

CANADIAN STANDARD FORM OF CONSTRUCTION CONTRACT

For use ONLY when the work is being done for a

STIPULATED SUM

ALSO

GENERAL CONDITIONS GOVERNING SAME

BY AND BETWEEN

TOWN OF PELHAM

OWNER

J & H CONSTRUCTION COMPANY

CONTRACTOR

PROJECT ADDITIONS TO MUNICIPAL BUILDING

DATE OCTOBER 30, 1972

FRASER & MACIE ARCHITECT

Registered under the Copyright Act
CANADA
1964

Approved by

THE ROYAL ARCHITECTURAL INSTITUTE OF CANADA
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OTTAWA 4, CANADA

THE CANADIAN CONSTRUCTION ASSOCIATION
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OTTAWA 4, CANADA

and prepared in consultation with

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CANADIAN STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

(For use when a stipulated sum forms the basis of payment, and to
be used only with the General Conditions of the Contract)

THIS AGREEMENT made in duplicate the Thirtieth day of October
in the year Nineteen hundred and seventy-two by and between
The Corporation of the Town of Pelham
herein (and in the General Conditions) called the "Owner",
and
J & H Construction Company

herein (and in the General Conditions) called the "Contractor",

WITNESSETH: That the Owner and the Contractor undertake and agree as follows:

ARTICLE A-1 The Contractor shall:

- (a) provide all the materials and perform all the work shown on the Drawings and described in the Specifications titled
(here insert the caption descriptive of the work as used in the Specifications, and upon the Drawings)

Additions to Municipal Building, Pelham, Ontario
(Part A)

which have been signed in duplicate by both the parties, and which were prepared by

Fraser & Macie Architects

acting as, and herein (and in the General Conditions) titled, the "Architect", and

- (b) do and fulfill everything indicated by this Agreement, and

- (c) complete substantially as certified by the Architect, all the work by the Twenty-eighth
day of February, 1973.

(here insert the date of completion, and stipulations as to liquidated damages, and bonus if any)

ARTICLE A-3

(a) The Owner shall:—

- (1) pay the Contractor in lawful money of Canada for the work aforesaid Fifty-Nine
Thousand, Nine Hundred and Ninety-Five -----

----- and 00/100 dollars (\$ 59,995.00)
100

subject to additions and deductions as provided in the General Conditions of the Contract;*

- (2) pay on account thereof upon the Architect's certificate, and within the time stipulated in Article 28 of the General Conditions of the Contract, eighty-five percent (85 %) of the value, proportionate to the amount of the Contract, of the work completed and materials delivered at the site up to and including the last day of the month preceding, as invoiced by the Contractor and approved by the Architect, less the aggregate of previous payments; and
- (3) on completion of the entire work and one day after all lien rights have expired, pay the balance owing under the Contract.
- (b) Notwithstanding the provisions contained in sub-section (2) above:—
- (1) if on account of climatic or other conditions reasonably beyond the Contractor's control there are items of work that cannot readily be completed, the payment in full for the work which has been completed shall not be delayed on account thereof, but the Owner may withhold a sufficient and reasonable sum, as determined by the Architect, until the uncompleted work is finished and such sum as will adequately protect the Owner against liens; and
- (2)**where the Architect has issued a certificate confirming that a subcontract made by the Contractor in respect to a portion of the work covered by this Contract has been completed to his satisfaction, the Owner shall, one day after all lien rights under such subcontract have expired but not otherwise, pay to the Contractor, out of the monies then being retained by the Owner under this Agreement, the balance of the fixed price of such subcontract as certified by the Architect or if there is no specific subcontract price, the balance of the value of the work or materials incorporated in the said building under such subcontract as certified by the Architect.

ARTICLE A-4

The "General Conditions of the Contract" hereto annexed and signed in duplicate by both parties, and the aforesaid Specifications and Drawings, are all to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and it shall enure to the benefit of and be binding upon them and their successors, executors, administrators and, subject to Article 41 of the General Conditions of the Contract, their assigns.

*Include any special provisions with respect to taxes or their rebate in the Supplementary General Conditions.

**This paragraph will apply where the relevant lien legislation permits release of holdback on completed subcontracts.

THE GENERAL CONDITIONS OF THE CONTRACT FOR STIPULATED SUM CONTRACT

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ARTICLE 1. Definitions.

(a) The contract documents shall consist of the signed Agreement, the General Conditions of the Contract, the Drawings, and the Specifications, including all modifications thereof incorporated in any of the documents before their execution.

(b) The Owner, the Contractor and the Architect are those named as such in the Agreement.

(c) The term "Subcontractor" includes only a person, firm or corporation having a contract for the execution of a part or parts of the work included in the Contract, and a person, firm or corporation furnishing material called for in the Contract and worked to a special design according to the Drawings or Specifications, but does not include one who merely furnishes material not so worked.

(d) The term "work" includes all labour, materials and services required, as shown or described in the contract documents, supplied and installed or erected complete at the place of building.

(e) The term "Other Contractor" means any person or firm or corporation employed by or having a contract directly or indirectly with the Owner otherwise than through the Contractor.

(f) The place of building is the designated site or location of the completed work.

(g) The law of the place of building shall govern the work.

ARTICLE 2. Documents.

The contract documents shall be signed in duplicate by the Owner and Contractor. The contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labour and materials reasonably necessary for the proper execution of the work. It is not intended however, that materials or work not covered by or properly inferable from any heading, section or trade in the Specifications shall be supplied unless shown on the Drawings. Descriptions of materials or work in words which so applied have well known technical or trade meanings shall be held to refer to such recognized standards. Should the Specifications conflict with the Drawings, the Specifications shall govern. In the case of discrepancies between Drawings, those of larger scale, or if the scales are the same, those of later date shall govern. All Drawings and Specifications shall be interpreted in conformity with the Agreement and these General Conditions which shall govern.

Contractor hold such decisions to be at variance with the contract documents or to involve changes in work already built, fixed, ordered or in hand in excess of the Contract, or to be given in error, he shall notify the Architect before proceeding to carry them out. In the event of the Architect and the Contractor failing to agree as to such excess or error and the Architect deciding to carry out such disputed work, the Contractor shall act according to such decision. Any question of excess of cost due to the aforesaid cause may be decided in the manner hereinafter provided in Article 44.

ARTICLE 12. Superintendence.

The Contractor shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Architect. The superintendent shall not be changed except with the consent of the Architect, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his employ. The superintendent shall represent the Contractor in his absence and directions on minor matters given to him shall be held to be given to the Contractor. Important directions shall be given in writing to the Contractor. The Contractor shall give efficient supervision to the work using his best skill and attention.

ARTICLE 13. Materials, Appliances, Employees.

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labour, water, tools, equipment, light and power necessary for the execution of the work. Unless otherwise specified, all materials shall be new. Both workmanship and materials shall be of the quality specified. The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

ARTICLE 14. Inspection of Work.

The Owner or the Architect on his behalf and their representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection. If the Specifications, the Architect's instructions, the laws, or the ordinances of any public authority require any work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for inspection, and if the inspection is by an authority other than the Architect, of the date and time fixed for such inspection. Inspections by the Architect shall be promptly made. If any such work should be covered up without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination and made good at the Contractor's expense. Re-examination of questioned work may be ordered by the Architect. If such work be found in accordance with the Contract, the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract, through the fault of the Contractor, the Contractor shall pay such cost.

ARTICLE 15. Rejected Work.

The Contractor shall promptly remove from the premises any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or other act of the Contractor, which has been condemned by the Architect as failing to conform to the contract documents, whether incorporated in the work or not. The Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of Other Contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned materials or work within the time fixed by written notice, the Owner may remove them and may store such materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within Five (5) days thereafter, the Owner may, upon Ten (10) days written notice sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

ARTICLE 16. Deductions for Uncorrected Work.

If in the opinion of the Architect it is not expedient to correct defective work or work not done in accordance with the contract documents, the Owner may deduct from the contract price the difference in value between the work as done and that called for by the Contract, the amount of which shall be determined in the first instance by the Architect.

In the event of a loss, the Contractor shall act on behalf of the Owner and himself for the purpose of adjusting the amount of such loss with the Insurer. On completion of such adjustment the Contractor shall repair the damage and complete the work, and shall be entitled to receive from the Owner (in addition to any sum due under the Contract) the amount at which the Owner's interest has been appraised in the adjustment, to be paid as the work of restoration proceeds and in accordance with the Architect's certificates. Damage shall not affect the rights and obligations of either party under the Contract except as aforesaid, and except that the Contractor shall be entitled to such reasonable extension of time for completion of the work as the Architect may decide.

In the event that the Owner occupies the building or any part thereof prior to the date of substantial completion as certified by the Architect, any increase in cost of insurance arising out of such occupancy shall be at the Owner's expense.

Prior to commencement of any work hereunder, the Contractor shall file with the Owner a copy of the insurance policy. All such insurance shall be maintained continuously until a date Ten (10) days after issue by the Architect of certificate of substantial completion and readiness for occupancy, after which date the Owner shall assume responsibility for insuring the whole work.

ARTICLE 22. Performance Bond.

The Owner shall have the right to require the Contractor to furnish a bond covering the faithful performance of the Contract including the corrections after completion provided for in Article 17, and the payment of all obligations arising under the Contract, in such form as the Architect may prescribe and with such sureties as he may approve. If such bond is required by written instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

ARTICLE 23. Cash Allowances.

The Contractor shall include in the contract sum all cash allowances mentioned in the Specifications, which allowances shall be expended in whole or in part as the Architect shall direct, the amount of the contract sum being adjusted in conformity therewith. The Contract sum includes such sums for expenses and profit on account of such cash allowances as the Contractor requires excepting those allowances included for contingency purposes.

ARTICLE 24. Subsurface Conditions.

In the event that during the execution of the work subsurface conditions at the site are found to differ materially from those indicated in the contract documents and soil reports, or otherwise represented by the Owner or Architect to the Contractor then the Contractor shall promptly notify the Architect in writing of such conditions. The Architect shall promptly investigate such conditions and if he finds that they differ materially and will result in an increase or decrease in the cost of, or time required for performance of this Contract an equitable adjustment shall be made between the parties and the Contract modified in writing accordingly. If the parties fail to agree upon the adjustment to be made the dispute may be determined as provided for in Article 44.

ARTICLE 25. Changes in the Work.

The Owner, or the Architect, without invalidating the Contract, may make changes by altering, adding to, or deducting from the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the Contract except that any claim for extension or reduction of time caused thereby shall be adjusted at the time of ordering such change. Except as provided in Article 18, no change shall be made unless in pursuance of a written order from the Architect and no claim for an addition to or deduction from the contract sum shall be valid unless so ordered and at the same time valued or agreed to be valued as provided in Article 26.

ARTICLE 26. Valuation of Changes.

The value of any change shall be determined in one or more of the following ways:—

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.
- (d) If none of the above methods be agreed upon, such value may be determined in the manner set out in Article 44.

ARTICLE 32. Use of Premises.

The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by laws, ordinances, permits or by direction of the Architect and shall not unreasonably encumber the premises with his materials. The Contractor shall not load or permit to be loaded any part of the work with a weight that will endanger its safety. The Contractor shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking.

ARTICLE 33. Cleaning Up.

The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work, and at the completion of the work he shall remove all his rubbish and all tools, equipment and surplus materials from and about the work and shall leave the work "broom clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost as the Architect shall determine to be just.

ARTICLE 34. Cutting, Patching and Digging.

The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of Other Contractors shown upon, or reasonably implied by, the contract documents.

Any cost caused by ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any existing work by cutting, digging or otherwise and shall not cut or alter the work of any Other Contractor save with the consent of the Architect.

ARTICLE 35. Delays.

If the Contractor is delayed in the completion of the work by any act or neglect of the Owner, Architect or any Other Contractor or any employee of any one of them or by changes ordered in the work, then the time of completion shall be extended for such reasonable time as the Architect may decide. If the Contractor is delayed in completion of the work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended by a recognized contractors' association for its members of which the Contractor is a member), fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by any cause of any kind whatsoever beyond the Contractor's control, then the time of completion shall be extended for a period of time equal to the time lost due to such delays. In addition and without limit to the foregoing the time of completion shall be extended because of any cause whatsoever within the Contractor's control which the Architect shall decide as justifying a delay for such reasonable time as the Architect may decide.

No such extension shall be made for delay unless written notice of claim is given to the Architect within Seven (7) days of its commencement, provided however, that in the case of a continuing cause of delay only one claim shall be necessary.

If no schedule is made under Article 3, no claim for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

The Architect shall not, except by written notice to the Contractor, or as provided in Article 18, stop or delay any part of the work pending decisions or proposed changes either by himself or by the Owner.

ARTICLE 36. Owner's Right to do Work.

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the Owner, after Five (5) days' written notice to the Contractor, may without prejudice to any other right or remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor; provided however, that the Architect shall approve both such action and the amount charged to the Contractor.

ARTICLE 37. Owner's Right to Terminate Contract.

If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency or if he should, except in cases recited in Article 35, refuse or fail to supply enough properly skilled workmen or proper materials after having received Seven (7) days' notice in writing from the Architect to supply additional

ARTICLE 42. Subcontracts.

The Contractor agrees that the list of names of Subcontractors supplied prior to the signing of the Contract is the list of Subcontractors proposed to be used to carry out those parts of the work noted thereon and he shall not employ any to whom the Architect may reasonably object.

If the change of any name on such list is required by the Architect, and the work has to be awarded to a higher bidder, the contract price shall be increased by the difference between the two bids.

The Architect shall, on request, furnish to any Subcontractor, wherever practicable, evidence of the amounts certified to on his account.

The Contractor shall be held as fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons directly or indirectly employed by them, as for the acts and omissions of persons directly employed by him.

In view of this responsibility the Contractor shall not be obliged to employ as a Subcontractor or supplier any person or firm to whom he may reasonably object.

Nothing contained in the contract documents shall create any contractual relation between any Subcontractor and the Owner.

ARTICLE 43. Relations of Contractor and Subcontractor.

The Contractor agrees to bind every Subcontractor by the terms of the contract documents, as far as applicable to his work.

ARTICLE 44. Arbitration.

In the case of any dispute arising between the Owner (or the Architect acting on his behalf) and the Contractor as to their respective rights and obligations under the Contract, either party hereto shall be entitled to give to the other notice of such dispute and to request arbitration thereof; and the parties may, with respect to the particular matters then in dispute, agree to submit the same to arbitration in accordance with the applicable law of the place of building.

Arbitration proceedings shall not take place until after the completion or alleged completion of the work except (a) on a question of certificate for payment, or (b) in a case where either party can show that the matter in dispute is of such nature as to require immediate consideration while evidence is available.

J. & H. CONSTRUCTION CO.

Signed: _____
PER *N. A. Culp*

Name of Contractor: _____

Signed: _____
Thomas S. Pelham

Name of Owner: TOWN OF PELHAM

