Owner in relation to the performance of the Subcontract Work, to the same extent that the Contractor is bound; and
 - (v) the Subcontractor will not be entitled to greater rights, entitlements or relief against the Contractor under this Subcontract than the Contractor actually obtains from the Owner under the Prime Contract in relation to the performance of the Subcontract Work or any claims of the Subcontractor relating thereto provided however that where the Subcontractor is delayed in the performance of the Subcontract Work due to a breach of this Subcontract by the Contractor, the Subcontractor will be entitled to the reasonable expenses incurred by the Subcontractor due to such breach in accordance with the terms of this Subcontract .
- (e) The Subcontractor will so execute, complete and maintain the Subcontract Work that no act or omission of the Subcontractor in relation thereto shall constitute, cause or contribute to any breach by the Contractor of any of the Contractor's obligations under the Prime Contract.
- (f) The Subcontractor hereby acknowledges that:
- (i) any breach by the Subcontractor of its obligations under this Subcontract (including its obligations under Article 1 or this Article 2) may result in the Contractor committing breaches of and becoming liable for damages, including liquidated damages, under the Prime Contract and other subcontracts made by the Contractor and may occasion further loss or expense to the Contractor; and
 - (ii) all such damages, liquidated damages, loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the Subcontractor.
- (g) Subject to Article 2(h), in the event that a circumstance should arise that has an impact on the cost of performance of the Subcontract Work or the time required to perform the Subcontract Work and, as a result of the occurrence of such circumstance, the Contractor receives additional payment from the Owner in respect of the Subcontract Work or is granted an extension of the time for performance of the Subcontract Work by the Owner, the Subcontractor shall be entitled to a like additional payment, exclusive of any amount attributable to the Contractor's fee for profit or overhead, and to a like extension of time for performance of the Subcontract Work.
- (h) Whenever the Contractor is required by the terms of the Prime Contract to give any return, account or notice, the Subcontractor will, in relation to the Subcontract Work, give a similar return, account or notice in writing in such form and within such period of time as will enable the Contractor to comply with the requirements of the Prime Contract. If by reason of any breach of this Article 2(h) the Contractor is prevented from recovering any sum from the Owner or from obtaining any extension of time in respect of the Subcontract Work, then, without prejudice to any other remedy the Contractor may have for such breach, the Subcontractor shall be disentitled from recovering a like sum or any portion thereof or obtaining a like extension of time or any portion thereof under this Subcontract.

ARTICLE 3.

- (a) In respect of the Subcontract Work, the Subcontractor shall obtain and maintain at its own expense all such insurance as the Contractor is required to obtain and maintain pursuant to the Prime Contract (except for wrap up liability insurance if provided for in the

Prime Contract) unless this requirement is amended or waived by the Contractor in writing. Except as otherwise agreed by the Contractor in writing, the Subcontractor shall also obtain and maintain at its own expense liability, property damage, owned/non-owned vehicle and Subcontractor's equipment insurance satisfactory to the Contractor, and shall furnish certificates of such insurance to the Contractor.

- (b) Each insurance policy to be provided and maintained by the Subcontractor shall:
 - (i) be in form, on terms and with insurers satisfactory to the Contractor;
 - (ii) name the Contractor as an additional insured, and shall contain provisions that the insurer shall have no right of subrogation against the Contractor, and when required by the Prime Contract, shall name the Owner or other persons as additional insureds and contain waivers of subrogation against the Owner and such other persons;
 - (iii) contain a cross liability clause and a severability of interests clause; and
 - (iv) be primary insurance and not in excess to any similar coverage provided by insurance procured by or available to the Contractor or the Owner unless this requirement is amended or waived by the Contractor in writing.
- (c) The approval by the Contractor of any insurance policy provided by the Subcontractor, including the approval of any limits of such policy, shall not limit the Subcontractor's obligations pursuant to this Subcontract.
- (d) Where a loss occurs to the Subcontractor which is covered or would be covered in whole or part by the insurance required to be obtained and maintained by the Subcontractor, the Contractor shall not be liable to the Subcontractor for so much of such loss as is so covered or as would have been covered.
- (e) On projects where the Contractor or the Owner carries builders' risk or similar insurance, any deductible from the sums otherwise payable there under shall be borne by the party responsible for the loss, or if no responsible party can be determined, by the party receiving the direct benefit of such insurance.
- (f) Where the Subcontractor has provided a surety bond in connection with the Subcontract Work, the Subcontractor shall report to and obtain the written consent of the surety for all amendments to and increases in the Subcontract where the aggregate increase of the value of the Subcontract is greater than ten (10%) percent, and shall ensure continued bonding of the Subcontract, provided that no failure of the Subcontractor to fulfil such obligations shall invalidate the surety bond or affect the obligations of the surety under the surety bond.
- (g) Prior to commencement of the Subcontract Work and upon the placement, renewal, or extension of all or any part of the insurance to be obtained and maintained by the Subcontractor hereunder, the Subcontractor shall promptly provide the Contractor with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements and all other related information as requested.
- (h) All required insurance policies shall be issued by insurers licensed to underwrite insurance in the jurisdiction of the place of the Subcontract Work.

ARTICLE 4.

- (a) The Subcontractor agrees not to subcontract all or any portion of the Subcontract Work except with the prior written consent of the Contractor (which will not be unreasonably withheld) and then only to sub-subcontractors or material suppliers acceptable to the Contractor (acting reasonably).
- (b) The Subcontractor shall not assign this Subcontract or any portion thereof except with the prior written consent of the Contractor.
- (c) The Contractor may assign this Subcontract or any portion hereof.

ARTICLE 5.

The Subcontractor shall at its own expense remove from the Site all debris resulting from the carrying out of the Subcontract Work.

ARTICLE 6.

The Subcontractor further specifically obligates itself to the Contractor in the following respects:

- (a) To defend and indemnify the Contractor and its directors, officers, employees and agents (collectively, the "Contractor Indemnitees") against and save them harmless from any and all claims, suits, proceedings, liability, damages (including liquidated damages), loss, expense or damage (collectively, "Claims") incurred by the Contractor Indemnitees (or any of them) for or on account of:
 - (i) any alleged or actual infringement or violation of any patent, copyright, or other intellectual or industrial property right arising in connection with this Subcontract and anything done hereunder;
 - (ii) injuries to property, injuries to persons including death, and from any other Claims on account of any negligent act or omission, wilful misconduct or other wrongful act or omission of the Subcontractor, or any of its directors, officers, agents, employees, servants, material suppliers, sub-subcontractors or assignees; and
 - (iii) any breach by the Subcontractor of any of its obligations under this Subcontract.

- (b) All obligations by the Subcontractor pursuant to this Subcontract to defend, indemnify or save harmless the Contractor Indemnitees or any other person or entity shall:
 - (i) survive the termination of this Subcontract for any reason and shall be without limitation to any other right or remedy that may be available to the Contractor; and
 - (ii) include the obligation to indemnify the Contractor Indemnitees or such other person or entity from and against all costs, expenses and fees, including agency fees and legal fees and disbursements on a solicitor and his or her own client basis. Any entity or person entitled to indemnification hereunder shall, at its or their option, have the right to undertake its or their own defence at the expense of the Subcontractor and to recover from the Subcontractor all such costs, expenses and fees in relation thereto.

ARTICLE 7.

- (a) The Subcontractor shall comply with the provisions of any applicable builders', mechanics' or construction lien legislation including any trust provisions thereof.

- (b) Prior to the commencement of the Subcontract Work, the Subcontractor shall familiarize itself with and at all times during the progress of the Subcontract Work shall fully comply with the Contractor's Safety Policy, the Contractor's Project Health, Safety, and Environment (HSE) Plan, the *Workers' Compensation Act*, the *Occupational Health and Safety Act* and all other laws, regulations and codes concerning health, safety or the environment as shall be applicable to the Subcontract Work. The Subcontractor shall, if so required, furnish to the Contractor satisfactory evidence that the terms of this Article are being complied with.

- (c) The Subcontractor shall obtain and pay for all permits, licenses and official inspections made necessary by its work, and to comply with all laws, ordinances and regulations bearing on its work and the conduct thereof, including those in respect of environmental protection or enhancement.

- (d) The Subcontractor warrants and guarantees the work and materials covered by this Subcontract and agrees to make good, at its own expense, any non-compliance in carrying out the Subcontract Work including any defect or deficiency in materials or workmanship which may occur or develop, or may be properly condemned or ordered modified by the Consultant, the Contractor or any municipal or government inspector as the result of any work, goods or materials provided by the Subcontractor, together with detrimental direct or indirect effects of such defect or deficiency or of such making good.

- (e) The Subcontractor will examine all work (of its or others) near to or necessary to its own work, detect and notify the Contractor of all flaws or defects therein, and cooperate to make the two works come together and fit and function smoothly.

- (f) Without limitation to the rights of the Contractor pursuant to Article 7, 13 and 17 of this Subcontract, title to materials supplied under this Subcontract shall pass to the Contractor on the earliest of (i) the date required pursuant to the Prime Contract for the passage of title to the Owner, (ii) the date of delivery of such materials to the Site or to such other location as may be directed by the Contractor, or (iii) the date of payment by the Contractor to the Subcontractor for such materials. The Subcontractor agrees to execute such

documents as the Contractor may reasonably require to evidence the transfer of such title.

- (g) Whether or not title has passed to the Contractor or the Owner, all risk of loss of or damage to the Subcontract Work not fully or finally accepted by the Owner, or to materials, supplies, equipment or scaffolds, shall rest solely on the Subcontractor, including loss or damage due to vandalism or theft unless, and only to the extent that, such loss or damage is covered by insurance obtained by the Contractor or the Owner that is primary to any insurance obtained or required to be obtained by the Subcontractor.
- (h) The Subcontractor shall:
 - (i) perform quality control covering all activities, products, and services related to the execution of the Subcontract Work so as to ensure:
 - (A) compliance of the Subcontract Work with the stated project performance requirements as well as compliance with the intent of such requirements; and
 - (B) that defects in the performance in the Subcontract Work, if any, are identified and remedied;
 - (ii) ensure that its quality control program meets or exceeds the requirements of the Contractor's quality control program;
 - (iii) present quality control documentation to the Contractor if requested, as a minimum, on a monthly basis with the Subcontractor's monthly progress estimate; and
 - (iv) notify the Contractor immediately upon discovering evidence of a non-conformance quality event.

ARTICLE 8.

- (a) The term "Shop Drawings" means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by the Subcontractor to illustrate details of a portion of the Subcontract Work.
- (b) The Subcontractor shall submit Shop Drawings to the Contractor for its review with reasonable promptness and in an orderly sequence so as to cause no delay in the Subcontract Work or in the work of others. Shop Drawings shall be submitted in the form of reproducible transparencies or prints as the Contractor may direct. At the time of submission the Subcontractor shall notify the Contractor, by notice in writing separate and apart from the Shop Drawings themselves, of any deviations in the Shop Drawings from the requirements of the Prime Contract. The Subcontractor shall be responsible for all on-site and field dimensioning confirmation as may be required to ensure the accuracy of the Subcontractor's Shop Drawings and to ensure the proper fitting of the Subcontract Work to the work of others.
- (c) The Subcontractor shall submit any samples required to be provided for approval to the Contractor with reasonable promptness and in an orderly sequence so as to cause no delay in the Subcontract Work or in the work of others.
- (d) The Subcontractor agrees to provide the Contractor with such information as the Contractor may demand from time to time to evaluate the progress and coordination of the Subcontract Work or to prepare and revise construction and coordination schedules.
- (e) "By Others" or similar comments on Shop Drawings will not be recognized unless they specifically concur with the specifications.
- (f) The Subcontractor shall maintain accurate and complete Subcontract documents (including all Shop Drawings, as-built drawings, maintenance manuals, instructions, brochures, guarantees, warranties, certificates and other similar documents) at all times during the performance of the Subcontract Work at the Site or at such other location approved by the Contractor in writing, shall make all such documents available to the Contractor at all such times and shall deliver to the Contractor all such documents as and when required by the Contractor and in any event no later than the Subcontractor's final progress claim or two weeks before the Consultant's final inspection, whichever is the earlier.

ARTICLE 9.

- (a) The Contractor shall have the right, without invalidating this Subcontract, to order changes to the Subcontract Work, including changes by way of addition to the Subcontract Work or deletion of portions of the Subcontract Work, and in each such case shall do so in writing.

- (b) When a change to the Subcontract Work is proposed, the Contractor shall provide notice in writing to the Subcontractor describing the proposed change to the Subcontract Work. The Subcontractor shall propose, in a form and in detail acceptable to the Contractor and within such time as may be prescribed by the Contractor, a method of adjustment or an amount of adjustment to the Subcontract Price, if any, and the adjustment to the Subcontract schedule, if any, for the proposed change to the Subcontract Work.
- (c) When the Contractor and the Subcontractor agree to the adjustments to the Subcontract Price and the Subcontract schedule or the method to be used to determine such adjustments, such agreement shall be recorded in a Subcontract Revision signed by the Contractor and the Subcontractor (a "Subcontract Revision").
- (d) If the Contractor requires the Subcontractor to proceed with a change to the Subcontract Work prior to the Contractor and the Subcontractor agreeing upon the adjustments to the Subcontract Price and the Subcontract schedule, the Contractor shall issue a written authorization (a "Contractor Directive") to the Subcontractor authorizing such change, and the Subcontractor shall proceed promptly with the performance of the change to the Subcontract Work. If the parties are unable to agree on the amount of any adjustments to the Subcontract Price or the Subcontract schedule, the same shall be determined in accordance with the provisions of the Prime Contract dealing with changes to the Subcontract Work but such adjustments shall exclude any fee or overhead to which the Contractor is entitled in respect of changes to the Subcontract Work (and, for the purposes of determining such adjustment in accordance with the provisions of the Prime Contract, such change shall be treated as a change initiated by the Owner as if the Contractor were the Owner and as if the Subcontractor were the Contractor). In the event that the Prime Contract prescribes limitations on adjustments to schedule or to payments to be made to the Contractor in respect of changes to the work being performed by subcontractors, such limitations shall apply to adjustments to schedule and to payments to the Subcontractor in respect of changes to the Subcontract Work.
- (e) The Subcontractor shall not undertake any changes to the Subcontract Work without a written Subcontract Revision or Contractor Directive and the Contractor shall not be liable to the Subcontractor in any way for any work carried out by the Subcontractor in respect of changes to the Subcontract Work where such work was carried out without a written Subcontract Revision or Contractor Directive. All Subcontract Revisions and Contractor Directives will be considered incorporated into this Subcontract and governed by its terms.
- (f) In the event of a dispute as to whether a written instruction by the Contractor to the Subcontractor constitutes a change to the Subcontract Work, the Subcontractor shall act in accordance with the Contractor's instructions. If it is subsequently determined that the instructions constituted a change to the Subcontract Work, the Subcontract Price shall be adjusted and the Subcontract schedule shall be adjusted in respect of such instruction in accordance with this Article 9 PROVIDED HOWEVER that no such instructions shall constitute a change to the Subcontract Work unless the Subcontractor has provided the Contractor with:
 - (i) notice in writing that it believes that such instructions constitute a change in the Subcontract Work by the earlier of:
 - (A) five (5) days from the date the Subcontractor has received the written instruction from the Contractor; or
 - (B) the day that is two Working Days immediately preceding the day that the Contractor must provide a similar notice to the Owner under the Prime Contract in respect of such instructions; and
 - (ii) a further notice in writing to the Contractor detailing why the Subcontractor believes that such instructions constitute a change in the Subcontract Work, the value of such change, and any schedule impacts associated with such change by the earlier of:
 - (A) ten (10) days from the date the Subcontractor received the written instruction from the Contractor;
 - (B) the day that is two Working Days immediately preceding the day that the Contractor must provide a similar notice to the Owner under the Prime Contract in respect of such instructions.

ARTICLE 10.

The Subcontractor shall have no Claim against the Contractor unless it shall have provided the Contractor with:

- (i) notice in writing which specifies the occurrence or event giving rise to such Claim or possible Claim by the earlier of:
 - (A) five (5) days of the date of such occurrence or event; or
 - (B) the day that is two Working Days immediately preceding the day that the Contractor must provide a similar notice to the Owner under the Prime Contract in respect of such Claim or possible Claim; and
- (ii) a further notice in writing which details why the Subcontractor believes that it is entitled to compensation or schedule relief in respect of such Claim or possible Claim, the value of such Claim or possible Claim, and any schedule Impacts associated with such Claim or possible Claim by the earlier of:
 - (A) ten (10) days of the date of such occurrence or event; or
 - (B) the day that is two Working Days immediately preceding the day that the Contractor must provide a similar notice to the Owner under the Prime Contract in respect of such Claim or possible Claim.

ARTICLE 11.

- (a) The Subcontractor agrees to comply with all applicable municipal, provincial, territorial and federal employment and labour laws, rules.
- (b) The Subcontractor shall provide a sufficient number of personnel to enable timely and proper execution and completion of the Subcontract Work. All such personnel shall be competent and qualified by education, training and experience and in all other respects capable of carrying out the tasks to which each is assigned. At the Contractor's request, the Subcontractor shall reassign, replace or remove personnel who, in the Contractor's sole and unfettered discretion, do not meet the above requirements, or become intoxicated, intemperate, disorderly, incompetent, or negligent, or who have committed a violation of the Contractor's regulations or procedures including those related to safety, environment, and security. Such requests by the Contractor shall not limit in any way the Subcontractor's responsibilities and obligations, pursuant to the Contract Documents or in tort, for any costs or damages that may arise as a result of the actions of the Subcontractor's personnel.
- (c) The Subcontractor shall comply with those provisions of the Contractor's collective agreements relating to the Subcontract Work. Should the Contractor be found liable for any breach of the Contractor's relevant collective agreements as a result of the Subcontractor's actions, the Subcontractor agrees to defend and indemnify the Contractor in respect of any damages, costs and expenses incurred by the Contractor by reason of the failure by the Subcontractor to comply with those collective agreements or its failure to meet the subcontracting or jurisdiction provisions of those collective agreements.

ARTICLE 12.

- (a) The Subcontractor shall not permit any lien to be filed in respect to the Subcontract Work except the Subcontractor may file a lien for amounts owing to the Subcontractor under this Subcontract which are not paid when due. The Subcontractor shall pay for all materials furnished and work and labour performed under this Subcontract and all taxes, imposts, levies, assessments, premiums, fees or union dues relating thereto directly or indirectly when such payments are due, and shall satisfy the Contractor thereupon whenever demand is made.
- (b) The Contractor, acting reasonably, may withhold payments from the Subcontractor to such extent as may be considered necessary by the Contractor to protect the Contractor from loss on account of defective work or materials not remedied, or the failure of the Subcontractor to make payments for material, labour or otherwise under this Subcontract, or the failure of the Subcontractor to perform any of its obligations hereunder, or claims asserted by the Owner or any third party in respect of acts or omissions of the Subcontractor. The Contractor shall endeavour to give the Subcontractor notice of its intent to withhold a payment from the Subcontractor in accordance with this Article 12(b) as soon as reasonably possible after it becomes aware of the circumstances that would permit the Contractor to do so, but the Contractor shall not be precluded from withholding if such notice has not been given. The Subcontractor hereby authorizes the Contractor to pay any or all of the Subcontractor's unpaid obligations, whether or not such unpaid obligations have been disclosed by the Subcontractor to the Contractor, and to reduce the amount owing to the Subcontractor

by the amount or amounts so paid, plus a reasonable allowance for the Contractor's overhead and administration. The amount of any obligations in dispute, plus a reasonable allowance for the Contractor's overhead and administration, may be retained by the Contractor pending determination of the dispute.

- (c) The Subcontractor hereby acknowledges and agrees that the Contractor may set-off against any obligation of the Contractor to the Subcontractor, and that the Contractor's obligation to pay the Subcontractor shall be reduced by, any claim of any nature or kind by the Contractor against the Subcontractor or any subsidiary or affiliate of the Subcontractor, whenever arising, whether liquidated or unliquidated, whether or not arising from or related to this Subcontract and including any claim against the Subcontractor by any other person which has been assigned at any time to the Contractor. Any right which the Subcontractor may have to assign rights under this Subcontract shall be subject to the Contractor's right of set-off as aforesaid and any rights acquired by any assignee shall be subject to the Contractor's right of set-off as aforesaid, whether the claim or claims of the Contractor against the Subcontractor arise before, upon or after the assignment to the assignee, or before, upon or after the Contractor is notified of such assignment.
- (d) Without limiting the generality of the foregoing or any other right or remedy of the Contractor, if a builders', mechanics' or construction lien in respect of the Subcontract Work is registered by a sub-subcontractor, employee, or supplier (or any other entity engaged by or through the Subcontractor) of the Subcontractor and such registration is not released, vacated or discharged by the Subcontractor at least ten (10) days prior to the date that the Contractor is required to discharge such a lien under the provisions of the Prime Contract or, if the Prime Contract does not specify such a date, within ten (10) days after notice by the Contractor to the Subcontractor to discharge such lien, then the Contractor may settle and pay the claim for such lien or make such court applications and make such payments into court as the Contractor deems necessary, in its absolute discretion, to release, vacate or discharge such lien. All amounts paid by the Contractor to release, vacate or discharge such lien or otherwise incurred by the Contractor arising from the registration of such lien, including legal costs on a solicitor and his or her own client basis, shall be paid by the Subcontractor to the Contractor on demand and the Contractor may deduct all such amounts from payments otherwise due to the Subcontractor.

ARTICLE 13.

If the Contractor accepts delivery on behalf of the Subcontractor of any of the Subcontractor's materials, supplies or equipment, whether or not the Subcontractor is then absent from the Site, the Contractor will not be liable for any deficiency or defect in quantity, quality, or content of what was delivered, nor shall the Contractor be deemed to have accepted such materials, supplies or equipment. The Contractor shall not be responsible for storage of any such materials, supplies or equipment.

ARTICLE 14.

- (a) For the purposes of this Article 14, an Event of Default will occur if any of the following events should occur:
 - (i) the Subcontractor is insolvent, or is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or commences any proceedings under the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act* or any similar legislation in any jurisdiction, or a receiver is appointed in respect of the Subcontractor, or
 - (ii) the Subcontractor fails to comply with any of the requirements of this Subcontract or fails to prosecute the Subcontract Work with promptness and diligence, or delays the progress of the Contractor and the Subcontractor fails to cure such default within the Cure Period.
- (b) "Cure Period" in respect of a default described in Article 14(a)(ii) means the lesser of:
 - (i) 70% of the cure period prescribed in the Prime Contract in respect of such default, if such default gives rise to a default by the Contractor under the Prime Contract; or
 - (ii) 3 Working Days (being a day other than a Saturday or Sunday or a holiday which is observed by the construction industry in the area of the place of the Subcontract Work) immediately following notice of such default from the Contractor, provided that if:
 - (A) the default is capable of being corrected, but is not capable of being corrected within 3 Working Days,
 - (B) the Subcontractor commences the correction of the default within 3 Working Days after receipt of the Contractor's notice, and
 - (C) the Subcontractor provides the Contractor within such period of 3 Working Days with a schedule acceptable to the Contractor for such correction and the Subcontractor diligently works to correct the default in accordance with such schedule,

such cure period shall be extended to the time prescribed in such schedule.

- (c) Upon the occurrence of an Event of Default, the Contractor may, at its option, and without prejudice to any other right or remedy the Contractor may have:
- (i) cure such default at the expense of the Subcontractor, including a reasonable allowance for the Contractor's overhead and administration,
 - (ii) suspend this Subcontract,
 - (iii) terminate this Subcontract,
 - (iv) take possession of all materials, supplies, products, tools, machinery and equipment of the Subcontractor on the Site,
 - (v) do or pay anything the Subcontractor has failed to do or pay either by the Contractor itself or by employing others for the purpose, or
 - (vi) any two or more of the foregoing.
- In any of these cases the Contractor may charge all costs, expenses and losses incurred by it including all fees, including agency fees and legal fees on a solicitor and his or her own client basis, to the Subcontractor who covenants forthwith to reimburse the Contractor therefore.
- (d) If the Contractor fails to pay to the Subcontractor any undisputed amounts owing to the Subcontractor under this Subcontract when due and the Contractor fails to rectify such default within thirty (30) days following its receipt of written notice of such default from the Subcontractor, the Subcontractor shall have right to suspend its performance of the Subcontract Work until such default has been rectified. If the Subcontractor suspends the Subcontract Work in accordance with this Article 14(d), the Subcontractor shall recommence all suspended Subcontract Work within five (5) days of the paying to the Subcontractor of such outstanding undisputed amounts owing to the Subcontractor.

ARTICLE 15.

The Contractor shall have the right at any time by written notice to the Subcontractor to terminate or suspend this Subcontract. If this Subcontract is suspended by the Contractor for reasons other than the default of the Subcontractor or any other event referred to in Article 14, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Price and the schedule for performance of the Subcontract Work in respect of such suspension provided that the Subcontractor has taken all reasonable steps to mitigate the cost and schedule impacts arising from the suspension. Notwithstanding the foregoing, if such suspension is as a result of suspension of the Work or the Subcontract Work under the Prime Contract, other than as a result of default of the Contractor not caused or contributed to by the Subcontractor, the Contractor's obligation to make an equitable adjustment of the Subcontract Price and the schedule for performance of the Subcontract Work shall be conditional upon the Contractor being in receipt of funds and being granted an extension of time for the same pursuant to the terms of the Prime Contract, the Contractor having taken all commercially reasonable steps to obtain such compensation and extension. If this Subcontract is terminated for reasons other than the default of the Subcontractor or any other event referred to in Article 14, the Subcontractor shall be entitled to be paid for all work performed to the date of termination, as provided in the payment provisions of this Subcontract, for loss sustained with respect to sub-subcontracts and supply contracts and such other damage as the Subcontractor may reasonably have sustained as a result of termination of this Subcontract provided that:

- (a) the Subcontractor has taken all reasonable steps to mitigate such loss or damages; and
- (b) the Contractor may require the Subcontractor to assign to the Contractor any agreements that the Subcontractor has with sub-subcontractors and suppliers in respect of the Subcontract Work; and
- (c) the Subcontractor shall not be entitled to recovery of anticipated profits on Subcontract Work not performed or any other consequential damages.

Any payments owing to the Subcontractor under this Article 15 shall be made in accordance with Article D of this Subcontract.

ARTICLE 16.

Payment by the Contractor to the Subcontractor, approval of progress payments by the Contractor, failure by the Contractor to complain against or to sue the Subcontractor, inspection or testing of any of the Subcontract Work by the Contractor, the Consultant or the Owner, or the issuance of any certificate for payment by the Consultant or the Owner shall not be deemed to be a waiver by the Contractor of any of its rights against the Subcontractor including the right of the Contractor to either withhold payments from the Subcontractor or set-off against any obligation of the Contractor to the Subcontractor in accordance with this Subcontract unless there is an express agreement in writing to that effect. Whenever it may be useful or necessary, the Contractor or the Owner shall be permitted to occupy and use any portion of the Subcontract Work that has been either partially or fully completed by the Subcontractor, but such occupation or use shall not be deemed to be a waiver by the Contractor of any of its rights against the Subcontractor unless there is an express agreement in writing to that effect. The Subcontractor shall not be responsible for any damage caused by the Contractor or the Owner during such occupation.

ARTICLE 17.

The Subcontractor shall store all construction materials to be supplied for the Subcontract Work ("Materials"), whether such Materials are supplied by the Subcontractor, or by the Contractor or Owner to the Subcontractor, until such Materials have been incorporated into the Subcontract Work. Such Materials shall be stored so as to:

- (a) ensure the preservation of their cleanliness, quality and fitness for the Subcontract Work;
- (b) be protected from vandalism and theft; and
- (c) be protected from moisture and other conditions promoting the growth of mold or the propagation of corrosion or rust.

Such Materials shall be located so as to facilitate prompt inspection. The Subcontractor shall be responsible to ensure that any Materials transported to the Site by or for it shall be protected from moisture and kept clean during transportation and handling. Any unclean materials shall be cleaned or replaced to the Contractor's satisfaction. Any Materials that have become moist shall be immediately dried to ensure that no mold, rust or corrosion will result from such moisture, to the satisfaction of the Contractor. Wet Materials or Materials that have not been dried in a timely way or to the satisfaction of the Contractor shall be removed from the Site and replaced with Materials satisfactory to the Contractor. The Subcontractor shall notify the Contractor prior to the incorporation of any moist materials in the Subcontract Work, or before using any water in any of its construction methods. The Subcontractor shall immediately notify the Contractor of any leaks or spills of which it becomes aware. The Subcontractor shall undertake all of the foregoing requirements at its own cost and shall be responsible for the cost of any rework or replacement required due to improper material storage or installation. The Subcontractor shall ensure that these provisions are incorporated into all of its subcontracts or purchase orders on this Project.

ARTICLE 18.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Subcontract.

ARTICLE 19.

- (a) In this Article 19, "Confidential Information" means all information, documentation or records of one party that are disclosed to the other that are marked "Confidential" at the time of disclosure or that would be considered by a prudent and reasonable businessperson to be confidential or proprietary in nature and includes all analyses, compilations, studies or other documents that contain or are derived from the foregoing information, documentation or records.
- (b) Each party (the "Recipient") will hold in confidence any Confidential Information disclosed to it by the other party (the "Disclosing Party"), to be used only for the purpose for which such Confidential Information was disclosed. Such obligation shall not apply to any information, documentation or records:

- (i) which the Disclosing Party confirms in writing is not required to be treated as Confidential Information;
 - (ii) which is in or becomes a part of the public domain otherwise than through disclosure prohibited by this Article 19;
 - (iii) to the extent either party is required to disclose such Confidential Information by applicable law;
 - (iv) to the extent such information, documentation or records were lawfully in the possession of the Recipient prior to its disclosure by the Disclosing Party; or
 - (v) to the extent such information, documentation or records are received by the Recipient on a non-confidential basis from a third party, provided that to the best of the Recipient's knowledge, such third party was not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient.
- (c) The obligations of the Subcontractor pursuant to this Article 19 are in addition to any confidentiality obligations under the Prime Contract that are incorporated into this Subcontract pursuant to Article 2.
- (d) All obligations of the Subcontractor and the Contractor pursuant to this Article 19 shall survive termination of this Subcontract for any reason.

ARTICLE 20.

- (a) Any Claim, dispute, or other matter in question between the Contractor and the Subcontractor in any way pertaining to this Subcontract including any dispute in respect of scope of the Subcontract Work, changes to the Subcontract Work, the Subcontract Price or scheduling (a "Subcontract Dispute"), shall, if possible, be resolved by negotiation between the Contractor's and the Subcontractor's designated representatives for the Project. The Contractor and the Subcontractor each commit to seeking resolution of such matters in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Project. If a Subcontract Dispute cannot be resolved by the parties' designated representatives for the Project, no later than thirty (30) days after either party submits same in writing for resolution, representatives from executive management of the Contractor and the Subcontractor shall attempt to resolve the matter through additional good faith negotiations. If resolution cannot be reached within sixty (60) days by the parties' executive managers, the Subcontract Dispute shall be referred for resolution in accordance with Articles 20(c) through 20(g).
- (b) Notwithstanding the existence of any Subcontract Dispute, the Subcontractor shall continue to diligently perform the Subcontract Work in accordance with the directions of the Contractor. Provided the Subcontractor has provided all applicable notices to the Contractor with respect to such Subcontract Dispute, the Subcontractor's continued performance of the Subcontract Work shall not prejudice to any right of the Subcontractor to contest, dispute or challenge the relevant matter in accordance with the provisions of this Subcontract.
- (c) Should any Subcontract Dispute arise that is related to a dispute between the Owner and the Contractor, such Subcontract Dispute shall, at the election of the Contractor, be disposed of in the same manner, by the same mediator, arbitrator or arbitration panel, or the same court, at the same time, and in the same proceeding as the dispute is to be disposed of as between the Owner and the Contractor.
- (d) If a Subcontract Dispute:
- (i) has not been resolved pursuant to Article 20(a); or
 - (ii) has not been referred to a dispute resolution procedure pursuant to an election made by the Contractor in accordance with Article 20(c);

either party may by written notice to the other party refer the Subcontract Dispute to mediation. If either party refers a Subcontract Dispute to mediation, the parties shall within 14 days of such notice jointly appoint a mediator (the "Project Mediator"). If the parties fail to jointly appoint a Project Mediator within such 14 day period, either party may request a neutral appointing authority operating in the province of the Subcontract Work or, if applicable, a judge of the superior court of the jurisdiction of the Subcontract Work, to appoint the Project Mediator and the Project Mediator so appointed shall be deemed acceptable to the parties and appointed by them.

- (e) If a Project Mediator is appointed, the parties shall submit their position regarding the Subcontract Dispute in writing to the Project Mediator and shall afford to the Project Mediator access to all records, documents and information the Project Mediator may request. The parties shall meet with the Project Mediator at such reasonable times that the Project Mediator may request and shall, through the intervention of the Project Mediator, negotiate in good faith to resolve the Subcontract Dispute. All proceedings involving a Project Mediator are agreed to be without prejudice and the cost of the Project Mediator shall be shared equally between the parties.
- (f) If a Subcontract Dispute has not been resolved within six months after the appointment of a Project Mediator, either party may by notice to the other party withdraw from the mediation process.
- (g) Any Subcontract Dispute that:
 - (i) is not resolved pursuant to Article 20(a);
 - (ii) has not been referred to a dispute resolution procedure pursuant to an election made by the Subcontractor in accordance with Article 20(c); or
 - (iii) has not been resolved through or as a result of a mediation

shall be referred to and finally resolved by arbitration conducted by a single arbitrator in accordance with the applicable commercial arbitration statute in force in the jurisdiction of the Subcontract Work, unless the parties mutually agree otherwise in writing. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The prevailing party shall be entitled to reasonable solicitor's fees and costs, and the arbitrator shall have the power to make such an award.

SPECIAL CONDITIONS

1. WCB Requirements

Prior to commencing Work on the Project, and when requested by the Contractor, the Subcontractor shall provide a letter of good standing from the Worker's Compensation Board of Alberta. The Subcontractor must remain in good standing with the Worker's Compensation Board of Alberta for the duration of the Project.

2. Utilization of Contractor Spill Kits

The Subcontractor is responsible for the reporting, clean-up and disposal of all spilled material(s) pursuant to applicable regulatory requirements. This includes preventative measures as well for worker education/training, personal protective equipment and spill kit materials (when applicable) prior to commencement of on-site work related activities. In the event that Contractor's Spill Kits are utilized by any Subcontractor, all costs associated with the replacement of spill kit materials will be paid to the Contractor by the Subcontractor.

3. Shipping

All material and equipment must be crated and/or bundled securely for shipment. All materials shall be clearly identified as to destination and are to be ready for shipment as directed on or before Sept 30, 2019. Total weights and description of materials are to be provided before goods are shipped. Provide contractor with copies of all detail shipping manifests at the following address:
9 Ave Bridge SE (Ingelwood).

4. Inclusions

Performance Bond - Supplier

The Subcontractor shall provide to the Contractor on behalf of their Supplier a Surety Association of Canada Performance Bond covering the amount of the Supplier cost made in favor of the Contractor or naming the Contractor as a dual obligee on said bond and be with a Bonding Company approved by the Contractor. If the Subcontractor fails to provide such bond, the Contractor may terminate the Subcontract preserving its' right to claim any damage it may be put to as a result thereof. This bond shall be signed and sealed by both the Supplier and the Bonding Company and returned with the signed copies of this Subcontract Agreement. The cost of the bond, without markup, is included in the Subcontract amount.

Labour & Materials Payment Bond - Supplier

The Subcontractor shall provide to the Contractor on behalf of their Supplier a Surety Association of Canada Labour & Materials Payment Bond covering 50% of the amount of the Supplier cost made in the favor of the Contractor or naming the Contractor as a dual obligee on said bond and be with a Bonding Company approved by the Contractor. If the Subcontractor fails to provide such bond, the Contractor may terminate the Subcontract preserving its' right to claim any damage it may be put to as a result thereof. This Bond shall be signed and sealed by both the Supplier and the Bonding Company and returned with the signed copies of this Subcontract Agreement. The cost of the bond, without markup, may be invoiced by the Subcontractor to the Contractor. Subcontractor is responsible for ensuring that it provides prompt written notice of the existence of the Labour & Materials Payment Bond to any potential beneficiaries under the such Bond.

For greater clarity, Supplier's bond shall cover 50% of \$3,700,000.00 representing the Supplier's cost and the Subcontractor's bond shall cover 50% of the remaining Subcontract Price of \$924,000.

Performance Bond - North American

As an extension to the performance bond verbiage under special condition 18, The Subcontractor shall provide to the Contractor on behalf of their Supplier a Surety Association of Canada Performance Bond covering 50% of the balance of the contract (50% of \$924,000.00)

5. Supervision

Pursuant to Article 11(b), at all times, in connection with the performance of the Subcontract Work, the Subcontractor shall keep and employ at the Site a suitably qualified superintendent (the "Subcontractor's Superintendent") who is skilled, fluent in the English language, experienced and competent, who shall be available at the Site at all times during the performance

of the Subcontract Work. Any explanations, orders, instructions, directions and requests and notices given by the Contractor shall be well and sufficiently made or given to the Subcontractor when made or given to the Subcontractor's Superintendent.

If, during the performance of the Subcontract Work, the Subcontractor's Superintendent is required to leave the Site for a period of time such that he cannot reasonably oversee the progress of the Subcontract Work, the Subcontractor shall notify the Contractor of the anticipated duration of the absence and, if deemed necessary in the sole and unfettered discretion of the Contractor, the Subcontractor's Superintendent shall appoint an acting Subcontractor's Superintendent to fulfill the duties of the Subcontractor's Superintendent during the anticipated absence from the Site. The Subcontractor's Superintendent shall, prior to leaving the Site, deliver or cause to be delivered to the Contractor the name of the person whom he or she nominates as the acting Subcontractor's Superintendent and shall not leave the Site prior to receiving from the Contractor acceptance of said nominee.

6. Unit Prices

Quantities of work are approximate only and final payments will be based on actual quantities as determined by Ciaran Curran.

The following unit prices shall form part of this Subcontract:
See unit rates in unit price breakdown

7. Cleaning During Construction

Each subcontractor shall be responsible for cleaning up during and after installation of their materials, and shall leave areas 'broom clean' daily.

Each subcontractor shall, at all times, assemble and remove their bulk debris from the site. In addition, one workman for each 10 people employed, or pro-rated portion thereof, shall be assigned to the contractor's clean-up crew one day per week for the duration of the subcontractor's installation period. In lieu of the workman, arrangements may be made with the Contractor for use of their labour force for such clean-ups which will be chargeable to the subcontractor.

Each subcontractor shall, upon request of the contractor, remove excess debris from the work areas within four working hours. Failure to so perform will result in the contractor having this work done at the subcontractor's expense.

8. Schedule

Time is of the essence; substantial completion by November 30, 2020 and ready for turnover to Owner. This subcontractor agrees to co-ordinate all work with the General Contractor's Master Schedule and add men, or work extra hours as required to meet this schedule.

9. Hoisting

The Subcontract price includes all hoisting necessary to carry out the work.

10. Shop Drawings

1 copie(s) of shop drawings are to be submitted no later than June 15, 2019 to the attention of Mark Reid and Copy Ciaran Curran. The subcontractors shop drawings shall complement the Issued for Construction Design drawings. Any exclusion or deviation from the Design drawings must be identified and made very clear on the subcontractors shop drawings using highlighted notations and clouding.

11. Liquidated Damages

As the contract with the Owner includes a provision of \$2,000.00 per calendar day liquidated damage for late completion, your failure to meet the construction schedule for work in your trade will result in backcharges to your account in such amount or as to such portion thereof as Contractor determines relates to Subcontractor's delays.

12. Schedule and Delivery Dates

All orders for materials should be placed and guaranteed delivery dates arranged to conform with the schedule. Completion of your work must be carried out in such a manner as to cause no delay to the Project and in accordance with Contractor's progress schedule. The Supplier shall be responsible for any additional costs or losses to Contractor caused by any delays by the Supplier.

13. Subcontractor Agreement

The Subcontractor agrees that there will be no work stoppages, work slowdowns, or any other forms of withdrawal of labour while the Subcontractor is engaged in performing his subcontract on the work site. In the event employees of the Subcontractor engage in any work stoppages, work slowdowns, or any other forms of withdrawal of labour or disruptions while the Subcontractor is engaged on the project, the Subcontract may be terminated within 48 hours by the Contractor, and the Subcontractor shall have no recourse against the Contractor, the Owner, the Consultants, or any of their respective agents or employees.

14. PCL Builders Agreement

The Subcontractor acknowledges that the Contractor has appointed PCL Builders Inc. to act as its agent in respect of certain aspects of this Subcontract and that either the Contractor or PCL Builders Inc. may provide instructions, directions, notices, or fulfill other actions related to the Contractor's administration of, or execution of rights under, this Subcontract. The Subcontractor agrees to follow any such instructions, directions, notices, or other actions given or performed by PCL Builders Inc. as though such instructions, directions, notices, or other actions were given or performed by the Contractor.

15. Insurance Requirements 5 Million

In accordance with Articles of this Subcontract, the Subcontractor shall maintain at his expense:

- A. Public Liability and Property Damage Insurance with minimum limits of \$5 million per occurrence.
- B. Owned Vehicle Insurance with minimum limits of \$5 million.
- C. Non-Owned Vehicle Insurance with minimum limits of \$5 million.
- D. Equipment Insurance.

Prior to commencing Work on the Project, the Subcontractor shall furnish certificates of such insurance to the Contractor.

The certificate shall include the clause "The insurer shall mail to Contractor 30 days written notice of any material change in or cancellation of these policies". The policies shall include the Contractor as an Additional Insured and certificates issued to the Contractor shall list the Contractor as an Additional insured.

16. Quality Control Requirements

It is the responsibility of the Subcontractor to perform quality control covering all activities, products, and services related to the execution of the products and services being provided. The Subcontractor must ensure compliance with the stated Project performance requirements as well as compliance with the intent of such requirements. The following terms form part of this Subcontract:

- a) Prior to commencing work the Subcontractor must submit a quality plan satisfactory to the Contractor.
- b) Quality control documentation must be presented to the Contractor, as a minimum, on a monthly basis.
- c) Notwithstanding item (b) above, the Contractor is to be notified immediately upon evidence of a non-conformance quality event.
- d) Before payment of a Construction Payment, all quality control documentation shall be presented to the Contractor. The applications for Construction Payments may be withheld at the discretion of the Contractor in the absence of this documentation.
- e) Non-conformance of an activity, product, or service will result in withholding of funds until rectification or resolution of the non-conformance is achieved. The funds withheld will be based on the Contractor's assessment of the value to rectify the non-conforming work. All non conforming work must be rectified or made acceptable to the Owner and the Contractor in a timely manner.
- f) Quality control documentation include specific documentation specific to each trade scope for material supplied (including but not limited to testing of products) and the installation of that material, quality control plan, and any other documents that may be required to confirm the quality of products provided including installation.
- g) Quality control, procedures and inspections must meet the requirements of the owner and the Contractor's QM System.

17. Performance Bond

The subcontractor shall provide a Surety Association of Canada Performance Bond covering 50% of the amount of this Subcontract made in favor of the Contractor and be with a Bonding Company approved by the Contractor. If Subcontractor fails to provide such bond, the Contractor may terminate the subcontract preserving its' right to claim any damage it may be put to as a result thereof. This bond shall be signed by both the Subcontractor and the Bonding Company and returned with the signed copies of this Subcontract Agreement. The cost of the bond is included in the Subcontract amount.

18. Textura®

Article E1 is deleted and replaced with the following:

The Subcontractor shall submit invoices, back up to invoices, and all supporting documents required by the Contractor, including but not limited to those items specified in Articles D(5) and E(2), in an electronic format acceptable to the Contractor covering progress claims referencing this Project through the Textura® Construction Payment Management (CPM™) system ("Textura®") not later than the twenty-fifth day of the month in which materials were supplied or work performed. In the event invoices are received later than this, the Contractor may postpone payment to the month following that in which it would otherwise have been due, notwithstanding anything contained elsewhere in this Subcontract. The subcontractor is responsible for all fees and costs associated with the use of Textura®. The Subcontractor agrees to enter into an agreement with Textura® with respect to the payment of fees for the use of Textura® and to pay such fees directly to Textura®. Fees, as of February 1, 2014, are specified in the table below:

Subcontract (SC)	
Value	Fee
< \$27,778	\$50 (min)
\$27,778 - \$1,388,889	0.18% of SC
> \$1,388,889	\$2,500 (max)

Fees are subject to change in accordance with the agreement between the subcontractor and Textura®.

Articles E2(a) and E3 are deleted.



Project Specific HSE Plan Acknowledgement Form

Project Name: 9th Avenue SE (Inglewood) Vehicle Bridge Replacement

After reviewing the policies and practices as outlined in this plan, the company owner, site superintendent, on-site foreman, lead hands, and all trade contractors are to sign off this sheet. The sign-off sheet must be returned to the PCL Project Manager, before commencement of work-related activities on the jobsite.

I have read and understand this Project Specific Health, Safety and Environmental Plan and will carry out my work within these guidelines.

Company Name: North American Steel Erectors

Company Owner

Name: Steeve Toupin

Date: June 27, 2019

Signature: 

Title: President

Company Superintendent

Name: Gord Spalding

Date: June 27, 2019

Signature: 

Title: VP of Operations

On Site Foreman

Name: _____

Date: _____

Signature: _____

Title: _____

9912 – 107 Street
PO Box 2415
Edmonton AB T5J 2S5

Email: ebusiness.support@wcb.ab.ca
Tel: (780) 498-3999 (1-866-922-9221)
Fax: (780) 498-7999
WCB website: www.wcb.ab.ca

August 6, 2019

Reference Number: 2497809

PCL CONSTRUCTION MANAGEMENT INC.
2882 11 ST NE
CALGARY AB T2E 7S7

Dear Sir or Madam:

Re: NORTH AMERICAN STEEL ERECTORS INC.
590 GRIFFIN RD E
COCHRANE AB T4C 2B8

The above named subcontractor has an account with WCB-Alberta in the following industry(ies):

account	trade names(s)/Industry	effective date	coverage
8093467	ERECT - STRUCTURAL STEEL	Jan 01, 2017	worker coverage no personal coverage
	Self Storage Units	Oct 20, 2018	worker coverage no personal coverage

Thank you for checking into the status of this contractor or subcontractor. Under Section 126 of the Workers' Compensation Act, you are responsible for obtaining a clearance on your contractor or subcontractor, in order to release you from any liability for unpaid WCB premiums owed by them. Please ensure clearance has been issued in the correct name and that there is coverage in the industry(ies) for which work was performed.

Please accept this letter as a clearance for work completed between the effective date of the account and the date of this letter. For this account, you are cleared of any liability under Section 126 of the Workers' Compensation Act up to the date of this letter. Any holdback may be released for contracts completed, and/or for work completed to the date of this letter. For an account that shows closed under the effective date, the clearance is only valid for work completed up to the close date. If work has not started, obtain a clearance prior to releasing final payment.

Please note, if any directors of the corporation are injured at work, you are protected from lawsuit if they have personal coverage. If they do not have personal coverage, you may not be protected in the case of a workplace injury.


If your contractor or subcontractor is performing work outside Alberta, contact the WCB in that jurisdiction to determine your clearance and any other WCB requirements.

Any alteration of this document is strictly prohibited.

Yours truly,

eBusiness Support Team (11246141)

This is EXHIBIT "D" referred to in the Affidavit of Stuart Detsky, sworn before me this 12th day of August, 2022.

 NEDA FOROUGHIAN

A Commissioner for Oaths in and for the
Province of Ontario



CONSTRUCTION

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July 30, 2021

Steeve Toupin, P.Eng, PE
North American Steel Erectors, Inc.
160 Griffin Ranch Road
Cochrane, AB
T4C 2B8

Re: 9th Avenue (Inglewood) Bridge Replacement
Notice of Default – Subcontract no. 463022

Dear Mr Toupin:

PCL Construction Management Inc. ("PCL") writes to advise that North American Steel Erectors Inc. ("NASE") has failed to carry out the Subcontract Work pursuant to Subcontract no. 463022 (the "Subcontract").

The nature of NASE's defaults of the Subcontract are as follows:

- (1) In accordance with Article 14(b), NASE has failed to meet the obligations required during the Cure Period or to respond to the notice of default issued on July 26, 2021 to address NASE's failure to carry on and complete the Subcontract Work in a prompt and diligent manner so as not to interfere with or delay the work of PCL or the work of any of its subcontractors pursuant to the Subcontract including but not limited to Article A of the Subcontract's Agreement and Article 1(b) of the Subcontract's General Conditions (the "Schedule Default").
- (2) Contrary to Article 14(a) of the Subcontract's General Conditions: (a) NASE is insolvent; (b) NASE is adjudged bankrupt; (c) proceedings under the Companies' Creditors Arrangement Act or the Bankruptcy and Insolvency Act have been initiated as of July 29, 2021, (the "Insolvency Event of Default"). The Insolvency Event of Default allows PCL to immediately exercise the full spectrum of its legal rights against NASE including but not limited to those set out at Article 14(c) of the Subcontract's General Conditions.

The Schedule Default and the Insolvency Event of Default shall here in after be collectively referred to as the "Subcontract Defaults").

As you are aware, pursuant to Article 6 of the Subcontract's General Conditions, PCL is entitled to be fully indemnified and held harmless from and against any losses or damages suffered by PCL (including but not limited to PCL's internal overhead and administration and legal costs) on account of the Subcontract Defaults or any other breaches of the Subcontract.

Further, please be advised that PCL intends to call upon Performance Bond # MCS1150074, dated August 12, 2019, (the "Performance Bond") provided by NASE (as Principal) to PCL (as Oblige) with Trisura Guarantee Insurance Company ("Trisura") (as Surety) as security in

PCL Construction Management Inc.
2882 11th Street NE
Calgary, AB T2E 7S7
Phone (403) 250-4800 www.pcl.com



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relation to the Subcontract (a copy of which is attached hereto for NASE's ease of reference). Pursuant to the Performance Bond, which guarantees NASE's performance of the Subcontract, PCL is entitled to recover all amounts which are, or may become, due and owing to PCL with respect to the Subcontract Defaults or any other breaches of the Subcontract.

Pursuant to Article 12(b) of the Subcontract's General Conditions, PCL hereby provides written notice to NASE that PCL intends to exercise its contractual right to withhold payment from NASE to such extent as may be necessary to protect PCL from losses or damages on account of the Subcontract Defaults.

As stated in Article F of the Subcontract's Agreement, Time is of the Essence for performing the Subcontract Work. As such, NASE's and Trisura's immediate attention to the Subcontract Defaults is required. Should you have any immediate concerns or queries, please feel free to contact me at any time.

Kind regards,


PCL Construction Management Inc.

Sean Bush
Sr. Project Manager

SB

cc: Mitch Beauchamp, Manager, Finance & Commercial Risk
Connie English, Assistant Manager, Finance & Commercial Risk
Keith Mitchell, Manager, Civil Operations
Ciaran Curran, Project Coordinator

This is EXHIBIT "E" referred to in the Affidavit of Stuart Detsky, sworn before me this 12th day of August, 2022.



NEDA FOROUGHIAN
A Commissioner for Oaths in and for the
Province of Ontario



CONSTRUCTION

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July 30, 2021

By Facsimile (514-845-6876)
and Registered Mail

Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610
Toronto, ON
M5H 2R2

RE: Installation of Structural Steel for 9th Avenue Bridge Replacement, Calgary, Alberta (the "Project") and the Contract (the "Contract") between PCL Construction Management Inc. ("PCL") and North American Steel Erectors Inc. ("NASE") dated June 1, 2019 and Performance Bond #MCS1150074 in the amount of \$462,000 issued by Trisura Guarantee Insurance Company (the "Bond")

To whom it may concern:

Trisura Guarantee Insurance Company (the "Surety") issued the Bond (MCS1150074) on August 12, 2019. A copy of the Bond is attached hereto.

NASE is and has been declared by PCL to be in default of its obligations under the Contract. The Default Notice issued by PCL to NASE is attached hereto. PCL hereby claims under the Bond noted herein and demands that the Surety respond in accordance with the terms of the Bond.

We look forward to hearing from the Surety.

Kind regards,

PCL Construction Management Inc.

Connie English
Assistant Manager, Finance & Commercial Risk

CE

cc: Mitch Beauchamp, Manager, Finance & Commercial Risk
Keith Mitchell, Manager, Civil Operations
Sean Bush, Sr. Project Manager
Ciaran Curran, Project Coordinator

PCL Construction Management Inc.
2882 11th Street NE
Calgary, AB T2E 7S7
Phone (403) 250-4800 www.pcl.com

S.M. 10.



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July 30, 2021

Steeve Toupin, P.Eng, PE
North American Steel Erectors, Inc.
160 Griffin Ranch Road
Cochrane, AB
T4C 2B8

Re: 9th Avenue (Inglewood) Bridge Replacement
Notice of Default – Subcontract no. 463022

Dear Mr Toupin:

PCL Construction Management Inc. ("PCL") writes to advise that North American Steel Erectors Inc. ("NASE") has failed to carry out the Subcontract Work pursuant to Subcontract no. 463022 (the "Subcontract").

The nature of NASE's defaults of the Subcontract are as follows:

- (1) In accordance with Article 14(b), NASE has failed to meet the obligations required during the Cure Period or to respond to the notice of default issued on July 26, 2021 to address NASE's failure to carry on and complete the Subcontract Work in a prompt and diligent manner so as not to interfere with or delay the work of PCL or the work of any of its subcontractors pursuant to the Subcontract including but not limited to Article A of the Subcontract's Agreement and Article 1(b) of the Subcontract's General Conditions (the "Schedule Default").
- (2) Contrary to Article 14(a) of the Subcontract's General Conditions: (a) NASE is insolvent;; (b) NASE is adjudged bankrupt; (c) proceedings under the Companies' Creditors Arrangement Act or the Bankruptcy and Insolvency Act have been initiated as of July 29, 2021, (the "Insolvency Event of Default"). The Insolvency Event of Default allows PCL to immediately exercise the full spectrum of its legal rights against NASE including but not limited to those set out at Article 14(c) of the Subcontract's General Conditions.

The Schedule Default and the Insolvency Event of Default shall here in after be collectively referred to as the "Subcontract Defaults").

As you are aware, pursuant to Article 6 of the Subcontract's General Conditions, PCL is entitled to be fully indemnified and held harmless from and against any losses or damages suffered by PCL (including but not limited to PCL's internal overhead and administration and legal costs) on account of the Subcontract Defaults or any other breaches of the Subcontract.

Further, please be advised that PCL intends to call upon Performance Bond # MCS1150074, dated August 12, 2019, (the "Performance Bond") provided by NASE (as Principal) to PCL (as Oblige) with Trisura Guarantee Insurance Company ("Trisura") (as Surety) as security in

PCL Construction Management Inc.
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Calgary, AB T2E 7S7
Phone (403) 250-4800 www.pcl.com

S. U. D.



CONSTRUCTION

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relation to the Subcontract (a copy of which is attached hereto for NASE's ease of reference). Pursuant to the Performance Bond, which guarantees NASE's performance of the Subcontract, PCL is entitled to recover all amounts which are, or may become, due and owing to PCL with respect to the Subcontract Defaults or any other breaches of the Subcontract.

Pursuant to Article 12(b) of the Subcontract's General Conditions, PCL hereby provides written notice to NASE that PCL intends to exercise its contractual right to withhold payment from NASE to such extent as may be necessary to protect PCL from losses or damages on account of the Subcontract Defaults.

As stated in Article F of the Subcontract's Agreement, Time is of the Essence for performing the Subcontract Work. As such, NASE's and Trisura's immediate attention to the Subcontract Defaults is required. Should you have any immediate concerns or queries, please feel free to contact me at any time.

Kind regards,

PCL Construction Management Inc.

Sean Bush
Sr. Project Manager

SB

cc: Mitch Beauchamp, Manager, Finance & Commercial Risk
Connie English, Assistant Manager, Finance & Commercial Risk
Keith Mitchell, Manager, Civil Operations
Claran Curran, Project Coordinator

Bond No. MCS1150074 (the "Bond")
 Bond Amount: \$462,000.00 (the "Bond Amount")

Performance Bond

NORTH AMERICAN STEEL ERECTORS INC as Principal (the "Principal") and Trisura Guarantee Insurance Company a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety (the "Surety") are held and firmly bound unto PCL Construction Management Inc. as Obligor (the "Obligor") in the amount of Four Hundred Sixty-Two Thousand And 00/100 Dollars (\$462,000.00) lawful money of Canada for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal entered into a written contract (the "Contract") with the Obligor, dated this 1st day of June, in the year 2019 for INSTALLATION OF STRUCTURAL STEEL FOR 8TH AVENUE BRIDGE REPLACEMENT, CALGARY ALBERTA.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect.

I - Pre-Demand Conference

Prior to a Demand (as defined in Section II 3) below) under this Bond, the Obligor may notify the Surety and the Principal in writing that it is considering declaring the Principal to be in default under the Contract and request a pre-demand conference (the "Pre-Demand Conference"). Upon receipt of such request the Surety and Principal shall participate in a Pre-Demand Conference meeting or telephone conference call, on a without prejudice basis, with the Obligor which shall be arranged by the Surety and held at a mutually agreeable time and place not later than fifteen (15) calendar days after receipt of such notice, unless otherwise mutually agreed to by each of the Obligor, Surety and Principal.

The purpose of the Pre-Demand Conference is to allow the Obligor to express its concerns about the Principal's performance pursuant to the Contract and to allow the Principal to respond to such concerns prior to the Obligor exercising its rights under the Contract or this Bond. It should not be construed as an alternative to any dispute resolution provisions which may appear in the Contract. Neither the participation by any party in the Pre-Demand Conference, nor any statement or position taken by any party during the Pre-Demand Conference or any follow-up Pre-Demand Conference, may be relied on by any other party as a waiver or compromise of the rights or duties of the Obligor, the Surety or the Principal under the Contract, this Bond or applicable law.

II - Conditions Precedent to Liability

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

1. The Principal is, and is declared by the Obligor to be, in default under the Contract; and
2. The Obligor has performed the Obligor's obligations under the Contract; and
3. The Obligor has made a Demand under the Bond. In this Bond, "Demand" means a clear and unequivocal written statement by the Obligor, delivered to the Surety in accordance with Section XI below, that the Principal is in default of its obligations under the Contract and requesting that the Surety fulfill its obligations under this Bond; and
4. The Obligor has agreed to make available the Balance of the Contract Price to the Surety in accordance with the terms and conditions of the Contract. In this Bond, "Balance of the Contract Price" means the total amount payable by the Obligor to the Principal under the Contract less the amount properly paid by the Obligor to the Principal.

III - Surety's Investigation and Response

Upon receipt of a Demand from the Obligor, the Surety shall be entitled to a reasonable time within which to conduct an investigation of the Demand and determine its liability under the Bond, if any. Within five (5) business days of receipt of the Demand the Surety shall acknowledge receipt of the Demand in writing and request from the Obligor the information and documentation the Surety shall require to complete its investigation (the "information") and access to the site where the work is being performed, if necessary. Upon receipt of the Surety's acknowledgement, the Obligor shall promptly provide the requested information and site access to the Surety.

Upon receipt of all the information, and completion of the site visit, if required, the Surety shall have twenty-one (21) calendar days to complete its investigation and advise the Obligor, in writing, of its position on liability pursuant to the Bond and to choose an option for discharging its obligation hereunder, if appropriate. In the event that the Surety is unable to complete its investigation and take a position on liability within such twenty-one (21) calendar days it shall write to the Obligor prior to the expiration of such twenty-one (21) calendar days and provide the Obligor with an update which sets out the status of the Surety's investigation and the Surety's estimate of when the investigation will be completed and its position delivered to the Obligor. In the event that the Surety denies that it has any liability pursuant to this Bond, the Surety shall explain its reasons therefor to the Obligor in writing.

IV - Emergency Remedial Action by the Obligor

If during the time the Surety is investigating a Demand, circumstances dictate that the Obligor must undertake emergency remedial work which is necessary to:

- a) ensure public safety; or
- b) preserve or protect the work under the Contract from deterioration or damage,

the Obligor may, acting with due diligence and upon giving written notice to the Surety, undertake such emergency remedial work provided that:

1. reasonable costs incurred by the Oblige in undertaking such emergency remedial work shall be reimbursed by the Surety in accordance with the terms and conditions of this Bond and subject to the Principal's default and the Surety's liability being subsequently established. Any payments made by the Surety in respect of such work shall form part of its obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments; and
2. any such emergency remedial work shall be limited to work which is within the scope of the Contract and which is reasonably required to mitigate the potential costs or damages of the Oblige in the circumstances; and
3. any such emergency remedial work shall be undertaken without prejudice to the rights of the Oblige, the Principal or the Surety under the Contract, this Bond or applicable law.

V - Post-Demand Conference

Following a Demand, the Surety and the Principal shall participate in a meeting or telephone conference call (the "Post Demand Conference") with the Oblige, on a without prejudice basis, which shall be arranged by the Surety and held at a mutually agreeable time and place not later than ten (10) calendar days after receipt of the Demand, unless otherwise mutually agreed to by the Oblige and the Surety.

The purpose of the Post Demand Conference shall be to determine what remedial action, if any, the Oblige believes must be taken while the Surety is conducting its investigation. If the Oblige reasonably believes that the work of the Contract must proceed for the benefit/protection of the Project overall and in mitigation of any damages the Oblige intends to seek from the Surety hereunder, while the Surety is conducting its investigation and provides reasonable evidence thereof to the Surety, the Oblige may engage an appropriate contractor(s) to continue the work of the Contract (the "Remedial Work") subject to the following conditions:

1. the Oblige shall pay the costs of the Remedial Work on terms the same as or similar to those of the Contract;
2. the Oblige shall keep separate records of all amounts related to the Remedial Work it intends to seek as damages from the Surety hereunder; and
3. the Oblige shall allow the Surety and/or its consultant(s) access to the Project during the course of the Remedial Work for the purpose of preserving evidence and monitoring the progress of the Remedial Work.

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

The reasonable costs incurred by the Oblige in undertaking the Remedial Work shall be reimbursed by the Surety in accordance with the terms and conditions of this Bond subject to the Principal's default and the Surety's liability being subsequently established. Any payments made by the Surety in respect of the Remedial Work shall form part of its obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments.

So long as the Oblige has attended a Post Demand Conference and otherwise complied with all of the conditions of this Bond the Oblige may proceed with the Remedial Work and the Surety shall not raise the mere fact that the Remedial Work proceeded as a defence to any claim by the Oblige hereunder.

Neither the participation in the Post-Demand Conference, nor any statement or position taken by either party during the Post-Demand Conference or any follow-up Post-Demand Conference, shall be relied on by any other party as a waiver or compromise of the rights or duties of any the Oblige, the Surety or the Principal under the Contract or this Bond.

VI- Surety's Options

Following the completion of the Surety's investigation, if the Conditions Precedent have been satisfied by the Oblige and the Surety has accepted liability pursuant to this Bond, subject to Sections VII and VIII below, the Surety shall promptly:

1. remedy the default; or
2. complete the Contract in accordance with its terms and conditions; or
3. obtain a bid or bids for submission to the Oblige for completing the Contract in accordance with its terms and conditions and upon determination by the Oblige and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the Oblige and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to complete the Principal's obligations in accordance with the terms and condition of the Contract and to pay those expenses incurred by the Oblige as a result of the Principal's default relating directly to the performance of the work under the Contract, less the Balance of the Contract Price; or
4. pay the Oblige the lesser of : (1) the Bond Amount, or (2) the Oblige's proposed cost of completion less the Balance of Contract Price.

VII - Limitation on the Surety's Liability

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

In the province of Québec, the coverage period of this Bond begins at the date of commencement of the Contract work and ends two (2) years following acceptance of such work pursuant to Article 2110 of the CMI Code. Only defaults declared by the Oblige in writing to the Principal during such period shall be subject to coverage under this Bond.

VIII- Commencement of Action

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of : (1) the date of Substantial Performance of the Contract as defined in the Plan legislation where the work under the Contract is taking place, or, if no such definition exists, the date when the work is ready for use or is being used for the purpose intended, or (2) the date on which the Principal is declared in default by the Obligees.

IX- Right of Action

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

X- Headings for Reference Only

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

XI- Notices

All Demands and notices under this Bond shall be delivered by facsimile and registered mail at the addresses set out below. All other correspondence may be delivered by any of facsimile, regular mail, registered mail, email or courier at the addresses set out below.

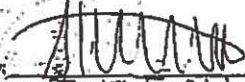
The Surety:
Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610
Toronto, ON M5H 2R2
Fax: 614-845-8878
Email: suraty@trisura.com

The Obligees:
PCL Construction Management Inc.
2882 11th Street NE
Calgary, AB T2E 7S7
Fax: N/A
calgarycontracta@pcl.com

The Principal:
NORTH AMERICAN STEEL ERECTORS INC
182 BOW RIDGE DR.
COCHRANE, AB T4C 1V7
Fax: N/A
Email: stoupin@nasteeerectors.com

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond this 12th day of August in the year 2019.

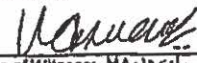
NORTH AMERICAN STEEL ERECTORS INC

By: 
Name: Steve Stoupin
Title: President
I have authority to bind the corporation.

Trisura Guarantee Insurance Company

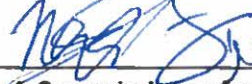
By: 
Name: Liane Secours, (seal)
Attorney-in-Fact

Witnessed by:


Name of Witness: HARKSHI GOSWAMI
Address of Witness: 160 GRIFFIN PARK RD
Cochrane, Ab

S.M.P.

This is EXHIBIT "F" referred to in the Affidavit of Stuart Detsky, sworn before me this 17th day of August, 2022.

 NENA KOROGHLIAN

A Commissioner for Oaths in and for the
Province of Ontario

INVOICE / APPLICATION FOR PAYMENT

<p>Contractor: <u>North American Steel Erectors Inc</u> <u>160 Griffin ranch road</u> <u>Cochrane, Alberta T4C2B8</u></p> <p>Sent To: <u>PCL Construction Management Inc.</u></p> <p>Project: <u>9th Ave SE Vehicle Bridge Replacement</u> <u>9 Ave SE - Over Elbow River, Calgary, Alberta T2G 4K8</u></p>	<p>Sub Invoice #: <u>00463022OS-JUL2021-49</u></p> <p>GC Invoice #: <u>00463022OS-JUL2021-49</u></p> <p>Invoice Date: <u>07/16/2021</u></p> <p>Period Covered: From: <u>07/01/2021</u> To: <u>07/16/2021</u></p> <p>Subcontract #: <u>00463022OS</u></p> <p>Project #: <u>0400463</u></p>
--	---

Original Contract Amount:	\$4,648,509.00	
Approved Change Orders:	<u>\$1,922,106.05</u>	
Gross Contract Value:	<u>\$6,570,615.05</u>	
Gross Amount Claimed to Date:	\$5,427,916.66	<u>82.61 % Complete</u>
Less Gross Amount Claimed Previously:	<u>\$5,386,399.76</u>	
Gross Amount this Claim:		\$41,516.90
Less Holdback at <u>0.00 %</u>		<u>\$0.00</u>
Net Amount This Claim:		\$41,516.90
Add GST/HST at <u>5.00 %</u> (GST/HST # <u>739358497RT0001</u>):		<u>\$2,075.84</u>
Invoice Total:		<u><u>\$43,592.74</u></u>

Holdback Summary:

Total Holdback to Date:	\$459,571.13
Less Holdback Released:	<u>\$386,096.47</u>
Holdback Retained:	<u><u>\$73,474.66</u></u>

Submitted by the Contractor

Steeve Toupin - President
 Name and Title of person Signing

Steeve Toupin
 Signature

5/16/21

Continuation Sheet - North American Steel Erectors Inc

APPLICATION AND CERTIFICATION FOR PAYMENT, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where holdback for line items may apply.

APPLICATION NO: 49

APPLICATION DATE: 07/20/2021


PERIOD TO: 07/16/2021

PROJECT NAME: 9th Ave SE Vehicle Bridge Replacement

A ITEM NO.	B DESCRIPTION OF WORK	C CONTRACT AMOUNT	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I HOLDBACK	J HOLDBACK RELEASED THIS PERIOD	K NET AMOUNT TO DATE (G - I)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G + C)					
00000001	3.5.1 SteelArchRibCrzBracing	\$1,640,361.45	\$1,640,361.45	\$0.00	\$0.00	\$1,640,361.45	100.0%	\$0.00	\$0.00	\$0.00	\$1,640,361.45
00000002	3.5.2 GalvArchTieBeams	\$501,828.03	\$501,828.03	\$0.00	\$0.00	\$501,828.03	100.0%	\$0.00	\$0.00	\$0.00	\$501,828.03
00000003	3.5.3 SteelArchRibCrzBracing	\$26,100.78	\$26,100.78	\$0.00	\$0.00	\$26,100.78	100.0%	\$0.00	\$0.00	\$0.00	\$26,100.78
00000004	3.5.4 S&I ArchRibCladdgPanel	\$46,064.80	\$46,064.80	\$0.00	\$0.00	\$46,064.80	100.0%	\$0.00	\$0.00	\$0.00	\$46,064.80
00000005	3.5.5 S&I Arch Cross Bracing	\$23,720.60	\$23,720.60	\$0.00	\$0.00	\$23,720.60	100.0%	\$0.00	\$0.00	\$0.00	\$23,720.60
00000006	3.5.6 GalvSteelDkBeamStringr	\$2,095,356.84	\$2,095,356.84	\$0.00	\$0.00	\$2,095,356.84	100.0%	\$0.00	\$39,316.60	\$0.00	\$2,056,040.24
00000007	3.5.7 SteelDeckBeamStringer	\$78,302.35	\$78,302.35	\$0.00	\$0.00	\$78,302.35	100.0%	\$0.00	\$6,056.65	\$0.00	\$72,245.70
00000008	3.5.8 S&I GalvSteelArchHangr	\$193,098.30	\$193,098.30	\$0.00	\$0.00	\$193,098.30	100.0%	\$0.00	\$15,969.34	\$0.00	\$177,128.96
00000009	3.5.9 S&I CoatSteelPiteHangr	\$19,166.85	\$19,166.85	\$0.00	\$0.00	\$19,166.85	100.0%	\$0.00	\$1,754.81	\$0.00	\$17,412.04
00000010	50% PerfBond-ShieldIndustry	\$14,950.00	\$14,950.00	\$0.00	\$0.00	\$14,950.00	100.0%	\$0.00	\$1,495.00	\$0.00	\$13,455.00
00000011	50% LbMatBond-ShieldIndustry	\$6,325.00	\$6,325.00	\$0.00	\$0.00	\$6,325.00	100.0%	\$0.00	\$632.50	\$0.00	\$5,692.50
00000012	50% PerfBond-NASteelErectors	\$3,234.00	\$3,234.00	\$0.00	\$0.00	\$3,234.00	100.0%	\$0.00	\$323.40	\$0.00	\$2,910.60
	Subtotal Base Contract	\$4,648,509.00	\$4,648,509.00	\$0.00	\$0.00	\$4,648,509.00	100.0%	\$0.00	\$65,548.30	\$0.00	\$4,582,960.70
00100013	Finalize Contract Value	\$75,000.00	\$75,000.00	\$0.00	\$0.00	\$75,000.00	100.0%	\$0.00	\$7,500.00	\$0.00	\$67,500.00
00200014	R03 ElectricalConduitAddnScops	\$7,106.05	\$7,106.05	\$0.00	\$0.00	\$7,106.05	100.0%	\$0.00	\$426.36	\$0.00	\$6,679.69
00300015	Costs to complete steel	\$1,540,000.00	\$355,784.71	\$41,516.90	\$0.00	\$397,301.61	25.8%	\$1,142,698.39	\$0.00	\$0.00	\$397,301.61
00300016	Cost reconciliation steel work	\$300,000.00	\$300,000.00	\$0.00	\$0.00	\$300,000.00	100.0%	\$0.00	\$0.00	\$0.00	\$300,000.00
	Subtotal Revisions	\$1,922,106.05	\$737,890.76	\$41,516.90	\$0.00	\$779,407.66	40.5%	\$1,142,698.39	\$7,926.36	\$0.00	\$771,481.30
	GRAND TOTALS	\$6,570,615.05	\$5,386,399.76	\$41,516.90	\$0.00	\$5,427,916.66	82.6%	\$1,142,698.39	\$73,474.66	\$0.00	\$5,354,442.00

5/11/21

This is EXHIBIT "G" referred to in the Affidavit of Stuart Detsky, sworn before me this 17th day of August, 2022.

 NEDA FOROUGHIAN


A Commissioner for Oaths in and for the
Province of Ontario

Back charges / cost to complete NASE subcontract

Item Description	Cost Incurred to Date	Cost to Complete	Total Cost
Supreme Steel LP (Fabrication)	\$ 446,578.19	\$ 763,421.81	\$ 1,200,000.00
Supreme Steel LP (Remediation of Steel required from NASE's direction)		\$ 50,000.00	\$ 50,000.00
Testing / Inspection - Nortech NDT		\$ 65,000.00	\$ 65,000.00
Metalizing - Park Derochie		\$ 258,554.00	\$ 258,554.00
Painting - Park Derochie		\$ 105,000.00	\$ 105,000.00
Galvanizing - Dam Galvanizing		\$ 50,000.00	\$ 50,000.00
Machining - SPM Oil & Gas		\$ 169,500.00	\$ 169,500.00
Machining missing pins - TBD		\$ 5,000.00	\$ 5,000.00
3rd Party Engineering for Erection Planning		\$ 15,000.00	\$ 15,000.00
3rd Party QC Inspections / Shop Supervision		\$ 15,000.00	\$ 15,000.00
Survey / Trial fit costs		\$ 15,000.00	\$ 15,000.00
Installation / Erection Bridge		\$ 1,200,000.00	\$ 1,200,000.00
Painting/Metalizing Touch ups (following install)		\$ 50,000.00	\$ 50,000.00
Trucking / Crane estimate to transport steel to site		\$ 400,000.00	\$ 400,000.00
Allowance for fabrication of missing steel		\$ 50,000.00	\$ 50,000.00
Additional bolts for erection		\$ 30,000.00	\$ 30,000.00
PCL supervision of Supreme fabrication		\$ 20,000.00	\$ 20,000.00
Equipment/Tent Rental		\$ 8,500.00	\$ 8,500.00
Steel retrieval from NASE storage yard		\$ 20,000.00	\$ 20,000.00
PCL direct cost for heating & hoarding		\$ 200,000.00	\$ 200,000.00
Legal Fees		\$ 40,000.00	\$ 40,000.00
PCL General Expense for Delay		\$ 225,000.00	\$ 225,000.00
LD's - Interim Operational Date \$2,000/Day to max \$350,000 (revised Nov 30, 2021)		\$ 350,000.00	\$ 350,000.00
LD's - Scheduled Operational Date \$2,000/Day to max \$250,000 (revised June 06, 2022)		\$ 250,000.00	\$ 250,000.00
	\$ 446,578.19	\$ 4,344,975.81	\$ 4,791,554.00

Jim, D.

This is EXHIBIT "H" referred to in the Affidavit of Stuart Detsky, sworn before me this 12^m day of August, 2022.

 NEDA FOROUSHIAN

A Commissioner for Oaths in and for the
Province of Ontario

From: Kim, Eugene <Eugene.Kim@Trisura.com>
Sent: April 22, 2022 6:46 AM
To: CALACCOUNTSRECEIVABLE@PCL.COM
Subject: Trisura Guarantee Insurance EFT Transfer Notice




This is a notice to confirm that \$462,000.00 will be deposited into your bank account via electronic fund transfers on 4/22/2022 from Trisura Guarantee Insurance Company. The following details are related to the deposit:

Invoice #: 18APR2022
Amount: \$462,000.00
Paid Date: 4/22/2022
Payee Name: PCL CONSTRUCTION MANAGEMENT INC.

This email message is intended for the use of the individual or entity to which it is addressed and may contain information that is confidential. If you are not the intended recipient, you are notified that any use, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender and erase this email message immediately.

This email communication was sent by Trisura Accounting (accounting@trisura.com), 333 Bay Street, Suite 1610, Toronto, ON, M5H 2R2

This is EXHIBIT "I" referred to in the Affidavit of Stuart Detsky, sworn before me this 12th day of August, 2022.

 NEBA FOROUGHIAN

A Commissioner for Oaths in and for the
Province of Ontario

[REDACTED] 0001-00022 1930987 [REDACTED]

[REDACTED] PCLCON001 [REDACTED]

[REDACTED] PCL CONSTRUCTION MANAGEMENT I [REDACTED]

[REDACTED] \$462,000.00 0004-82389 0736224 [REDACTED]

[REDACTED] 460 022111 [REDACTED]

[REDACTED] C [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

*** END OF REPORT ***

This is EXHIBIT "J" referred to in the Affidavit of Stuart Detsky, sworn before me this 12^m day of August, 2022.

 NEDA FERZOGHIAN

A Commissioner for Oaths in and for the
Province of Ontario

District of: Alberta
Division No. 02 - Calgary
Court No. 25-095246
Estate No. 25-095246

FORM 31 / 36
Proof of Claim / Proxy
In the Matter of the Bankruptcy of
North American Steel Erectors Inc.

All notices or correspondence regarding this claim must be forwarded to the following address:

Trisun Guarante Insurance Company
333 Bay St. - Ste 1610, Toronto, ON, M5H 2R2

In the matter of the bankruptcy of North American Steel Erectors Inc. of the town of Cochrane in the Province of Alberta and the claim of Trisun Guarante Insurance Company creditor. — (Trisun?)

I, _____, of the city of _____, a creditor in the above matter, hereby appoint _____ of _____, to be my proxyholder in the above matter, except as to the receipt of dividends, _____ (with or without) power to appoint another proxyholder in his or her place.

I, Shant D. Saly (name of creditor or representative of the creditor), of the city of Toronto in the province of Ontario do hereby certify:

1. That I am a creditor of the above named debtor (or I am VP Claims (position/title) of Trisun creditor).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, namely the 29th day of July 2021, and still is, indebted to the creditor in the sum of \$ 500,000.00, as specified in the statement of account (or affidavit or solemn declaration) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

A. UNSECURED CLAIM OF \$ _____

(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$ _____, I claim a right to a priority under section 136 of the Act.

Regarding the amount of \$ _____, I do not claim a right to a priority.
(Set out on an attached sheet details to support priority claim.)

B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ _____

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

C. SECURED CLAIM OF \$ 500,000.00

That in respect of this debt, I hold assets of the debtor valued at \$ 0 as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ _____

That I hereby make a claim under subsection 81:2(1) of the Act for the unpaid amount of \$ _____
(Attach a copy of sales agreement and delivery receipts.)

E. CLAIM BY WAGE EARNER OF \$ _____

That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ _____,

That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ _____,

F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ _____

That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ _____,

That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ _____,

G. CLAIM AGAINST DIRECTOR \$ _____

(To be completed when a proposal provides for the compromise of claims against directors.)

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ _____

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That, to the best of my knowledge, I _____ (am/am not) (or the above-named creditor _____ (is/is not)) related to the debtor within the meaning of section 4 of the Act, and _____ (have/has/have not/has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

7. (Applicable only in the case of the bankruptcy of an individual.)

Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Toronto, ON, this 1st day of August, 2021.

Witness

Individual Creditor

Witness

Tridim Grand Truism Corp
Name of Corporate Creditor

Per _____
Name and Title of Signing Officer

Return To:

Phone Number: 416-607-2165
Fax Number: _____
E-mail Address: _____

Stuart.D.alk@tridim.com

MNP Ltd. - Licensed Insolvency Trustee
Per:

Victor Kroeger - Licensed Insolvency Trustee
1500, 640 - 5 Avenue SW
Calgary AB T2P 3G4
Fax: (403) 537-8437
E-mail: calgary.insolvency@mnp.ca

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

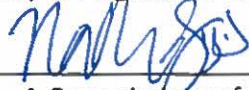
Subsection 20(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

SCHEDULE "A" TO PROOF OF CLAIM

Claim Amount: \$500,000

The claim amount is derived from the bond amount of \$462,000 for Performance Bond MCS1150074 and potential expenses of \$38,000 owed by the bankrupt pursuant to the attached Indemnity Agreement.

This is EXHIBIT "K" referred to in the Affidavit of Stuart Detsky, sworn before me this 12th day of August, 2022.

 NEDA FOROGHIAN

A Commissioner for Oaths in and for the
Province of Ontario

District of Alberta
Division No. Calgary
Court/ Estate No. 25-095246

**IN THE MATTER OF THE BANKRUPTCY OF
NORTH AMERICAN STEEL ERECTORS INC.
TRUSTEE'S PRELIMINARY REPORT**

BACKGROUND

1. On July 29, 2021, on an application made by the Bank of Nova Scotia ("ScotiaBank"), a Bankruptcy Order was granted by the Court of Queen's Bench of Alberta (the "Court") against North American Steel Erectors Inc. (the "Bankrupt" or "NASE"). MNP Ltd. (the "Trustee") was appointed by the Court to act as Trustee of the bankrupt estate of NASE.
2. NASE is a steel structure fabrication company that was incorporated in Alberta on January 18, 2016 and is based in Cochrane, Alberta. NASE carried on business throughout Canada. On the date of bankruptcy, the Bankrupt had three open contracts, one in Alberta and, two in Ontario.
3. The Trustee is of the view that the Bankrupt's insolvency was primarily caused by the Bankrupt's failure to pay its employer source deduction obligations (the 'Deemed Trust Claim') to Canada Revenue Agency (the "CRA"). NASE's former director, Steeve Toupin has advised the Trustee that he attributes the Bankrupt's financial difficulties primarily to a contract for the supply of steel on a project in Calgary, Alberta, (the "9th Avenue Bridge Project"). To the best knowledge of the Trustee, the supplier of steel on the 9th Avenue Bridge Project, Shield Industries Ltd. ("Shield") is no longer actively in business. Prior to the bankruptcy of NASE, litigation regarding the 9th Avenue Bridge Project had been commenced by NASE against Shield and Wynward Insurance Group ("Wynward"), who had issued a Performance Bond concerning the 9th Avenue Bridge Project. To date, no payments have been made under the Performance Bond.
4. The Trustee received the sworn Statement of Affairs of the Bankrupt on August 11th, 2021.

BOOKS AND RECORDS

5. Selected books and records of the Bankrupt have been provided to the Trustee. The Trustee is still awaiting the receipt of additional financial information, including the QuickBooks back up, from NASE's former Controller.

CONSERVATORY AND PROTECTIVE MEASURES

6. The Company's operations were discontinued as at the date of bankruptcy, July 29, 2021. The Trustee took reasonable steps to conserve and protect the assets of NASE, including changing the locks on NASE's main office, inventorying NASE's assets within the office, NASE's equipment located outside of the office, and on their former job sites, and ensuring adequate insurance coverage is in place.
7. NASE's operations at the date of the bankruptcy included three projects, the 9th Avenue Bridge Project, the McDonald Block project in Toronto, Ontario, and the Children's Hospital Project in

Toronto, Ontario. The Trustee has reviewed the costs associated with these projects and has determined that there is no economic benefit to the bankrupt estate of NASE to complete any of the projects. PCL Construction Ltd. ("PCL") is the general contractor on all projects and have advised the Trustee that they will likely be submitting a claim into the bankruptcy for the extra costs associated with replacing NASE to complete these projects.

8. The Trustee has contacted CRA regarding its trust audit to determine the amount of a potential Deemed Trust Claim. CRA has advised that this matter has not yet been assigned to a trust examiner. The CRA source deduction payable, as reported in the Bankrupt's Statement of Affairs exceeds \$1.1 million.

ASSET REALIZATION AND PROJECTED DISTRIBUTION

9. The assets listed on the Bankrupt's Statement of Affairs are as follows:

<u>Description</u>	<u>Amount</u>
Cash	\$314,410
Furniture	10,000
Vehicles	244,000
Machinery, plant & equipment	200,000
Total Assets	<u>\$768,410</u>

10. Cash is currently frozen, for the benefit of the Estate, in the Bankrupt's Scotiabank account. These funds will be remitted to the Trustee once a trust account is in place. The cash, along with all other assets of the Bankrupt appear to be subject to CRA's Deemed Trust Claim.
11. The Statement of Affairs also listed accounts receivable. The accounts receivable balance reported to be good were \$777,587. A receivable amount of \$17,320 was collected by the Trustee from PCL for the progress payment on the 9th Ave Bridge Project.
12. The \$744,322 remaining accounts receivable balance reported as good in the Statement of Affairs is due from 2127712 Alberta Ltd. ("212"), a related party to the Bankrupt. The Trustee issued a letter demanding payment of this amount. The Trustee is aware that Roynat Ltd. has made an application to appoint a receiver over the assets of 212 that is scheduled to be heard by the Court on August 20, 2021. Therefore, collection of this receivable is doubtful.
13. The Trustee is aware that as of the date of bankruptcy, NASE was involved in the following four court actions:
 - a. As discussed above, NASE advanced a claim regarding the 9th Avenue Bridge Project against Shield, a steel supplier, and Wynward, Shield's insurance company who has issued a Performance Bond regarding the 9th Avenue Bridge Project, with the Court of Queen's Bench of Alberta. The claim is for \$3,673,856.02 and the penal limit of the Performance Bond is \$1,860,174.02. Shield has not defended the claim, but a Statement of Defence has been filed by Wynward. This litigation was at the document exchange phase as at the date of bankruptcy.
 - b. A claim was made by NASE against Exact Detailing Ltd. ("Exact") in the Court of Queen's Bench of Manitoba for \$4,677,711.08 concerning steel procurement and structural steel design regarding the design and construction of the Winnipeg Artis Tower. Exact has defended the action and brought a counterclaim for \$205,152.41 for alleged unpaid services concerning the project. Exact filed a builder's lien against the lands upon which the Winnipeg Artis Tower is situated for the said \$205,152.41 sum. The lien has been

vacated from the lands as a result of NASE paying the sum of \$205,152.41 into Court of Queen's Bench of Manitoba. The action was to be dealt with by way of arbitration but as of the date of bankruptcy, no arbitration had occurred or been scheduled.

- c. A claim was made by Exact against NASE for the sum of \$232,106.86 plus interest and costs in the Ontario Superior Court for alleged unpaid fees for the supply of structural steel design and erection drawings concerning the construction of a casino in Pickering, Ontario (the "Pickering Casino Project"). Exact registered a construction lien regarding the unpaid sum, which construction lien has been vacated as a result of NASE posting a letter of credit from the Bank of Nova Scotia with the Ontario Superior Court in the amount of \$282,106.87. NASE has defended the action. As of the date of bankruptcy, the litigation was at the document exchange phase.
- d. A claim was made by Métal Perreault Inc. ("MPI") against NASE for the sum of \$244,995.40 in the Ontario Superior Court for alleged unpaid amounts in respect of steel material supplied by to the Pickering Casino Project. NASE has defended the action and brought a counterclaim for \$2,980,000 plus interest and costs for alleged lost profits and costs in rectifying materials allegedly supplied by MPI. As of the date of bankruptcy, the litigation was at the document exchange phase.

- 14. The Trustee currently does not have funds to continue the litigation outlined above.
- 15. A preliminary review conducted by GD Auctions has estimated that all machinery, equipment, furniture and the vehicles of NASE located in Cochrane have a realizable value of \$205,675 based on their report dated August 13, 2021. The Trustee has received proof of claims from Ford Canada for the vehicles being financed. The Ford claims are currently being reviewed by the Trustee and its legal counsel.
- 16. The Trustee has estimated the following realizations of assets that would be available after CRA's Deemed Trust Claim is paid:

<u>Description</u>	<u>*Estimated Realization</u>
Cash	\$0
Furniture	0
Vehicles	0
Machinery, plant & equipment	0
Total Assets	<u>0</u>

* Estimated realization based on funds available after CRA deemed trust claim is paid.

- 17. CRA's Deemed Trust Claim is currently unproven, however, any realizations that the Trustee makes on behalf of the Estate, including cash, will likely be subject to the Deemed Trust Claim.
- 18. Based on the above information, the Trustee does not currently anticipate there to be any funds available for distribution to the unsecured creditors of this estate.

SUMMARY OF CLAIMS

19. The Bankrupt's statement of affairs listed the following creditor claims:

<u>Description</u>	<u>Amount</u>
Secured	\$524,410
Preferred	\$38,010
*Unsecured	\$6,671,182
	<u>\$7,233,602</u>

*Unsecured amount includes \$1.1 million claim for unremitted source deductions that form a deemed trust claim that ranks in priority to all other claims

20. As at 12:00 PM, August 19, 2021, the following claims have been submitted to the Trustee:

<u>Description</u>	<u># of claims</u>	<u>Amount</u>
Secured	3	\$514,429.51
Preferred	-	-
Unsecured	5	1,858,613.18
	<u>8</u>	<u>\$2,373,042.69</u>

LEGAL

21. Prior to the First Meeting of Creditors the Trustee has retained the services of Caron & Partners LLP ("Caron") to provide preliminary legal advice to the Estate with respect to getting access to assets, obtaining the sworn Statement of Affairs and obtaining information regarding the legal claims. We will be seeking confirmation of Caron as the Estate solicitors at the First Meeting of Inspectors.

REVIEW OF FRAUDULENT PREFERENCES AND TRANSFERS AT UNDERVALUE

22. The Trustee is required to undertake a review of any transactions that occurred prior to the date of bankruptcy that would constitute a transfer at undervalue or a fraudulent preference as defined by subsections 95 and 96 of the *Bankruptcy and Insolvency Act* (the "Review").

23. The Trustee has started the Review and is aware of \$32,300 in payments made on the date of bankruptcy by NASE to 212. These, and other transactions, will be reviewed once the Trustee receives the accounting and banking records from NASE's former Controller and from review of account records received from the various financial institutions that held NASE accounts.

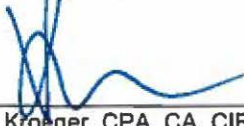
OTHER

24. The Trustee's fees and that of its legal counsel, Caron & Partners LLP, are being paid by ScotiaBank through a fee guarantee.

25. Further information with respect to these proceedings will be made available on the Trustee's website at <https://mnpdebt.ca/en/corporate/corporate-engagements/north-american-steel-erectors-inc> as it becomes available.


Dated at Calgary, Alberta this 19th day of August 2021.

MNP Ltd.,
In its capacity as Trustee of
North American Steel Erectors Inc. and not in its personal
or corporate capacity



Victor P. Kroeger, CPA, CA, CIRP, LIT, CFE
Senior Vice President

This is EXHIBIT "L" referred to in the Affidavit of Stuart Detsky, sworn before me this 12th day of August, 2022.

 NEDA FOROUGHIAN

A Commissioner for Oaths in and for the
Province of Ontario

Clerk's Stamp

COURT
FILE NO.

BK01 095206

COURT

COURT OF QUEEN'S BENCH OF
ALBERTAJUDICIAL
CENTRE

CALGARY

IN THE MATTER OF THE BANKRUPTCY OF
NORTH AMERICAN STEEL ERECTORS INC.

DOCUMENT

FIRST REPORT OF THE TRUSTEE, MNP LTD.

DATED

JULY 6, 2022

ADDRESS
FOR
SERVICE
AND
CONTACT
INFORMATI
ON OF
PARTY
FILING
THIS
DOCUMENT**Trustee's Legal Counsel****CARON & PARTNERS LLP**
Fifth Avenue Place – West Tower
2120, 237 – 4th Avenue, S.W.
CALGARY, AB T2P 4K3ATTN: DEAN HUTCHISON
TEL: 403-770-4023
EMAIL: dhutchison@caronpartners.com**Trustee****MNP LTD.**
1500, 640 – 5 Avenue S.W.
CALGARY, AB T2P 3G4ATTN: VICTOR P. KROEGER / RICK ANDERSON
TEL: 403.298.8479 / 403-537-8424
EMAIL: victor.kroeger@mnp.ca /
rick.anderson@mnp.ca

APPENDICES

- Appendix A - Bankruptcy Order Granted July 29, 2021
- Appendix B - Corporate Registry Search Results for North American Steel Erectors Inc.
- Appendix C – Copies of Pleadings from Shield Action
- Appendix D – Proof of Claim of Borden Ladner Gervais LLP
- Appendix E – Copy of the Inspector's Minutes held February 9, 2022
- Appendix F – Creditor Notice dated February 23, 2022
- Appendix G - Creditor Notice dated April 13, 2022
- Appendix H – Copies of Pleadings from Manitoba Exact Actions
- Appendix I – Copies of Pleadings from Ontario Exact Action
- Appendix J – Settlement Agreement and Mutual Release dated October 28, 2021
- Appendix K – Copies of Consent Orders granted November 9, 2021 in Manitoba Exact Actions
and copy of Consent Order granted November 22, 2021 in Ontario Exact Action
- Appendix L – Minutes from Inspector's Meetings held September 7, 2021 and September 28,
2021
- Appendix M – March 25, 2022 E-mail Correspondence between Counsel for the Trustee and
Counsel for Steeve Toupin
- Appendix N – April 21, 2022 E-mail Correspondence between Counsel for Steeve Toupin and
Counsel for the Trustee
- Appendix O – May 16, 2022 E-mail from Counsel for the Trustee to Counsel for Steeve Toupin
- Appendix P – June 1 to 30, 2022 E-mail Correspondence between Counsel for the Trustee and
Counsel for Steeve Toupin
- Appendix Q – July 4 and 5, 2022 E-mail Correspondence from Ramsay Law Office and Notice
of Withdrawal of Lawyer of Record (of Ramsay Law Office as counsel for
Steeve Toupin) filed July 4, 2022

INTRODUCTION AND BACKGROUND

1. On July 29, 2021 the Honourable Mr. Justice C.M. Jones Court of the Queen's Bench of Alberta (the "Court") granted an Order (the "Bankruptcy Order") adjudging North American Steel Erectors Inc. ("NASE" or the "Company") bankrupt and appointing MNP Ltd. as the trustee (the "Trustee") of the bankrupt estate. A copy of the Bankruptcy Order is attached hereto as **Appendix "A"**.
2. NASE operated a steel structure fabrication company on lands owned by a related company, 2127712 Alberta Ltd. ("212"), located at 160 Griffin Ranch Road, Cochrane, Alberta. 212 was placed into receivership pursuant to a Receivership Order granted by the Honourable Madam Justice B.E.C. Romaine in Court File Number: 2101-10276 on August 2021. MNP Ltd. acts as the receiver of 212.
3. At the time of NASE's bankruptcy, Steeve Toupin ("Mr. Toupin") was the sole director of NASE, and Mr. Toupin (holding 77.78%) and Gordon Spalding (holding 22.22%) were the voting shareholders of NASE. Attached hereto as **Appendix "B"** are the Alberta Corporate Registry search results for NASE as of the date of bankruptcy, July 29, 2021.
4. Copies of the relevant documents relating to these proceedings are available on the Trustee's website: <https://mnpdebt.ca/en/corporate-engagements/north-american-steel-erectors-inc>.

REPORT LIMITATIONS

5. In preparing this first report (the "First Report") and in making comments herein, the Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information of the Company, books and records of the Company, and information from other third-party sources (collectively, the "Information"). The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada (the "Standards"). Additionally, none of the Trustee's procedures were intended to disclose defalcations or other irregularities. If the Trustee were to perform additional procedures or to undertake an audit examination of the information in accordance with the Standards,

additional matters may have come to the Trustee's attention. Accordingly, the Trustee does not express an opinion, nor does it provide any other form of assurance on the financial or other information presented herein. The Trustee may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.

6. The Trustee assumes no responsibility or liability for any loss of damage occasioned by any party as a result of the use of the First Report. Any use, which any party makes of this report, or any reliance or decision to be made based on this report, is the sole responsibility of such party.
7. All amounts included herein are in Canadian dollars unless otherwise stated.

PURPOSE OF THE REPORT

8. The purpose of the First Report is to provide this Honourable Court with information in respect of an application filed by Mr. Toupin on May 30, 2022 (the "**Toupin Application**") for an Order seeking the assignment of the Trustee's interests in the following legal actions concerning NASE, to Mr. Toupin:
 - i. North American Steel Erectors Inc. v. Shield Industries Ltd. and Wynward Insurance Group – Court of Queen's Bench of Alberta Court File No. 2001-16202 (the "**Shield Action**");
 - ii. North American Steel Erectors Inc. v. Exact Detailing Ltd. – Court of Queen's Bench of Manitoba Court File No. CI-20-01-27129 and CI-19-01-24911 (collectively, the "**Manitoba Exact Actions**"); and
 - iii. Exact Detailing Ltd. v. North American Steel Erectors Inc., Pickering Developments (Squires) Inc., Pickering Developments (Bayly) Inc., Pickering Developments (401) Inc. and Ontario Gaming GTA Limited Partnership, by its general partner 2569129 Ontario Inc., also known as Pickering Casino – Ontario Superior Court of Justice Court File No.: CV-19-0003223-000 (the "**Exact Ontario Action**").

9. The Toupin Application states that it is brought under sections 37 and 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 (the "BIA").

NO PROOF OF CLAIM SUBMITTED BY STEEVE TOUPIN

10. As of the date the First Report, Mr. Toupin has not submitted a Proof of Claim of any kind to the Trustee with respect to any amounts claimed to be owed to Mr. Toupin by NASE.

THE SHIELD ACTION

11. The Shield Action concerns a construction project, specifically the 9th Avenue vehicle bridge replacement project located in Calgary, Alberta (the "9th Avenue Bridge Project"), in which: (i) NASE was engaged to supply, fabricate and install structural steel to the 9th Avenue Bridge Project; (ii) Shield Industries Ltd. ("Shield") is alleged to have agreed to fabricate and supply steel for the 9th Avenue Bridge Project; and (iii) the Wynward Insurance Group ("Wynward") is alleged to have issued a performance bond with respect to the 9th Avenue Bridge Project, specifically a performance bond in which NASE was the named Obligee, Shield was the named Principal, and Wynward was the named Surety.
12. The Shield Action was commenced by way of a Statement of Claim filed on behalf of NASE by Borden Ladner Gervais LLP ("BLG") in the amount of \$3,673,856.02. The Shield Action was defended by Wynward, who filed a Statement of Defence. The Trustee was advised by BLG that Shield was insolvent and did not defend the Shield Action. Attached hereto and collectively marked as **Appendix "C"** are copies of the pleadings filed in the Shield Action that were provided to the Trustee by BLG, consisting of: (i) the Statement of Claim filed by NASE; (ii) the Statement of Defence filed by Wynward; and (iii) the Reply to the Statement of Defence filed by NASE.
13. Following its appointment, the Trustee and its legal counsel had discussions with BLG, who was acting for NASE with respect to the Shield Action. BLG advised the Trustee that the Shield Action was at the Affidavit of Records / exchange of documents phase. BLG further advised the Trustee that they were owed \$28,861.31 by NASE for unpaid legal fees and disbursements and that BLG was asserting a solicitor's lien over its file and NASE's documents.

14. Notwithstanding the solicitor's lien, BLG did provide copies of NASE's documents to the Trustee for the purposes of the Trustee's administration of the estate.
15. BLG has also submitted a Proof of Claim to the Trustee, a copy of which is attached hereto as **Appendix "D"**.
16. The Trustee and its legal counsel reviewed the pleadings and documents concerning the Shield Action provided by BLG. The Trustee determined that it did not have access to the funds necessary to pursue further litigation of the Shield Action. The estate Inspector at the 7th meeting of the Inspectors, a copy of which is attached hereto as Appendix "E", directed the Trustee to provide the required Section 38 of the BIA notice to the estate creditors. The notice to creditors was sent on February 23, 2022 (the "**Creditor Notice**"). A copy of the Creditor Notice is attached hereto as **Appendix "F"** the Creditor Notice was sent to all known creditors and potential creditors of NASE. The Creditor Notice summarized the Shield Action, advised that the Trustee had preformed its due diligence and an investigation regarding the Shield Action and determined that it did not have access to funds to pursue the Shield Action. The Creditor Notice further indicated that section 38 of the BIA provides that any one or more creditors may apply to the Court for an Order authorizing them to pursue the Shield Action in their own name and at their own expense.
17. Following the issuance of the Creditor Notice, the Trustee and or its legal counsel were contacted by counsel for three different creditors or possible creditors of NASE, including counsel for Mr. Toupin, who indicated that they may be interested in bringing an application under section 38 of the BIA concerning the Shield Action.
18. The Trustee then issued a second notice to all known creditors and potential creditors of NASE dated April 13, 2022 (a copy of which is attached as **Appendix "G"**) advising that any creditors seeking to pursue an application under section 38 of the BIA may, at their own risk and expense within thirty days of the notice, view those records of NASE in the Trustee's possession concerning the Shield Action by contacting the Trustee's legal counsel. Such notice further stated that any creditors seeking to view the said records shall do so at their own risk and expense and shall be responsible for reimbursing the Trustee and its legal counsel for any costs and expenses incurred in making said records available for viewing.

THE MANITOBA EXACT ACTION AND THE ONTARIO EXACT ACTIONS

19. The Manitoba Exact Actions concerned a claim made by NASE regarding steel procurement and structural steel design concerning the design and construction of the Artis Tower in Winnipeg, Manitoba (the "**Winnipeg Tower Project**"). NASE commenced the Manitoba Exact Actions by way of a Statement of Claim filed on its behalf by David Marr of Marr Finlayson Pollock LLP ("**Mr. Marr**"), and Exact Detailing Ltd. ("**Exact**") defended by way of a Statement of Defence and Exact brought a Counterclaim for \$205,152.41 for alleged unpaid services provided to NASE concerning the Winnipeg Tower Project. Attached hereto and collectively marked as **Appendix "H"** are copies of the Statement of Claim filed by NASE, the Statement of Defence and Counterclaim filed by Exact, and the Consent Order concerning the discharge of the aforementioned builder's lien and payment of monies into Court.
20. The Ontario Exact Action concerned a claim made by Exact against NASE for the sum of \$232,106.86 plus interest and costs brought by way of a Statement of Claim filed with the Ontario Superior Court of Justice for alleged unpaid fees for the supply of structural steel design and erection drawings concerning the construction of a casino in Pickering, Ontario (the "**Casino Project**"). Exact registered a construction lien regarding the alleged unpaid sum, which construction lien had been vacated as a result of NASE posting a letter of credit from the Bank of Nova Scotia in the amount of \$282,106.87 with the Ontario Superior Court of Justice. NASE defended the Ontario Exact Action by way of a Statement of Defence filed on its behalf by Andrea Lee of Glahot Bowels LLP ("**Ms. Lee**"). The Statement of Defence sought set-off regarding amounts alleged to be owed to NASE by Exact with respect to the Winnipeg Tower Project. Attached hereto and collectively marked as **Appendix "I"** are copies of the Statement of Claim, Statement of Defence and Consent Order concerning the discharge of the said builder's lien and posting of the said letter of credit with the Court.
21. Following its appointment, the Trustee and its legal counsel had discussions with both NASE's legal counsel, Mr. Marr in Manitoba concerning the Manitoba Exact Actions, Ms. Lee in Ontario concerning the Ontario Exact Action. With respect to the Manitoba Exact Actions, the Trustee was advised by Mr. Marr that the action was to be dealt with by way of arbitration but that as of the date of bankruptcy, no arbitration had occurred or been scheduled. With respect to the Ontario Exact Action, the Trustee was advised by Ms. Lee

that as of the date of bankruptcy, the action was at the document exchange phase.

22. Following the discussions with Mr. Marr and Ms. Lee, the Trustee, with the consent of the inspector of the bankrupt estate of NASE, engaged in settlement discussions with Exact which resulted in a Settlement Agreement and Mutual Release made between the Trustee and Exact dated October 28, 2021 (the "Settlement Agreement"), a copy of which is attached hereto as **Appendix "J"**. The terms of the Settlement Agreement are as follows:

- (a) the monies that had been paid into Court in the Manitoba Exact Actions were paid to Exact;
- (b) the letter of credit that had been posted with the Court in the Ontario Exact Action was released and returned to the Trustee;
- (c) the Trustee paid Exact the sum of \$1,500.00 as an agreed upon contribution to the legal fees incurred by Exact;
- (d) the Manitoba Exact Actions were discontinued on a without costs basis;
- (e) the Ontario Exact Action was discontinued on a without costs basis; and
- (f) any and all claims of NASE and Exact against one another concerning the Manitoba Exact Actions, the Winnipeg Tower Project, the Ontario Exact Action and the Casino Project were mutually released, save for any trust obligations or duties owed by directors or officers of NASE to Exact under any lien legislation and any possible claims by Exact against the directors or officers of NASE for breach of trust or any other duty owed under any lien legislation, at law or equity.

23. Attached hereto and collectively marked as **Appendix "K"** are copies of: (i) Consent Orders granted November 9, 2021 in the Manitoba Exact Actions directing that the monies that had been paid into Court, with interest, be paid to Exact and that the actions are dismissed without costs; and (ii) the Consent Order granted November 22, 2021 in the Ontario Exact Action discharge Exact's lien to the lands upon which the Casio Project is located, directing the Clerk of the Court to return to the letter of credit that had been posted with the Court to

the Trustee, for delivery to the Bank of Nova Scotia, and dismissing the action without costs.

The Settlement Agreement was entered into by the Trustee with the approval of the inspector of the estate of NASE. Attached hereto as **Appendix "L"** are copies of inspectors meeting minutes of September 21, 2021 and September 28, 2021 regarding such Inspector approval. The September 21, 2021 Inspector minutes had not yet been signed by the Inspector as of the date of the First Report.

COMMUNICATIONS WITH MR. TOUPIN / HIS LEGAL COUNSEL

24. On March 25, 2022, legal counsel for the Trustee, Dean Hutchison of Caron & Partners LLP ("**Mr. Hutchison**"), received a voicemail message from Dan Ramsay of Ramsay Legal Counsel ("**Mr. Ramsay**"), then legal counsel for Mr. Toupin, inquiring on the status of the Manitoba Exact Actions. By e-mail correspondence between Mr. Hutchison and Mr. Ramsay of March 25, 2022, Mr. Hutchison advised that the Manitoba Exact Actions and the Ontario Exact Action had been resolved and discontinued in October/November 2021. Attached hereto as **Appendix "M"** is a copy of this e-mail correspondence.
25. On April 21, 2022, Mr. Ramsay sent an e-mail to Mr. Hutchison indicating he was in the process of filing an application on behalf of Mr. Toupin for the assignment of NASE's legal actions to him and requested a copy of NASE's list of creditors. Mr. Hutchison responded by e-mail of that same day providing a copy of an Affidavit of Mailing of the Trustee sworn August 19, 2021 containing the Creditor Mailing List of NASE's known creditors and potential creditors. Attached hereto as **Appendix "N"** is a copy of the e-mail.
26. On May 16, 2022, Mr. Hutchison sent Mr. Ramsay an e-mail advising him, as a courtesy, that the Trustee will be moving forward to seek its discharge in the near future. Attached hereto as **Appendix "O"** is copy of the e-mail.
27. On June 1, 2022 the Trustee was served with a copy of the Toupin Application and the supporting Affidavit of Mr. Toupin sworn April 20, 2022 from Mr. Ramsay's office. The Trustee's legal counsel was not served.
28. During the period of June 1, 2022 to June 30, 2022, Mr. Hutchison sent Mr. Ramsay several e-mails outlining the Trustee's concerns with that portion of the Toupin Application seeking

relief under section 37 of the BIA and seeking to assign the Manitoba Exact Actions and the Ontario Exact Action to Mr. Toupin. Such correspondence noted that the Manitoba Exact Actions and the Ontario Exact Action had been resolved and discontinued, and that should Mr. Toupin proceed with that portion of the Toupin Application, that such relief will be vigorously opposed by the Trustee and the Trustee would be seeking costs against Mr. Toupin on a solicitor and own client, full indemnity basis. Such correspondence requested multiple times that Mr. Toupin confirm whether he would be proceeding with such portions of the Toupin Application. The responses from Mr. Ramsay were that he was seeking instructions from Mr. Toupin and would advise. Such correspondence further noted that Mr. Toupin had not submitted a Proof of Claim to the Trustee, and therefore his standing to make an application under section 38 of the BIA was potentially at issue. Attached hereto and collectively marked as **Appendix "P"** are copies of such e-mail correspondence.

29. On July 4, 2022, Mr. Hutchison received an e-mail from Mr. Ramsay's office attaching an unfiled copy of a Notice of Withdrawal of Lawyer of Record and advising that Mr. Ramsay had advised Mr. Toupin of the hearing scheduled in this matter on July 7, 2022, and that Mr. Ramsay's office did not know what Mr. Toupin will choose to do with respect to the Toupin Application. On July 5, 2022, Mr. Hutchison received a filed copy of the Notice of Withdrawal of Lawyer of Record filed July 4, 2022 from Mr. Ramsay's office. Attached hereto and collectively marked as **Appendix "Q"** is a copy of the foregoing described correspondence and filed copy of Notice of Withdrawal of Lawyer of Record filed by Mr. Ramsay.
30. As of the time this First Report was signed, neither the Trustee or Mr. Hutchison have received any communications from Mr. Toupin regarding his intentions concerning the Toupin Application, nor a Proof of Claim from Mr. Toupin.

RECOMMENDATION AND CONCLUSION

31. Based upon the foregoing the Trustee respectfully recommends that this Honorable Court:
- i. Deny the Toupin Application; and
 - ii. Grant costs in favour of the Trustee concerning the Toupin Application payable by Mr. Toupin on a solicitor and own client, full indemnity basis.

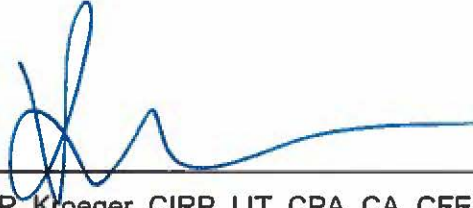
All of which is respectfully submitted this 6th day of July, 2022.

MNP Ltd.

In its capacity as trustee in bankruptcy of

North American Steel Erectors Inc.

and not in its personal or corporate capacity

A handwritten signature in blue ink, consisting of a large, stylized initial 'V' followed by a series of loops and a long horizontal stroke extending to the right.

Per: Victor P. Kroeger, CIRP, LIT, CPA, CA, CFE
Senior Vice President

COURT FILE NUMBER: BK01 095206
COURT COURT OF QUEEN'S BENCH
OF ALBERTA IN BANKRUPTCY
AND INSOLVENCY
JUDICIAL CENTRE CALGARY
APPLICANT THE BANK OF NOVA SCOTIA
RESPONDENT NORTH AMERICAN STEEL
ERECTORS INC.



**IN THE MATTER OF THE
BANKRUPTCY OF NORTH
AMERICAN STEEL ERECTORS
INC.**

DOCUMENT **BANKRUPTCY ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McMillan LLP
421 7th Avenue SW, Suite 1700
Calgary, Alberta T2P 4K9
Phone: 403.531-4700
Fax: 403.531.4720
Attention: Preet Saini
preet.saini@mcmillan.ca
File No. 269071

DATE ON WHICH ORDER WAS PRONOUNCED:	July 29, 2021
NAME OF JUSTICE WHO MADE THIS ORDER:	Justice C.M. Jones
LOCATION OF HEARING:	Calgary, Alberta

UPON THE APPLICATION FOR BANKRUPTCY ORDER being made by The Bank of Nova Scotia (the "Applicant"); **AND UPON** having read the application for Bankruptcy Order of the Applicant; **AND UPON** having read the Affidavit of Josh Coonan, filed in the within action; **AND UPON** reading the consent of MNP Ltd. to act as trustee in the bankruptcy of the estate of North American Steel Erectors Inc. ("NASE"); **AND UPON** hearing from counsel for the Applicant, NASE and the proposed trustee; **AND UPON** it appearing that all interested and affected parties have been served with notice of this application; **AND UPON** it appearing to the Court that the following acts of bankruptcy have been committed by NASE:

- (a) the debt owing by NASE exceeds \$1,000; and
- (b) within the 6 months preceding the date of filing of the application for Bankruptcy Order, NASE has ceased to meet its liabilities generally as they come due;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of the notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and the time for service of this application is abridged to that actually given.
2. NASE, be and is hereby adjudged bankrupt and that a Bankruptcy Order is hereby made against NASE.
3. MNP Ltd. be and is hereby appointed as trustee of the estate of the bankrupt NASE, without security.
4. The costs of and incidental to this application and of this Order be paid to the applicant, on a full indemnity, solicitor and own client basis, out of the assets of the estate of the bankrupt NASE.



Justice of the Court of Queen's Bench of
Alberta

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2021/07/29
 Time of Search: 01:21 PM
 Search provided by: CARON & PARTNERS LLP
 Service Request Number: 35891440
 Customer Reference Number: DAH:lrc

Corporate Access Number: 2019448758
 Business Number: 739358497
 Legal Entity Name: NORTH AMERICAN STEEL ERECTORS INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
CENTRAL ERECTORS INC.	2016/03/08

Legal Entity Status: Active
 Alberta Corporation Type: Named Alberta Corporation
 Registration Date: 2016/01/18 YYYY/MM/DD

Registered Office:

Street: 160 GRIFFIN RANCH ROAD
 City: COCHRANE
 Province: ALBERTA
 Postal Code: T4C2B8

Records Address:

Street: 160 GRIFFIN RANCH ROAD
 City: COCHRANE
 Province: ALBERTA
 Postal Code: T4C2B8

Email Address: MGOSWAMI@NASTEELERECTORS.COM

Directors:

Last Name: TOUPIN
 First Name: STEEVE
 Street/Box Number: 264095 MONTERRA DRIVE
 City: COCHRANE
 Province: ALBERTA

Postal Code: T4C0A7

Voting Shareholders:

Last Name: SPALDING
First Name: GORDON
Street: 10432 GLENROSE DRIVE
City: DELTA
Province: BRITISH COLUMBIA
Postal Code: V4C0A6
Percent Of Voting Shares: 22.22

Last Name: TOUPIN
First Name: STEEVE
Street: 264095 MONTERRA DRIVE
City: COCHRANE
Province: ALBERTA
Postal Code: T4C0A7
Percent Of Voting Shares: 77.78

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: 100 CLASS "A" SHARES
Share Transfers Restrictions: NONE
Min Number Of Directors: 1
Max Number Of Directors: 5
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: NONE

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2020/12/15

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2016/01/18	Incorporate Alberta Corporation
2016/03/08	Name Change Alberta Corporation
2017/06/07	Name/Structure Change Alberta Corporation
2019/01/11	Change Address
2019/03/08	Change Director / Shareholder
2020/02/22	Update BN
2020/12/15	Enter Annual Returns for Alberta and Extra-Provincial Corp.

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



The Project

4. Pursuant to Subcontract #463022 – OS, dated May 30, 2019, NASE was engaged by PCL Construction Management Inc. (“PCL”) to supply, fabricate and install structural steel on the 9th Ave Vehicle Bridge Replacement project (the “Project”), located in Calgary, Alberta (the “Subcontract”).
5. On or about April 4, 2019, NASE and Shield entered into Purchase Order Number 1906-002 (the “Purchase Order”), whereby Shield agreed to fabricate and supply the structural steel for the Project as described in Shield’s Quotation No. 6317, dated January 31, 2019 (the “Work”), for a stipulated price of \$3,720,348.03 (including GST) (the “Purchase Order Price”).
6. The Purchase Order incorporated the terms and conditions of the Subcontract by express reference and Shield was bound to adhere to those terms and conditions in the performance of the Work.

The Performance Bond

7. Pursuant to clause 4 of the special conditions of the Subcontract, Shield was obligated to provide a performance bond in favour of NASE, providing a penal sum equivalent to one-half of the Purchase Order Price.
8. On or about October 9, 2019, Wynward issued Performance Bond No. W086-102-001P/L-A (the “Bond”), with a penal limit of \$1,860,174.02 (the “Bond Amount”), which replaced Bond No. W0186-102-001P/L. Under the Bond, NASE was the named Obligee, Shield was the Principal, and Wynward was the Surety. NASE pleads and relies upon the terms and provisions of the Bond.
9. In the event that Shield defaulted on any of its obligations under the Purchase Order, NASE could deliver to Wynward a written statement that Shield was in such default and request that Wynward fulfill its obligations under the Bond (a “Demand”).
10. In advance of making a Demand on the Bond, NASE was, entirely at its own discretion, entitled to notify Wynward if Shield was, or was soon to be, in default and request that the parties attend a conference to communicate those concerns (a “Pre-Demand Conference”).
11. Upon receipt of a Demand, Wynward would be afforded a reasonable time within which to conduct an investigation of the Demand and determine its liability under the Bond.
12. Twenty-one days following receipt of the information required to conduct the investigation, Wynward was obligated to complete its investigation and advise NASE of its decision. Alternatively, if Wynward required more time to complete its investigation then, before the expiry of the aforementioned twenty-one days, it was obligated to write to NASE and set out the status of the investigation and provide an estimate of when the investigation would be complete.
13. While Wynward performed its investigation, NASE was entitled under the terms of the Bond to engage a replacement contractor or contractors to proceed with the Work for the benefit and protection of the Project and in order to mitigate its losses.
14. Where NASE engaged a replacement contractor, and subject to the conditions of the Bond, the reasonable costs incurred by NASE were to be reimbursed by Wynward.
15. Following an investigation, if the conditions precedent have been satisfied and Shield’s default confirmed, Wynward would then be obligated to promptly:

- (a) remedy the default;
- (b) complete the Purchase Order in accordance with its terms and conditions;
- (c) obtain a bid, or bids, for submission to NASE for completing the Purchase Order in accordance with its terms and conditions, and upon determination by NASE and Wynward of the lowest responsible bidder, arrange for a contract between such bidder and NASE, and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this option) sufficient funds to pay to complete Shield's obligations in accordance with the terms and conditions of the Purchase Order, and to pay those expenses incurred by NASE as a result of Shield's default relating directly to the performance of the Work under the Purchase Order, less the balance of the Purchase Order Price; or,
- (d) pay NASE the lesser of: (1) the Bond Amount; or, (2) NASE's proposed cost of completion less the balance of the Subcontract price.

Shield's Default and the Surety's Investigation

16. In order to ensure that Shield was meeting its obligations under the Purchase Order on or about October 31, 2019, among other times, NASE, PCL and Shield met and discussed Shield's progress. Part of that meeting included potential options that would ensure that Shield met the Purchase Order with respect to schedule, and conformed to the plans and specifications incorporated into the Purchase Order. Among the options discussed was the possibility that Shield engage a subcontractor to assist with portions of its Work.
17. Entirely of its own volition, Shield subcontracted with Supreme Steel LP to perform portions of the Work.
18. In the months subsequent to the October 31, 2019 meeting, it began to become clear to NASE that Shield was unable to adequately manage its obligations under the Purchase Order. As a result, on December 11, 2019, NASE issued a notice of non-compliance to Shield requesting that Shield take steps to avoid a default (the "Notice of Non-Compliance").
19. NASE received and reviewed Shield's response to the Notice of Non-Compliance upon returning from a shut down for the holiday season and, on or about January 2, 2020, NASE contacted a representative of Wynward regarding its continuing concerns related to Shield's performance.
20. Without any appreciable improvement following receipt of Shield's response to the Notice of Non-Compliance, on January 16, 2020, NASE informed Wynward in writing that Shield was in default under the Purchase Order, and that NASE had become aware that Shield was facing financial difficulties, and requested a Pre-Demand Conference. That Pre-Demand Conference was held on January 30, 2020, during which Shield confirmed that it was facing financial difficulties.
21. On or about February 20, 2020, Shield indicated that it would be laying off its employees and that its financial difficulties would prevent it from being able to continue with the Work.
22. Further, Shield's performance had not improved following the Pre-Demand Conference and, on or about February 27, 2020, NASE made a Demand to Wynward, declared that Shield was in default and requested that Wynward fulfill its obligations under the Bond (the "Bond Claim").

23. On or about March 2, 2020 to March 5, 2020, Shield made the final deliveries of materials and then subsequently abandoned the Project.
24. Following the Bond Claim, Wynward began an investigation, with the full cooperation of NASE.
25. Shield failed to satisfy its obligations under the Purchase Order. These failures include, but are not limited to, the following:
 - (a) Shield issued invoices that included, and Shield sought payment for, Work that was not complete;
 - (b) Shield failed to follow the change request requirements of the Purchase Order and failed to justify additional costs for which it was seeking payment, which in turn resulted in NASE being unable to obtain a corresponding approval from PCL;
 - (c) Shield failed or otherwise refused to perform the Work as outlined in the plans, specifications, or as otherwise contemplated within the Purchase Order;
 - (d) Shield performed the Work negligently and in breach of the express or implied terms of the Purchase Order;
 - (e) Shield failed or refused to adequately correct significant portions of its negligent and deficient Work, but even where some portions of the Work were corrected, Shield failed to do so in a timely manner;
 - (f) Shield failed to implement adequate quality assurance and quality control processes;
 - (g) Shield failed to staff and maintain a sufficient number of employees, agents or subcontractors to complete the Work properly, on time, and in accordance with the express or implied terms of the Purchase Order;
 - (h) Shield failed to staff appropriately skilled and competent employees, agents or subcontractors so that the Work could be completed properly, on time, and in accordance with the express or implied terms of the Subcontract;
 - (i) Shield failed to properly train the employees, agents or subcontractors that it did have to ensure they were adequately qualified to perform the Work;
 - (j) Shield failed to properly manage and supervise its employees, agents, or subcontractors;
 - (k) Shield failed to maintain a safe work site at all times in accordance with the express or implied terms of the Subcontract; and
 - (l) Shield failed to complete its scope of Work and abandoned the Purchase Order

(collectively, “Shield’s Defaults”).
26. By contrast, NASE has satisfied all of its obligations under the Purchase Order including, but not limited to, having made timely payment to Shield for all of its validly performed Work and properly submitted invoices.

27. At no point in time did NASE relieve Shield from its contractual obligations, or otherwise waive, acquiesce or abandon its right to demand that Shield perform its obligations under the Purchase Order.
28. On or about August 8, 2020, Wynward and NASE entered into a mitigation agreement (the “**Mitigation Agreement**”), whereby Wynward agreed that NASE could proceed with a remedial plan (the “**Remedial Plan**”) to complete the remaining work (the “**Remaining Work**”), as described in Schedules to the Mitigation Agreement. Pursuant to the Mitigation Agreement, Wynward agreed not to challenge or dispute the completion of the Remaining Work performed by NASE in accordance with the Remedial Plan.
29. Wynward and NASE entered into the Mitigation Agreement without prejudice to the rights and/or obligations of the parties under the Bond.
30. To date, Wynward has failed or otherwise refused to provide a decision with respect to the Bond Claim and, despite repeated demands, has further failed to fulfill its obligations under the Bond.

The Costs to Complete

31. At this time, and subject to uncovering further deficiencies in Shield’s work, the total cost to NASE to complete Shield’s Work will be not less than \$4,336,846.93.
32. NASE had already paid to Shield \$1,919,409.12 and, as a result, the balance of the contract price is \$1,800,938.91.
33. The resulting short fall from Shield’s Defaults and abandonment of the Purchase Order is, therefore, not less than \$2,535,908.02.

Claims against the Defendants

34. Shield has failed, refused, or been otherwise unable to perform its obligations under the Purchase Order. As a result of Shield’s Defaults, negligence, and breaches of the Purchase Order, NASE has suffered and continues to suffer damages and losses.
35. Wynward has failed to fulfill its obligations under the Bond. Specifically, Wynward has failed to take the steps necessary to see that Shield’s Defaults were corrected and the Work completed. By so doing, Wynward has exacerbated the delay on the Project to such an extent that NASE has had to incur significant additional costs and its losses have been substantially increased.
36. Further, Wynward has failed and or otherwise refused to render a decision regarding the Demand and has taken an unreasonable amount of time in so delaying.
37. As a result of both Shield’s Defaults or its negligence in carrying out the Work under the Purchase Order, and Wynward’s conduct and breaches of the Bond, NASE has suffered, and continues to suffer, serious damages including, but not limited to, losses from delay, additional costs, Work deficiencies, bank charges, interest costs, increased administrative and overhead costs, and costs to complete Shield’s unfinished Work. NASE currently estimates such losses, the particulars and total amount of which shall be proven at trial, to be not less than as follows:

- (a) Shortfall on costs to complete of \$2,535,908.02;

- (b) Additional manpower costs of \$385,948.00;
- (c) Delay and acceleration costs of \$648,000.00;
- (d) Liquidated damages losses of approximately \$104,000.00; and,
- (e) Such additional costs as may be proven at trial.

Remedy sought:

38. The Plaintiff, NASE, claims against the Defendant, Wynward:
- (a) a declaration that the Performance Bond remains in full force and effect; and,
 - (b) a declaration that NASE has discharged all preconditions for payment under the Performance Bond, or alternatively for relief from forfeiture in respect thereof.
39. The Plaintiff, NASE, claims against the Defendants, Wynward and Shield, jointly and severally:
- (a) judgment in the amount of \$3,673,856.02, or in the case of Wynward the Bond Amount;
 - (b) pre-judgment and post-judgment interest in accordance with the *Judgment Interest Act*, RSA 2000, c J-1;
 - (c) costs of this action on a solicitor-client basis or on such other basis as may be determined by this Honourable Court;
 - (d) such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

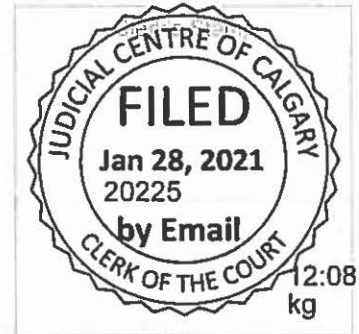
2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

COURT FILE NO.: 2001-16202
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE CALGARY
PLAINTIFF NORTH AMERICAN STEEL ERECTORS INC.
DEFENDANTS SHIELD INDUSTRIES LTD. and WYNWARD INSURANCE GROUP
DOCUMENT STATEMENT OF DEFENCE
PARTY FILING THIS DOCUMENT WYNWARD INSURANCE GROUP
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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File: A163536



Attention: Kerry R. Powell

Statement of facts relied on:

1. The Defendant Wynward Insurance Group ("**Wynward**") adopts the terms emboldened in the Statement of Claim to name the parties and subjects in this matter, except where otherwise stated in the within Statement of Defence.
2. In respect of paragraph 3 of the Statement of Claim, Wynward is a company incorporated pursuant to the laws of the Province of Manitoba and licensed to carry on business as an insurance company and surety in the Province of Alberta.
3. Except as expressly admitted herein, Wynward denies each and every allegation contained in the Plaintiff's Statement of Claim. Wynward admits paragraphs 1, 2, 4, 5 and 8 of the Statement of Claim.
4. As admitted by NASE in paragraph 5 of the Statement of Claim, Wynward agrees that the terms and conditions of Shield's Quotation No. 6317 dated January 31, 2019 (the "**Quotation**") were incorporated into and formed part of the Purchase Order.

5. The Quotation provided, *inter alia*, that Shield did not assume or agree to any obligations or liabilities other than expressly provided for in the Quotation.
6. The Quotation did not include reference to the Subcontract and expressly excluded any losses, damages or costs suffered by NASE resulting from any defects in workmanship.
7. In specific reply to paragraph 6 of the Statement of Claim, Wynward denies that the terms and conditions of the Subcontract entered into by NASE and PCL on May 30, 2019, more than fifty days after the Purchase Order was entered into by NASE and Shield on April 4, 2019, apply to the Purchase Order.
8. As a result, an executed finalized copy of the Subcontract was not, and could not be, attached to the Purchase Order as required by the Purchase Order.
9. Further, in the alternative, the reference to the Subcontract in the Purchase Order does contain sufficient specificity to identify which terms of the Subcontract, if any, were to be incorporated into the Purchase Order.
10. As admitted by NASE in paragraph 8 of the Statement of Claim, the original Performance Bond No. W0186-102-001P/L issued by Wynward was replaced with Performance Bond No. W086-102-001P/L (the "**Bond**").
11. NASE did not pay, and has not paid, for the Bond and should not be entitled to rely upon or be entitled to the benefits of the Bond.
12. Further, Wynward denies that NASE has complied with the obligations required of it under the Bond.
13. For instance, NASE has failed to comply with the obligations required of it under the Bond by failing to provide timely notice to Wynward of changes to fundamental terms and conditions of the Purchase Order.
14. NASE unilaterally revised and extended the schedule for the completion of the Work eleven separate times (the "**Schedule Extensions**").
15. The Schedule Extensions resulted in the extension of the original delivery date of the fabricated steel from October 15, 2019 to March 15, 2020.
16. The last Schedule Extension was issued by NASE on January 13, 2020.
17. No notice whatsoever of any of the Schedule Extensions was provided to Wynward by NASE.
18. At no time was the consent of Wynward sought by or provided to NASE with respect to the Schedule Extensions.
19. Further, the delivery of the steel was significantly delayed and was not completely received until December 22, 2019 (the "**Late Delivery of Steel**"), more than two months after the original completion date of the Work on October 15, 2019.

20. When all of the steel finally did arrive on December 22, 2019, the steel had to undergo extensive testing and additional approvals in order to comply with the specifications due to the fact that the steel was foreign sourced and had an excessively high boron content.
21. No notice whatsoever of the Late Delivery of the Steel was provided to Wynward by NASE.
22. Further, NASE unilaterally revised the Specifications for the Work nine months after the commencement of the Work requiring Shield to perform additional Work and incur additional costs that were not included in the original Purchase Order (the "**Revised Specifications**").
23. No notice whatsoever of any of the Revised Specifications was provided to Wynward by NASE.
24. At no time was the consent of Wynward sought by or provided to NASE with respect to the Revised Specifications.
25. Further, NASE has failed to comply with the obligations required of it under the Bond by failing to provide timely notice to Wynward of Shield's default under the Purchase Order.
26. On October 31, 2019 NASE and PCL met with Shield to express serious concerns about Shield's performance of the Work to date and required that Shield subcontract out a portion of the steel fabrication Work to Supreme Steel Ltd. ("**Supreme**"), a third party steel fabricator.
27. Based on discussions at the October 31, 2010 meeting, a portion of the steel fabrication Work was subsequently subcontracted to Supreme by Shield at NASE's instruction and with its full knowledge and approval (the "**Subcontracted Work**").
28. No notice whatsoever of the Subcontracted Work was provided to Wynward by NASE.
29. At no time was the consent of Wynward sought by or provided to NASE with respect to the Subcontracted Work.
30. There were problems with the completion of the Subcontracted Work by Supreme which required additional rework and costs.
31. As admitted by NASE in paragraph 18 of the Statement of Claim, in the months subsequent to the October 31, 2019 meeting, it became clear to NASE that Shield was unable to adequately manage its obligations under the Purchase Order.
32. Instead of noting Shield in default and providing notice to Wynward under the Bond based on Shield's inability to adequately manage its obligations under the Purchase Order, NASE required Shield to hire additional welding labour in order to accelerate the performance of the Work.
33. As further admitted by NASE in paragraph 18 of the Statement of Claim, on December 11, 2019, a formal Notice of Non-Conformance was issued to Shield by NASE which confirmed the serious concerns that NASE had with Shield's performance.

34. Contrary to the allegation contained in paragraph 18 of the Statement of Claim, the Notice of Non-Compliance did not mention or refer to Shield taking steps to avoid a default, but rather mentioned that the steps needed to be taken by Shield in to avoid further issues on the Project.
35. A copy of the formal Notice of Non-Conformance issued by NASE on December 11, 2019 was not provided to Wynward by NASE nor was Wynward advised of the issuance of the Notice of Non-Compliance.
36. On December 16, 2019 Shield sent a letter to NASE objecting to NASE's allegations as set out in the Notice of Non-Conformance ("**Shield's Response**"). A copy of Shield's Response was not provided to Wynward by either Shield or NASE.
37. Shield contended in its response that it had completed seventy-seven percent of its Work but had only been paid thirty-three percent of the value of the Purchase Order.
38. On or about January 16, 2020, NASE sent a letter to Wynward to advise Wynward of the problems being experienced with Shield's performance and provided Wynward with notice of a potential claim under the Bond (the "**Initial Notice**").
39. Shield responded to the Initial Notice on the same day denying that it was in default of its obligations under the Purchase Order and provided details of non-payment by NASE and other factors that had made Shield's performance of the Work more arduous.
40. The Initial Notice was provided to Wynward by NASE more than a month after the Notice of Non-Compliance had been provided to Shield by Wynward and more than three months after the original completion date of October 15, 2019 as specified in the Purchase Order had been revised by NASE without the knowledge or the consent of Wynward.
41. The Initial Notice was the first time that Wynward had been formally advised of any issues in relation to the performance of the Work by Shield.
42. On or about January 20, 2020, a Pre-Demand Conference was held between representatives of NASE, Shield and Wynward (the "**Pre-Demand Conference**").
43. At the Pre-Demand Conference, based on representations made by NASE and Shield as to the status of the Work, it was decided by NASE and Shield that Shield would continue to complete the Work.
44. No independent investigation was conducted by Wynward at this time based on the representations of both NASE and Shield as to the status of the Work.
45. Accordingly, the Initial Notice of a potential claim provided to Wynward by NASE was effectively withdrawn by NASE.
46. Based on the absence of a formal default by Shield, Wynward did not further investigate any of the issues raised in the Initial Notice or object to Shield continuing with the Work.
47. Subsequently, NASE provided Shield with a payment of \$350,000.00 in order to provide Shield with funds to complete the Work.

48. There was no further communication between NASE and Wynward, or Shield and Wynward, until over six weeks later when on February 27, 2020 NASE formally declared that Shield was in default of its obligations under the Purchase Order and called upon Wynward to respond to NASE's claim under the Performance Bond (the "**Notice of Default**").
49. The Notice of Default contended that Shield was at that time four months behind in the completion of its Work.
50. The Notice of Default was provided to Wynward considerably after NASE knew in the months following October 31, 2019, as admitted in paragraph 18 of the Statement of Claim, that Shield was unable to adequately manage its obligations under the Purchase Order.
51. NASE's failure to provide timely notice of Shield's default has caused significant irreparable prejudice to Wynward by limiting Wynward's ability to address, remedy and mitigate the impact of Shield's default.
52. NASE's failure to provide timely notice of Shield's default also minimized Wynward's ability to address, remedy and mitigate its obligations under Labour and Material Payment Bond W086-102-001 P/L (the "**L&M Bond**") under which Wynward has paid \$1,860,174.02 into the Court of Queen's Bench for the payment of unpaid suppliers and subcontractors of Shield (the "**Interpleader Proceedings**").
53. Upon receipt of the Notice of Default, Wynward took steps to investigate the claim made by NASE in the Notice of Default, including the retention of a forensic engineering firm to sample the quality of the steel used and welding performed by Shield.
54. Wynward's expert was to provide advice with respect to the welds undertaken by Shield in its performance of the Work given that the steel was showing significant signs of cracking where the welds had been made.
55. After repeated requests, samples of the steel and welds were obtained from NASE.
56. The results of these investigations on Wynward's behalf were shared with NASE.
57. At all times, Wynward took reasonable and appropriate steps to advise NASE of its investigation and the need for additional information from NASE in order to conduct and complete its investigation.
58. At all times, the steps taken by Wynward were reasonable and appropriate in the circumstances, and were carried out in a timely manner even in the face of the global pandemic and the fact that Shield's project records or personnel were not available to Wynward to assist it in conducting its investigation.
59. On March 2, 2020, after the Notice of Default had been issued by NASE to Wynward, NASE unilaterally, and without the involvement of Wynward, entered into an agreement with Shield for the purchase of certain fabricated steel components from Shield (the "**Material Purchase Arrangement**").

60. Pursuant to the Material Purchase Arrangement, NASE paid directly to Shield a lump sum of \$200,000.00.
61. The Material Purchase Arrangement was confirmed in writing by an agreement between NASE and Shield dated March 2, 2020 (the "**Bill of Sale**").
62. The Bill of Sale included an acknowledgement that expressly provided that the amount being paid by NASE was a "final lump sum" and included "any and all costs to repair or replace any deficiencies in the fabrication of fully or partially completed work, including but not limited to transportation, galvanizing, painting, re-work and project delay costs".
63. Wynward denies that NASE is entitled to the remedies listed in paragraph 38 of the Statement of Claim.
64. Wynward admits that on or about August 8, 2020 NASE and Wynward entered into a mitigation agreement whereby NASE was entitled to proceed to complete the Work in an effort to mitigate the impact of Shield's alleged default (the "**Mitigation Agreement**"). Wynward had offered to enter in to the Mitigation Agreement with NASE on June 17, 2020
65. The Mitigation Agreement provided that neither Wynward or NASE relinquished any rights or remedies other than as stated in the Mitigation Agreement. Wynward did not relinquish any defences that it was entitled to under the Performance Bond or waive any obligations that NASE was obligated to perform under the Performance Bond or the Purchase Order.
66. The Purchase Order stated the price for the Work as \$3,720,348.03 including GST. The Material Purchase Arrangement as confirmed by the Bill of Sale stated that the amount paid to Shield to March 2, 2020 was \$1,741,926.27 leaving the sum of \$1,978,421.76 available to NASE to complete any deficiencies in the Work (the "**Balance of Contract Funds**").
67. The penal sum of the Bond is \$1,860,174.02 (the "**Penal Sum**").
68. On March 17, 2020 NASE advised Wynward that the costs to complete the Work would result in a shortfall to NASE of \$1,751,860.23, an amount less than the penal sum of the Bond and within the Balance of Contract Funds available to NASE to complete the Work.
69. The costs to complete the Work being claimed by NASE in its Statement of Claim are \$3,673,856.02, more than double NASE's previous advice.
70. NASE has neglected, failed or refused to use the Balance of Contract Funds appropriately and efficiently to complete the Work and mitigate any losses, damages or costs.
71. Wynward denies that NASE has suffered the losses, damages, or costs as alleged, or at all.
72. If NASE has suffered or will suffer any losses, damages or costs, which is not admitted but denied, NASE's losses, damages or costse as claimed are, in any event, excessive, too remote, are contrived to exceed the Penal Sum, and not recoverable under the terms of the Performance Bond, or the Purchase Order.

Any matters that defeat the claim of the Plaintiff:

73. NASE neglected, failed or refused to pay for the Bond and should not be entitled to rely upon or be entitled to the benefits of the Bond
74. The Purchase Order expressly precluded the recovery by NASE of any losses, damages or costs that may have been suffered by NASE as a result of any defects in Shield's Work.
75. The Subcontract had not been entered into at the time it was purported to have been incorporated into the Purchase Order and was not attached to the Purchase Order.
76. Alternatively, the reference in the Purchase Order to the Subcontract did not contain sufficient specificity to identify which terms of the Subcontract, if any, were to be incorporated into the Purchase Order.
77. NASE did not provide Wynward with the Notice of Default within a period of time that allowed Wynward with a reasonable opportunity to address, remedy and mitigate the impact of Shield's default and has caused irreparable prejudice to Wynward.
78. NASE neglected, failed or refused to perform its own obligations and comply with the terms of the Purchase Order, or the Bond, properly or at all, the particulars of which are known to NASE and include, but are not limited to:
 - (a) NASE neglected, failed or refused to make payments to Shield in accordance with and as required by the terms of the Purchase Order;
 - (b) NASE neglected, failed or refused to deal with issues causing delay in Shield's performance of the Purchase Order that resulted from factors beyond Shield's control or scope of Work;
 - (c) NASE unilaterally, and without the knowledge or consent of Wynward, revised the completion date of the Work on eleven different occasions such that the original completion date under the Purchase Order of October 15, 2019 was ultimately changed to March 15, 2020;
 - (d) NASE unilaterally, and without the knowledge or consent of Wynward, changed the specifications relating to the Work nine months after the Work had been commenced by Shield causing Shield to undertake additional Work, expense and delay;
 - (e) Pursuant to the Final Purchase Arrangement as confirmed by the Bill of Sale, NASE effectively, for consideration, waived any entitlement, if any, to recover any costs relating to any defects in the workmanship or materials provided by Shield; and
 - (f) NASE neglected, failed or refused to use the Contract Balance appropriately and efficiently to complete the Work.
79. Obligations arise on the part of Wynward under the Bond, if at all, only in the event that Shield is in default under the Purchase Order, Shield is properly noted in default under the terms of the Purchase Order and NASE has met all of its obligations under the Purchase

Order. These conditions precedent have not been met and consequently, no obligations arise or can arise on the part of Wynward under the Bond.

80. Further, or in the alternative, if any such loss, damage or cost was incurred, which is not admitted but denied, then such loss, damage or cost arises from unknown, unanticipated or undisclosed conditions, material imperfections, design errors, onerous or impossible specifications, and are not the responsibility or fault of Shield under the Purchase Order, or Wynward under the Bond.
81. Further, or in the alternative, if any such losses, damages or costs were incurred, which is not admitted but denied, then such losses, damages or costs result from the breach of contract, negligent acts or omissions of parties other than Shield, including NASE, and are not the responsibility or fault of Shield under the Purchase Order, or Wynward under the Bond.
82. Further, or in the alternative, if any such losses, damages, or costs were incurred, which is not admitted but denied, then the Balance of Contract Funds are well in excess of any reasonable and proper losses, damages or costs incurred or that might be incurred in completing or correcting any of the Work.
83. If NASE has suffered or will suffer any losses, damages or costs, which is not admitted but denied, NASE's losses, damages or costs claimed are, in any event, excessive and too remote. NASE's claim for delay damages, acceleration, and liquidated damages are not compensable by the terms of the Purchase Order, or the Bond.
84. Further, or in the alternative, if NASE has suffered or will suffer any losses, damages or costs, which is not admitted but denied, NASE has failed to take any or, alternatively, proper steps to mitigate such losses, damages or costs.
85. Further, or in the alternative, if NASE has suffered or will suffer any losses, damages or costs, which are not admitted but denied, all or a portion of such losses, damages or costs improperly relate to the payment by NASE of suppliers and subcontractors who have claimed under the L&M Bond and will be, or have been, paid under the Interpleader Proceedings.
86. Further, or in the alternative, the amounts sought by NASE are overstated.

Remedy sought:

87. A denial of the declarations sought by the Plaintiff;
88. Dismissal of the Plaintiff's claim for judgement;
89. Dismissal of the Plaintiff's claim for interest;
90. Costs of this action on a solicitor-client basis or on such other basis as may be determined by this Honourable Court; and
91. Such further and other relief as this Honourable Court may deem just.

COURT FILE NUMBER **2001-16202**
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **NORTH AMERICAN STEEL ERECTORS INC.**
DEFENDANTS **SHIELD INDUSTRIES LTD. and WYNWARD
INSURANCE GROUP**

DOCUMENT **REPLY TO DEFENCE**



inv 204877
11.46

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File No. 446270-000001

This is the Reply of the Plaintiff, North American Steel Erectors Inc., to the Statement of Defence, filed by Wynward Insurance Group, Defendant, on January 28, 2021

Statement of facts relied on:

1. The Plaintiff, North American Steel Erectors Inc., denies each and every allegation in the Statement of Defence of Wynward Insurance Group, filed January 28, 2021 (the "Statement of Defence") and puts the Defendant to the strict proof thereof.
2. The Plaintiff, North American Steel Erectors Inc. repeats and relies on the allegations set out in its Statement of Claim, filed December 9, 2020 (the "Statement of Claim")
3. All capitalized terms used in this Reply have the same meanings as set out in the Statement of Claim, unless otherwise indicated herein.
4. In reply to paragraphs 4, 5, and 6, NASE states and the fact is, that on January 31, 2019, Shield provided a quote to NASE (the "Quotation"). Upon receipt of the Quotation, and in the context of the Subcontract, NASE issued the Purchase Order. On April 4, 2019, NASE provided Shield with the Purchase Order, which clearly detailed the Work, the Purchase Order Price, and the terms

and conditions of the Purchase Order. On the date that it was issued to Shield, Shield accepted the Purchase Order. The Work was done pursuant to both the Purchase Order and the Subcontract.

5. In reply to paragraphs 7, 8, 9, 75, and 76 of the Statement of Defence, NASE states and the fact is that the Subcontract was incorporated by reference and by attachment to the Purchase Order. Shield's Work was done pursuant to both the Purchase Order and the Subcontract.
6. In reply to paragraph 10 of the Statement of Defence, NASE states and the fact is that the Bond Number is "W086-102-001P/L-A", as stated in the Statement of Claim, not "W086-102-001P/L", as stated in the Statement of Defence.
7. In reply to paragraphs 11, 12, and 73 of the Statement of Defence, NASE states and the fact is that NASE paid for the Bond, has complied with its obligations under the Bond, and is entitled to rely upon the Bond. As detailed in the Statement of Claim, it is Wynward that has failed to comply with its obligations under the Bond.
8. In reply to paragraphs 13 through 18 of the Statement of Defence, NASE states and the fact is that while Shield breached the Purchase Order, resulting in significant delay, there were no changes to any fundamental terms or conditions of the Purchase Order. NASE denies unilaterally revising or extending the schedule for completion of the Work, as alleged or at all. The fact is that Shield's delay breached the Purchase Order, and the schedule agreed to therein. NASE acted reasonably in response to Shield's breaches, insisted that Shield's delay was not agreed to, and never waived its rights in relation to the Purchase Order or the Bond. NASE denies that Shield's delay is attributable to or acquiesced to by NASE, and puts Wynward to the strict proof of any allegations to the contrary. Wynward was aware of Shield's delay, and specifically involved in meetings between PCL, NASE, and Shield in relation to Shield's delay.
9. In reply to paragraphs 19 and 21 of the Statement of Defence, NASE states and the fact is that Shield never completed its delivery of steel obligations under the Purchase Order.
10. In reply to paragraph 20 of the Statement of Defence, NASE states and the fact is that all steel testing was completed prior to delivery and compliant with agreed to specifications.
11. NASE denies the allegations of fact stated in paragraphs 22 through 24 and puts Wynward to the strict proof thereof. The explicit and implicit specifications of the Work did not change. Accordingly, no notice of any revised specifications was necessary or possible.
12. In reply to paragraphs 26 to 31 of the Statement of Defence, NASE states and the fact is that PCL, NASE, and Shield met to discuss Shield's delay and default under the Purchase Order, and to

discuss ways in which the issues and damages accruing as a result of Shield's breaches of the Purchase Order and delay could be mitigated. NASE never required Shield to subcontract any portion of the Work, nor did NASE direct the means and methods that Shield was to accomplish the Work.

13. In reply to paragraphs 33 through 39 of the Statement of Defence, NASE states and the fact is that NASE complied with its obligations under the Purchase Order, and the Bond, making all reasonable efforts to mitigate its potential and actual damages, and losses in its dealings with both Shield and Wynward. While Shield has suggested that as of December 16, 2019 seventy-seven percent (77%) of the Work was complete, the fact is that Shield had only completed and delivered sixteen percent (16%) of the Work. NASE paid all invoices for Work completed that also complied with the mandatory invoicing requirements of the Purchase Order.
14. In reply to paragraphs 42 through 45 of the Statement of Defence, NASE states and the fact is that Wynward raised no concerns with NASE's actions in relation to the Bond at the January 20, 2020 meeting or otherwise. Subsequent to that meeting or otherwise, NASE denies waiving any rights under the Bond or implicitly or explicitly withdrawing the Initial Notice or its claims under the Bond. NASE puts Wynward to the strict proof of any allegations to the contrary.
15. In reply to paragraph 46 of the Statement of Defence, NASE states and the fact is that NASE is unaware of what investigative efforts were made by Wynward, but denies that NASE was obligated to note Shield in default prior to when it did.
16. In reply to paragraph 47 of the Statement of Defence, NASE states and the fact is that the \$350,000 payment from NASE to Shield was expressly consented to by Wynward.
17. In reply to paragraph 48 of the Statement of Defence, NASE states and the fact is that Wynward was in regular communication with both NASE and Shield throughout January and February 2020 and leading up to NASE's formal issuance of its Notice of Default upon Shield.
18. In reply to paragraph 52 of the Statement of Defence, NASE states and the fact is that NASE complied with its obligations under the Bond, provided timely notice to Wynward, and denies that Wynward has suffered significant irreparable prejudice, as alleged or at all in relation to any notice that NASE provided. NASE puts Wynward to the strict proof of any allegation to the contrary.
19. In reply to paragraphs 53 through 56 of the Statement of Defence, NASE states and the fact is that none of its actions affected Wynward's ability to address, remedy, or mitigate its obligations under the Bond. NASE denies that repeated requests of it were made or necessary to obtain samples. In contrast to the allegations made in the referenced paragraphs, NASE provided Wynward's experts

prompt access to the site and Shield's work. NASE puts the Defendant Wynward to the strict proof of any allegations to the contrary.

20. In reply to paragraphs 57 and 58 of the Statement of Defence, NASE states and the fact is that NASE has no knowledge of Wynward's internal investigative efforts, which are irrelevant to Wynward's refusal to comply with its obligations under the Bond.
21. In reply to paragraphs 59 through 62 of the Statement of Defence, NASE states and the fact is that the Bill of Sale does not preclude, limit, or estop NASE from its entitlements in this Action and the Bond.
22. In reply to paragraphs 64 through 69 of the Statement of Defence NASE states and the fact is that the Balance of the Contract Funds, as that term is defined in the Statement of Defence will not make NASE whole, and does not preclude, limit, or estop NASE from its entitlements in this Action and the Bond. NASE has suffered the damages it has plead in the Statement of Claim, and is entitled to the Bond Amount.
23. In reply to paragraph 74 of the Statement of Defence, NASE disagrees that the Purchase Order or any of its terms preclude recovery from the Defendants or either of them.

Any matters that defeat the claim/defence of the defendant:

24. In reply to paragraph 25, 28, 29, 31, 32, 35, 36, 40, 41, 63, 77, 78, 79, 80, and 81 of the Statement of Defence, and the Statement of Defence generally, NASE states and the fact is that NASE complied with the terms of the Bond and is entitled to the remedies sought through this Action, as against the Defendant, Wynward. NASE puts Wynward to the strict proof of any allegation to the contrary.
25. In reply to paragraphs 82 through 86 of the Statement of Defence, NASE states and the fact is that the losses, damages, and costs incurred and suffered by NASE as a result of the actions of the Defendants exceed any amounts owed under the Subcontract and will exceed the balance of the of the penal limit under the Bond. NASE has taken all reasonable steps and fulfilled its obligations to mitigate its losses, damages, and costs incurred and suffered. The damages suffered by NASE and plead are reasonably foreseeable, calculated correctly, proximate, compensable, conservatively stated, and specifically contemplated by the Bond. The losses, damages, and costs suffered by NASE do not relate to the suppliers and subcontractors who have claimed under the L&M Bond, as that term is defined in the Statement of Defence.

Remedy sought:

26. The Plaintiff, NASE, reiterates and incorporates herein the relief sought in its Statement of Claim, at paragraphs 38 and 39.

NOTE

This reply may only make admissions or respond to matters raised for the first time in the statement of defence (Rules 3.33(2)(b) and 13.10).

District of: Alberta
Division No. 02 - Calgary
Court No. 25-095246
Estate No. 25-095246

FORM 31 / 36
Proof of Claim / Proxy
In the Matter of the Bankruptcy of
North American Steel Erectors Inc.

All notices or correspondence regarding this claim must be forwarded to the following address:
Borden Ladner Gervais LLP, 1900, 520 - 3 Ave SW, Calgary, AB T2P 0R3

In the matter of the bankruptcy of North American Steel Erectors Inc. of the town of Cochrane in the Province of Alberta and the claim of Borden Ladner Gervais LLP, creditor.

I, _____, of the city of _____, a creditor in the above matter, hereby appoint _____, of _____, to be my proxyholder in the above matter, except as to the receipt of dividends, _____ (with or without) power to appoint another proxyholder in his or her place.

I, Locklyn E. Price (name of creditor or representative of the creditor), of the city of Calgary in the province of Alberta do hereby certify:

1. That I am a creditor of the above named debtor (or I am associate (position/title) of Borden Ladner Gervais LLP creditor).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, namely the 29th day of July 2021, and still is, indebted to the creditor in the sum of \$ 28,861.31 as specified in the statement of account (or affidavit or solemn declaration) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

A. UNSECURED CLAIM OF \$ 28,861.31
(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$ _____, I claim a right to a priority under section 136 of the Act.

Regarding the amount of \$ _____, I do not claim a right to a priority.
(Set out on an attached sheet details to support priority claim.)

B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ _____

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

C. SECURED CLAIM OF \$ _____

That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ _____

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ _____
(Attach a copy of sales agreement and delivery receipts.)

E. CLAIM BY WAGE EARNER OF \$ _____

That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ _____

That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ _____

F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ _____

That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ _____

That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ _____

G. CLAIM AGAINST DIRECTOR \$ _____

(To be completed when a proposal provides for the compromise of claims against directors.)

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ _____

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That, to the best of my knowledge, I am not (am/am not) (or the above-named creditor is not (is/is not)) related to the debtor within the meaning of section 4 of the Act, and have not (have/has/have not/has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

7. (Applicable only in the case of the bankruptcy of an individual.)

Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Calgary, Alberta, this 29th day of September, 2021.

Witness




Witness

Individual Creditor

Borden Ladner Gervais LLP
Name of Corporate Creditor

Per


Name and Title of Signing Officer

Locklyn E. Price
Associate

Phone Number: 403-232-9793

Fax Number: 402-266-1395

E-mail Address: lprice@blg.com

Return To:

MNP Ltd. - Licensed Insolvency Trustee
Per:

Victor Kroeger - Licensed Insolvency Trustee
1500, 640 - 5 Avenue SW
Calgary AB T2P 3G4
Fax: (403) 537-8437
E-mail: calgary.insolvency@mnp.ca

NOTE If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 20(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.



Borden Ladner Gervais LLP
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big.com

North American Steel Erectors
160 Griffin Ranch Road
Cochrane, AB T4C 2B8

June 28, 2021

Attention: Steeve Toupin

Invoice # 697991364
Page 1

Re: Wynward Insurance Group

File No: 446270/000001

PROFESSIONAL SERVICES rendered to May 31, 2021 in connection with the above matter as described in the attached.

Fees	\$ 3,962.00
Other Charges	0.00
Total Fees and Other Charges	<u>3,962.00</u>
Disbursements	55.82
GST on Fees and Taxable Disbursements and Other Charges	200.89
Total this Invoice	<u>\$ 4,218.71</u>

THIS IS OUR ACCOUNT - E. & O.E.

BORDEN LADNER GERVAIS LLP

For: Locklyn Price

North American Steel Erectors
Re: Wynward Insurance Group

June 28, 2021
Invoice # 697991364
File No: 446270/000001
Page 2

PROFESSIONAL SERVICES RENDERED to May 31, 2021

May 4, 2021	L. Price	0.20	Receive and respond to email from S. Carter-Edwards; follow up with client regarding sworn Affidavit of Records.	\$ 104.00
May 6, 2021	L. Price	0.50	Final Revision of Noting in Default Application, Affidavit, and Noting in Default.	260.00
May 14, 2021	L. Price	0.10	Email to client, following up on sworn Affidavit of Records.	52.00
May 17, 2021	L. Price	0.30	Receive and respond to emails from S. Toupin; receive and respond to email from S. Carter-Edwards; email to S. Toupin and S. Unrau.	156.00
May 18, 2021	L. Price	0.20	Receive and respond to email from S. Unrau regarding further documents and project meeting minutes, and daily site reports.	104.00
May 19, 2021	L. Price	0.30	Receive and respond to email from J. Vallis; review voicemail from Jeremy Kate; email to client.	156.00
May 19, 2021	J.D. Vallis	0.10	Telephone call from J. Taitinger.	84.50
May 19, 2021	J.D. Vallis	0.10	Memorandum to L. Price.	84.50
May 19, 2021	J.D. Vallis	0.10	Telephone call to J. Taitinger.	84.50
May 19, 2021	J.D. Vallis	0.20	Memorandum from L. Price and reply (x2).	169.00
May 20, 2021	L. Price	0.30	Briefly review records; provide records to discovery services for Supplemental Affidavit of Records; instructions to provide service letter.	156.00
May 21, 2021	L. Price	0.20	Receive and respond to email from S. Toupin regarding exchange of records and Trial dates; review critical dates in relation to exchange of records and rules in relation to Trial dates.	104.00
May 25, 2021	J. Mason	2.40	Perform work regarding Affidavit of Records.	588.00
May 25, 2021	L. Price	0.10	Emails with discovery services regarding Supplemental Affidavit of Records.	52.00

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



Borden Ladner Gervais LLP
 Lawyers | Patent & Trade-mark Agents
 Centennial Place, East Tower
 1900, 520 - 3rd Avenue S W
 Calgary, AB, Canada T2P 0R3
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 blg.com

North American Steel Erectors
 Re: Wynward Insurance Group

June 28, 2021
 Invoice # 697991364
 File No: 446270/000001
 Page 3

May 25, 2021	G. Song	0.60	Conduct data processing to prepare data for analysis, including expand client data from containers, extract metadata from files, normalize data into reviewable format, identify duplicate data and de-duplicate to reduce time and cost of document review.	126.00
May 25, 2021	G. Song	0.30	Populate client data received via dropbox on 05/20/2021 from repository to review workspace, build and update searchable index to allow for increased efficiency in custom searching of data.	63.00
May 27, 2021	L. Price	1.10	Emails with Discovery services regarding document review of supplemental records; review records.	572.00
May 28, 2021	L. Price	1.10	Review records for Supplemental Affidavit of Records.	572.00
May 31, 2021	J. Mason	1.30	Perform work regarding Affidavit of Records; prepare electronic production documents for other Party.	318.50
May 31, 2021	L. Price	0.30	Emails with Discovery Services; review records; draft Supplemental Affidavit of Records and Supplemental Schedule 1.	156.00

TO OUR FEES \$ 3,962.00

FEE SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Avg. Rate/Hr.</u>	<u>Amount</u>
J. Mason	3.70	\$ 245.00	\$ 906.50
L. Price	4.70	520.00	2,444.00
G. Song	0.90	210.00	189.00
J.D. Vallis	0.50	845.00	422.50

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North American Steel Erectors
Re: Wynward Insurance Group

June 28, 2021
Invoice # 697991364
File No: 446270/000001
Page 4

<u>9.80</u>	<u>\$ 3,962.00</u>
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DISBURSEMENTS:

<u>Taxable</u>	G=GST; Q=QST; H=HST; P=PST	
Relativity – Data Hosting Fee	\$ 53.22	G
Relativity Processing Fee	<u>2.60</u>	G
Total Taxable Disbursements	<u>55.82</u>	
Total Disbursements		55.82
Total Fees and Disbursements and Other Charges		<u>4,017.82</u>
GST on Fees and Taxable Disbursements and Other Charges		<u>200.89</u>
TOTAL THIS INVOICE		<u>\$ 4,218.71</u>

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



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North American Steel Erectors
160 Griffin Ranch Road
Cochrane, AB T4C 2B8

June 28, 2021
Invoice # 697991364
LP/LP

Re: Wynward Insurance Group

File No: 446270/000001

REMITTANCE COPY

Fees	\$ 3,962.00
Other Charges	0.00
Total Fees and Other Charges	<u>3,962.00</u>
Disbursements	55.82
GST on Fees and Taxable Disbursements and Other Charges	200.89
Total this Invoice	<u>\$ 4,218.71</u>

PLEASE REFER TO PAYMENT OPTIONS PAGE FOR REMITTANCE INFORMATION.

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



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North American Steel Erectors
 160 Griffin Ranch Road
 Cochrane, AB T4C 2B8

June 28, 2021
 Invoice # 697991364
 LP/LP

Use one of the following payment methods and ensure your payment contains the details provided in the example.

Client Name	Client #	Invoice #	Amount	Comments
North American Steel Erectors	446270	697991364	4,218.71 (CAD)	Payment for Invoice # 697991364

Payment method # 1 - EFT/WIRE (Preferred Method)

Beneficiary Customer: Borden Ladner Gervais, LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, ON, Canada M5H 4E3	Beneficiary Bank: Canadian Clearing Code: //CC000247696 Bank of Nova Scotia PO Box 4234 STN A Toronto, ON, Canada M5W 5P6
Payments Originating from Canada or International Locations (Excluding US Dollars from the USA): 12 Digit Account #: 80002 14221 11 Bank #: 002 Transit #: 80002 Swift Code: NOSCCATT IBAN #: CA002800021422111 *IBAN number only required for clients OUTSIDE NORTH AMERICA	Payments Originating from the USA in US Dollars: 12 Digit Account #: 80002 51181 15 Bank #: 002 Transit #: 80002 Swift Code: NOSCCATT Intermediary Bank (If required): Bank of America NA 222 Broadway New York, N.Y. Swift Code: BOFAUS3N 10038 United States ABA #: 026009593
Remittance email required: Payment confirmation must be sent by email to remittanceadvice@blg.com and reference made to the invoice(s) paid.	

Payment method # 2 - ONLINE PAYMENTS, CANADIAN FUNDS ONLY

You may pay your invoice(s) to BLG through participating Canadian financial institution's online banking. Select Borden Ladner Gervais through your financial institution and enter your client #, 446270 Remittance email required: Payment confirmation must be sent by email to remittanceadvice@blg.com and reference made to the invoice(s) paid. *Please note we do not accept Interac e-Transfers.

Payment method # 3 - CHEQUES

Send by mail: Borden Ladner Gervais, LLP PO Box # 81100 World Exchange Plaza 100 Queen Street Ottawa, ON, Canada K1P 1B1	Send by courier: Borden Ladner Gervais, LLP World Exchange Plaza 100 Queen Street, Suite 1000 Ottawa, ON, Canada K1P 1J9
Attach remittance details with payment and reference invoice(s) paid.	

For additional information contact cashreceiptscoe@blg.com OR (613) 369-4777

PAYABLE ON RECEIPT
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 GST/HST REGISTRATION # R869096974RT0004



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North American Steel Erectors
160 Griffin Ranch Road
Cochrane, AB T4C 2B8

May 26, 2021

Attention: Steeve Toupin

Invoice # 697980145

Page 1

Re: Wynward Insurance Group

File No: 446270/000001

PROFESSIONAL SERVICES rendered to April 30, 2021 in connection with the above matter as described in the attached.

Fees	\$ 6,877.50
Less Discount	(2,000.00)
Fee Balance	<u>4,877.50</u>
Other Charges	<u>2.00</u>
Total Fees and Other Charges	4,879.50
Disbursements	98.55
GST on Fees and Taxable Disbursements and Other Charges	<u>248.91</u>
Total this Invoice	<u>\$ 5,226.96</u>

THIS IS OUR ACCOUNT - E. & O.E.

BORDEN LADNER GERVAIS LLP

For: Locklyn Price



Borden Ladner Gervais LLP
Lawyers | Patent & Trade-mark Agents
Centennial Place, East Tower
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North American Steel Erectors
Re: Wynward Insurance Group

May 26, 2021
Invoice # 697980145
File No: 446270/000001
Page 2

PROFESSIONAL SERVICES RENDERED to April 30, 2021

Apr 5, 2021	T. Sadac	1.00	Conduct data processing to prepare data for analysis, including expand client data from containers, extract metadata from files, normalize data into reviewable format, identify duplicate data and de-duplicate to reduce time and cost of document review.	\$ 210.00
Apr 6, 2021	L. Price	0.10	Email with discovery services regarding document production.	52.00
Apr 6, 2021	T. Sadac	0.30	Populate litigation team review workspace with data identified in repository workspace from 003 Documents received via Dropbox 03/25/2021. Build and update searchable index of 003 Documents received via Dropbox 03/25/2021 to allow for increased efficiency in custom searching of data.	63.00
Apr 13, 2021	T. Nguyen	0.60	Prepare images of data for legal team's document review.	144.00
Apr 13, 2021	L. Price	1.10	Document review; emails to discovery services in relation to corrupted documents; further emails with discovery services; document review.	572.00
Apr 14, 2021	T. Nguyen	0.20	Prepare extracted text to reflect the text in the documents that were imaged to aid in the efficiency of the legal team's document review.	48.00
Apr 14, 2021	L. Price	0.50	Phone call with J. Mason regarding unviewable pdfs; document review for privilege and relevance.	260.00
Apr 15, 2021	L. Price	1.10	Document review.	572.00
Apr 15, 2021	L. Price	0.90	Document review; email to discovery services.	468.00
Apr 16, 2021	J. Mason	0.40	Perform work in evidence database for legal team's document review.	98.00
Apr 16, 2021	L. Price	2.10	Document review; emails with discovery services.	1,092.00

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



Borden Ladner Gervais LLP
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North American Steel Erectors
Re: Wynward Insurance Group

May 26, 2021
Invoice # 697980145
File No: 446270/000001
Page 3

Apr 19, 2021	J. Mason	0.50	Perform work regarding Affidavit of Records.	122.50
Apr 19, 2021	L. Price	0.20	Receive and respond to client email; emails with discovery services.	104.00
Apr 20, 2021	L. Price	0.80	Phone call with J. Mason regarding production; email with J. Mason; review documents; email to client.	416.00
Apr 21, 2021	L. Price	1.40	Phone call with S. Unrau; review production to find unredacted copy of bond; email with discovery services; phone call with discovery services regarding redacted/highlighted copy of bond; gave instructions to proceed with schedules; perform bankruptcy and insolvency searches, corporate search; phone call to Century auctions in relation to auction of Shield's assets; pulled Personal Property Registry search; review Civil Enforcement Act; email to assistant regarding PPR searches; email to S. Unrau regarding PPR searches and further operations.	728.00
Apr 21, 2021	V. Smith	0.20	Receive instructions from A. Cabral. Respond via email. Attendance to Alberta PPR search and BIA and CCAA searches and send results via email.	51.00
Apr 22, 2021	J. Mason	4.60	Perform work regarding Affidavit of Records.	1,127.00
Apr 22, 2021	L. Price	0.30	Receive and respond to email from S. Unrau.	156.00
Apr 23, 2021	L. Price	0.90	Receive and review schedule of records; draft Affidavit of Records; receive and respond to email from S. Unrau; receive and respond to emails from S. Toupin; proceed to serve unsworn copies on Defendants.	468.00

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



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North American Steel Erectors
 Re: Wynward Insurance Group

May 26, 2021
 Invoice # 697980145
 File No: 446270/000001
 Page 4

Apr 26, 2021	G. Song	0.60	Complete quality control of productions, identify redacted documents, prepare electronic productions including prepare branded images, export load files, production images, natives and text per required specifications, prepare data in zipped format for ease of delivery to opposing counsel.	126.00
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TO OUR FEES	\$ 6,877.50
Less Discount	(2,000.00)
FEE BALANCE	4,877.50

FEE SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Avg. Rate/Hr.</u>	<u>Amount</u>
J. Mason	5.50	\$ 173.75	\$ 955.64
T. Nguyen	0.80	170.20	136.16
L. Price	9.40	368.78	3,466.55
T. Sadac	1.30	148.93	193.61
V. Smith	0.20	180.85	36.17
G. Song	0.60	148.95	89.37
	17.80		\$ 4,877.50

PAYABLE ON RECEIPT
 INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



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North American Steel Erectors
Re: Wynward Insurance Group

May 26, 2021
Invoice # 697980145
File No: 446270/000001
Page 5

OTHER CHARGES:

<u>Taxable</u>	G=GST, Q=QST, H=HST, P=PST	
Remote Database Fee	\$ 2.00	G
Total Other Charges		<u>2.00</u>
Total Fees and Other Charges		4,879.50

DISBURSEMENTS:

<u>Taxable</u>	G=GST, Q=QST, H=HST, P=PST	
Corporate Registry Search	14.20	G
Industry Canada Search	7.00	G
Postage	8.00	G
PPSA Searches	14.69	G
Relativity – Data Hosting Fee	3.00	G
	<u>51.66</u>	G
Total Taxable Disbursements		<u>98.55</u>
Total Disbursements		98.55
Total Fees and Disbursements and Other Charges		<u>4,978.05</u>
GST on Fees and Taxable Disbursements and Other Charges		<u>248.91</u>
TOTAL THIS INVOICE		<u>\$ 5,226.96</u>

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



Borden Ladner Gervais LLP
Lawyers | Patent & Trade-mark Agents
Centennial Place, East Tower
1900, 520 - 3rd Avenue S W
Calgary, AB, Canada T2P 0R3
T 403.232.9500 F 403.266.1395
blg.com

North American Steel Erectors
160 Griffin Ranch Road
Cochrane, AB T4C 2B8

May 26, 2021
Invoice # 697980145
LP/LP

Re: Wynward Insurance Group

File No: 446270/000001

REMITTANCE COPY

Fees	\$ 6,877.50
Less Discount	(2,000.00)
Fee Balance	<u>4,877.50</u>
Other Charges	<u>2.00</u>
Total Fees and Other Charges	4,879.50
Disbursements	98.55
GST on Fees and Taxable Disbursements and Other Charges	<u>248.91</u>
Total this Invoice	<u>\$ 5,226.96</u>

PLEASE REFER TO PAYMENT OPTIONS PAGE FOR REMITTANCE INFORMATION.

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



Borden Ladner Gervais LLP
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 1900, 520 - 3rd Avenue S W
 Calgary, AB, Canada T2P 0R3
 T 403.232.9500 F 403.266.1395
 blg.com

North American Steel Erectors
 160 Griffin Ranch Road
 Cochrane, AB T4C 2B8

May 26, 2021
 Invoice # 697980145
 LP/LP

Use one of the following payment methods and ensure your payment contains the details provided in the example.

Client Name	Client #	Invoice #	Amount	Comments
North American Steel Erectors	446270	697980145	5,226.96 (CAD)	Payment for Invoice # 697980145

Payment method # 1 - EFT/WIRE (Preferred Method)

Beneficiary Customer: Borden Ladner Gervais, LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, ON, Canada M5H 4E3	Beneficiary Bank: Canadian Clearing Code: //CC000247696 Bank of Nova Scotia PO Box 4234 STN A Toronto, ON, Canada M5W 5P6
Payments Originating from Canada or International Locations (Excluding US Dollars from the USA): 12 Digit Account #: 80002 14221 11 Bank #: 002 Transit #: 80002 Swift Code: NOSCCATT IBAN #: CA002800021422111 *IBAN number only required for clients OUTSIDE NORTH AMERICA	Payments Originating from the USA in US Dollars: 12 Digit Account #: 80002 51181 15 Bank #: 002 Transit #: 80002 Swift Code: NOSCCATT Intermediary Bank (If required): Bank of America NA 222 Broadway New York, N.Y. Swift Code: BOFAUS3N 10038 United States ABA #: 026009593
Remittance email required: Payment confirmation must be sent by email to remittanceadvice@blg.com and reference made to the invoice(s) paid.	

Payment method # 2 - ONLINE PAYMENTS, CANADIAN FUNDS ONLY

You may pay your invoice(s) to BLG through participating Canadian financial institution's online banking. Select Borden Ladner Gervais through your financial institution and enter your client #, 446270 Remittance email required: Payment confirmation must be sent by email to remittanceadvice@blg.com and reference made to the invoice(s) paid. *Please note we do not accept Interac e-Transfers.

Payment method # 3 - CHEQUES

Send by mail: Borden Ladner Gervais, LLP PO Box # 81100 World Exchange Plaza 100 Queen Street Ottawa, ON, Canada K1P 1B1	Send by courier: Borden Ladner Gervais, LLP World Exchange Plaza 100 Queen Street, Suite 1000 Ottawa, ON, Canada K1P 1J9
Attach remittance details with payment and reference invoice(s) paid.	

For additional information contact cashreceiptscoe@blg.com OR (613) 369-4777

PAYABLE ON RECEIPT
 INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
 GST/HST REGISTRATION # R869096974RT0004



Borden Ladner Gervais LLP
Lawyers | Patent & Trade-mark Agents
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Calgary, AB, Canada T2P 0R3
T 403.232.9500 F 403.266.1395
blg.com

North American Steel Erectors
160 Griffin Ranch Road
Cochrane, AB T4C 2B8

August 26, 2021

Attention: Steeve Toupin

Invoice # 698012030

Page 1

Re: Wynward Insurance Group

File No: 446270/000001

PROFESSIONAL SERVICES rendered to July 31, 2021 in connection with the above matter as described in the attached.

Fees	\$ 17,093.00
Other Charges	13.00
Total Fees and Other Charges	<u>17,106.00</u>
Disbursements	129.96
GST on Fees and Taxable Disbursements and Other Charges	861.80
Total this Invoice	<u>\$ 18,097.76</u>

THIS IS OUR ACCOUNT - E. & O.E.

BORDEN LADNER GERVAIS LLP

For: Locklyn Price

North American Steel Erectors
Re: Wynward Insurance Group

August 26, 2021
Invoice # 698012030
File No: 446270/000001
Page 2

PROFESSIONAL SERVICES RENDERED to July 31, 2021

Jun 1, 2021	L. Price	0.80	Emails with Discovery Services; instructions to assistant to draft Service Letter; revise draft Service Letter; email to clients regarding Supplemental Affidavit of Records and strategy; serve unsworn Affidavit of Records.	\$ 416.00
Jun 2, 2021	L. Price	1.30	Receive and respond to email from client; set up appointment to swear Affidavit of Records; email in relation to Summary Judgment; receive and forward email from K. Powell to client; respond to K. Powell email; emails with client; attend to swearing Supplemental Affidavit of Records with client; discussed Summary Judgment Application; email to K. Powell.	676.00
Jun 8, 2021	L. Price	0.20	Receive and forward email from S. Carter-Edwards; emails with client.	104.00
Jun 17, 2021	L. Price	0.20	Receive and respond to email from S. Toupin; email to Y. Lui.	104.00
Jun 18, 2021	L. Price	0.20	Emails with student regarding Summary Judgment research.	104.00
Jun 23, 2021	Y. Liu	0.40	Research re Summary Judgment against the Defendants.	102.00
Jun 24, 2021	Y. Liu	1.80	Research re Summary Judgment against the Defendants.	459.00
Jun 24, 2021	L. Price	0.20	Correspondence with student; review of provided case law.	104.00
Jun 25, 2021	Y. Liu	0.60	Research re Summary Judgment against the Defendants.	153.00
Jun 27, 2021	Y. Liu	6.40	Research re Summary Judgment against the Defendants.	1,632.00
Jun 28, 2021	Y. Liu	3.00	Research re Summary Judgment against the Defendants.	765.00

Jun 28, 2021	L. Price	0.20	Receive and respond to email from student regarding research; clarified student research.	104.00
Jun 29, 2021	Y. Liu	2.80	Research re Summary Judgment against the Defendants.	714.00
Jun 29, 2021	L. Price	0.20	Receive and respond to email from client; receive and respond to student email regarding research; draft letter to opposing counsel to demand Affidavit of Records.	104.00
Jul 5, 2021	L. Price	0.80	Receive and respond to email from client; review and revise research from student.	416.00
Jul 6, 2021	L. Price	0.20	Receive and respond to email from client regarding Summary Judgment Application; set up teleconference; phone call with client; received instructions to draft Application materials.	104.00
Jul 8, 2021	Y. Liu	1.50	Review file materials and prepare for a Summary Judgment Memorandum.	382.50
Jul 12, 2021	Y. Liu	0.50	Prepare for Summary Judgment Application.	127.50
Jul 14, 2021	Y. Liu	3.40	Prepare for Summary Judgment Application and materials; email L. Price regarding the same.	867.00
Jul 14, 2021	L. Price	0.10	Work with Student on Application and Affidavit.	52.00
Jul 15, 2021	Y. Liu	9.10	Review NASE's records to prepare for the Summary Judgment Application and Affidavit.	2,320.50
Jul 15, 2021	L. Price	0.20	Emails with Y. Lui regarding Summary Judgment Application and Affidavit drafts; email to J. Mason to provide access to producible records; review proposed structure of Application/Affidavit.	104.00
Jul 16, 2021	Y. Liu	5.80	Review file materials and prepare for the Summary Judgment Application.	1,479.00
Jul 16, 2021	L. Price	0.20	Receive and respond to emails from Y. Liu regarding Summary Judgment Application.	104.00

North American Steel Erectors
Re: Wynward Insurance Group

Jul 16, 2021	L. Price	0.20	Emails with Y. Lui regarding Summary Judgment Application.	104.00
Jul 19, 2021	Y. Liu	5.20	Draft Application and Affidavit for Summary Judgment; sent email to L. Price regarding my draft.	1,326.00
Jul 23, 2021	L. Price	1.20	Email to S. Carter-Edwards; review and revise Affidavit and Application; email to student.	624.00
Jul 26, 2021	L. Price	1.20	Receive and respond to email from S. Carter-Edwards; email with S. Toupin; review of caselaw and secondary resources in relation to Notice and material changes to contracts.	624.00
Jul 27, 2021	Y. Liu	1.10	Discuss with L. Price regarding Summary Judgment Application; finalize the Application materials.	280.50
Jul 27, 2021	L. Price	1.80	Emails with Y. Lui regarding Application materials and Exhibits; draft Brief; emails regarding Exhibits.	936.00
Jul 28, 2021	Y. Liu	0.40	Collect records for Summary Judgment Application.	102.00
Jul 28, 2021	J. Mason	0.40	Prepare electronic documents from evidence database for Summary Judgment.	98.00
Jul 28, 2021	L. Price	0.30	Emails with discovery services regarding Exhibits.	156.00
Jul 29, 2021	Y. Liu	1.40	Prepare for the Brief of the Summary Judgment, pull relevant records from the database; email L. Price, A. Cabral and J. Mason regarding the relevant records for Affidavit for Summary Judgment.	357.00
Jul 29, 2021	L. Price	0.10	Follow up with S. Carter-Edwards regarding Wynwards' Affidavits of Records.	52.00
Jul 30, 2021	L. Price	0.10	Receive and respond to email from S. Carter-Edwards regarding Wynward Affidavit of Records.	52.00



Borden Ladner Gervais LLP
 Lawyers | Patent & Trade-mark Agents
 Centennial Place, East Tower
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 Calgary, AB, Canada T2P 0R3
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 blg.com

North American Steel Erectors
 Re: Wynward Insurance Group

August 26, 2021
 Invoice # 698012030
 File No: 446270/000001
 Page 5

Jul 30, 2021	L. Price	1.10	Review Exhibits and correspondence between counsel; review case law; draft Brief.	572.00
Jul 30, 2021	L. Price	0.60	Receive and respond to email from D. Hutchinson, gathering Pleadings, providing budget and reporting.	312.00

TO OUR FEES \$ 17,093.00

FEE SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Avg. Rate/Hr.</u>	<u>Amount</u>
Y. Liu	43.40	\$ 255.00	\$ 11,067.00
J. Mason	0.40	245.00	98.00
L. Price	11.40	520.00	5,928.00
	<u>55.20</u>		<u>\$ 17,093.00</u>

OTHER CHARGES:

Taxable Copies G=GST; Q=QST; H=HST; P=PST \$ 13.00 G

Total Other Charges 13.00

Total Fees and Other Charges 17,106.00

PAYABLE ON RECEIPT
 INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
 GST/HST REGISTRATION # R869096974RT0004



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Lawyers | Patent & Trade-mark Agents
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Calgary, AB, Canada T2P 0R3
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North American Steel Erectors
Re: Wynward Insurance Group

August 26, 2021
Invoice # 698012030
File No: 446270/000001
Page 6

DISBURSEMENTS:

<u>Taxable</u>		G=GST; Q=QST; H=HST; P=PST	
	Relativity – Data Hosting Fee	129.96	G
Total Taxable Disbursements		<u>129.96</u>	
Total Disbursements			129.96
Total Fees and Disbursements and Other Charges			<u>17,235.96</u>
GST on Fees and Taxable Disbursements and Other Charges			<u>861.80</u>
TOTAL THIS INVOICE			<u>\$ 18,097.76</u>

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



Borden Ladner Gervais LLP
Lawyers | Patent & Trade-mark Agents
Centennial Place, East Tower
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blg.com

North American Steel Erectors
160 Griffin Ranch Road
Cochrane, AB T4C 2B8

August 26, 2021
Invoice # 698012030
LP/LP

Re: Wynward Insurance Group

File No: 446270/000001

REMITTANCE COPY

Fees	\$ 17,093.00
Other Charges	13.00
Total Fees and Other Charges	<u>17,106.00</u>
Disbursements	129.96
GST on Fees and Taxable Disbursements and Other Charges	861.80
Total this Invoice	<u>\$ 18,097.76</u>

PLEASE REFER TO PAYMENT OPTIONS PAGE FOR REMITTANCE INFORMATION.

PAYABLE ON RECEIPT
INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004



Borden Ladner Gervais LLP
 Lawyers | Patent & Trade-mark Agents
 Centennial Place, East Tower
 1900, 520 - 3rd Avenue S W
 Calgary, AB, Canada T2P 0R3
 T 403.232.9500 F 403.266.1395
 blg.com

North American Steel Erectors
 160 Griffin Ranch Road
 Cochrane, AB T4C 2B8

August 26, 2021
 Invoice # 698012030
 LP/LP

Use one of the following payment methods and ensure your payment contains the details provided in the example.

Client Name	Client #	Invoice #	Amount	Comments
North American Steel Erectors	446270	698012030	18,097.76 (CAD)	Payment for Invoice # 698012030

Payment method # 1 - EFT/WIRE (Preferred Method)

Beneficiary Customer: Borden Ladner Gervais, LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, ON, Canada M5H 4E3	Beneficiary Bank: Canadian Clearing Code: //CC000247696 Bank of Nova Scotia PO Box 4234 STN A Toronto, ON, Canada M5W 5P6
Payments Originating from Canada or International Locations (Excluding US Dollars): 12 Digit Account #: 80002 14221 11 Bank #: 002 Transit #: 80002 Swift Code: NOSCCATT	Payments Originating in US Dollars: ACH payments are not accepted 12 Digit Account #: 80002 51181 15 Bank #: 002 Transit #: 80002 Swift Code: NOSCCATT Intermediary Bank (If required):NOTE: do not use intermediary bank as the beneficiary bank Bank of America NA 222 Broadway New York, N.Y. Swift Code: BOFAUS3N 10038 United States ABA #: 026009593

Payment method # 2 - ONLINE PAYMENTS, CANADIAN FUNDS ONLY

You may pay your invoice(s) to BLG through participating Canadian financial institution's online banking.
 1. As a bill payment - Select **Borden Ladner Gervais** through your financial institution and enter your client # 446270
 2. As an Interac e-transfer - Add BLG's e-transfer email address etransfers@blg.com and enter the amount. No security question is needed as BLG is registered for Auto Deposit.

Remittance email required: For payment methods #1 and #2 a payment confirmation must be sent by email to remittanceadvice@blg.com and referencing your client number and invoice(s) paid.

Payment method # 3 - CHEQUES

Send by mail: Borden Ladner Gervais, LLP PO Box # 81100 World Exchange Plaza 100 Queen Street Ottawa, ON, Canada K1P 1B1 Attach remittance details with payment and reference invoice(s) paid.	Send by courier: Borden Ladner Gervais, LLP World Exchange Plaza 100 Queen Street, Suite 1000 Ottawa, ON, Canada K1P 1J9
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For additional information contact cashreceiptscoe@blg.com OR (613) 369-4777

PAYABLE ON RECEIPT
 INTEREST AT THE RATE OF 12.0% PER ANNUM MAY BE CHARGED ON ACCOUNTS WHICH ARE OVERDUE
GST/HST REGISTRATION # R869096974RT0004

District of Alberta
Division No: 02-Calgary
Estate No.: 25-095246
Court No: 25-095246

**IN THE MATTER OF THE BANKRUPTCY OF
NORTH AMERICAN STEEL ERECTORS INC.
(the "Company")
MINUTES OF THE SEVENTH MEETING OF INSPECTORS**

Date: February 9, 2022
Time: 3:30 PM
Location: Teams Call

Present: Crystal Martin - Inspector
Rick Anderson – Trustee, MNP Ltd.
Jacqueline Shellon – Secretary, MNP Ltd.

1. A quorum of Inspectors was present and the meeting was called to order at 3:32 PM.
2. The Trustee provided an update regarding the remaining matter in the estate, the litigation concerning the bankrupt, Shield Industries Ltd. and Wynward Insurance Group, the 9th avenue bridge litigation matter. The Trustee's legal counsel has received a reply from the Department of Justice confirming CRA is not prepared to defer a portion of its property claim to support the Trustee in pursuing this action.
3. The Trustee advised the Inspector that the estate does not have the funds required to continue the litigation, and therefore the Trustee is seeking Inspector approval to proceed with a Section 38 Order to determine whether there is an interest amongst the proven creditors of the estate in taking on the matter.

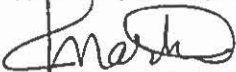
The Inspector directed the Trustee to proceed with sending notice to all proven creditors in the estate of the Section 38 proceedings.

4. There being no further business, the meeting was terminated at 3:35 PM.



Rick Anderson, CPA, CMA, CIRP, LIT, CFE

Approved by the Inspector this 15 day of February, 2022.



Crystal Martin, Inspector

District of Alberta
Division No: 02-Calgary
Estate No.: 25-095246
Court No: 25-095246

**IN THE MATTER OF THE BANKRUPTCY OF
NORTH AMERICAN STEEL ERECTORS INC.
(the "Company")**

**NOTICE
(Section 38 of the *Bankruptcy and Insolvency Act*)**

TAKE NOTICE THAT MNP Ltd., Trustee of the Estate of North American Steel Erectors Inc. ("NASE"), a Bankrupt, is willing to assign and transfer to any one or more of the creditors all of the Trustee's right, title and interest in the action described below pursuant to Section 38 of the *Bankruptcy and Insolvency Act* ("Act").

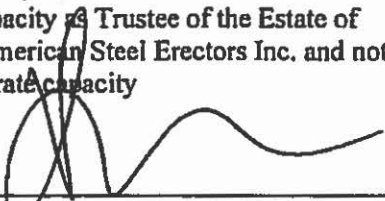
- Litigation regarding a contract for the supply of steel on a project in Calgary, Alberta, (the "9th Avenue Bridge Project") commenced by NASE against Shield Industries Ltd. ("Shield") and Wynward Insurance Group ("Wynward"), who had issued a Performance Bond concerning the 9th Avenue Bridge Project with the Court of Queen's Bench of Alberta. The claim is for \$3,673,856.02 and the penal limit of the Performance Bond is \$1,860,174.02. Shield has not defended the claim, but a Statement of Defence has been filed by Wynward. This litigation was at the document exchange phase as at the date of bankruptcy.

AND FURTHER TAKE NOTICE THAT the Trustee performed its due diligence and completed its investigation with respect to the realization of the subject property. The Trustee has concluded that it does not have access to funds to continue the litigation and effect a potential realization for the benefit of the Creditors.

AND FURTHER TAKE NOTICE THAT Section 38 of the Act provides that, any one or more of the creditors may make application to the Court for an Order authorizing them to take a proceeding in their own name and at their own expense and risk.

Dated at Calgary, Alberta this 23rd day of February 2022.

MNP Ltd.,
In its capacity as Trustee of the Estate of
North American Steel Erectors Inc. and not in its personal
or corporate capacity



Victor P. Kroeger, CPA, CA, CIRP, LIT, CFE
Senior Vice President

District of Alberta
Division No.: 02-Calgary
Estate No.: 25-095246
Court No.: 25-095246

**IN THE MATTER OF THE BANKRUPTCY OF
NORTH AMERICAN STEEL ERECTORS INC.**

NOTICE

(Section 38 of the *Bankruptcy and Insolvency Act* (the "*Act*"))

FURTHER TO THE NOTICE of MNP Ltd. (the "Trustee") in its capacity as the Trustee of the Estate of North American Steel Erectors Inc. ("NASE"), a Bankrupt, dated February 23, 2022 (the "Notice", copy enclosed), the Trustee has obtained records of NASE concerning the litigation commenced by NASE with the Court of Queen's Bench of Alberta against Shield Industries Ltd. and Wynward Insurance Group concerning the 9th Avenue Bridge Project (as such term is defined in the Notice). As previously described in the Notice, the Trustee has concluded that it does not have access to funds to continue the said litigation and effect a potential realization for the benefit of Creditors.

AND FURTHER TO THE NOTICE, any creditors seeking to pursue an application under Section 38 of the *Act* may, at their own risk and expense within thirty (30) days of the day of this notice, view those records of NASE in the Trustee's possession concerning the 9th Avenue Bridge Project litigation by contacting the Trustee's legal counsel, Dean Hutchison, of Caron & Partners LLP, via e-mail phone at 403-770-4023, or via e-mail at dhutchison@caronpartners.com, to make arrangements to view the records.

AND FURTHER TAKE NOTICE THAT any creditors seeking to view the said records shall do so at their own risk and expense, and such creditor(s) shall be responsible for reimbursing the Trustee and its legal counsel for any costs and expenses incurred in making the said records available for viewing.


Dated at Calgary, Alberta this 13th day of April 2022.

MNP Ltd.,
In its capacity as Trustee of the Estate of
North American Steel Erectors Inc., and
not in its personal or corporate capacity



Rick Anderson, CPA, CMA, CIRP, LIT, CFE
Vice President

This is EXHIBIT "M" referred to in the Affidavit of Stuart Detsky, sworn before me this 12th day of August, 2022.

 NEDA FOROGHIAN

A Commissioner for Oaths in and for the
Province of Ontario

Entered

C53394

Form 49
[Rule 13.19]

COURT FILE NUMBER BK01 – 095206
COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE CALGARY
PLAINTIFF THE BANK OF NOVA SCOTIA
DEFENDANTS NORTH AMERICAN STEEL ERECTORS
INC.
DOCUMENT **AFFIDAVIT**
ADDRESS FOR SERVICE Ramsay Legal Counsel
AND CONTACT #101, 4603 Varsity Dr. NW
INFORMATION OF PARTY Calgary, Alberta T3A 2L6
FILING THIS DOCUMENT Tel: (403) 247-2111
Fax: (403) 247-1270



COM
June 14 2022

Attn: Dan B. Ramsay
Solicitor's File No. 21-0016

AFFIDAVIT OF STEEVE TOUPIN

Sworn/affirmed on April 20, 2022


I, STEEVE TOUPIN, of Cochrane, Alberta, SWEAR AND SAY THAT:

1. I am a principal and the Corporate Representative of the Defendant, North American Steel Erectors Inc. ("NASE"), and as such have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief.
2. NASE carries on business throughout Canada providing steel erector contracting and other services to large construction projects, including bridges, commercial and residential condominium towers, and sports facilities.
3. On July 29, 2021 NASE was ordered into bankruptcy by the Order of Justice C.M. Jones, and MNP Ltd. (the "Trustee") was appointed as trustee of the bankrupt estate.
4. At the time of the bankruptcy, NASE was the plaintiff in 2 separate ongoing legal actions in Alberta and in Manitoba, and a related action in Ontario.

5. On December 9, 2020, NASE had filed a Statement of Claim in the Court of Queen's Bench of Alberta, Calgary, Court File No. 2001-16202, against Shield Industries Ltd. and Wynward Insurance Group arising from NASE's provision of materials and services for a bridge located at 9th Avenue in Calgary, Alberta (the "Shield Action"). Attached hereto and marked as **Exhibit "A"** is a copy of the Statement of Claim of the Alberta Action.
6. As alleged in the Alberta Action, NASE entered into a purchase order with Shield Industries Ltd. for it to fabricate and supply steel for the bridge project. Shield Industries Ltd.'s obligations were guaranteed under a performance bond issued by Wynward Insurance Group in favour of NASE. Shield Industries Ltd. failed to meet its obligations, and Wynward has disputed the amounts owing to NASE for the costs of the materials and services Shield Industries Ltd. was to provide under the purchase order. The total sought in this action against both defendants is \$3,673,856.02.
7. As the amount sought in the Shield Action was secured by way of a performance bond, NASE will be guaranteed payment of \$1.9 million (the amount of the bond coverage) by Wynward Insurance Group if NASE can establish liability.
8. At the time of the bankruptcy, Statements of Defence had been filed in the Shield Action and the parties were in the process of compiling their documents for Affidavits of Records.
9. On May 7, 2020, NASE filed a Statement of Claim in the Court of Queen's Bench, Winnipeg Centre, Court File No. CI 20-01-27129 against Exact Detailing Ltd. (the "Exact Action"). The action pertains to an agreement for Exact Detailing Ltd. to provide structural steel detailing design services to the construction of a tower located in Winnipeg, Manitoba. Exact Detailing Ltd. breached the terms of the agreement by failing to attain approval for extra work orders, failing to provide electronic drawings, and causing delays in the progress of work and prevented NASE from completing its work on the project, causing damages to NASE of \$4,677,711.08. Attached hereto and marked as **Exhibit "B"** is a copy of the Statement of Claim in the Exact Action.
10. The Exact Action was proceeding under the above-mentioned court file number, but there had been earlier proceedings under the *Builder's Lien Act* which were effectively incorporated into the Exact Action, Court of Queen's Bench Action No. CI19-01-24911.
11. In addition to the Manitoba Exact Action, Exact commenced a claim against NASE and several other defendants in Oshawa, Ontario, CV19000032230000 in respect of the same subject matter as the Winnipeg action (the "Ontario Exact Action").
12. Prior to the date of the bankruptcy, the parties to the Exact Action had agreed to arbitration. This was to take place sometime in the near future, though an actual date had not been scheduled. Attached hereto and marked as **Exhibit "C"** is a copy of a Year End Audit Letter from NASE's Manitoba counsel for the Exact Action.

- 13. At the time of the bankruptcy, I believed that the Exact Action (and Ontario Exact Action) would be resolved within the following few months by way of arbitration and would likely result in a significant payment or award made in favour of NASE.
- 14. In late February, 2022, I and NASE received notice from the Trustee that it was willing to assign and transfer the Trustee’s right and interest in the Shield Action. Attached hereto and marked as **Exhibit “D”** is a copy of the Notice.
- 15. I am a creditor of NASE by way of a shareholder loan to the corporation in the amount of \$741,868.28. Attached hereto and marked as **Exhibit “E”** is a copy of a promissory note dated January 18, 2016, evidencing the amount owed to me by the corporation. NASE was originally incorporated on January 18, 2016, as Central Erectors Inc., and changed its name to NASE on March 8, 2016. The Promissory Note remains outstanding and owing by NASE. Attached hereto and marked as **Exhibit “F”** is a Alberta Registries search evidencing the name change from Central Erectors Inc. to NASE.
- 16. The amount owed to me by virtue of the promissory note was included in NASE’s yearly financial statements as “advances from shareholders”. As of the date of bankruptcy, there was \$634,862.00 owing. Attached hereto and marked as **Exhibit “G”** is a copy of NASE’s 2020 financial statements, the latest available.
- 17. I am in a position to prosecute and make decisions for NASE in respect of the Shield Action and the Exact Action as I have had firsthand involvement in the contracting and projects which are subject of the litigation.
- 18. After receiving the Notice, I anticipated receiving a similar notice in respect of the Exact Action and the Ontario Exact Action. On March 24, 2022, after not receiving a similar notice, counsel for NASE contacted counsel for the Trustee inquiring into whether similar notices would be forthcoming. On March 25, 2022, Counsel for the Trustee emailed counsel for NASE informing him that the Exact Action and Ontario Exact Action had been “resolved and discontinued”.
- 19. I make this affidavit in support of an application to assign carriage of the Shield Action the Exact Action and the Ontario Exact Action to myself. Regardless of the status of the Exact actions, I wish to be granted carriage of these to determine whether they can be salvaged. The Exact Action was nearing arbitration and I am confident that if the action can be reinstated, NASE can receive an award through arbitration.

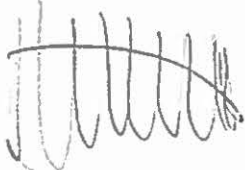
SWORN BEFORE ME at Calgary, Alberta,
 this 20 day of April, 2022.



Commissioner for Oaths in and for the
 Province of Alberta

Daniel Bertram Ramsay
 Barrister & Solicitor

)
)
)
)
)
)
)



STEEVE TOUPIN

referred to in the Affidavit of
Steeve Toupin
Sworn before me this *20*
day of *April* A.D. 20 *22*

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Form 10
[Rule 3.25]

COURT FILE NUMBER 2001-16202 Daniel Bertram Ramsay
Barrister & Solicitor
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF NORTH AMERICAN STEEL ERECTORS INC.
DEFENDANT(S) SHIELD INDUSTRIES LTD. and WYNWARD
INSURANCE GROUP
DOCUMENT STATEMENT OF CLAIM



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Jeffrey D. Vallis, Q.C. / Theron Davis
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3
Telephone: (403) 232-9404 / 9761
Facsimile: (403) 266-1395
File No. 446270-000001

THIS IS EXHIBIT "*1*"
referred to in the Affidavit of
Steeve Toupin
Sworn before me this *2*
day of *June* A.D. 20*21*

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. North American Steel Erectors Inc. ("NASE") is a body corporate, duly incorporated pursuant to the laws of the Province of Alberta. NASE carries on the business of supplying and installing structural steel on commercial, institutional, bridge and sports facility projects.
2. The Defendant, Shield Industries Ltd. ("Shield") is a body corporate, duly incorporated pursuant to the laws of the Province of Alberta. Shield carries on business as a fabricator of, among other things, structural steel.
3. The Defendant, Wynward Insurance Group ("Wynward") is a body corporate, duly incorporated pursuant to the laws of Canada and is duly authorized to transact the business of suretyship in Canada, including in the Province of Alberta.

Daniel Bertram Ramsay
Barrister & Solicitor

The Project

4. Pursuant to Subcontract #463022 – OS, dated May 30, 2019, NASE was engaged by PCL Construction Management Inc. (“PCL”) to supply, fabricate and install structural steel on the 9th Ave Vehicle Bridge Replacement project (the “Project”), located in Calgary, Alberta (the “Subcontract”).
5. On or about April 4, 2019, NASE and Shield entered into Purchase Order Number 1906-002 (the “Purchase Order”), whereby Shield agreed to fabricate and supply the structural steel for the Project as described in Shield’s Quotation No. 6317, dated January 31, 2019 (the “Work”), for a stipulated price of \$3,720,348.03 (including GST) (the “Purchase Order Price”).
6. The Purchase Order incorporated the terms and conditions of the Subcontract by express reference and Shield was bound to adhere to those terms and conditions in the performance of the Work.

The Performance Bond

7. Pursuant to clause 4 of the special conditions of the Subcontract, Shield was obligated to provide a performance bond in favour of NASE, providing a penal sum equivalent to one-half of the Purchase Order Price.
8. On or about October 9, 2019, Wynward issued Performance Bond No. W086-102-001P/L-A (the “Bond”), with a penal limit of \$1,860,174.02 (the “Bond Amount”), which replaced Bond No. W0186-102-001P/L. Under the Bond, NASE was the named Obligee, Shield was the Principal, and Wynward was the Surety. NASE pleads and relies upon the terms and provisions of the Bond.
9. In the event that Shield defaulted on any of its obligations under the Purchase Order, NASE could deliver to Wynward a written statement that Shield was in such default and request that Wynward fulfill its obligations under the Bond (a “Demand”).
10. In advance of making a Demand on the Bond, NASE was, entirely at its own discretion, entitled to notify Wynward if Shield was, or was soon to be, in default and request that the parties attend a conference to communicate those concerns (a “Pre-Demand Conference”).
11. Upon receipt of a Demand, Wynward would be afforded a reasonable time within which to conduct an investigation of the Demand and determine its liability under the Bond.
12. Twenty-one days following receipt of the information required to conduct the investigation, Wynward was obligated to complete its investigation and advise NASE of its decision. Alternatively, if Wynward required more time to complete its investigation then, before the expiry of the aforementioned twenty-one days, it was obligated to write to NASE and set out the status of the investigation and provide an estimate of when the investigation would be complete.
13. While Wynward performed its investigation, NASE was entitled under the terms of the Bond to engage a replacement contractor or contractors to proceed with the Work for the benefit and protection of the Project and in order to mitigate its losses.
14. Where NASE engaged a replacement contractor, and subject to the conditions of the Bond, the reasonable costs incurred by NASE were to be reimbursed by Wynward.
15. Following an investigation, if the conditions precedent have been satisfied and Shield’s default confirmed, Wynward would then be obligated to promptly:

- (a) remedy the default;
- (b) complete the Purchase Order in accordance with its terms and conditions;
- (c) obtain a bid, or bids, for submission to NASE for completing the Purchase Order in accordance with its terms and conditions, and upon determination by NASE and Wynward of the lowest responsible bidder, arrange for a contract between such bidder and NASE, and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this option) sufficient funds to pay to complete Shield's obligations in accordance with the terms and conditions of the Purchase Order, and to pay those expenses incurred by NASE as a result of Shield's default relating directly to the performance of the Work under the Purchase Order, less the balance of the Purchase Order Price; or,
- (d) pay NASE the lesser of: (1) the Bond Amount; or, (2) NASE's proposed cost of completion less the balance of the Subcontract price.

Shield's Default and the Surety's Investigation

- 16. In order to ensure that Shield was meeting its obligations under the Purchase Order on or about October 31, 2019, among other times, NASE, PCL and Shield met and discussed Shield's progress. Part of that meeting included potential options that would ensure that Shield met the Purchase Order with respect to schedule, and conformed to the plans and specifications incorporated into the Purchase Order. Among the options discussed was the possibility that Shield engage a subcontractor to assist with portions of its Work.
- 17. Entirely of its own volition, Shield subcontracted with Supreme Steel LP to perform portions of the Work.
- 18. In the months subsequent to the October 31, 2019 meeting, it began to become clear to NASE that Shield was unable to adequately manage its obligations under the Purchase Order. As a result, on December 11, 2019, NASE issued a notice of non-compliance to Shield requesting that Shield take steps to avoid a default (the "Notice of Non-Compliance").
- 19. NASE received and reviewed Shield's response to the Notice of Non-Compliance upon returning from a shut down for the holiday season and, on or about January 2, 2020, NASE contacted a representative of Wynward regarding its continuing concerns related to Shield's performance.
- 20. Without any appreciable improvement following receipt of Shield's response to the Notice of Non-Compliance, on January 16, 2020, NASE informed Wynward in writing that Shield was in default under the Purchase Order, and that NASE had become aware that Shield was facing financial difficulties, and requested a Pre-Demand Conference. That Pre-Demand Conference was held on January 30, 2020, during which Shield confirmed that it was facing financial difficulties.
- 21. On or about February 20, 2020, Shield indicated that it would be laying off its employees and that its financial difficulties would prevent it from being able to continue with the Work.
- 22. Further, Shield's performance had not improved following the Pre-Demand Conference and, on or about February 27, 2020, NASE made a Demand to Wynward, declared that Shield was in default and requested that Wynward fulfill its obligations under the Bond (the "Bond Claim").

23. On or about March 2, 2020 to March 5, 2020, Shield made the final deliveries of materials and then subsequently abandoned the Project.
24. Following the Bond Claim, Wynward began an investigation, with the full cooperation of NASE.
25. Shield failed to satisfy its obligations under the Purchase Order. These failures include, but are not limited to, the following:
 - (a) Shield issued invoices that included, and Shield sought payment for, Work that was not complete;
 - (b) Shield failed to follow the change request requirements of the Purchase Order and failed to justify additional costs for which it was seeking payment, which in turn resulted in NASE being unable to obtain a corresponding approval from PCL;
 - (c) Shield failed or otherwise refused to perform the Work as outlined in the plans, specifications, or as otherwise contemplated within the Purchase Order;
 - (d) Shield performed the Work negligently and in breach of the express or implied terms of the Purchase Order;
 - (e) Shield failed or refused to adequately correct significant portions of its negligent and deficient Work, but even where some portions of the Work were corrected, Shield failed to do so in a timely manner;
 - (f) Shield failed to implement adequate quality assurance and quality control processes;
 - (g) Shield failed to staff and maintain a sufficient number of employees, agents or subcontractors to complete the Work properly, on time, and in accordance with the express or implied terms of the Purchase Order;
 - (h) Shield failed to staff appropriately skilled and competent employees, agents or subcontractors so that the Work could be completed properly, on time, and in accordance with the express or implied terms of the Subcontract;
 - (i) Shield failed to properly train the employees, agents or subcontractors that it did have to ensure they were adequately qualified to perform the Work;
 - (j) Shield failed to properly manage and supervise its employees, agents, or subcontractors;
 - (k) Shield failed to maintain a safe work site at all times in accordance with the express or implied terms of the Subcontract; and
 - (l) Shield failed to complete its scope of Work and abandoned the Purchase Order

(collectively, "Shield's Defaults").
26. By contrast, NASE has satisfied all of its obligations under the Purchase Order including, but not limited to, having made timely payment to Shield for all of its validly performed Work and properly submitted invoices.

27. At no point in time did NASE relieve Shield from its contractual obligations, or otherwise waive, acquiesce or abandon its right to demand that Shield perform its obligations under the Purchase Order.
28. On or about August 8, 2020, Wynward and NASE entered into a mitigation agreement (the "Mitigation Agreement"), whereby Wynward agreed that NASE could proceed with a remedial plan (the "Remedial Plan") to complete the remaining work (the "Remaining Work"), as described in Schedules to the Mitigation Agreement. Pursuant to the Mitigation Agreement, Wynward agreed not to challenge or dispute the completion of the Remaining Work performed by NASE in accordance with the Remedial Plan.
29. Wynward and NASE entered into the Mitigation Agreement without prejudice to the rights and/or obligations of the parties under the Bond.
30. To date, Wynward has failed or otherwise refused to provide a decision with respect to the Bond Claim and, despite repeated demands, has further failed to fulfill its obligations under the Bond.

The Costs to Complete

31. At this time, and subject to uncovering further deficiencies in Shield's work, the total cost to NASE to complete Shield's Work will be not less than \$4,336,846.93.
32. NASE had already paid to Shield \$1,919,409.12 and, as a result, the balance of the contract price is \$1,800,938.91.
33. The resulting short fall from Shield's Defaults and abandonment of the Purchase Order is, therefore, not less than \$2,535,908.02.

Claims against the Defendants

34. Shield has failed, refused, or been otherwise unable to perform its obligations under the Purchase Order. As a result of Shield's Defaults, negligence, and breaches of the Purchase Order, NASE has suffered and continues to suffer damages and losses.
35. Wynward has failed to fulfill its obligations under the Bond. Specifically, Wynward has failed to take the steps necessary to see that Shield's Defaults were corrected and the Work completed. By so doing, Wynward has exacerbated the delay on the Project to such an extent that NASE has had to incur significant additional costs and its losses have been substantially increased.
36. Further, Wynward has failed and or otherwise refused to render a decision regarding the Demand and has taken an unreasonable amount of time in so delaying.
37. As a result of both Shield's Defaults or its negligence in carrying out the Work under the Purchase Order, and Wynward's conduct and breaches of the Bond, NASE has suffered, and continues to suffer, serious damages including, but not limited to, losses from delay, additional costs, Work deficiencies, bank charges, interest costs, increased administrative and overhead costs, and costs to complete Shield's unfinished Work. NASE currently estimates such losses, the particulars and total amount of which shall be proven at trial, to be not less than as follows:

- (a) Shortfall on costs to complete of \$2,535,908.02;

- (b) Additional manpower costs of \$385,948.00;
- (c) Delay and acceleration costs of \$648,000.00;
- (d) Liquidated damages losses of approximately \$104,000.00; and,
- (e) Such additional costs as may be proven at trial.

Remedy sought:

38. The Plaintiff, NASE, claims against the Defendant, Wynward:

- (a) a declaration that the Performance Bond remains in full force and effect; and,
- (b) a declaration that NASE has discharged all preconditions for payment under the Performance Bond, or alternatively for relief from forfeiture in respect thereof.

39. The Plaintiff, NASE, claims against the Defendants, Wynward and Shield, jointly and severally:

- (a) judgment in the amount of \$3,673,856.02, or in the case of Wynward the Bond Amount;
- (b) pre-judgment and post-judgment interest in accordance with the *Judgment Interest Act*, RSA 2000, c J-1;
- (c) costs of this action on a solicitor-client basis or on such other basis as may be determined by this Honourable Court;
- (d) such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

File No. CL20-01-27129^B
THIS IS EXHIBIT "....."
referred to in the Affidavit of
Steeve Toupin.....
Sworn before me this 2.....
day of June..... A.D. 20 21
.....
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

NORTH AMERICAN STEEL ERECTORS INC.,

Daniel Bertram Ramsay
Barrister & Solicitor
plaintiff,

- and -

EXACT DETAILING LTD.,

defendant.

STATEMENT OF CLAIM

MARR FINLAYSON POLLOCK LLP
Barristers and Solicitors
240 River Avenue
Winnipeg, Manitoba
R3L 0B4

DAVID I. MARR

Ph.: (204) 925-5308
Fax: (204) 992-7099

File No. DM190024

THIS IS EXHIBIT " B "....."
referred to in the Affidavit of
Steeve Toupin.....
Sworn before me this 29.....
day of April..... A.D. 20 22
.....
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Daniel Bertram Ramsay
Barrister & Solicitor

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

NORTH AMERICAN STEEL ERECTORS INC.,

plaintiff,

- and -

EXACT DETAILING LTD.,

defendant.

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

Date: May 7, 2020

Issued by: D. CHAMPAGNE
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA
Deputy Registrar
Address of Court Office:
100C – 408 York Avenue
Winnipeg, MB R3C 0P9

TO: EXACT DETAILING LTD.
c/o Thompson Dorfman Sweatman LLP
1700 – 242 Hargrave Street
Winnipeg, MB R3C 0V1
Attention: Meghan C. Ross
lawyers for the defendant

CLAIM

1. The plaintiff claims from the defendant:
 - a) the sum of \$4,677,711.08 (resulting from piecemeal procurement of steel and costs to engage TDS Industrial Services Ltd. to provide detailing services);
 - b) payment for additional damages for breach of contract and breach of the duty of good faith in contractual performance in an amount to be determined at trial;
 - c) pre-judgment and post-judgment interest;
 - d) costs of this action; and
 - e) such further and other relief as this Honourable Court may deem just.

2. The plaintiff, North American Steel Erectors Inc. ("NASE"), is a corporation incorporated pursuant to the laws of the Province of Alberta, and is duly registered to carry on business in the Province of Manitoba, and carries on business as a prime steel contractor across Canada.

3. The defendant, Exact Detailing Ltd. ("Exact") is a corporation incorporated pursuant to the laws of the Province of British Columbia, and carries on the business of providing steel detailing services.

4. This action arises from the design and construction of the Winnipeg Artis Tower (the "Project") located in Winnipeg, Manitoba.

5. On or about April 6, 2018, NASE submitted a revised proposal for the supply and installation of structural steel, joists and decking for the Project and on or about June 13, 2018 Diaser Management (2006) Ltd. ("Diaser"), the Construction Manager, issued a purchase order to NASE to perform the work (the "Contract").

The Sub-Contract

6. On or about May 31, 2018 Exact tendered a quote to NASE for the supply of structural steel design detail services which included the supply of structural and steel design, direction drawings, shop drawings and steel erection detailed layout instructions and modelling and, on or about June 19, 2018 NASE issued a purchase order to Exact therefor, upon terms which included weekly model sharing and progress reporting and payments to be made to Exact when NASE is paid by Diaser (the "Sub-Contract").

7. The value of the Sub-contract is made up of the base contract price of \$375,000.00 plus \$18,750.00 in sales tax (GST of 5%).

8. Clause 2 of the Sub-contract directs that "payments (are) to be made within the latter of thirty (30) days or five (5) days after receipt of payment for such work from Construction Manager" (the "pay when paid clause"). For the purposes of the pay when paid clause, the Construction Manager and the Owner under NASE's contract are one and the same.

9. NASE and Exact have collaborated on previous projects, which were governed by purchase orders issued by NASE which also contained a "pay when paid" clause. Exact understood that "pay when paid" clauses governed the contractual relationship between Exact and NASE, and Exact accepted the pay when paid clause under the Sub-contract.

Extra Work Orders

10. In addition to the base contract, between on or about July 6, 2018 to on or about May 30, 2019, Exact issued 56 extra work orders ("EWOs"), 3 of which were cancelled, for which Exact claimed the sum of \$205,152.41 for the remaining 53 EWOs.

11. In accordance with the Sub-contract, and as agreed by Exact, any changes, including EWOs, had to be approved and paid by the Owner before NASE could issue payments to Exact.

12. Contrary to the terms of the Sub-contract, Exact withheld and failed to provide electronic drawings (models) and issued viewer only drawings such that NASE was unable to make any changes as required, and insisted on payment prior to NASE being paid by the Owner which also contributed to delays in the progress of the work.

13. Notwithstanding NASE's efforts to have Exact comply, on or about June 28, 2019, NASE terminated the Sub-contract and retained TDS Industrial Services Ltd. who had to re-do some of Exact's work for which Exact had been paid, and complete the work left outstanding under the Sub-contract at a cost to NASE of \$230,500.00 and GST of \$11,525.00, totalling \$242,025.00.

14. On or about July 25, 2019, Exact caused a Builder's Lien to be registered against the Owner's property for the sum of \$205,152.41 (the "Lien Amount"), which NASE vacated with Exact's consent by payment into court the Lien Amount without prejudice to any claims, set-offs, or counterclaims which NASE may have, including the validity of the claim for lien itself. The lien was discharged as of January 13, 2020.

15. Exact's claim for lien is improper and exaggerated, and NASE pleads and relies upon section 40 of *The Builders' Liens Act*, C.C.S.M. c. B91.

16. As a result of Exact's misconduct described herein, including its failure to deliver the detailed design model and insisting on premature payment before releasing shop drawings

pursuant to its Sub-contract with NASE, Exact severely impeded NASE's ability to perform the Contract, NASE claims as set out in paragraph 1 hereof.

Date: May 7th, 2020

MARR FINLAYSON POLLOCK LLP
Barristers and Solicitors
240 River Avenue
Winnipeg, MB R3L 0B4
Telephone: (204) 925-5308
Facsimile: (204) 992-7099
DAVID I. MARR
lawyers for the plaintiff



MARR FINLAYSON POLLOCK

THIS IS EXHIBIT "C" referred to in the Affidavit of Steeve Toupin Sworn before me this 20 day of April A.D. 2022

DAVID I. MARR dmarr@mfpawco.com (204) 925-5308 Christine Watson cwatson@mfpawco.com

February 18, 2021

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA Daniel Bertram Ramsay File No. DM190024 Barrister & Solicitor

Via email to: stoupin@nasteelerectors.com

North American Steel Erectors 160 Griffin Ranch Road Cochrane, AB T4C 2B8

THIS IS EXHIBIT "C" referred to in the Affidavit of Steeve Toupin Sworn before me this 2 day of June A.D. 2021

Attention: Mr. Steeve Toupin, PE, P.Eng

Dear Sir:

Daniel Bertram Ramsay Barrister & Solicitor

Re: Year End Audit – Exact Detailing Ltd.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

In response to your request for a status report of the claim of North American Steel Erectors Inc. (NASE) against Exact Detailing Ltd. (Exact) and Exact's counterclaim against NASE in the Court of Queen's Bench, Winnipeg Centre, under file No. CI20-01-27129, we would advise as follows.

In response to a Builder's Lien filed by Exact against land owned by Artis Winnipeg Square Parade Ltd. on July 25, 2019 in regard to its claim for the sum of \$205,152.41 for alleged unpaid accounts, NASE paid the said sum into court, following which Exact consented to the discharge of the Builder's Lien. Thereafter, on May 7, 2020 NASE commenced an action in the Court of Queen's Bench, Winnipeg Centre, against Exact claiming the sum of \$4,677,711.08, resulting from piecemeal procurement of steel and costs to engage another detailing service to correct the deficient work of Exact and to complete unfinished work. Exact filed a Statement of Defence and Counterclaim against NASE on June 9, 2020 for the said sum of \$205,152.41.

Notwithstanding the pending action and counterclaim (the "Dispute"), the parties have agreed to refer the Dispute to arbitration. Discussions are underway to decide upon a sole arbitrator and, in the meantime, documents relevant to the Dispute are in the process of being exchanged. It is anticipated that an arbitrator will be agreed upon within the next month or so, after which the arbitrator's terms of appointment will be settled and pre-hearing matters including the exchange of documents and examinations for discovery will be arranged and dates will be set for the arbitration hearing, which may take place before the end of this year.

Assuming NASE can satisfy the arbitrator of the validity and quantum of its claim (and correspondingly, that Exact is not entitled to its counterclaim), we anticipate an award in NASE's favour although the prospect of recovery of an award is unknown at this time. Regardless, assuming NASE can satisfy the arbitrator that Exact breached its contract with NASE, Exact's counterclaim should fail, thereby allowing NASE to make an application for payment out of court of the said sum of \$205,152.41 (plus interest), which NASE paid into Court to have the Builder's Lien discharged.



I trust this is satisfactory but should you have any questions, please do not hesitate to contact me.

Yours truly,

MARR FINLAYSON POLLOCK LLP

Per:


A handwritten signature in black ink, appearing to read 'David I. Marr', written over a horizontal line.

DAVID I. MARR

DIM:cw

**Services Provided by David I. Marr Law Corporation*

District of Alberta
Division No: 02-Calgary
Estate No.: 25-095246
Court No: 25-095246

THIS IS EXHIBIT " U "
referred to in the Affidavit of
Steel Company
Sworn before me this 20
day of April A.D. 20 22

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

**IN THE MATTER OF THE BANKRUPTCY OF
NORTH AMERICAN STEEL ERECTORS INC.
(the "Company")**

**Daniel Bertram Ramsay
Barrister & Solicitor**

**NOTICE
(Section 38 of the *Bankruptcy and Insolvency Act*)**

TAKE NOTICE THAT MNP Ltd., Trustee of the Estate of North American Steel Erectors Inc. ("NASE"), a Bankrupt, is willing to assign and transfer to any one or more of the creditors all of the Trustee's right, title and interest in the action described below pursuant to Section 38 of the *Bankruptcy and Insolvency Act* ("Act").

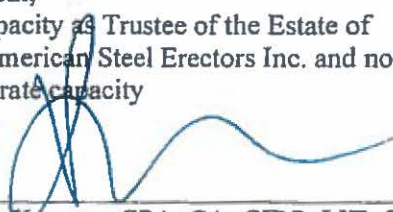
- Litigation regarding a contract for the supply of steel on a project in Calgary, Alberta, (the "9th Avenue Bridge Project") commenced by NASE against Shield Industries Ltd. ("Shield") and Wynward Insurance Group ("Wynward"), who had issued a Performance Bond concerning the 9th Avenue Bridge Project with the Court of Queen's Bench of Alberta. The claim is for \$3,673,856.02 and the penal limit of the Performance Bond is \$1,860,174.02. Shield has not defended the claim, but a Statement of Defence has been filed by Wynward. This litigation was at the document exchange phase as at the date of bankruptcy.

AND FURTHER TAKE NOTICE THAT the Trustee performed its due diligence and completed its investigation with respect to the realization of the subject property. The Trustee has concluded that it does not have access to funds to continue the litigation and effect a potential realization for the benefit of the Creditors.

AND FURTHER TAKE NOTICE THAT Section 38 of the Act provides that, any one or more of the creditors may make application to the Court for an Order authorizing them to take a proceeding in their own name and at their own expense and risk.

Dated at Calgary, Alberta this 23rd day of February 2022.

MNP Ltd.,
In its capacity as Trustee of the Estate of
North American Steel Erectors Inc. and not in its personal
or corporate capacity



Victor P. Kroeger, CPA, CA, CIRP, LIT, CFE
Senior Vice President

Promissory Note

\$741,868.28

FOR VALUE RECEIVED, the undersigned, CENTRAL ERECTORS INC. (the "Borrower"), unconditionally promises to pay to STEEVE TOUPIN (the "Lender") the principal sum of SEVEN HUNDRED FORTY-ONE THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS AND TWENTY-EIGHT CENTS (\$741,868.28) (the "Principal Amount") in accordance with the provisions of the Bill of Sale between the Borrower and the Lender dated as of the date hereof (the "Bill of Sale") and the Principal Amount shall be payable on demand without interest (the "Loan").

The Borrower may prepay all or any part of the outstanding balance of the Loan at any time without notice, bonus or penalty.

The Borrower hereby waives presentment for payment, notice of dishonour, protest, notice of protest and demand with regard to this Promissory Note. No course of dealing between the Borrower and the Lender or any delay on the part of the Lender in exercising any rights hereunder shall operate as a waiver of any rights of the Lender. All the covenants, stipulations, promises and agreements in this Promissory Note contained by or on behalf of the Borrower shall bind any successor and assigns of the Borrower, whether permitted or not and whether so expressed or not.

This Promissory Note shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned makes and delivers this Promissory Note with effect as of the 18th day of January, 2016.

CENTRAL ERECTORS INC.

Per: [Signature]
Steeve Toupin, Director

THIS IS EXHIBIT
referred to in the Affidavit of
Steeve Toupin
Sworn before me this 20
day of April A.D. 20 22
.....
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Daniel Bertram Ramsay
Barrister & Solicitor

Government of Alberta ■ Corporation/Non-Profit Search

Corporate Registration System

Date of Search: 2022/04/20
Time of Search: 09:29 AM
Search provided by: A-PLUS REGISTRY SERVICES LTD.
Service Request Number: 37451027
Customer Reference Number: NORTH AMERICAN STEEL EREC

THIS IS EXHIBIT " F "
referred to in the Affidavit of
Steve Toupin
Sworn before me this 29
day of April A.D. 2022
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Daniel Bertram Ramsay
Barrister & Solicitor

Corporate Access Number: 2019448758
Business Number: 739358497
Legal Entity Name: NORTH AMERICAN STEEL ERECTORS INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
CENTRAL ERECTORS INC.	2016/03/08

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2016/01/18 YYYY/MM/DD

Registered Office:

Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8

Records Address:

Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8

Email Address: MGOSWAMI@NASTEELERECTORS.COM

Directors:

Last Name: TOUPIN

First Name: STEEVE
Street/Box Number: 264095 MONTERRA DRIVE
City: COCHRANE
Province: ALBERTA
Postal Code: T4C0A7

Voting Shareholders:

Last Name: SPALDING
First Name: GORDON
Street: 10432 GLENROSE DRIVE
City: DELTA
Province: BRITISH COLUMBIA
Postal Code: V4C0A6
Percent Of Voting Shares: 22.22

Last Name: TOUPIN
First Name: STEEVE
Street: 264095 MONTERRA DRIVE
City: COCHRANE
Province: ALBERTA
Postal Code: T4C0A7
Percent Of Voting Shares: 77.78

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: 100 CLASS "A" SHARES
Share Transfers Restrictions: NONE
Min Number Of Directors: 1
Max Number Of Directors: 5
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: NONE

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2020/12/15

Outstanding Returns:

Annual returns are outstanding for the 2022 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2016/01/18	Incorporate Alberta Corporation
2016/03/08	Name Change Alberta Corporation
2017/06/07	Name/Structure Change Alberta Corporation
2019/01/11	Change Address
2019/03/08	Change Director / Shareholder
2020/02/22	Update BN
2020/12/15	Enter Annual Returns for Alberta and Extra-Provincial Corp.

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



North American Steel Erectors Inc.

Financial statements
Unaudited – See independent practitioner's
review engagement report
August 31, 2020

THIS IS EXHIBIT " G " referred to in the Affidavit of
George Loup
Sworn before me this *20*
day of *April* A.D. 20 *23*
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
Daniel Bertram Ramsay
Barrister & Solicitor

The EY logo consists of the letters 'EY' in a bold, black, sans-serif font. The 'E' and 'Y' are connected at the top.

Building a better
working world

Independent practitioner's review engagement report

To the Shareholders of
North American Steel Erectors Inc.

We have reviewed the accompanying financial statements of North American Steel Erectors Inc. that comprise the balance sheet as at August 31, 2020, and the statement of (loss) income and (deficit) retained earnings, and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's responsibility for the financial statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for private enterprises, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Practitioner's responsibility

Our responsibility is to express a conclusion on the accompanying financial statements based on our review. We conducted our review in accordance with Canadian generally accepted standards for review engagements, which require us to comply with relevant ethical requirements.

A review of financial statements in accordance with Canadian generally accepted standards for review engagements is a limited assurance engagement. The practitioner performs procedures, primarily consisting of making inquiries of management and others within the entity, as appropriate, and applying analytical procedures, and evaluates the evidence obtained.

The procedures performed in a review are substantially less in extent than, and vary in nature from, those performed in an audit conducted in accordance with Canadian generally accepted auditing standards. Accordingly, we do not express an audit opinion on these financial statements.

Emphasis of matter

Without qualifying our conclusion, we draw attention to Note 3 to the financial statements, which indicates that North American Steel Erectors Inc. incurred a net loss of \$4,971,654 during the year ended August 31, 2020 and as of that date, had an accumulated deficit of \$4,558,260 and its current liabilities exceeded its current assets by \$6,681,869. These conditions, along with other matters as set forth in Note 3, indicate the existence of a material uncertainty that may cast significant doubt about North American Steel Erectors Inc.'s ability to continue as a going concern.

Conclusion

Based on our review, nothing has come to our attention that causes us to believe that the financial statements do not present fairly, in all material respects, the financial position of North American Steel Erectors Inc. as at August 31, 2020, and results of its operations and cash flows for the year then ended in accordance with Canadian accounting standards for private enterprises.

Calgary, Canada
March 23, 2021

Ernst & Young LLP

Chartered Professional Accountants

North American Steel Erectors Inc.

Balance sheet

Unaudited – See independent practitioner's
review engagement report

As at August 31

	2020	2019
	\$	\$
Assets		
Current		
Cash	-	234,791
Accounts receivable <i>[notes 4 and 5]</i>	2,966,390	5,658,897
Goods and services tax recoverable	-	88,470
Prepaid expenses and deposits	-	7,500
Income taxes recoverable	-	41,058
Total current assets	2,966,390	6,030,716
Property and equipment <i>[note 7]</i>	1,461,964	1,128,707
Advance to 2127712 Alberta Ltd. <i>[note 6]</i>	856,814	546,620
	5,285,168	7,706,043
Liabilities and shareholders' equity (deficiency)		
Current		
Bank indebtedness <i>[note 8]</i>	1,064,430	-
Accounts payable and accrued liabilities <i>[note 9]</i>	2,287,474	6,221,427
Goods and services tax payable	419,325	-
Deferred revenue	20,984	-
Current portion of long-term debt <i>[note 10]</i>	73,097	61,992
Advances from shareholders <i>[note 11]</i>	634,862	774,147
Due to related individual <i>[note 12]</i>	59,262	59,262
Liability for contract loss <i>[note 16]</i>	2,670,225	-
Contingent liability <i>[note 8]</i>	2,418,600	-
Total current liabilities	9,648,259	7,116,828
Long-term debt <i>[note 10]</i>	195,079	175,731
Total liabilities	9,843,338	7,292,559
Commitments <i>[note 13]</i>		
Shareholders' (deficiency) equity		
Share capital <i>[note 14]</i>	90	90
(Deficit) retained earnings	(4,558,260)	413,394
Total shareholders' (deficiency) equity	(4,558,170)	413,484
	5,285,168	7,706,043

See accompanying notes

North American Steel Erectors Inc.

Statement of (loss) income and (deficit) retained earnings

Year ended August 31

Unaudited – See independent practitioner's
review engagement report

	2020	2019
	\$	\$
Sales		
Revenue	15,213,834	16,127,505
Cost of sales	11,900,712	13,435,311
Gross profit	<u>3,313,122</u>	<u>2,692,194</u>
Expenses		
General and administrative <i>[note 15]</i>	2,863,187	2,003,350
Amortization	341,992	194,466
Interest on long-term debt	6,611	5,947
	<u>3,211,790</u>	<u>2,203,763</u>
Income before the following	<u>101,332</u>	<u>488,431</u>
Contract loss <i>[note 16]</i>	2,670,225	-
Contingent loss <i>[note 8]</i>	2,418,600	-
Loss on foreign exchange	146	7,255
Interest	(34)	-
Gain on sale of property and equipment	(5,951)	-
Government assistance <i>[note 4]</i>	(10,000)	-
	<u>5,072,986</u>	<u>7,255</u>
Net (loss) income for the year	<u>(4,971,654)</u>	<u>481,176</u>
Retained earnings (deficit), beginning of year	413,394	(67,782)
Retained earnings (deficit), end of year	<u>(4,558,260)</u>	<u>413,394</u>

See accompanying notes

North American Steel Erectors Inc.

Statement of cash flows

Year ended August 31

Unaudited – See independent practitioner's
review engagement report

	2020	2019
	\$	\$
Operating activities		
Net (loss) income for the year	(4,971,654)	481,176
Add Items not involving cash		
Amortization	341,992	194,466
Contract loss	2,670,225	-
Contingent loss	2,418,600	-
Gain on sale of property and equipment	(5,951)	-
Government assistance	(10,000)	-
	<u>443,212</u>	<u>675,642</u>
Changes in non-cash working capital balances related to operations		
Accounts receivable	2,692,507	(2,715,087)
Goods and services tax recoverable	88,470	(88,470)
Prepaid expense	7,500	(7,500)
Income tax recoverable	41,058	
Accounts payable	(3,933,953)	3,884,845
Goods and services tax payable	419,325	(124,951)
Deferred revenue	20,984	-
	<u>(664,109)</u>	<u>948,837</u>
Cash (used in) provided by operating activities	<u>(220,897)</u>	<u>1,624,479</u>
Financing activities		
Proceeds from long-term debt	156,898	36,494
Repayment of long-term debt	(116,445)	(34,451)
Cash provided by financing activities	<u>40,453</u>	<u>2,043</u>
Investing activities		
Purchase of property and equipment	(723,423)	(365,003)
Proceeds on disposal of property and equipment	54,125	-
Advance to related company	(310,194)	(151,276)
Repayment of advances by shareholders	(139,285)	(87,695)
Cash used in investing activities	<u>(1,118,777)</u>	<u>(603,974)</u>
Net (decrease) increase in cash during the year	<u>(1,299,221)</u>	<u>1,022,548</u>
Cash (bank indebtedness), beginning of year	234,791	(787,757)
(Bank indebtedness) cash, end of year	<u>(1,064,430)</u>	<u>234,791</u>

See accompanying notes

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner's
review engagement report

1. Nature of business

North American Steel Erectors Inc. (the "Company") was incorporated under the Business Corporations Act of Alberta on January 18, 2016. Company's primary business activity is construction and engineering services.

2. Summary of significant accounting policies

Basis of presentation

The financial statements have been prepared in accordance with Canadian accounting standards for private enterprises ["ASPE"].

Financial instruments

The Company initially records a financial instrument at its fair value except for a related party transaction, which is recorded at the carrying or exchange amount depending on the circumstances.

The Company recognizes its transaction costs in net income in the period incurred. However, financial instruments that will not be subsequently measured at fair value are adjusted by the transaction costs that are directly attributable to their origination, issuance or assumption.

Subsequently, the Company measures financial instruments as follows:

- investments in equity instruments that are quoted in an active market at fair value;
- all other investments in equity instruments at cost less impairment;
- all other financial assets at amortized cost;
- financial liabilities at amortized cost; and
- derivative contracts, other than designated in a qualifying hedging relationship, at fair value.

Property and equipment

Property and equipment are recorded at cost less accumulated amortization. Amortization is provided on the following bases over the assets' estimated useful lives:

On the declining balance method:

Furniture and fixtures	20%
Machinery and equipment	20%
Computer equipment	55%
Vehicles	30%

On the straight-line method:

Leasehold improvements	over the lease term
------------------------	---------------------

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner's
review engagement report

Income taxes

The Company follows the taxes payable method whereby only the cost or benefit of current income taxes for the year is reported, as determined in accordance with the rules established by taxation authorities.

Revenue recognition

Revenue is recorded on contracts using the percentage of completion method. Under this method, revenue is recorded as costs are incurred, and includes gross profit on each contract. Percentage of completion is determined as total incurred costs over estimated total costs. Periodic reviews of estimated final revenues and cost during the terms of such contracts may result in revisions of contract estimates which have the effect of including on a prospective basis, cumulative adjustments necessary to reflect the results indicated by the revised estimates. Anticipated losses are recognized in earnings when they first become identifiable.

Deferred revenue represents the excess of billings to date over the amount of contract costs and profits recognized to date on the percentage of completion accounting method.

Long-lived assets

Long-lived assets, which comprise property and equipment, are reviewed for impairment if events or changes in circumstances indicate that the carrying value may not be recoverable. If the sum of the undiscounted future cash flows expected from use and residual value is less than the carrying amount, the long-lived asset is considered impaired. An impairment loss is measured as the amount by which the carrying value of the long-lived asset exceeds its fair value.

Government assistance

Amounts received or receivable resulting from government assistance programs are reflected as reductions of the cost of the assets or expenses to which they relate when the Company becomes eligible to accrue them, provided there is reasonable assurance the benefits will be realized.

3. Going concern

The financial statements of the Company have been prepared in accordance with Canadian accounting standards for private enterprises on a going concern basis, which presumes that the Company will be able to realize its assets and discharge its liabilities in the normal course of operations for the foreseeable future.

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner's
review engagement report

The Company has a current year loss of \$4,971,654 and has an accumulated deficit of \$4,558,260 as at August 31, 2020. As at August 31, 2020, the Company's current liabilities exceed its current assets by \$6,681,869 [2019 – \$1,086,112]. Further, the Company is in violation of all financial covenants under its non-revolving term loan facility and the revolving loan facility as well as a mortgage-backed loan that it has guaranteed for a related party. These factors create a material uncertainty about the use of the going concern assumption. The Company's continuation as a going concern is dependent upon its ability to obtain financing, the continued support of existing lenders and related parties and achieving profitable operations. As the outcomes of these matters cannot be predicted at this time, there exists material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern.

The accompanying financial statements do not give effect to any adjustments which could be necessary should the Company be unable to continue as a going concern and, therefore, be required to realize its assets and discharge its liabilities in other than the normal course of business and at amounts different than those reflected in the accompanying financial statements.

4. Government assistance

In response to the negative economic impact of COVID-19, the Government of Canada announced a number of measures aimed to minimize the impact of the virus. The Company has recorded the following government assistance:

[a] Canada Emergency Wage Subsidy

The Company qualified for wage subsidies totaling \$328,918 under the Canada Emergency Wage Subsidy Program. Under the terms of this program, companies that experienced declines in revenues meeting the eligibility criteria for each eligible period were entitled to receive wage subsidies for each employee based on the percentage of revenue decline up to maximum amounts specified for each period under the legislation. Of this amount, \$163,242 is included in accounts receivable as at August 31, 2020.

[b] Canada Emergency Business Account Loan

During the year, the Company received \$40,000 [2019 - \$nil] Canada Emergency Business Account ("CEBA") Term Loan that is non-interest bearing and which has no required principal repayments prior to December 31, 2022. Under the terms of the loan, if 75% of the principal is repaid prior to December 31, 2022, the remaining 25% principal will be forgiven. The loan has been recorded at the principal amount expected to be repaid and a benefit accrued for the amount expected to be forgiven.

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner's
review engagement report

5. Accounts receivable

	2020	2019
	\$	\$
Trade receivables	1,837,877	4,091,458
Holdback receivables	965,271	1,567,439
Government assistance receivable	163,242	-
	<u>2,966,390</u>	<u>5,658,897</u>

6. Advance to 2127712 Alberta Ltd.

Amounts owing from 2127712 Alberta Ltd. ("2127712 AB"), a company related by common ownership, are non-interest bearing with no set terms of repayment. The amount receivable is subject to measurement uncertainty as 2127712 AB has breached debt covenants on its mortgage-backed loan, as described in *note 8*.

7. Property and equipment

	2020		2019	
	Cost	Accumulated amortization	Net book value	Net book value
	\$	\$	\$	\$
Computers and printers	38,478	26,666	11,812	21,344
Furniture and equipment	19,570	4,693	14,877	18,265
Tools and equipment	1,092,610	489,764	602,846	595,432
Leasehold improvement	700,468	159,406	541,062	202,424
Vehicles	468,567	177,200	291,367	291,242
	<u>2,319,693</u>	<u>857,729</u>	<u>1,461,964</u>	<u>1,128,707</u>

8. Bank indebtedness

In the prior year, the Company entered into demand credit facility with a Canadian chartered bank for a maximum amount of \$500,000, bearing interest at the bank's prime rate plus 1.2%. The relevant prime rate at August 31, 2020 was 2.45% [2019 - 3.95%]. Subsequent to the fiscal year end, the maximum amount on this facility was increased to \$1,500,000. The credit facility is secured a general security agreement, a guarantee from 2127712 AB, and guarantees from the Company's shareholders. As at August 31, 2020, the Company had drawn \$1,109,950 [2019 - \$nil] on the facility. The terms of the banking agreement require the Company to comply with certain financial covenants. As at August 31, 2020, the Company was not in compliance with these requirements, and as a result, it is not known what actions, if any will be taken by the lender.

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner’s
review engagement report

The Company has also guaranteed the mortgage-backed loan of 2127712 AB with the same Canadian chartered bank. As at August 31, 2020 the amount owing on the related party loan is \$2,418,600 [2019 - \$2,523,000]. The loan bears interest at the bank’s variable interest rate plus 3.75% per annum, repayable in monthly instalments of \$8,700, and maturing on October 15, 2023. This loan requires both 2127712 AB and the Company to comply with certain financial covenants. As at August 31, 2020, both the Company and 2127712 AB were not in compliance with these covenants. The lender has not provided a waiver to the borrower for the breach of covenants as at August 31, 2020, and therefore, a contingent liability of \$2,418,600 has been accrued in these financial statements with respect to the guarantee. This represents the outstanding principal amount on the loan, and the ultimate payment of the contingent liability would be potentially offset from proceeds of sale of the secured building.

9. Accounts payable and accrued liabilities

Included in accounts payable and accrued liabilities is \$1,213,602 [2019 - \$368,669] of government remittances payable, including an estimate of penalties on unpaid payroll withholdings of \$122,000.

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner’s review engagement report

10. Long-term debt

	2020 \$	2019 \$
Ford Credit loan bearing interest at 1.99% per annum, with monthly installment of \$1,124. The loan matures on August 21, 2022 and is secured by a vehicle which has a carrying value of \$32,657.	26,412	39,241
Ford Credit loan bearing interest at 1.99% per annum, with monthly installment of \$1,124. The loan matures on August 21, 2022 and is secured by a vehicle which has a carrying value of \$32,657.	26,412	39,241
Ford Credit loan bearing interest at 3.49% per annum, with monthly installment of \$1,221. The loan matures in August 23, 2023 and is secured by a 2019 Ford Truck which has a carrying value of \$44,116.	41,647	54,600
Ford Credit loan bearing interest at 3.99% per annum, with monthly installment of \$672. The loan matures on August 24, 2024 and is secured by a Ford Truck which has a carrying value of \$44,123.	29,764	36,494
Ford Credit loan bearing interest at 7.04% per annum, with monthly installment of \$976. The loan matures on June 15, 2023 and is secured by a 2018 Ford Truck which has a carrying value of \$30,379.	29,977	-
Ford Credit loan bearing interest at 1.49% per annum, with monthly installment of \$1,478. The loan matures on July 24, 2025 and is secured by a 2020 Ford Truck which has a carrying value of \$92,332.	83,964	-
CEBA Loan. \$40,000 loan with \$10,000 forgivable portion, non-interest bearing with no payments required until December 31, 2022. [note 4[b]]	30,000	-
Ford Credit loan bearing interest at 2.99% per annum, with monthly installment of \$1,539. The loan matures in July 23, 2023 and is secured by a 2018 Ford Truck. This loan was fully repaid in the year.	-	68,147
	<u>268,176</u>	<u>237,723</u>
Less current portion of long-term debt	<u>73,097</u>	<u>61,992</u>
	<u>195,079</u>	<u>175,731</u>

Principal repayments on long-term debt due in next five years are as follows:

	\$
2021	73,097
2022	75,306
2023	78,455
2024	25,240
2025	<u>16,078</u>

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner's
review engagement report

11. Advances from shareholders

Advances from shareholders are non-interest bearing, unsecured and have no specified terms of repayment.

12. Due to related individual

Amounts due to a former shareholder of the Company are non-interest bearing with no set terms of repayment.

13. Commitments

Future annual minimum lease payments required under operating leases with 2127712 AB for the Company's premises through 2023 are as follows:

	<u>\$</u>
2021	90,000
2022	90,000
2023	75,000
	<u>255,000</u>

14. Capital stock

Authorized

100 Class A common voting shares.

Issued

90 Class A common voting shares

90 90

15. Related party transactions

The Company, in the normal course of operations, rented a storage and residential building, from 2127712 AB. These transactions are measured at the exchange amount. Rental payments included in general and administrative expenses during the year totaled \$90,000 [2019 – \$60,000].

16. Contract loss

During the year, the Company has accrued projected losses on an ongoing project totaling \$2,670,225. The losses were incurred predominantly due to significant additional costs incurred by the Company on this project in relation to engaging multiple companies for detailing work as the original entity contracted went bankrupt during the contract. The company is involved in litigation in an attempt to recover additional costs incurred.

North American Steel Erectors Inc.

Notes to financial statements

August 31, 2020

Unaudited – See independent practitioner’s
review engagement report

17. Financial instruments

Risk and uncertainties

The Company is exposed to risks of varying degrees of significance which could affect its ability to achieve its strategic objectives for growth. The main objectives of the Company’s risk management process are to ensure that risks are properly identified and the capital base is adequate in relation to these risks. The principal financial risks to which the Company is exposed are described below:

Credit risk

The Company is exposed to credit risk in the event of non-payment by its customers for their accounts receivable. The Company believes there is minimal risk associated with these amounts due to the size of the Company’s customers. As at August 31, 2020, two [2019 - two] customers comprised 89% [2019 - 100%] of trade receivables.

Liquidity risk

The Company is exposed to liquidity risk due to its negative working capital and accumulated deficit, as disclosed in *note 3*.


Interest rate risk

The Company is exposed to interest rate risk with respect to its long-term debt facilities which bear fixed rates of interest and with respect to its bank indebtedness which bear interest at a floating rate based on the bank prime rate.

18. Contingencies

The Company is currently involved in multiple litigations in which it is the plaintiff. Management is unable to estimate the likelihood of success as well as the amount of any likely recovery in these litigations.

This is EXHIBIT "N" referred to in the Affidavit of Stuart Detsky, sworn before me this 12^m day of August, 2022.

 NEDA FOROUGHIAN

A Commissioner for Oaths in and for the
Province of Ontario

The Project

4. Pursuant to Subcontract #463022 – OS, dated May 30, 2019, NASE was engaged by PCL Construction Management Inc. (“PCL”) to supply, fabricate and install structural steel on the 9th Ave Vehicle Bridge Replacement project (the “Project”), located in Calgary, Alberta (the “Subcontract”).
5. On or about April 4, 2019, NASE and Shield entered into Purchase Order Number 1906-002 (the “Purchase Order”), whereby Shield agreed to fabricate and supply the structural steel for the Project as described in Shield’s Quotation No. 6317, dated January 31, 2019 (the “Work”), for a stipulated price of \$3,720,348.03 (including GST) (the “Purchase Order Price”).
6. The Purchase Order incorporated the terms and conditions of the Subcontract by express reference and Shield was bound to adhere to those terms and conditions in the performance of the Work.

The Performance Bond

7. Pursuant to clause 4 of the special conditions of the Subcontract, Shield was obligated to provide a performance bond in favour of NASE, providing a penal sum equivalent to one-half of the Purchase Order Price.
8. On or about October 9, 2019, Wynward issued Performance Bond No. W086-102-001P/L-A (the “Bond”), with a penal limit of \$1,860,174.02 (the “Bond Amount”), which replaced Bond No. W0186-102-001P/L. Under the Bond, NASE was the named Obligee, Shield was the Principal, and Wynward was the Surety. NASE pleads and relies upon the terms and provisions of the Bond.
9. In the event that Shield defaulted on any of its obligations under the Purchase Order, NASE could deliver to Wynward a written statement that Shield was in such default and request that Wynward fulfill its obligations under the Bond (a “Demand”).
10. In advance of making a Demand on the Bond, NASE was, entirely at its own discretion, entitled to notify Wynward if Shield was, or was soon to be, in default and request that the parties attend a conference to communicate those concerns (a “Pre-Demand Conference”).
11. Upon receipt of a Demand, Wynward would be afforded a reasonable time within which to conduct an investigation of the Demand and determine its liability under the Bond.
12. Twenty-one days following receipt of the information required to conduct the investigation, Wynward was obligated to complete its investigation and advise NASE of its decision. Alternatively, if Wynward required more time to complete its investigation then, before the expiry of the aforementioned twenty-one days, it was obligated to write to NASE and set out the status of the investigation and provide an estimate of when the investigation would be complete.
13. While Wynward performed its investigation, NASE was entitled under the terms of the Bond to engage a replacement contractor or contractors to proceed with the Work for the benefit and protection of the Project and in order to mitigate its losses.
14. Where NASE engaged a replacement contractor, and subject to the conditions of the Bond, the reasonable costs incurred by NASE were to be reimbursed by Wynward.
15. Following an investigation, if the conditions precedent have been satisfied and Shield’s default confirmed, Wynward would then be obligated to promptly:

- (a) remedy the default;
- (b) complete the Purchase Order in accordance with its terms and conditions;
- (c) obtain a bid, or bids, for submission to NASE for completing the Purchase Order in accordance with its terms and conditions, and upon determination by NASE and Wynward of the lowest responsible bidder, arrange for a contract between such bidder and NASE, and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this option) sufficient funds to pay to complete Shield's obligations in accordance with the terms and conditions of the Purchase Order, and to pay those expenses incurred by NASE as a result of Shield's default relating directly to the performance of the Work under the Purchase Order, less the balance of the Purchase Order Price; or,
- (d) pay NASE the lesser of: (1) the Bond Amount; or, (2) NASE's proposed cost of completion less the balance of the Subcontract price.

Shield's Default and the Surety's Investigation

16. In order to ensure that Shield was meeting its obligations under the Purchase Order on or about October 31, 2019, among other times, NASE, PCL and Shield met and discussed Shield's progress. Part of that meeting included potential options that would ensure that Shield met the Purchase Order with respect to schedule, and conformed to the plans and specifications incorporated into the Purchase Order. Among the options discussed was the possibility that Shield engage a subcontractor to assist with portions of its Work.
17. Entirely of its own volition, Shield subcontracted with Supreme Steel LP to perform portions of the Work.
18. In the months subsequent to the October 31, 2019 meeting, it began to become clear to NASE that Shield was unable to adequately manage its obligations under the Purchase Order. As a result, on December 11, 2019, NASE issued a notice of non-compliance to Shield requesting that Shield take steps to avoid a default (the "Notice of Non-Compliance").
19. NASE received and reviewed Shield's response to the Notice of Non-Compliance upon returning from a shut down for the holiday season and, on or about January 2, 2020, NASE contacted a representative of Wynward regarding its continuing concerns related to Shield's performance.
20. Without any appreciable improvement following receipt of Shield's response to the Notice of Non-Compliance, on January 16, 2020, NASE informed Wynward in writing that Shield was in default under the Purchase Order, and that NASE had become aware that Shield was facing financial difficulties, and requested a Pre-Demand Conference. That Pre-Demand Conference was held on January 30, 2020, during which Shield confirmed that it was facing financial difficulties.
21. On or about February 20, 2020, Shield indicated that it would be laying off its employees and that its financial difficulties would prevent it from being able to continue with the Work.
22. Further, Shield's performance had not improved following the Pre-Demand Conference and, on or about February 27, 2020, NASE made a Demand to Wynward, declared that Shield was in default and requested that Wynward fulfill its obligations under the Bond (the "Bond Claim").

23. On or about March 2, 2020 to March 5, 2020, Shield made the final deliveries of materials and then subsequently abandoned the Project.
24. Following the Bond Claim, Wynward began an investigation, with the full cooperation of NASE.
25. Shield failed to satisfy its obligations under the Purchase Order. These failures include, but are not limited to, the following:
 - (a) Shield issued invoices that included, and Shield sought payment for, Work that was not complete;
 - (b) Shield failed to follow the change request requirements of the Purchase Order and failed to justify additional costs for which it was seeking payment, which in turn resulted in NASE being unable to obtain a corresponding approval from PCL;
 - (c) Shield failed or otherwise refused to perform the Work as outlined in the plans, specifications, or as otherwise contemplated within the Purchase Order;
 - (d) Shield performed the Work negligently and in breach of the express or implied terms of the Purchase Order;
 - (e) Shield failed or refused to adequately correct significant portions of its negligent and deficient Work, but even where some portions of the Work were corrected, Shield failed to do so in a timely manner;
 - (f) Shield failed to implement adequate quality assurance and quality control processes;
 - (g) Shield failed to staff and maintain a sufficient number of employees, agents or subcontractors to complete the Work properly, on time, and in accordance with the express or implied terms of the Purchase Order;
 - (h) Shield failed to staff appropriately skilled and competent employees, agents or subcontractors so that the Work could be completed properly, on time, and in accordance with the express or implied terms of the Subcontract;
 - (i) Shield failed to properly train the employees, agents or subcontractors that it did have to ensure they were adequately qualified to perform the Work;
 - (j) Shield failed to properly manage and supervise its employees, agents, or subcontractors;
 - (k) Shield failed to maintain a safe work site at all times in accordance with the express or implied terms of the Subcontract; and
 - (l) Shield failed to complete its scope of Work and abandoned the Purchase Order

(collectively, “Shield’s Defaults”).
26. By contrast, NASE has satisfied all of its obligations under the Purchase Order including, but not limited to, having made timely payment to Shield for all of its validly performed Work and properly submitted invoices.

27. At no point in time did NASE relieve Shield from its contractual obligations, or otherwise waive, acquiesce or abandon its right to demand that Shield perform its obligations under the Purchase Order.
28. On or about August 8, 2020, Wynward and NASE entered into a mitigation agreement (the “**Mitigation Agreement**”), whereby Wynward agreed that NASE could proceed with a remedial plan (the “**Remedial Plan**”) to complete the remaining work (the “**Remaining Work**”), as described in Schedules to the Mitigation Agreement. Pursuant to the Mitigation Agreement, Wynward agreed not to challenge or dispute the completion of the Remaining Work performed by NASE in accordance with the Remedial Plan.
29. Wynward and NASE entered into the Mitigation Agreement without prejudice to the rights and/or obligations of the parties under the Bond.
30. To date, Wynward has failed or otherwise refused to provide a decision with respect to the Bond Claim and, despite repeated demands, has further failed to fulfill its obligations under the Bond.

The Costs to Complete

31. At this time, and subject to uncovering further deficiencies in Shield’s work, the total cost to NASE to complete Shield’s Work will be not less than \$4,336,846.93.
32. NASE had already paid to Shield \$1,919,409.12 and, as a result, the balance of the contract price is \$1,800,938.91.
33. The resulting short fall from Shield’s Defaults and abandonment of the Purchase Order is, therefore, not less than \$2,535,908.02.

Claims against the Defendants

34. Shield has failed, refused, or been otherwise unable to perform its obligations under the Purchase Order. As a result of Shield’s Defaults, negligence, and breaches of the Purchase Order, NASE has suffered and continues to suffer damages and losses.
35. Wynward has failed to fulfill its obligations under the Bond. Specifically, Wynward has failed to take the steps necessary to see that Shield’s Defaults were corrected and the Work completed. By so doing, Wynward has exacerbated the delay on the Project to such an extent that NASE has had to incur significant additional costs and its losses have been substantially increased.
36. Further, Wynward has failed and or otherwise refused to render a decision regarding the Demand and has taken an unreasonable amount of time in so delaying.
37. As a result of both Shield’s Defaults or its negligence in carrying out the Work under the Purchase Order, and Wynward’s conduct and breaches of the Bond, NASE has suffered, and continues to suffer, serious damages including, but not limited to, losses from delay, additional costs, Work deficiencies, bank charges, interest costs, increased administrative and overhead costs, and costs to complete Shield’s unfinished Work. NASE currently estimates such losses, the particulars and total amount of which shall be proven at trial, to be not less than as follows:

- (a) Shortfall on costs to complete of \$2,535,908.02;

- (b) Additional manpower costs of \$385,948.00;
- (c) Delay and acceleration costs of \$648,000.00;
- (d) Liquidated damages losses of approximately \$104,000.00; and,
- (e) Such additional costs as may be proven at trial.

Remedy sought:

38. The Plaintiff, NASE, claims against the Defendant, Wynward:
- (a) a declaration that the Performance Bond remains in full force and effect; and,
 - (b) a declaration that NASE has discharged all preconditions for payment under the Performance Bond, or alternatively for relief from forfeiture in respect thereof.
39. The Plaintiff, NASE, claims against the Defendants, Wynward and Shield, jointly and severally:
- (a) judgment in the amount of \$3,673,856.02, or in the case of Wynward the Bond Amount;
 - (b) pre-judgment and post-judgment interest in accordance with the *Judgment Interest Act*, RSA 2000, c J-1;
 - (c) costs of this action on a solicitor-client basis or on such other basis as may be determined by this Honourable Court;
 - (d) such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

COURT FILE NO.: 2001-16202

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE CALGARY

PLAINTIFF NORTH AMERICAN STEEL ERECTORS INC.

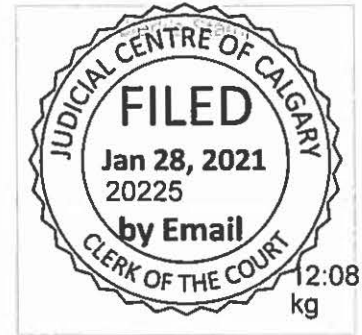
DEFENDANTS SHIELD INDUSTRIES LTD. and WYNWARD INSURANCE GROUP

DOCUMENT **STATEMENT OF DEFENCE**

PARTY FILING THIS DOCUMENT WYNWARD INSURANCE GROUP

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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 File: A163536

Attention: Kerry R. Powell



Statement of facts relied on:

1. The Defendant Wynward Insurance Group ("**Wynward**") adopts the terms emboldened in the Statement of Claim to name the parties and subjects in this matter, except where otherwise stated in the within Statement of Defence.
2. In respect of paragraph 3 of the Statement of Claim, Wynward is a company incorporated pursuant to the laws of the Province of Manitoba and licensed to carry on business as an insurance company and surety in the Province of Alberta.
3. Except as expressly admitted herein, Wynward denies each and every allegation contained in the Plaintiff's Statement of Claim. Wynward admits paragraphs 1, 2, 4, 5 and 8 of the Statement of Claim.
4. As admitted by NASE in paragraph 5 of the Statement of Claim, Wynward agrees that the terms and conditions of Shield's Quotation No. 6317 dated January 31, 2019 (the "**Quotation**") were incorporated into and formed part of the Purchase Order.

5. The Quotation provided, *inter alia*, that Shield did not assume or agree to any obligations or liabilities other than expressly provided for in the Quotation.
6. The Quotation did not include reference to the Subcontract and expressly excluded any losses, damages or costs suffered by NASE resulting from any defects in workmanship.
7. In specific reply to paragraph 6 of the Statement of Claim, Wynward denies that the terms and conditions of the Subcontract entered into by NASE and PCL on May 30, 2019, more than fifty days after the Purchase Order was entered into by NASE and Shield on April 4, 2019, apply to the Purchase Order.
8. As a result, an executed finalized copy of the Subcontract was not, and could not be, attached to the Purchase Order as required by the Purchase Order.
9. Further, in the alternative, the reference to the Subcontract in the Purchase Order does contain sufficient specificity to identify which terms of the Subcontract, if any, were to be incorporated into the Purchase Order.
10. As admitted by NASE in paragraph 8 of the Statement of Claim, the original Performance Bond No. W0186-102-001P/L issued by Wynward was replaced with Performance Bond No. W086-102-001P/L (the "**Bond**").
11. NASE did not pay, and has not paid, for the Bond and should not be entitled to rely upon or be entitled to the benefits of the Bond.
12. Further, Wynward denies that NASE has complied with the obligations required of it under the Bond.
13. For instance, NASE has failed to comply with the obligations required of it under the Bond by failing to provide timely notice to Wynward of changes to fundamental terms and conditions of the Purchase Order.
14. NASE unilaterally revised and extended the schedule for the completion of the Work eleven separate times (the "**Schedule Extensions**").
15. The Schedule Extensions resulted in the extension of the original delivery date of the fabricated steel from October 15, 2019 to March 15, 2020.
16. The last Schedule Extension was issued by NASE on January 13, 2020.
17. No notice whatsoever of any of the Schedule Extensions was provided to Wynward by NASE.
18. At no time was the consent of Wynward sought by or provided to NASE with respect to the Schedule Extensions.
19. Further, the delivery of the steel was significantly delayed and was not completely received until December 22, 2019 (the "**Late Delivery of Steel**"), more than two months after the original completion date of the Work on October 15, 2019.

20. When all of the steel finally did arrive on December 22, 2019, the steel had to undergo extensive testing and additional approvals in order to comply with the specifications due to the fact that the steel was foreign sourced and had an excessively high boron content.
21. No notice whatsoever of the Late Delivery of the Steel was provided to Wynward by NASE.
22. Further, NASE unilaterally revised the Specifications for the Work nine months after the commencement of the Work requiring Shield to perform additional Work and incur additional costs that were not included in the original Purchase Order (the "**Revised Specifications**").
23. No notice whatsoever of any of the Revised Specifications was provided to Wynward by NASE.
24. At no time was the consent of Wynward sought by or provided to NASE with respect to the Revised Specifications.
25. Further, NASE has failed to comply with the obligations required of it under the Bond by failing to provide timely notice to Wynward of Shield's default under the Purchase Order.
26. On October 31, 2019 NASE and PCL met with Shield to express serious concerns about Shield's performance of the Work to date and required that Shield subcontract out a portion of the steel fabrication Work to Supreme Steel Ltd. ("**Supreme**"), a third party steel fabricator.
27. Based on discussions at the October 31, 2010 meeting, a portion of the steel fabrication Work was subsequently subcontracted to Supreme by Shield at NASE's instruction and with its full knowledge and approval (the "**Subcontracted Work**").
28. No notice whatsoever of the Subcontracted Work was provided to Wynward by NASE.
29. At no time was the consent of Wynward sought by or provided to NASE with respect to the Subcontracted Work.
30. There were problems with the completion of the Subcontracted Work by Supreme which required additional rework and costs.
31. As admitted by NASE in paragraph 18 of the Statement of Claim, in the months subsequent to the October 31, 2019 meeting, it became clear to NASE that Shield was unable to adequately manage its obligations under the Purchase Order.
32. Instead of noting Shield in default and providing notice to Wynward under the Bond based on Shield's inability to adequately manage its obligations under the Purchase Order, NASE required Shield to hire additional welding labour in order to accelerate the performance of the Work.
33. As further admitted by NASE in paragraph 18 of the Statement of Claim, on December 11, 2019, a formal Notice of Non-Conformance was issued to Shield by NASE which confirmed the serious concerns that NASE had with Shield's performance.

34. Contrary to the allegation contained in paragraph 18 of the Statement of Claim, the Notice of Non-Compliance did not mention or refer to Shield taking steps to avoid a default, but rather mentioned that the steps needed to be taken by Shield in to avoid further issues on the Project.
35. A copy of the formal Notice of Non-Conformance issued by NASE on December 11, 2019 was not provided to Wynward by NASE nor was Wynward advised of the issuance of the Notice of Non-Compliance.
36. On December 16, 2019 Shield sent a letter to NASE objecting to NASE's allegations as set out in the Notice of Non-Conformance ("**Shield's Response**"). A copy of Shield's Response was not provided to Wynward by either Shield or NASE.
37. Shield contended in its response that it had completed seventy-seven percent of its Work but had only been paid thirty-three percent of the value of the Purchase Order.
38. On or about January 16, 2020, NASE sent a letter to Wynward to advise Wynward of the problems being experienced with Shield's performance and provided Wynward with notice of a potential claim under the Bond (the "**Initial Notice**").
39. Shield responded to the Initial Notice on the same day denying that it was in default of its obligations under the Purchase Order and provided details of non-payment by NASE and other factors that had made Shield's performance of the Work more arduous.
40. The Initial Notice was provided to Wynward by NASE more than a month after the Notice of Non-Compliance had been provided to Shield by Wynward and more than three months after the original completion date of October 15, 2019 as specified in the Purchase Order had been revised by NASE without the knowledge or the consent of Wynward.
41. The Initial Notice was the first time that Wynward had been formally advised of any issues in relation to the performance of the Work by Shield.
42. On or about January 20, 2020, a Pre-Demand Conference was held between representatives of NASE, Shield and Wynward (the "**Pre-Demand Conference**").
43. At the Pre-Demand Conference, based on representations made by NASE and Shield as to the status of the Work, it was decided by NASE and Shield that Shield would continue to complete the Work.
44. No independent investigation was conducted by Wynward at this time based on the representations of both NASE and Shield as to the status of the Work.
45. Accordingly, the Initial Notice of a potential claim provided to Wynward by NASE was effectively withdrawn by NASE.
46. Based on the absence of a formal default by Shield, Wynward did not further investigate any of the issues raised in the Initial Notice or object to Shield continuing with the Work.
47. Subsequently, NASE provided Shield with a payment of \$350,000.00 in order to provide Shield with funds to complete the Work.

48. There was no further communication between NASE and Wynward, or Shield and Wynward, until over six weeks later when on February 27, 2020 NASE formally declared that Shield was in default of its obligations under the Purchase Order and called upon Wynward to respond to NASE's claim under the Performance Bond (the "Notice of Default").
49. The Notice of Default contended that Shield was at that time four months behind in the completion of its Work.
50. The Notice of Default was provided to Wynward considerably after NASE knew in the months following October 31, 2019, as admitted in paragraph 18 of the Statement of Claim, that Shield was unable to adequately manage its obligations under the Purchase Order.
51. NASE's failure to provide timely notice of Shield's default has caused significant irreparable prejudice to Wynward by limiting Wynward's ability to address, remedy and mitigate the impact of Shield's default.
52. NASE's failure to provide timely notice of Shield's default also minimized Wynward's ability to address, remedy and mitigate its obligations under Labour and Material Payment Bond W086-102-001 P/L (the "L&M Bond") under which Wynward has paid \$1,860,174.02 into the Court of Queen's Bench for the payment of unpaid suppliers and subcontractors of Shield (the "Interpleader Proceedings").
53. Upon receipt of the Notice of Default, Wynward took steps to investigate the claim made by NASE in the Notice of Default, including the retention of a forensic engineering firm to sample the quality of the steel used and welding performed by Shield.
54. Wynward's expert was to provide advice with respect to the welds undertaken by Shield in its performance of the Work given that the steel was showing significant signs of cracking where the welds had been made.
55. After repeated requests, samples of the steel and welds were obtained from NASE.
56. The results of these investigations on Wynward's behalf were shared with NASE.
57. At all times, Wynward took reasonable and appropriate steps to advise NASE of its investigation and the need for additional information from NASE in order to conduct and complete its investigation.
58. At all times, the steps taken by Wynward were reasonable and appropriate in the circumstances, and were carried out in a timely manner even in the face of the global pandemic and the fact that Shield's project records or personnel were not available to Wynward to assist it in conducting its investigation.
59. On March 2, 2020, after the Notice of Default had been issued by NASE to Wynward, NASE unilaterally, and without the involvement of Wynward, entered into an agreement with Shield for the purchase of certain fabricated steel components from Shield (the "Material Purchase Arrangement").

60. Pursuant to the Material Purchase Arrangement, NASE paid directly to Shield a lump sum of \$200,000.00.
61. The Material Purchase Arrangement was confirmed in writing by an agreement between NASE and Shield dated March 2, 2020 (the "**Bill of Sale**").
62. The Bill of Sale included an acknowledgement that expressly provided that the amount being paid by NASE was a "final lump sum" and included "any and all costs to repair or replace any deficiencies in the fabrication of fully or partially completed work, including but not limited to transportation, galvanizing, painting, re-work and project delay costs".
63. Wynward denies that NASE is entitled to the remedies listed in paragraph 38 of the Statement of Claim.
64. Wynward admits that on or about August 8, 2020 NASE and Wynward entered into a mitigation agreement whereby NASE was entitled to proceed to complete the Work in an effort to mitigate the impact of Shield's alleged default (the "**Mitigation Agreement**"). Wynward had offered to enter in to the Mitigation Agreement with NASE on June 17, 2020
65. The Mitigation Agreement provided that neither Wynward or NASE relinquished any rights or remedies other than as stated in the Mitigation Agreement. Wynward did not relinquish any defences that it was entitled to under the Performance Bond or waive any obligations that NASE was obligated to perform under the Performance Bond or the Purchase Order.
66. The Purchase Order stated the price for the Work as \$3,720,348.03 including GST. The Material Purchase Arrangement as confirmed by the Bill of Sale stated that the amount paid to Shield to March 2, 2020 was \$1,741,926.27 leaving the sum of \$1,978,421.76 available to NASE to complete any deficiencies in the Work (the "**Balance of Contract Funds**").
67. The penal sum of the Bond is \$1,860,174.02 (the "**Penal Sum**").
68. On March 17, 2020 NASE advised Wynward that the costs to complete the Work would result in a shortfall to NASE of \$1,751,860.23, an amount less than the penal sum of the Bond and within the Balance of Contract Funds available to NASE to complete the Work.
69. The costs to complete the Work being claimed by NASE in its Statement of Claim are \$3,673,856.02, more than double NASE's previous advice.
70. NASE has neglected, failed or refused to use the Balance of Contract Funds appropriately and efficiently to complete the Work and mitigate any losses, damages or costs.
71. Wynward denies that NASE has suffered the losses, damages, or costs as alleged, or at all.
72. If NASE has suffered or will suffer any losses, damages or costs, which is not admitted but denied, NASE's losses, damages or costse as claimed are, in any event, excessive, too remote, are contrived to exceed the Penal Sum, and not recoverable under the terms of the Performance Bond, or the Purchase Order.

Any matters that defeat the claim of the Plaintiff:

73. NASE neglected, failed or refused to pay for the Bond and should not be entitled to rely upon or be entitled to the benefits of the Bond
74. The Purchase Order expressly precluded the recovery by NASE of any losses, damages or costs that may have been suffered by NASE as a result of any defects in Shield's Work.
75. The Subcontract had not been entered into at the time it was purported to have been incorporated into the Purchase Order and was not attached to the Purchase Order.
76. Alternatively, the reference in the Purchase Order to the Subcontract did not contain sufficient specificity to identify which terms of the Subcontract, if any, were to be incorporated into the Purchase Order.
77. NASE did not provide Wynward with the Notice of Default within a period of time that allowed Wynward with a reasonable opportunity to address, remedy and mitigate the impact of Shield's default and has caused irreparable prejudice to Wynward.
78. NASE neglected, failed or refused to perform its own obligations and comply with the terms of the Purchase Order, or the Bond, properly or at all, the particulars of which are known to NASE and include, but are not limited to:
 - (a) NASE neglected, failed or refused to make payments to Shield in accordance with and as required by the terms of the Purchase Order;
 - (b) NASE neglected, failed or refused to deal with issues causing delay in Shield's performance of the Purchase Order that resulted from factors beyond Shield's control or scope of Work;
 - (c) NASE unilaterally, and without the knowledge or consent of Wynward, revised the completion date of the Work on eleven different occasions such that the original completion date under the Purchase Order of October 15, 2019 was ultimately changed to March 15, 2020;
 - (d) NASE unilaterally, and without the knowledge or consent of Wynward, changed the specifications relating to the Work nine months after the Work had been commenced by Shield causing Shield to undertake additional Work, expense and delay;
 - (e) Pursuant to the Final Purchase Arrangement as confirmed by the Bill of Sale, NASE effectively, for consideration, waived any entitlement, if any, to recover any costs relating to any defects in the workmanship or materials provided by Shield; and
 - (f) NASE neglected, failed or refused to use the Contract Balance appropriately and efficiently to complete the Work.
79. Obligations arise on the part of Wynward under the Bond, if at all, only in the event that Shield is in default under the Purchase Order, Shield is properly noted in default under the terms of the Purchase Order and NASE has met all of its obligations under the Purchase

Order. These conditions precedent have not been met and consequently, no obligations arise or can arise on the part of Wynward under the Bond.

80. Further, or in the alternative, if any such loss, damage or cost was incurred, which is not admitted but denied, then such loss, damage or cost arises from unknown, unanticipated or undisclosed conditions, material imperfections, design errors, onerous or impossible specifications, and are not the responsibility or fault of Shield under the Purchase Order, or Wynward under the Bond.
81. Further, or in the alternative, if any such losses, damages or costs were incurred, which is not admitted but denied, then such losses, damages or costs result from the breach of contract, negligent acts or omissions of parties other than Shield, including NASE, and are not the responsibility or fault of Shield under the Purchase Order, or Wynward under the Bond.
82. Further, or in the alternative, if any such losses, damages, or costs were incurred, which is not admitted but denied, then the Balance of Contract Funds are well in excess of any reasonable and proper losses, damages or costs incurred or that might be incurred in completing or correcting any of the Work.
83. If NASE has suffered or will suffer any losses, damages or costs, which is not admitted but denied, NASE's losses, damages or costs claimed are, in any event, excessive and too remote. NASE's claim for delay damages, acceleration, and liquidated damages are not compensable by the terms of the Purchase Order, or the Bond.
84. Further, or in the alternative, if NASE has suffered or will suffer any losses, damages or costs, which is not admitted but denied, NASE has failed to take any or, alternatively, proper steps to mitigate such losses, damages or costs.
85. Further, or in the alternative, if NASE has suffered or will suffer any losses, damages or costs, which are not admitted but denied, all or a portion of such losses, damages or costs improperly relate to the payment by NASE of suppliers and subcontractors who have claimed under the L&M Bond and will be, or have been, paid under the Interpleader Proceedings.
86. Further, or in the alternative, the amounts sought by NASE are overstated.

Remedy sought:

87. A denial of the declarations sought by the Plaintiff;
88. Dismissal of the Plaintiff's claim for judgement;
89. Dismissal of the Plaintiff's claim for interest;
90. Costs of this action on a solicitor-client basis or on such other basis as may be determined by this Honourable Court; and
91. Such further and other relief as this Honourable Court may deem just.

COURT FILE NUMBER **2001-16202**
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF **NORTH AMERICAN STEEL ERECTORS INC.**
DEFENDANTS **SHIELD INDUSTRIES LTD. and WYNWARD
INSURANCE GROUP**
DOCUMENT **REPLY TO DEFENCE**



inv 204877
11.46

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File No. 446270-000001

This is the Reply of the Plaintiff, North American Steel Erectors Inc., to the Statement of Defence, filed by Wynward Insurance Group, Defendant, on January 28, 2021

Statement of facts relied on:

1. The Plaintiff, North American Steel Erectors Inc., denies each and every allegation in the Statement of Defence of Wynward Insurance Group, filed January 28, 2021 (the "Statement of Defence") and puts the Defendant to the strict proof thereof.
2. The Plaintiff, North American Steel Erectors Inc. repeats and relies on the allegations set out in its Statement of Claim, filed December 9, 2020 (the "Statement of Claim")
3. All capitalized terms used in this Reply have the same meanings as set out in the Statement of Claim, unless otherwise indicated herein.
4. In reply to paragraphs 4, 5, and 6, NASE states and the fact is, that on January 31, 2019, Shield provided a quote to NASE (the "Quotation"). Upon receipt of the Quotation, and in the context of the Subcontract, NASE issued the Purchase Order. On April 4, 2019, NASE provided Shield with the Purchase Order, which clearly detailed the Work, the Purchase Order Price, and the terms

and conditions of the Purchase Order. On the date that it was issued to Shield, Shield accepted the Purchase Order. The Work was done pursuant to both the Purchase Order and the Subcontract.

5. In reply to paragraphs 7, 8, 9, 75, and 76 of the Statement of Defence, NASE states and the fact is that the Subcontract was incorporated by reference and by attachment to the Purchase Order. Shield's Work was done pursuant to both the Purchase Order and the Subcontract.
6. In reply to paragraph 10 of the Statement of Defence, NASE states and the fact is that the Bond Number is "W086-102-001P/L-A", as stated in the Statement of Claim, not "W086-102-001P/L", as stated in the Statement of Defence.
7. In reply to paragraphs 11, 12, and 73 of the Statement of Defence, NASE states and the fact is that NASE paid for the Bond, has complied with its obligations under the Bond, and is entitled to rely upon the Bond. As detailed in the Statement of Claim, it is Wynward that has failed to comply with its obligations under the Bond.
8. In reply to paragraphs 13 through 18 of the Statement of Defence, NASE states and the fact is that while Shield breached the Purchase Order, resulting in significant delay, there were no changes to any fundamental terms or conditions of the Purchase Order. NASE denies unilaterally revising or extending the schedule for completion of the Work, as alleged or at all. The fact is that Shield's delay breached the Purchase Order, and the schedule agreed to therein. NASE acted reasonably in response to Shield's breaches, insisted that Shield's delay was not agreed to, and never waived its rights in relation to the Purchase Order or the Bond. NASE denies that Shield's delay is attributable to or acquiesced to by NASE, and puts Wynward to the strict proof of any allegations to the contrary. Wynward was aware of Shield's delay, and specifically involved in meetings between PCL, NASE, and Shield in relation to Shield's delay.
9. In reply to paragraphs 19 and 21 of the Statement of Defence, NASE states and the fact is that Shield never completed its delivery of steel obligations under the Purchase Order.
10. In reply to paragraph 20 of the Statement of Defence, NASE states and the fact is that all steel testing was completed prior to delivery and compliant with agreed to specifications.
11. NASE denies the allegations of fact stated in paragraphs 22 through 24 and puts Wynward to the strict proof thereof. The explicit and implicit specifications of the Work did not change. Accordingly, no notice of any revised specifications was necessary or possible.
12. In reply to paragraphs 26 to 31 of the Statement of Defence, NASE states and the fact is that PCL, NASE, and Shield met to discuss Shield's delay and default under the Purchase Order, and to

discuss ways in which the issues and damages accruing as a result of Shield's breaches of the Purchase Order and delay could be mitigated. NASE never required Shield to subcontract any portion of the Work, nor did NASE direct the means and methods that Shield was to accomplish the Work.

13. In reply to paragraphs 33 through 39 of the Statement of Defence, NASE states and the fact is that NASE complied with its obligations under the Purchase Order, and the Bond, making all reasonable efforts to mitigate its potential and actual damages, and losses in its dealings with both Shield and Wynward. While Shield has suggested that as of December 16, 2019 seventy-seven percent (77%) of the Work was complete, the fact is that Shield had only completed and delivered sixteen percent (16%) of the Work. NASE paid all invoices for Work completed that also complied with the mandatory invoicing requirements of the Purchase Order.
14. In reply to paragraphs 42 through 45 of the Statement of Defence, NASE states and the fact is that Wynward raised no concerns with NASE's actions in relation to the Bond at the January 20, 2020 meeting or otherwise. Subsequent to that meeting or otherwise, NASE denies waiving any rights under the Bond or implicitly or explicitly withdrawing the Initial Notice or its claims under the Bond. NASE puts Wynward to the strict proof of any allegations to the contrary.
15. In reply to paragraph 46 of the Statement of Defence, NASE states and the fact is that NASE is unaware of what investigative efforts were made by Wynward, but denies that NASE was obligated to note Shield in default prior to when it did.
16. In reply to paragraph 47 of the Statement of Defence, NASE states and the fact is that the \$350,000 payment from NASE to Shield was expressly consented to by Wynward.
17. In reply to paragraph 48 of the Statement of Defence, NASE states and the fact is that Wynward was in regular communication with both NASE and Shield throughout January and February 2020 and leading up to NASE's formal issuance of its Notice of Default upon Shield.
18. In reply to paragraph 52 of the Statement of Defence, NASE states and the fact is that NASE complied with its obligations under the Bond, provided timely notice to Wynward, and denies that Wynward has suffered significant irreparable prejudice, as alleged or at all in relation to any notice that NASE provided. NASE puts Wynward to the strict proof of any allegation to the contrary.
19. In reply to paragraphs 53 through 56 of the Statement of Defence, NASE states and the fact is that none of its actions affected Wynward's ability to address, remedy, or mitigate its obligations under the Bond. NASE denies that repeated requests of it were made or necessary to obtain samples. In contrast to the allegations made in the referenced paragraphs, NASE provided Wynward's experts

prompt access to the site and Shield's work. NASE puts the Defendant Wynward to the strict proof of any allegations to the contrary.

20. In reply to paragraphs 57 and 58 of the Statement of Defence, NASE states and the fact is that NASE has no knowledge of Wynward's internal investigative efforts, which are irrelevant to Wynward's refusal to comply with its obligations under the Bond.
21. In reply to paragraphs 59 through 62 of the Statement of Defence, NASE states and the fact is that the Bill of Sale does not preclude, limit, or estop NASE from its entitlements in this Action and the Bond.
22. In reply to paragraphs 64 through 69 of the Statement of Defence NASE states and the fact is that the Balance of the Contract Funds, as that term is defined in the Statement of Defence will not make NASE whole, and does not preclude, limit, or estop NASE from its entitlements in this Action and the Bond. NASE has suffered the damages it has plead in the Statement of Claim, and is entitled to the Bond Amount.
23. In reply to paragraph 74 of the Statement of Defence, NASE disagrees that the Purchase Order or any of its terms preclude recovery from the Defendants or either of them.

Any matters that defeat the claim/defence of the defendant:

24. In reply to paragraph 25, 28, 29, 31, 32, 35, 36, 40, 41, 63, 77, 78, 79, 80, and 81 of the Statement of Defence, and the Statement of Defence generally, NASE states and the fact is that NASE complied with the terms of the Bond and is entitled to the remedies sought through this Action, as against the Defendant, Wynward. NASE puts Wynward to the strict proof of any allegation to the contrary.
25. In reply to paragraphs 82 through 86 of the Statement of Defence, NASE states and the fact is that the losses, damages, and costs incurred and suffered by NASE as a result of the actions of the Defendants exceed any amounts owed under the Subcontract and will exceed the balance of the of the penal limit under the Bond. NASE has taken all reasonable steps and fulfilled its obligations to mitigate its losses, damages, and costs incurred and suffered. The damages suffered by NASE and plead are reasonably foreseeable, calculated correctly, proximate, compensable, conservatively stated, and specifically contemplated by the Bond. The losses, damages, and costs suffered by NASE do not relate to the suppliers and subcontractors who have claimed under the L&M Bond, as that term is defined in the Statement of Defence.

Remedy sought:

26. The Plaintiff, NASE, reiterates and incorporates herein the relief sought in its Statement of Claim, at paragraphs 38 and 39.

NOTE

This reply may only make admissions or respond to matters raised for the first time in the statement of defence (Rules 3.33(2)(b) and 13.10).