

THE CORPORATION OF THE TOWN OF PELHAM

BIG CREEK DRAIN

CONTRACT NO. 76-431

W.P. NO. 431

WILFRED J. SMITH & ASSOCIATES LTD.

Consulting Engineers

Pen Centre St. Catharines Ontario

L2T 2K9

Town of Pelham

Big Creek Drain

Contract No. 76-431

Addendum No. 4

This addendum shall form an integral part of the specifications and plans for the above project and shall be read in conjunction therewith. This addendum shall, however, take precedence over all requirements of the previously issued specifications and plans with which it may prove to be at variance, unless otherwise clarified by the Engineer.

This addendum must be signed by the Tenderer in the appropriate space and must be attached to the Form of Tender for submission at the time of tendering. Tenders not including this addendum, aigned as required, may be rejected as informal.

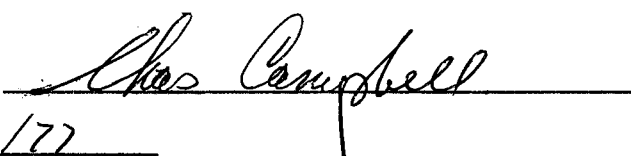
A. Information to Bidders. Page IB-6 and 7. Paragraph two, section 14 is hereby DELETED.
Thus there is no reference to the \$100.00 per day charge.

Dated: Oct. 11, 1977.



W.J.Smith P.Eng.
for
Wilfred J.Smith & Associates Ltd.

The Tenderer shall include in his bid price all extra costs which may be incurred in this addendum.

Tenderer's Signature: 
Dated: Oct 13 1977

TOWN OF PELHAM

BIG CREEK DRAIN

CONTRACT NO. 76-431

Addendum No. 3

This addendum shall form an integral part of the specifications and plans for the above project and shall be read in conjunction therewith. This addendum shall, however, take precedence over all requirements of the previously issued specifications and plans which it may prove to be at variance, unless otherwise clarified by the Engineer.

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A. INFORMATION TO BIDDERS (Page 1B-12)

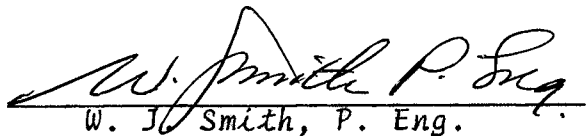
Add: Section 32. "80% of the contract price will be paid when all excavation is complete. 20% will be paid upon completion of the balance of the Contract. Progress Payments will be issued as work progresses, up to the 80% limit less 15% Holdback."

Add: Section 33. "The completion date of the Contract is hereby extended to June 30, 1978."

B. FORM OF TENDER (Page 2)

Add: Item 6. "Adjustment for contract delay (10%) = \$11,600.00."

Dated: September 29, 1977.


W. J. Smith, P. Eng.

for
Wilfred J. Smith & Associates Ltd.

The Tenderer shall include in his bid price all extra costs which may be incurred in this addendum.

Tenderer's Signature: 

Dated: Oct 13 / 77

922 MAY 4

TOWN OF PELHAM

BIG CREEK DRAIN

CONTRACT NO. 76-431

ADDENDUM NO. 2

This addendum shall form an integral part of the specifications and plans for the above project shall be read in conjunction therewith. This addendum shall, however, take precedence over all requirements of the previously issued specifications and plans which it may prove to be at variance, unless otherwise clarified by the Engineer.

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SPECIFICATIONS FOR OPEN CHANNELS

Item No. 7-please add:.

"except where alignment may be adjusted due to higher banks, large trees, etc., any such changes must be authorized by the Engineer in writing."

Item No. 8-Delete and substitute as follows:

Excavated earth, unless otherwise specified herein, is to be deposited not less than 6 feet back from the top of the ditch slope. Excavated material is to be deposited on one or both sides of the drain.

It is the Contractor's duty under these specifications, at least two days in advance, before entering upon the lands of any owner, to interview the land owner and take directions from him as to whether or not the excavated material is to be deposited on one or both sides of the drain. In case the Contractor and the owner cannot agree on the manner in which the excavated earth is to be deposited, then it shall be the Contractor's duty to immediately notify the Engineer, who will inspect and direct the depositing of the earth.

In cases where the owner does not occupy the lands upon which the ditch is located and cannot be interviewed by the Contractor, the Contractor will notify the Engineer at least two days in advance of moving on to the said owner's lands and no work shall be done on that owner's property until the Engineer has had an opportunity to inspect and direct the Contractor as

to the disposal of material.

The excavated material is to be levelled by bulldozer, grader or other mechanical means to a uniform height of not more than 0 feet and 6 inches above the normal ground level. It is the Contractor's duty before commencing levelling operations on each owner's property to interview each owner so far as practicable in carrying out the levelling operations as specified above to a height of 0 feet and 6 inches to co-operate with and satisfy the owner's requirements.

Where the owner does not occupy his lands, the Contractor is not able to contact him, the Contractor will adhere to 0 feet and 6 inches of specification as outlined

In all cases, the surface of the excavated material is to be in such condition that any form or farm cultivation machinery may be operated on the surface of the spoil bank.

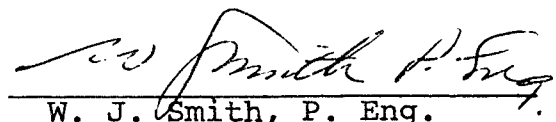
In cases where the owner occupies the land, it shall be the Contractor's duty, after completion of the levelling to sign in writing the owner's signature that the banks are levelled to his satisfaction. Form for the owner's signature to be supplied by the Engineer to the Contractor. The Contractor will then deliver or mail the said certificates to the Engineer.

In all cases notwithstanding the fact that the owner may or may not certify in writing that the banks are levelled to his satisfaction, the final approval of the levelling of the banks shall rest with the Engineer.

Item No. 2-Delete and Substitute with the following:

"The Contractor must carefully replace all fences doing as little damage as possible to the owner's property."

Dated, April 29, 1976.


W. J. Smith, P. Eng.

for
Wilfred J. Smith & Associates Ltd.

The Tenderer shall include in his bid prices all extra costs which may be incurred in this Addendum.

Tenderer's Signature



Dated: Oct 13/77

TOWN OF PELHAM

BIG CREEK DRAIN

CONTRACT NO. 76-431

ADDENDUM NO. 1

This addendum shall form an integral part of the specifications and plans for the above project shall be read in conjunction therewith. This addendum shall, however, take precedence over all requirements of the previously issued specifications and plans which it may prove to be at variance, unless otherwise clarified by the Engineer.

This addendum must be signed by the Tenderer in the appropriate space and must be attached to the Form of Tender for submission at the time of tendering. Tenders not including this addendum, signed as required, may be rejected as informal.

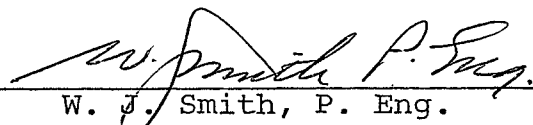
FORM OF TENDER

Item No. 2 should read:

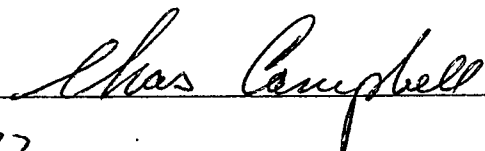
Excavate and grade open channel from Balfour Street to the Welland River excluding the section through Highland Golf Course.

L. S. 25,540 feet.

Dated, April 21, 1976.


W. J. Smith, P. Eng.
for
Wilfred J. Smith & Associates Ltd.

The Tenderer shall include in his bid prices all extra costs which may be incurred in this Addendum.

Tenderer's Signature 
Dated: OCT 13 1977

THE CORPORATION OF THE TOWN OF PELHAM

BIG CREEK DRAIN

W.P. NO. 431

CONTRACT NO. 76-431

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THE CORPORATION OF THE TOWN OF PELHAM

BIG CREEK DRAIN

CONTRACT NO. 76-431

Schedule of Drawings

Drawing Number

Big Creek Drain

431-7

SECTION 1B

INFORMATION TO BIDDERS

SECTION IB

INFORMATION TO BIDDERS

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TOWN OF PELHAM

BIG CREEK DRAIN

CONTRACT NO. 76-431

Information to Bidders

1. General Description of Work

The work to be carried out under this Contract included the supply of all labour, materials, equipment and plant required for the complete installation of farm culverts and excavation and grading of open channel from Balfour Street to Welland River, except on Highland Golf Course property.

The works consist generally of the following construction:

1. Open Channel. 29,640 feet.
2. Farm Culverts. 8 - 20' long 12 guage, 6'-6" x 10'-2" multiplate pipe arch. 12 - 20' long 12 guage, 5'-4" x 7'-4" multiplate pipe arch.

together with all associated works and all as specified hereinafter.

2. Plans and Specifications

Plans, specifications and all contract documents may be obtained at the office of the Consultant, Wilfred J. Smith & Associates Ltd., Consulting Engineers, Pen Centre, St. Catharines, Ontario, for a non-refundable deposit of \$10.00. Contract documents may also be inspected at the Niagara Construction Association offices and at the Municipal Offices in Fonthill.

3. Tendering Procedure

The following policy regarding preparation and submission of tenders and the tender opening procedures will be applicable to this project. Tenderers are requested to adhere strictly to the instructions concerning submission.

- (1) All Tenders must be submitted to:

Mr. L. C. Hunt,
Clerk-Treasurer,
Town of Pelham,
Fonthill, Ontario.

until 12:00 noon local time on:

TUESDAY, MAY 4, 1976.

- (2) Tenders shall be submitted in two envelopes.

The first envelope shall contain:

- (a) The completed form of "Agreement to Bond".
- (b) A Tender Deposit Cheque, certified, in the amount of \$5,000.00.

The Second envelope shall contain:

- (a) The itemized Tender.

Please note that the tender specifications shall not be included in the second envelope. ~~but are to be returned by the Tenderers after tender opening.~~ Jy

- (3) Tenders will be opened at 12:30 p.m. on the day that tenders close. Firms submitting tenders will be permitted to attend this meeting at the Town Hall.
- (4) In the event that the first envelope does not contain the proper documents and certified bid deposit, the second envelope will not be opened.
- (5) The total bid price only will be announced for each tender opening.
- (6) After tender closing day, tenders will be passed to the Corporation's Consulting Engineers who will check and analyze the tenders and submit a report to the Corporation.

4. Disqualification of Tenders

Under no circumstances will tenders be considered:

- (a) which are received after local time on the advertised closing date for tenders,
- (b) which are not accompanied by a certified cheque or cheques in the amounts specified,
- (c) if more than one tender is received from an individual firm, partnership, corporation or association under the same or different names.

5. Withdrawal of Tenders

A Tenderer may withdraw his tender at any time up to the official closing time by submitting a letter bearing his signature and seal as in his tender to the Corporation Clerk who will mark thereon the time and date of receipt and will place the letter in the tender box. No telegrams or telephone calls will be considered.

6. Informal or Unbalanced Tenders

Tenders which are incomplete, conditional, illegible, or obscure, or that contain additions not called for, reservations, erasures, alterations or irregularities of any kind, may be rejected as informal.

Tenders that contain prices which appear to be so unbalanced as likely to affect adversely the interests of the Corporation may be rejected.

Wherever in a tender the amount tendered for an item does not agree with the extension of the estimated quantity and the tendered unit price, the unit price shall govern and the amount shall be corrected accordingly.

The Corporation reserved the right to waive informalities at its discretion.

Tenderers who have submitted tenders which have been rejected by the Corporation because of informalities will be notified of the reasons for the rejection within ten (10) days after the closing date for tenders.

7. Submission of Tender

All tenders for the execution of the work as set forth herein or referred to must be made on the printed forms supplied for that purpose and No others will be considered. Such tenders must be made without any knowledge, comparison of figures or arrangements with any other person making any tender or estimate for the same purpose, and that such tenders are in all respects fair and without collusion or fraud, and that no officer of the Corporation is, shall be, or become interested, directly or indirectly, as contracting party, partner, stockholder, surety or otherwise in, or in the performance of, the Contract, or in the supplies, work or business to which it relates, or in any portion of the profits to be used therein or thereof, or in any of the monies to be derived therefrom.

Each tender shall include a complete Form of Tender, and Agreement to Bond, all as bound herein and a tender deposit as required herein.

The Tenderer shall give the total tender price both in words and in figures and shall fill in all blank spaces for unit prices, item prices and lump sums in the Form of Tender. The tender must be enclosed in the return envelope shall be sealed.

8. Omissions and Discrepancies

Should a Tenderer find discrepancies, or omissions from the drawings or contract documents, or should he be in doubt as to their meanings, he should notify the Consulting Engineers who may send a written instruction to all Tenderers.

9. Interpretations and Addenda

No oral interpretation shall be made to a Tenderer as to the meaning of any of the contract documents, or be effective to modify any of the provisions of the contract documents. Every request for an interpretation shall be made in writing, addressed and forwarded to the Consulting Engineers.

10. Acceptance or Rejection of Tenders

Subject to the General Conditions, neither the Consulting Engineer nor any officer or employee of the Corporation has authority to make or accept an offer or to enter into a Contract on behalf of the Corporation or to create any rights against or to impose any obligations on the Corporation.

Acceptance or Rejection of Tenders (cont'd)

Recommendation of a tender to the Corporation for acceptance does not constitute acceptance of the tender by the Corporation.

A tender is accepted by the Corporation and a Contract is made thereby between the Corporation and a Tenderer only when an Agreement is executed by the Corporation and by the Tenderer and the acceptance of a tender and the execution of an Agreement by the Corporation is subject to the express condition that the Corporation receive a contract bond, as required herein and in a form satisfactory to the Solicitor for the Corporation, within seven (7) days after notification to execute the Agreement by the Corporation has been mailed to the Tenderer whose tender has been accepted as aforesaid.

The Corporation shall not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any Tenderer prior or subsequent to or by reason of the acceptance of a tender save as provided in the Contract. Tenders are subject to a formal contract being prepared and executed. The Corporation reserves the right to reject any or all tenders and to waive formalities as the interest of the Corporation may require without stating reasons therefrom and the lowest or any tender will not necessarily be accepted. The Corporation also reserves the right to accept any proposal if considered best in its interests.

11. Time for Acceptance

The Tenderers shall keep their tender open for acceptance for a period of sixty (60) days after tender closing date.

12. Tender Deposit

Each tender shall be accompanied by a tender deposit in the form of a certified cheque or cheques, as outlined under Clause 3 of the Information for Tenderers, made payable to the order of the Town of Pelham for the amount of \$5,000.00.

The tender deposit cheques, with the exception of the two low bidders, will be returned within ten (10) days after the tenders are opened. The tender deposit cheque of the second low bidder will be retained but not cashed, by the Corporation and will be returned to the Tenderer after the successful bidder has executed the Contract and furnished the necessary supporting documents.

Tender Deposit (cont'd)

The tender deposit cheque of the low bidder (successful bidder), will be cashed by the Corporation. The deposit of the successful Tenderer will be released upon execution by the Contractor of the contract agreement and submission of all supporting documents required for the purposes of contract execution.

Tenders are requested to note that no interest will be paid for the tender deposit cheque retained and/or cashed by the Town of Pelham. The Tenderers are deemed to have made due allowance for this requirement in their contract bid price. If no tender has been recommended for acceptance within sixty (60) days after the date of the opening of tenders, any remaining tender deposit will be returned. If a tender has been recommended for acceptance but an agreement has not been executed within ninety (90) days after the date of opening tenders, any remaining tender deposit will be returned.

Except as otherwise herein provided, the Tenderer guarantees that if his tender is withdrawn before the Corporation shall have considered the tenders or before or after he has been notified that his tender has been recommended to the Corporation for acceptance, or that if the Corporation does not for any reason receive within the said period of seven (7) days and as required herein, the Agreement executed by the Tenderer, the Contract Bond executed by the Tenderer and the surety company, the insurance policies and the other documents required herein, the Corporation may retain the tender deposit for the use of the Corporation and may accept any tender, advertise for new tenders, negotiate a contract or not accept any tender as the Corporation may deem advisable.

13. Failure to Execute Contract

Failure to execute the Contract and file acceptable bonds and insurance policies as provided herein shall be just cause for the annulment of the award and the forfeiture of the tender deposit to the Corporation, not as a penalty, but in liquidation of damages sustained.

14. Time for Completion

The time for completion of the entire project shall not exceed twelve calendar weeks from the date of the Engineer's written instructions to proceed with the work. The Contractor shall commence work not later than seven (7) calendar days after the written instructions to commence work has been given by the Engineer.

Time for Completion (cont'd)

If the Contract is not completed in the time specified, the Contractor shall pay the Owner the sum of one hundred dollars (\$100.00) per day for the number of calendar days taken beyond the completion date. This amount is an estimate of the actual costs to the Corporation for Engineering, Inspection, Supervision and Continuing Maintenance which will accrue during the period after the completion date.

15. Contract Bonds and Agreement

The Tenderer agrees that if he has been notified that his tender has been accepted, he will execute the Agreement in triplicate in the form bound herein, within seven (7) days after being notified to do so by the Corporation or anyone acting on his behalf.

The Tenderer also agrees that upon award of the Contract, he shall furnish both a Performance and Maintenance Bond in the amount of 100% of the total tender price and a Labour and Materials Payment Bond in the amount of 50% of the total tender price and in a form satisfactory to the Solicitor for the Corporation, within seven (7) days after notification of the official award of the Contract, has been mailed to him. The Bonding company shall be authorized by law to carry on business in the Province of Ontario and shall be satisfactory to the Corporation.

The Performance and Maintenance Bond guarantees the satisfactory completion of all work and maintenance and guarantee of the work for the duration of the Maintenance Period within the terms of the Contract. and up to the face value of the bond. The Labour and Materials Bond guarantees payment to suppliers of materials incorporated into the works, of equipment under rental or other terms and also payment for all labour and other incidentals included in the Contract. The liability of the Bonding Company shall cover all extensions to the Contract, modifications thereof and the Maintenance Guarantee. The Bonding Company shall not replace a prime Contractor or Sub-Contractor without the prior approval of the Engineer.

The period of guaranteed maintenance shall commence on the date of completion and remain in force for a period of ONE YEAR thereafter.

16. Insurance

The Contractor must, upon award of the Contract, furnish a certified copy of the Public Liability Insurance Policy for a minimum amount of \$1,000,000.00 together with an endorsement certifying that the Town of Pelham, Wilfred J. Smith & Associates Limited and the Sub-Contractors as additional named insured.

17. Contract Documents and Drawings

All information contained on the contract drawings shall be read in conjunction with the documents and specifications forming part and parcel of this contract and shall form an integral part of interpreting the requirements of the proposed installation.

18. Examination of Plans, Specifications and Site of Work

The Bidders shall carefully examine the several portions of the contract documents and drawings in order to satisfy themselves by examinations as to the detailed requirements of the construction.

Each Tenderer shall visit the site of the work before submitting his tender and must satisfy himself by personal examination as to the local conditions to be met with during the construction and conduct of the work. He shall make his own estimate of the facilities and difficulties to be encountered including the nature of the subsurface materials and conditions. He is not to claim at any time after submission of his tender that there was any misunderstanding of the terms and conditions of the Contract relating to site conditions.

19. Quantities are Estimated.

The Engineer has the right to increase or reduce the quantities required or to suspend or omit any item or portion of the work at any time he may deem advisable. The Contractor shall not be entitled to any compensation for loss of anticipated profits as a result of the deletion of any item or part of an item from the Form of Tender.

The attention of all bidders is also drawn to Section 103-1 of the General Conditions of the Contract.

20. Construction Safety

All "Construction" as defined in the Construction Safety Act, 1973, shall be done in strict conformity with the Construction Safety Act, 1973 and any revisions thereto, including all sheeting and shoring, as required. Compliance with the requirements of this clause and the requirements of the Construction Safety Act, 1973, will be enforced by "Inspectors" as defined by the Construction Safety Act, 1973, Statutes of Ontario, 1973, Chapter 47, Section 4(1). The Contractor engaged to perform the works specified herein shall be defined as the "constructor" under the Act.

21. Setting Out Lines and Grades

The Tenderer's attention is drawn to Section 104-7 "Lines and Grades" of the General Conditions. The Corporation will only provide and be responsible for the initial accuracy of Bench Marks and reference points at suitable intervals and locations, and to be used by the Contractor in setting out the works. The Contractor shall use these for the preparation of grade sheets, the installation of centre-line stakes, grade stakes, off-sets, sight rails and screeds and he will be entirely responsible for the proper construction of the works.

22. Notice to the Contractor - Sub-Letting, Renting of Equipment, Purchase and Supply of Materials

Where a bidder has withdrawn his bid on this Contract after the closing of tenders, or, having been offered this Contract by the Corporation, has for any reason failed to enter into it, the Contractor shall not assign any part of this Contract nor shall he rent any equipment or purchase any material required for this Contract if such assignment, rental or purchase will result in such bidder or any person, firm or corporation having an interest in such bidder, directly or indirectly receiving any benefit.

23. First Aid Equipment

The Contractor shall be required to provide and maintain at each point of operation, a completely equipped first aid kit, M.S.A.F.A. 1035 or equal, in a clean orderly condition, which shall be readily accessible at all times to all employees and the Engineer. The Contractor shall also provide a stretcher M.S.A.F.A. 30161 or equal.

Certain employees shall be designated who are properly trained and instructed to carry out first aid treatment. At least one (1) such employee shall be available to render first aid at all times when work is in progress.

First Aid Equipment (cont'd)

The Contractor shall post in a conspicuous location, a telephone call list for summoning aid such as Doctors, ambulances, resuscitator (Fire Department) and rescue squads from outside sources.

24. Requirements for Labour and Material

The Contractor shall comply with provisions of the Industrial Standards Act, the Minimum Wage Act and the Fair Employment Practice Act, all as amended by the Legislative Assembly of the Province of Ontario and as applicable for the project area.

25. Local Labour

The Contractor shall give preference to the hiring of local labour provided the labour is available locally and is physically fit and properly qualified by training and experience to meet the Contractor's requirements.

The foregoing shall not apply to the Superintendent, Time Keeper, Foreman, Machine Operators, nor shall it apply until ten (10) days after the Contractor has actually commenced operations.

26. Existing Utilities

It will be the Tenderer's responsibility to contact the various departments concerned, such as the Water Department, the Bell Telephone Company of Canada, the Hydro and the Provincial Gas Companies, to arrange for the location in the field of any underground utilities or buried cables shown on the drawings or that may have been recently installed by these Companies.

The Tenderer will be responsible for all precautions necessary to safeguard these utilities, including method of support, (as required by each utility owner) where necessary, and no extra will be allowed therefore. The Tenderer should contact these companies and obtain information as to when these utilities may be installed if they are not already in existence. In this way, the Tenderer may program his construction work accordingly.

27. Consulting Engineers

All work is to be done according to the plans, specifications and instructions of Wilfred J. Smith & Associates Ltd., Pen Centre, St. Catharines, or the authorized site representative.

28. Discrepancies during Construction

Should any discrepancies appear, or differences of opinion or misunderstanding arise as to the meaning of the Contract or of the General Conditions, Specifications, or Plans, or as to any omissions therefrom, or misstatements therein in any respect, or as to the quality, or dimensions, or sufficiency of the due and proper execution of the works, or as to the measurement, or quantity or valuation of any works executed, or to be executed, under the Contract, or as to extras thereupon or additions thereto, or deductions therefrom, or as to any other questions or matters arising out of the Contract, the same shall be determined by the Engineer, whose decisions shall be final and binding upon all parties concerned, and from it there shall be no appeal.

The attention of the Tenderer is also drawn to Section 104.6 of the General Conditions of the Contract.

29. Provincial Sales Tax

Exemptions

Where the Contractor supplies under this contract any material in respect of which the Municipality is exempt from tax pursuant to Ruling 21 of the Ontario Retail Sales Tax Branch, bid prices shall not include Ontario Retail Sales Tax on such material.

Rebates

Where the Contractor supplies under this contract any material in respect of which the Municipality is entitled under Ruling 21 to a rebate of the Ontario Retail Sales Tax paid thereon (hereinafter called "tax-rebatable material"), bid prices shall include the tax on such material. In every such case, however, the Contractor shall furnish to the Municipality, in form satisfactory to the Ontario Retail Sales Tax Branch, any suppliers' statements or other document the Municipality requires to obtain all available rebates of retail sales tax under Ruling 21, such as statements from ready-mix concrete operators and hot or cold asphalt mixers certifying the quantities and strengths of their material supplied.

Where the contract is completed in any calendar year, the Contractor shall furnish all such documents to the Municipality within thirty (30) days of completing the contract. Where the contract is not completed in a calendar year, the Contractor shall, within ten (10) days after that year ends, furnish all such documents in respect of all tax-rebatable material supplied under the contract since the beginning of that year. Failure by the Contractor to furnish all such documents within the times stipulated shall entitle the Municipality to

Rebates (cont'd)

deduct from monies otherwise payable to the Contractor any amount the Municipality deems equal to the retail sales tax rebate to which it may be entitled in respect of tax-rebatable materials supplied under the contract, plus an amount sufficient to cover the Municipality's cost of calculating the aforesaid rebate entitlement.

Where the Contractor supplies under this contract no tax-rebatable material the Contractor shall not receive his final payment from the Municipality under this contract unless he has furnished the Municipality with a written statement, signed by him or by his agent in a position to know the facts, specifying all the materials at the time tax-rebatable pursuant to Ruling 21 and stating that the Contractor has not supplied any of those materials.

(Copies of Ruling 21 are available at the District Office of the Retail Sales Tax Branch.)

30. Federal Sales Tax

Where material is supplied under this contract by the Contractor and for which the Municipality is exempt from Federal Sales Tax, the Municipality shall furnish a certificate of end use of the material to the Contractor and the unit bid prices involving such material shall not include the Federal Sales Tax.

31. Tenderer's Signature

The Tenderer shall affix his signature in all the spaces provided in the contract documents. Failure to do so may be reason for a tender to be rejected as informal. The signature attests to the fact that the Tenderer has read and understands the foregoing section.


Tenderer's Signature

THE CORPORATION OF THE TOWN OF PELHAM

BIG CREEK DRAIN

CONTRACT NO. 76-431

W.P. NO. 431

FORM OF TENDER

Gentlemen:

The undersigned, having carefully examined the location of the proposed works and all Contract Documents relating hereto, hereby tender and offer to enter into contract within strict accordance with the said Contract Documents and such further details as may be supplied from time to time, and to furnish all materials, labour, plant matters and things necessary to complete the works within the specified time and to the satisfaction of the Corporation and at the prices set forth in this tender.

Dated at PELHAM this 13 day of OCTOBER 1977.

Sanden Drainage Limited
Name of Firm or Individual

RR 2 Wainfleet
Address

[Signature]
Witness

Chas Campbell
Signature of Person Signing
for Firm

Office of Person Signing for
Firm

CONTRACT No. _____

FORM OF TENDER 2

ITEM No.	SPEC. No.	ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
BROUGHT FORWARD						
1	200 S.P.	Clearing & Grubbing.	L.S.			\$21,320.00
2	200 S.P.	Excavate & Grade Open Channel from Balfour St. to Welland River.	L.S.	29640 ft.		\$51,080.00
3	S.P.	Supply & Install Multiplate pipe arch farm culverts 20' long, 12 guage, 6'-6" x 10'-2".	Ft.	160	\$80.00	\$17,600.00
4	S.P.	Supply & Install Multiplate pipe arch farm culverts 20' long, 12 guage 5'-4" x 7'-4".	Ft.	240	\$65.00	\$22,000.00
5	S.P.	Provisional Contingencies				4,000

S.P. - SPECIAL PROVISIONS

SUB-TOTAL \$116,000.00TOTAL TENDER \$116,000.00

AGREEMENT TO BOND

WE, the undersigned, hereby agree to become bound
as Surety for _____

in a bond totalling One Hundred Percent (100%) of the
contract amount and conforming to the Contract Documents in
connection with this Contract for the full and due performance
of the works shown as described herein if the Tender for

is accepted by the Owner.

It is a condition of this Agreement that, if the
above mentioned Tender is accepted, application for a Perform-
ance Bond must be completed with the undersigned within ten
(10) days of acceptance of the tender related hereto, other-
wise this Agreement shall be null and void.

Dated this _____ day of _____ 19____.

Name of Bonding Company

Signature of Official Signing
for Firm

SEAL

Position in Firm

AGREEMENT

THIS AGREEMENT MADE IN TRIPLICATE THIS 13 DAY OF

OCTOBER 1977

BETWEEN

LOWDEN DRAINAGE LIMITED

Hereinafter called the "Contractor" OF THE FIRST PART

AND:

THE TOWN OF PELHAM

Hereinafter called the "Corporation" OF THE SECOND PART

WITNESSETH:

That the party of the first part, and the party of the second part, in consideration of fulfillment of their respective promises and obligations herein set forth, covenant and agree with each other as follows:-

1. The Contractor will furnish all labour, tools, implements and materials whatsoever necessary for the due performance, execution, construction and completion of all and singular the works mentioned and set forth in the contract documents and will deliver the whole of such works unto the Corporation, fully and finally completed, of the best and most workmanlike manner, in the manner required by, and in strict conformity with the said contract documents and to the complete satisfaction of the Corporation and of the Engineer or other person in charge of the said works on behalf of the Corporation.

2. The Contractor agrees that he is fully informed regarding all of the conditions affecting the work to be done and labour and materials to be furnished for the completion of this contract and that his information was secured by personal investigation and research and not from estimates of the Corporation and that he will make no claim against the Corporation by reason of estimates or representation of any officer or agent of the Corporation.

3. No works hereby contracted to be executed shall be deemed to have been executed, nor shall the Contractor be entitled to payment therefor, unless the same shall have been executed to the satisfaction of the Engineer, as aforesaid and shall have been certified by him to have been so executed.

4. The provisions of this Agreement shall enure to the benefit of and be binding upon heirs, executors, administrators and assigns of the Contractor and on the heirs and successors of the Corporation.

IN WITNESS WHEREOF the Contractor hereto and hereunto affixed its Corporate Seal duly attested by its proper officers in that behalf and the Corporation has hereunto set its Seal duly authenticated by its proper officers.

SIGNED SEALED AND DELIVERED

In the presence of:

E. R. Cunningham

E. R. Cunningham

Contractor,

Chas Campbell

Corporation:

J. O. Wilson
E. R. ?

TOWN OF PELHAM

APPLICATION FOR RELEASE OF CONTRACTOR'S HOLDBACK

Mr. L. C. Hunt,
Clerk-Treasurer,
Town of Pelham,
Fonthill, Ontario.

Contract # _____

Project Title _____

We _____, the said Contractor
hereby confirm:

1. That the work under the above Contract is substantially complete as defined in the Mechanics' Lien Act and the terms of the Contract,
2. That there are no outstanding liens, garnishes, attachments or other charges affecting the work and that my firm and all sub-contractors engaged on this project have discharged liabilities incurred for labour, materials or services used or recently required for use in the performance of this Contract,

and hereby apply for release of holdback monies in accordance with the provisions of the Mechanics' Lien Act and the terms of the Contract.

Date: _____ Signature: _____

Seal:

SECTION SSP.

STANDARD SPECIAL PROVISIONS.

SECTION SSP
STANDARD SPECIAL PROVISIONS

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SPECIAL PROVISIONS

(STANDARD)

1. Layout of the Work

The Engineer will set such stakes as are necessary to mark the location, alignment, elevation and the grade of the work. However, the Contractor shall give the Engineer a minimum notice of two working days prior to the need for setting out each portion of the work and shall make no claim for any delay caused by the failure to give such a notice.

All stakes, marks, and reference points shall be carefully preserved by the Contractor and in case of their destruction or removal by the Contractor, they shall be replaced at the Contractor's expense.

The Contractor shall provide grade stakes, masts, scaffolds, batterboards, straight edges, templates, and other equipment as may be necessary to facilitate laying out, inspecting and constructing the work.

Whenever necessary work shall be temporarily suspended to permit the Engineer to inspect and check the line and grade of any portion of the work. No additional payment will be made for such temporary suspensions.

2. Existing Utilities

The attention of the Contractor is drawn to the presence of overhead and/or underground utility lines on this Contract. Relocation of utilities where necessary will be carried out by the Utility Company concerned although work may not be completed until after the award of the Contract. It is the Contractor's responsibility to consult the companies concerned as to the exact location of these services and where necessary, the Contractor shall protect and support these services to maintain their operation. In the event that damage is done to a utility that Utility Company shall be notified immediately by the Contractor and any costs arising from such damage shall be paid for by the Contractor.

Where existing utilities conflict with the proposed work, the Contractor shall be prepared to stop all work in the area where such a conflict exists and no additional payment will be made to the Contractor for any delays experienced.

3. Excess Loading of Vehicles

Damage by Vehicles and Other Equipment

If at any time, in the opinion of the Engineer, damage is being or is likely to be done to any highway or any improvement thereon, other than such portions as are part of the work, by the Contractor's vehicles or other equipment, whether licensed, or unlicensed, the Contractor shall, on the direction of the Engineer, and at the Contractor's own expense make changes in or substitutions for such vehicles or other equipment or shall alter loading or shall in some other manner remove the cause of such damage to the satisfaction of the Engineer.

Excess Loading of Motor Vehicles

Where a vehicle is hauling material for use on the work under this Contract, in whole or in part upon the public highway and where motor vehicles registration is required for such vehicle, the Contractor shall not cause or permit such vehicle to be loaded beyond the legal limit as specified in the Highway Traffic Act, whether such vehicle is registered in the name of the Contractor or otherwise, except where there are designated areas of the contract where overloading is permitted. The Contractor shall bear the onus of weighing disputed loads. Load restrictions shall not apply within the following areas:

.....
.....
.....
.....
.....

Notwithstanding any other provision of this Contract, where a vehicle is hauling material which is being measured for payment by weight, over any portion of highway on which overloading is not permitted by this contract, and where the load exceeds the legal limit of the vehicle by more than 1,000 lbs., the Department will make no payment to the Contractor for any portion of the load in excess of the vehicles legal limit.

4. Clean-Up

All surplus materials, tools, temporary structures, excess earth, etc., shall be removed by the Contractor. The clean-up of the work shall be carried out as the work proceeds and the Contractor shall furnish all labour, materials and equipment incidental thereto. No compensation shall be made for this work.

5. Execution of Contract

The successful bidder shall be notified in writing of the acceptance of his tender and shall be bound to execute the contract within 1 week of notification. Date of contract award shall be taken as the date on which the successful bidder is notified of the acceptance of his tender.

6. Protection of Survey Markers

The Contractor shall be responsible for the complete preservation of all survey lot pins and bars while his work is in progress. Any lot pins damaged or removed by the Contractor shall be replaced by a Registered Ontario Land Surveyor at the Contractor's expense.

7. Tests

Where required by the Engineer, the Contractor shall supply certified copies of all tests upon all materials to be used in the construction of the works, indicating that materials comply with specifications. Such tests shall be made by any approved testing company and shall be at the Contractor's expense.

8. Interpretation of Estimates

The Engineer's estimate of quantities as shown on the tender form shall be used as a basis of calculation upon which the award of contract will be made, but these quantities are not guaranteed to be accurate and are furnished without any liability on the part of the Corporation.

9. Working Restrictions

Requirements under clause 107-11 of the General Conditions of Contract are extended to include statutory holidays.

10. Working Days

A Working Day is defined as any working day:

- (a) Except Saturdays, Sundays and Statutory Holidays.
- (b) Except a day on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to controlling operation or operations, as determined by the Engineer, from proceeding with at least 60% of the normal labour and equipment force engaged on such operation or operations for at least five (5) hours toward completion of such operation or operations. A controlling operation or operations is to be construed to incline any feature of the work, considered at the time by the Engineer and the Contractor, which, if delayed, will delay the time of completion of the Contract.
- (c) Except any day between November 1st and May 1st inclusive, even though the Contractor may elect to carry out any approved work. No work shall be carried out during this period without written approval from the Engineer.

The Engineer will furnish the Contractor with a weekly statement showing the number of working days, charged to the Contractor for the preceeding week, the number of working days specified for completion of the Contract, and the number of the working days remaining to complete the Contract. The Contractor will be allowed one week in which to file a written protest setting forth in what respects the said weekly statement is incorrect, otherwise, the statement shall be deemed to have been accepted by the Contractor as correct.

11. Dust and Mud Control

The Contractor shall be responsible for dust control during the construction period, and for the removal of all debris and mud tracked upon travelled roadways resulting from his operations and the delivery of materials to the site.

12. Unit Price or Lump Sum Price

The Unit Price or Lump Sum Price for all items in the Schedule of Quantities and Unit Prices shall be deemed to be full compensation for all the works including all necessary materials specified in the Special Provisions and Standard Specifications.

13. Private Lands

The Contractor shall not enter upon or occupy with men, tools or materials of any nature, any lands outside of the public streets and roadways and the rights-of-way shown on the plans or as described herein, except after consent has been received by him from the proper parties, a certified copy of which consent shall have been furnished to the Engineer.

14. Clarification

It will be the Contractor's responsibility to clarify with the Engineer, any details in question, not mentioned in this contract or shown on the accompanying plans, before submitting his bid. The unit prices, as tendered, shall include the supply of all labour, equipment and materials, required to complete this Contract, to the satisfaction of the Engineer.

15. Ministry of Transportation and Communications

It is deemed to be understood that wherever reference is made in this contract to D.H.O., D.T.C., M.T.C., that it shall be read to mean the Ministry of Transportation and Communications.

16. Construction Schedule

In order to fulfil the conditions for which the work has been designed, the Contractor and the Engineer shall arrange, prior to the commencement of construction a definite program or schedule determining the order in which the work is to be carried out so as to ensure that the underlying conditions on which the design is based shall be maintained in their entirety, and without undue interference with the expeditions and economical carrying out of the Contractor's projected scheme of procedure.

The several sections of the work shall be carried out in such order as to permit the completion of the whole within the stipulated time, and as closely as possible in conformity with the agreed upon construction schedule.

17. Contingency Allowance

All bidders are to include in their total tender, the lump sum amount shown in the Schedule of Quantities and Unit Prices for Contingency Allowances.

Contractors are advised that payment will be made out of the Contingency Funds only for extra work as may be authorized by the Engineer.

18. Other Contractors Within or Adjacent to the Limits of the Contract

The Contractor is advised that as other work will be in progress within and adjacent to the limits of this contract, he shall co-operate with other Contractors, Utility Companies and Municipalities and they shall be allowed free access to their work at all times. The Engineer reserves the right to alter the method of operations on this contract to avoid interference with other work.

19. Traffic Control Flagging

Flagging for traffic control on this contract shall be in conformance with the procedure outlined in the pamphlet entitled "Correct Methods for Traffic Control" issued by the Construction Safety Association of Ontario.

20. Payment for Items

Payment for items shall be at the unit price tendered for each item in the Form of Tender based on the "All Inclusive Price Method" unless otherwise specified in the Special Provisions.

All Inclusive Price Method shall mean to include all labour, material, equipment to install and/or contract the item complete in all respects as described and/or shown.

21. Materials

The Contractor shall supply all materials for the work on this project. Any materials shown on the plans, but not included in the Form of Tender shall be considered as part of the work and no extra claim shall be made for its supply.

22. Insurance Claims

Claims or alleged claims received by the Contractor under Section 106-2 of The General Conditions of the Contract shall be dealt with immediately by the Contractor. If a claim is settled to the satisfaction of the claimant, the Contractor shall submit to the Engineer a copy of the claimant's release.

If a claim or alleged claim is rejected by the Contractor and/or his insurance company, the Contractor shall report this fact in writing to the Engineer.

Should 30 days elapse after the claim or alleged claim has been received by the Contractor, and the Contractor is not able to report settlement or rejection of the claim, he shall report to the Engineer the steps being taken to respect to the claim.

23. Trench and Safety Acts

The Contractor shall comply in every respect with the provisions of the Trench Excavators Protection Act and obey every instruction of Safety and Trench Inspectors in this respect.

24. Drainage - Pumping

The contractor shall drain the works as required and provide all pump, hose, etc., at his expense.

25. Vandalism

The Contractor shall be prepared to prevent vandalism on the project and shall employ watchmen if necessary.

Damage due to vandalism must be repaired at the Contractor's expense before the works are accepted.

SPECIFICATIONS FOR OPEN CHANNELS

1. Channels shall be excavated to the depth, bottom width and sides slopes as shown on the drawings.
2. All fences shall be carefully replaced without causing damage.
3. Work shall commence at the lower end of the Drain.
4. The Contractor will be required to excavate under all culverts to the grade line as shown on the profile.
5. The Contractor will ensure that animals owned by different owners through whose land the ditch is run are not allowed to stray from premises due to fences being removed at the property line.
6. All operations shall be carried out causing as little inconvenience as possible to the owners of the land on which he is operating.
7. The Contractor shall confine his operations to 25 ft. either side from the edge of the excavation.
8. All excavated material shall be removed from site unless requested by the owner.
9. All trees, shrubs, stumps, timber, roots, brush and debris within the limit of construction shall be removed.

Burning of such debris on site shall be in accordance with the latest regulations of the Air Management Branch of the Ministry of the Environment.

The Contractor shall obtain a permit from the District Engineer of the Department of Energy before any open burning is carried out.
10. The Contractor shall notify the owners at least two (2) days in advance before entering their lands.
11. The Contractor shall leave the site in a neat and tidy condition.
12. All areas disturbed by the Contractor shall be restored to original condition.

SPECIAL PROVISIONS

Item #1

Clearing & Grubbing

The Contractor shall supply all equipment and labour to remove all trees, brush, vegetation, shrubs, stumps, timber, roots and debris within the limits of construction.

All trees and shrubs which are to be saved shall be carefully protected from injury. All work shall be carried out in accordance with M.T.C. Specification form 200.

Payment

Payment for all work included in this item shall be at the Contract Lump Sum Price.

Item #2

Excavate and Grade Open Channel

The Contractor shall supply all equipment and labour necessary to completely excavate and grade the Open Channel to the width, lines and grades as shown in the drawings.

Payment

For all the work shall be at the Contract Lump Sum Price.

Item #3 & #4

Supply and Install Multiplate Pipe Arch Farm Culverts

The Contractor shall supply all equipment and labour to excavate and install the arch pipe to the grades as shown on the Contract Drawings or as directed by the Engineer.

Native earth materials will be used as backfill except at both ends of the culverts on which stone rip-rap will be applied as shown on the drawings.

The exact locations of the culverts will be directed by the Engineer.

Payment

Payment shall be at the tendered price per foot.

Item #5

Provisional Contingencies

It shall be understood that only the Engineer shall have the authority to authorize and approve work (if any) to be carried out under this item.

Payment for such work shall be negotiated between the Contractor and the Engineer and shall be based upon the prices bid for similar work under this contract. In cases where it is impractical or an agreement on prices cannot be made, then the Contractor shall be paid in accordance with Section 108-4 of the General Conditions of the Contract re: "Payment for Extra Work ^{on} an time and material basis" which is bound in with, and forms part of this Contract.

**GENERAL CONDITIONS
OF
CONTRACT**

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SECTION 101

INTERPRETATION

- 101-1 "Contract" — means the agreement, covering the performance of the work, including the supply of any and all work, labour, implements and materials that could reasonably be required properly and satisfactorily to complete the work to be performed and also includes the plans, specifications, contract bond and any written supplementary agreements that may be made in order to ensure the completion of the work in an acceptable manner.
- 101-2 "Contractor" — means the person, partnership or company undertaking the execution of the work under the terms of the Contract.
- 101-3 "Corporation" — means the municipal corporation entering into the Contract with the Contractor.
- 101-4 "Engineer" — means an engineer of the Corporation or such person designated in writing as the Engineer by the Corporation.
- 101-5 "Inspector" — means any person, partnership or company that the Engineer may appoint for the purpose of assisting in the supervision and inspection of the work and the materials to be used in the work.
- 101-6 "Major Item" — means any individually bid Tender item that has an actual value, calculated on the basis of its actual or estimated tender quantity, whichever is the larger, and its tender unit price, equal to or greater than 5% of the total tender value, calculated on the basis of the total of all the estimated tender quantities and the tender unit prices.
- 101-7 "Plans" or "Drawings" — The terms plans and drawings are used interchangeably and mean any contract plans or contract drawings or any approved working plans or approved working drawings or any reproductions of plans and drawings pertaining to the work.
- "Contract Plans" or "Contract Drawings" — means plans or drawings provided by the Corporation for the work.
- "Working Plans" or "Working Drawings" — means any plans or drawings prepared by the Contractor and approved by the Engineer for the execution of the work.
- 101-8 "Specifications" — means all written or printed descriptions or instructions pertaining to the method and manner of performing the work, or to the quantities and qualities of the materials to be furnished and works to be carried out under the Contract, and includes the Tender, General Conditions, Standard Specifications, Supplemental Specifications and Special Provisions, together with all written agreements, made or to be made pertaining to the method or manner of performing the work, or to the quantities or qualities of materials to be furnished and works to be carried out under the Contract.
- 101-9 "Standard Specifications" — means the requirements and stipulations of standard practice by the Corporation for the control of work.
- 101-10 "Supplemental Specifications" — means the specifications, supplemental to the standard specifications.
- 101-11 "Special Provisions" — means special directions containing requirements peculiar to the work not adequately provided for by the standard or supplemental specifications.
- 101-12 "Subcontractor" — means a person, partnership or company undertaking the execution of a part of the work by virtue of an agreement between himself and the Contractor, and who has independent control over, and who is paid either by a lump sum or by stated unit prices for the work to be done under such agreement.
- 101-13 "Work" — means the work undertaken by the Contractor pursuant to the provisions of the Contract.
- 101-14 The words "approval", "directed", "required", "considered necessary", "authorized", "acceptable", "satisfactory", or words of like import, shall mean approval of, directed, required, considered necessary or authorized by and acceptable or satisfactory to the Engineer.

SECTION 103

SCOPE OF WORK

103-1 Estimated Quantities

The estimated quantities set forth in the tender are approximate only. If the quantity of work to be done and material to be furnished exceeds or is less than the estimated quantity, the Contractor shall proceed with the work and payment will be made for the actual amount of work done and material furnished at the unit prices set forth in the contract except as provided below.

(a) In the case of a major item where the quantity of work done or material furnished exceeds the tender amount by more than 20 percent and where with such over-run the unit cost of the work done or material furnished is higher or lower than the tender price, then upon the written request of either party to the contract, negotiations shall be carried out as soon as reasonably possible to determine the revised unit price. Adjustments of compensation shall be applied only to the final quantity less 120 percent of the tender quantity. The revised unit price shall be based on the actual cost plus a reasonable allowance for profit and applicable overhead.

(b) In the case of a major item, where the quantity of work done or material furnished is less than the tender quantity by more than 20 percent, an allowance to compensate for the Contractor's losses in fixed costs will be made at a rate equal to 10 percent of the tender unit price on the amount of under-run in excess of 20 percent of the tender quantity.

103-2 Changes and Alterations

The Corporation may, by order in writing, at any time before or after the commencement of the work, delete, extend, increase, decrease, vary, or otherwise alter the work to be done or material to be furnished or any part thereof. If the character of the work to be done or material to be furnished is actually changed from that on which the Contractor based his bid, by reason of such written order of the Engineer or by reason

of incorrect written information supplied by the Corporation, and if the change increases or decreases the cost of the work to be done or material to be furnished, the Contractor shall proceed with the work to be done and upon the written request of either party to the contract, negotiations shall, as soon as reasonably possible, be carried out to determine the amount of compensation to be paid, provided that if such change in character relates solely to quantities, it shall be dealt with under Sub-Section 103-1 and not otherwise.

103-3 Extra Work

Where the Engineer directs or otherwise authorizes the Contractor in writing to undertake work in addition to that provided for in the contract and for which the Engineer and the Contractor agree that there is no applicable tender item, the Contractor shall proceed with the work and such work shall be considered extra work and shall be paid for as negotiated.

Where it is impractical to negotiate a price or where agreement cannot be reached on a price for approved extra work, payment for such work may be made on a time and material basis as provided in subsection 108-4.

103-4 Cleaning up Before Acceptance

Before any work shall be finally accepted by the Corporation, the Contractor shall make such replacements of improper materials and such corrections of faulty workmanship as have been directed by the Engineer and do such trimming and disposal of rubbish and surplus materials as to leave the work neat and presentable.

103-5 Acceptance of the Work

The Contractor shall notify the Engineer in writing when, in the opinion of the Contractor, the work has been satisfactorily

CONTROL OF THE WORK

104-1 Engineer's Authority

The Engineer may supervise and direct all work to the extent of ensuring the fulfillment of the contract and the completion of the work in accordance with the plans and specifications. He shall determine the quantities of the several kinds of work which are to be paid for under contract, and determine all questions relating to the said work and the construction thereof. The Engineer shall in all cases decide every question which may arise relative to the performance of the contract, and his estimate and findings shall be final. He shall, within a reasonable time, render a decision on all claims by the Contractor and all questions which may arise relative to the performance of the work, or the interpretation of the contract. The Contractor shall at all times and at his own expense furnish all reasonable aid and assistance required by the Engineer or any Inspector for the proper inspection and examination of the work or any part thereof. The Contractor shall, at his own expense, furnish samples for testing when required and shall furnish all reasonable facilities for the inspection of material and workmanship. The Contractor shall obey the directions and instructions of any Inspector and they shall be made in writing at the request of the Contractor.

Notwithstanding any inspections that the Corporation might carry out, the failure of the Engineer or the Inspector to condemn or object to any defective work or material shall not constitute a waiver of any specification or the approval or acceptance of such defective work or material and except as otherwise provided herein, the Contractor shall be and remain liable for such defective work or material and any loss, costs, charges or expenses in connection therewith.

104-2 Claims and Negotiations

Where the Contractor wishes to submit a claim or to request a negotiation, the Contractor shall give notice on the form prescribed by the Engineer within 7 days of the date of commencement of that specific portion of the tender item or other work out of which the claim or request for negotiation arises. The Contractor shall submit claims not later than 30 days after the date of his receipt of the final detailed statement for the entire work, identifying the item or items in respect of which the claim arises

the grounds upon which the claim is made, and the records maintained by the Contractor under Subsection 108-8 which support such claim. The Corporation may require the Contractor to submit such further and other particulars as the Corporation might require to assess the claim and the Contractor shall submit the information within 30 days therefore.

104-3 Right of the Engineer to Modify Methods and Equipment

The Contractor shall make such alterations in his method, equipment and working forces as the Engineer in writing directs if at any time the method or equipment or working forces are found by the Engineer to be unsafe or inadequate to ensure the protection, safety or quality of the work or to ensure a rate of progress sufficient in the opinion of the Engineer to complete the work within the time limited therefore under the contract, but notwithstanding the foregoing, the onus is on the Contractor to ensure that such required safety protection, progress and quality of the work are maintained.

104-4 Plans and Working Drawings

When the nature of the work so requires, the Corporation will provide the Contractor with plans showing the details of the construction required. Working drawings showing shop details, erection diagrams, falsework, formwork and such other details as may be required for the work and which are not shown on the drawings furnished by the Corporation shall be provided by the Contractor in as many copies as required.

Work related to the working drawings shall not proceed until such drawings have been approved by the Engineer. Approval by the Engineer shall not relieve the Contractor from any responsibility for the adequacy or soundness of such working drawings or for the work they represent.

104-5 Deviation from Plans

The Contractor shall not deviate from the contract plans, specifications and approved working drawings without the consent in writing of the Engineer.

or permit such vehicle to be loaded beyond the legal limit as specified in the Highway Traffic Act, whether such vehicle is registered in the name of the Contractor or otherwise, except where there are designated areas in the contract where overloading is permitted. The Contractor shall bear the onus of weighing disputed loads. Notwithstanding any other provision of the contract, where a vehicle is hauling material which is being measured for payment by weight, over any portion of the highway on which overloading is not permitted by this Contract, and where the load exceeds the legal limit of the vehicle by more than 1000 lbs., the Corporation will make no payment to the Contractor for any portion of the load in excess of the vehicles legal limit.

104-12 Condition of Site

The Contractor during the progress of the work shall keep the site and work in as tidy

a condition as practicable. He shall not deposit any material on any portion of street, sidewalk, boulevard, or other Corporation or public property, without permission of the Engineer, and shall remove same without delay when and as directed by the Engineer.

Unless all surplus material, or plant, rubbish, false work, etc. is removed from time to time, when and as directed, the Engineer will proceed to do whatever is necessary to restore the site, street, sidewalk, boulevard, or other Corporation or public property, to a tidy condition, and charge the cost thereof against the Contractor. Whenever and wherever any work is closed, suspended or stopped for the winter, all material of every description must be gathered up from off the streets, foot-walks, and boulevards, and removed therefrom, provided always there shall be no stoppage of work without the approval in writing of the Engineer.

LEGAL RELATIONS AND RESPONSIBILITY

106-1 Contractor's Responsibility for Damages

The Contractor, his agents and all workmen and persons employed by him or under his control, including Sub-Contractors, shall use due care that no person or property is injured and that no rights are infringed in the prosecution of the work, and the Contractor shall be solely responsible for all damages by whomsoever claimable in respect of any injury to persons or to lands, buildings, structures, fences, livestock, trees, crops, roads, ways, ditches, drains and water-courses, whether natural or artificial, or property of whatever description and in respect of any infringement of any right, privilege or easement whatever occasioned in the carrying on of the work or any part thereof, or by any neglect, misfeasance or non-feasance on the Contractor's part or on the part of any of his agents, workmen or persons employed by him or under his control including Subcontractors, and shall bear the full cost thereof and shall at his own expense make such temporary provisions as may be necessary to ensure the avoidance of any such damage, injury or infringement and to prevent the interruption of or danger or menace to the traffic on any railway or any public or private road entrance or sidewalk and to secure to all persons and corporations the uninterrupted enjoyment of all their rights, in and during the performance of the work and the Contractor shall indemnify and save harmless the Corporation from and against all claims, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by, or attributed to any such damage, injury or infringement.

Wherever any work is of such an extent and nature that it must necessarily be confined to particular areas of the right-of-way, the Contractor shall use reasonable care not to damage or deface the remaining portions of the right-of-way, and if any damage is occasioned as a result of the Contractor's operations, it shall be rectified by the Contractor at his own expense, to the satisfaction of the Engineer.

Notwithstanding the indemnity provisions contained in this section, where in the opinion of the Engineer the Contractor has failed to rectify any damage, injury or infringement or has failed to adequately compensate any person for any damage, injury or infringement for which the Con-

tractor is responsible under the contract, the Engineer, following notice in writing to the Contractor of his intention so to do, may withhold payment of any monies due to the Contractor under this or any other contract until the Contractor has rectified such damage, injury or infringement or has paid adequate compensation for such damage, injury or infringement, provided, however, that the Corporation will not withhold such monies where in the opinion of the Engineer there are reasonable grounds upon which the Contractor denies liability for such damage, injury or infringement and the Contractor has given the claimant a reasonable time in which to establish the validity of his claim, and provided further that the amount withheld under this section shall not exceed the amount of such claims against the Contractor.

Where the Contractor uses privately owned lands for pits or waste disposal areas, the Contractor shall provide the Engineer with a release signed by or on behalf of the owner of each pit or waste disposal area used by the Contractor. If the said release is not obtained, then sufficient monies will be withheld from the Contractor pursuant to sub-section 108-6 except, however, where the owner's signature is withheld solely on the basis of damage, injury, or infringement, it will be dealt with as provided elsewhere in this subsection.

106-2 Liability Insurance

The Contractor shall take out and keep in force until the date of acceptance of the entire work by the Engineer, a comprehensive policy of public liability and property damage insurance acceptable to the Engineer providing insurance coverage in respect of any one accident to the limit of at least \$1,000,000 exclusive of interest and cost, against loss or damage resulting from bodily injury to or death of one or more persons and loss of or damage to property and such policy shall name the Corporation as an additional insured thereunder and shall protect the Corporation against all claims for all damage or injury including death to any person or persons and for damage to any property of the Corporation or any other public or private property resulting from or arising out of any act or omission on the part of the Contractor or any of his servants or agents during the execution of the contract and the Contractor shall forward with the executed contract documents a certified

blading required to maintain the surface of such roads and detours shall be deemed to be included in the prices bid for the various tender items and no additional payment will be made.

Where the work under this contract is for any reason discontinued and will not be resumed until the following working season or for any extended period, the Contractor shall, when directed by the Engineer, open and place the highway and detours in a passable, safe and satisfactory condition for public travel and the highway shall not again be closed to traffic, or traffic thereon be obstructed, without written authority of the Engineer.

Where the Contractor constructs a detour which is not specifically provided for in the contract, or required by the Engineer, the construction of the detour and if required, the subsequent removal shall be carried out at the Contractor's expense. The detour shall be constructed and maintained to structural and geometric standards approved by the Engineer. Removal shall be carried out as directed and at the discretion of the Engineer and shall consist of the disposal, levelling and trimming of the excavated material and such restorative measures as may be required.

Where, with the written approval of the Engineer, the road is closed and the traffic diverted entirely off the road allowance, to any other public roads, the Contractor shall at his own expense supply and erect barricades, lights, including flashing lights and such other protection as may reasonably be required by the Engineer at all points where traffic might enter on that portion of the road so closed to traffic. The Contractor, when required by the Engineer, shall supply watchmen to protect the barricades and direct traffic at each end of the portion or portions of the highway closed to traffic. The Contractor shall at his own expense erect signs and lights and maintain such approved detours over other public roads which may be used during the said closure of the road, as directed the Engineer.

The foregoing provisions shall in no way relieve the Contractor of his obligations under the various provisions of the contract dealing with the Contractor's responsibility for damage claims, except for claims arising on sections of road within the limits of the contract that are being maintained by the Corporation.

106-5 Access to Properties Adjoining the Work

The Contractor shall provide at all times and at his own expense, adequate pedestrian access to private homes and commercial establishments unless otherwise authorized by the Engineer.

Where interruptions to access have been authorized by the Engineer, reasonable notice shall be given by the Contractor to the affected property owners and such interruptions shall be arranged so as to create a minimum interference to those affected.

106-6 Construction Affecting Railway Property

The methods of construction and the timing of work within or adjacent to railway property shall be subject to the approval of the Engineer.

Before any work is commenced, the Contractor shall give the Engineer, at least 7 days prior notice in writing, so that arrangements can be made for the Railway Company to appoint flagmen and to provide protection according to Railway Company requirements.

The Contractor shall provide and pay for all protection and flagging required in accordance with Section 106-4.

106-7 Explosives

The Contractor shall comply with all statutes, regulations, by-laws and orders relating to the supply, hauling, handling, use of and storing of explosives.

Before any blasting operations are carried out, the Contractor shall give reasonable notice to any department or agency of Government and to any person, partnership or corporation including a municipal corporation and any board or commission thereof affected thereby.

In addition to any other precaution that may be necessary, the Contractor shall, immediately prior to a blast, clear the blasting area of all residents, vehicular and pedestrian traffic, and shall post flagmen on each road entering the blasting area, who shall stop all traffic and shall prevent such traffic from entering the area until the blast has taken place.

Notwithstanding any direction of the Engineer in regard to explosives, drilling or methods of blasting used, the Contractor shall take all precautions necessary to ensure that persons are not injured and that adjoin-

PROSECUTION AND PROGRESS

107-1 Time and Order of Completion

Before starting the work the Contractor shall submit in writing to the Engineer his proposed methods and sequence of work and shall obtain approval therefore and such approval shall not relieve the Contractor of any of his duties and obligations under this contract.

The Engineer may direct the Contractor in writing as to the time, precedence or order in which any work to be done under the contract shall be performed.

The work shall not be commenced until the Contractor has received a written order to commence the same, signed by the Engineer and it shall thereupon be commenced within seven days of the commencement date specified therein and continuously and with utmost diligence and dispatch carried on to completion subject to any other provisions of this contract and shall be completed and full possession thereof given to the Corporation within the time allowed in the special provisions, said time to commence on the date of said written order; unless a longer time shall be allowed in writing by the Engineer, in which case it shall be carried on to completion and possession given to the Corporation within the additional time as allowed.

107-2 Extension of Time

An extension of time may be granted in writing by the Engineer in the event of the work being delayed beyond the prescribed time for completion as a result of causes beyond the Contractor's control. Such extensions shall be for such time as the Engineer may prescribe, and the Engineer shall fix the terms on which the said extension may be granted. An application by the Contractor for an extension of time as herein provided shall be made to the Engineer in writing on the form prescribed at least fifteen calendar days prior to the date of completion fixed by the contract. All bonds or other surety furnished to the Corporation by the Contractor shall be amended where necessary at the expense of the Contractor to provide coverage beyond the date of any extension of time granted, and the Contractor shall furnish the Engineer with evidence of such amendment of the bonds or other surety.

Any extension of time that may be granted to the Contractor shall be so granted and accepted without prejudice to any rights of the Corporation whatsoever under the contract, and all of such rights shall continue in full force and effect after the time limited in the contract for the completion of the work and whenever in the contract, power and authority is given to the Corporation or the Engineer or any person to take any action consequent upon the act, default, breach, neglect, delay, non-observance or non-performance by the Contractor in respect of the work or contract, or any portion thereof, such powers or authorities may be exercised from time to time and not only in the event of the happening of such contingencies before the time limited in the contract for the completion of the work but also in the event of the same happening after the time so limited in the case of the Contractor being permitted to proceed with the execution of the work under an extension of time granted by the Engineer. In the event of the Engineer granting an extension of time, time shall continue to be deemed of the essence of the contract.

107-3 Assignment, Subletting and Renting

The Contractor shall not assign, transfer or sublet the whole or any portion of the contract, or the whole or any portion of the work to be performed under the contract, without the consent in writing of the Engineer, and the Contractor shall not transfer or assign any monies which may be due or which may become payable under the contract without the consent in writing of the Engineer, provided that any consent so given shall not under any circumstances relieve the Contractor of liabilities and obligations assumed by him under the contract.

Where a bidder has withdrawn his bid on the contract after the closing of tenders or, having been offered the contract by the Corporation has for any reason failed to enter into it the Contractor shall not assign, transfer or sublet any part of the contract nor shall he rent any equipment required for the contract if such assignment, transfer subletting or rental will result in such bidder or any person, firm or corporation having an interest in such bidder, directly or indirectly receiving any benefit. The Contractor shall not purchase from such bidder or from any firm or corporation having an interest in such bidder, material required for the con-

of the location and details of such damage of interference.

The Contractor shall post prominently and maintain on the site of the work and wherever else the Engineer may require, legible copies of any notice, schedule or other information that he is required to post under this contract or under any statute, regulation, by-law or agreement.

107-10 Obstructions

The Contractor assumes all the risks and responsibilities arising out of any obstruction on or under the highway right-of-way and any traffic conditions caused by such obstruction including traffic conditions on any highway or road giving access to the contract area and he shall not make any claim against the Corporation for any loss, damage or expense occasioned thereby.

During the course of the contract, it is the Contractor's responsibility to consult with municipal authorities or utility companies for further information in regard to the

exact location of utilities, to exercise the necessary care in construction operations, and to take such other precautions as are necessary to safeguard the utility from damage.

107-11 Limitations of Operations

Except for such work as may be required by the Engineer to maintain the works in a safe and satisfactory condition, the Contractor shall not carry on his operations under the contract on Sundays without permission in writing of the Engineer.

The Engineer may, in writing, require the Contractor to cease or limit his operations under the contract, on any day or days if the operations are of such a nature or if the work is so located or if the traffic is of such a volume that the Engineer deems it necessary or expedient so to do.

107-12 Time of the Essence of the Contract

Time shall be deemed to be of the essence of the contract.

sub-sections 106-1 shall pay to the Contractor, 85% of such estimated value.

When the contract is duly completed in accordance with the terms herein contained, and the entire work is accepted by the Engineer, the Corporation may, after the expiration of 37 calendar days from the date of acceptance, pay to the Contractor such amounts of the estimated value of the work done and material furnished in accordance with the terms of the contract including Extra Work under Section 103-3 in excess of the amounts paid under the preceding paragraph as the Corporation deems proper.

Following the acceptance of the entire work by the Engineer, a final detailed statement shall be made by the Engineer of the value of all the work done and material furnished under the contract including work done or material furnished as Extra Work under Section 103-3 and within 5 months after the date of acceptance of the entire work two copies thereof shall be delivered to the Contractor. Within one month after such delivery to him, the Contractor shall present to the Corporation one copy of such detailed statement, certified by him to be correct and also on the forms prescribed, Contractor's and Subcontractor's verification certificates and a Workmen's Compensation Board clearance certificate. Upon receipt by the Engineer of the verified statement and certificates and except as herein otherwise provided, there shall be paid to the Contractor within one month of the date of receipt by the Corporation of the certified detailed statement an amount equal to the amount of the said detailed statement, less all amounts previously paid to the Contractor, provided that the Corporation may retain any portion of such payment that it deems necessary for its protection against claims for liabilities or for protection against any claims that the Corporation may have against the Contractor, under this contract or otherwise.

Delay by the Corporation in making any payment due to the Contractor following the acceptance of the entire work by the Engineer for work done or material furnished under the contract and listed on the final detailed statement, shall be deemed not to be a breach of the contract by the Corporation but the Corporation shall, in respect of any such payment made more than seven months after the date of acceptance of the entire work by the Engineer, pay the Contractor interest at the rate of 8% per annum for the period from the day next following the expiration of the

said seven month period to the date of payment.

Except as provided in this section, the Corporation shall not pay interest on any amount which may at any time become payable to the Contractor under this Contract.

108-4 Payment for Extra Work on a Time and Material Basis

For the purposes of this section, "Cost of Labour" means the amount of wages, salary and payroll burden paid or incurred directly by the Contractor to or in respect of labour and supervision by foremen actively and necessarily engaged on the extra work based on the recorded time and hourly rates of pay for such labour and supervision, but shall not include any payment or costs incurred for general supervision, administration or management time spent on the extra work or any wages, salary or payroll burden for which the Contractor is compensated by any payment made by the Corporation for equipment.

"Payroll Burden" means the payments in respect of workmen's compensation, vacation pay, unemployment insurance, public liability and property damage insurance, sickness and accident insurance, pension fund and such other welfare and benefit payments as form part of the Contractor's normal labour costs and shall include any cost or expense as the Engineer may approve, which has been incurred by the Contractor for food, lodging or similar items.

"Cost of Material" means the cost of material purchased by the Contractor for the extra work as shown by itemized invoices and the cost of material from the Contractor's stock used on the extra work, valued at current prices.

"The 527 Rate" means the rate for a unit of equipment as listed in MTC Form 527 (Schedule of Rental Rates for Construction Equipment) which is current at the time the extra work is carried out or for equipment which is not so listed, the rate which has been calculated by the Corporation, using the same principles as used in determining the 527 rates.

"Rented Equipment" means equipment that is rented from a person, firm or corporation that is not an associate or affiliate of the lessee as defined by the Securities Act, R.S.O. 1970, Chapter 426 and does not include equipment that is being paid for

Where the Contractor arranges for the extra work to be carried out by others, the Corporation will pay the Contractor 105% of the compensation as herein before provided. However, such percentage allowance over the prescribed compensation shall apply only once regardless of the number of times the work has been assigned or sublet and no percentage allowance over the prescribed compensation will be paid to any associate or affiliate as defined by the Securities Act, R.S.O. 1970, Chapter 426 or in respect of any compensation for rented equipment.

Except where there is agreement to the contrary, the compensation as herein provided shall be accepted by the Contractor as compensation in full for all costs and expenses arising out of the extra work and no other payment or allowance will be made in respect of such work.

Notwithstanding any other provision of this section, no payment shall be made to the Contractor for or in respect of hand tools or equipment that are tools of the trade.

Each month, the Contractor may submit an invoice to the Engineer covering work performed on the extra work project during the preceding month and to the extent that the work covered by the invoice can be verified by the Engineer, the invoice will be processed by the Corporation for payment.

The final invoice shall be submitted by the Contractor within 30 days after the completion of the extra work project.

Separate invoices shall be submitted in triplicate for each extra work project. Each invoice shall include the order number and covering dates of the work and shall itemize separately, labour, materials and equipment and submitted with the invoice, shall be invoices for materials, rented equipment and other charges incurred by the Contractor on the extra work.

108-5 Measurement of Excavated Materials

Whenever this contract requires the payment for excavation at a price per cubic yard the volumes shall be measured in their original position and computed in cubic yards by the method of average end areas unless otherwise provided for under the specifications for the item of work requiring their use.

108-6 Contractor's Discharge of Liabilities

The Contractor shall discharge and cause each Subcontractor to discharge all liabilities incurred, for labour, materials or services,

used or reasonably required for use in the performance of this contract on the date upon which each becomes due. At the request of the Corporation, the Contractor shall furnish the Corporation with evidence satisfactory to it that his liabilities and those of the Subcontractors, as aforesaid, have been discharged and this shall include a certificate or certificates from the Workmen's Compensation Board that they have complied with the requirements of the Workmen's Compensation Board and are in good standing on the books of the Board.

No payment to which the Contractor is otherwise entitled under this contract shall at the discretion of the Corporation be due and payable to him so long as he or any Subcontractors are in default under this section, and upon such default occurring, the Corporation may in respect of claims submitted by creditors having a contractual relationship with the Contractor, after notice in writing to the Contractor and his Surety, withhold payment on the whole or any part of any such liability of the Contractor. Interest will not be paid on any such funds withheld.

108-7 Payment of Workmen

The Contractor shall, in addition to any fringe benefits, pay the workmen employed by him on the work in accordance with the Labour Conditions set out in a Special Provision of this contract and at intervals of not less than twice a month or in accordance with the Labour Conditions in any Corporation By-Law, whichever is the greater.

The Contractor shall require each Subcontractor or other person doing any part of the work contemplated by this contract to covenant with the Corporation that he shall pay the workmen employed by him on the work at the wage rates and in the manner required by this section.

Where any person employed by the Contractor or any Subcontractor or other person on work contemplated by this contract is paid less than the amount required to be paid under this contract, the Corporation may deduct from any monies payable to the Contractor under this or any other contract and pay to such person a sum sufficient to bring that person's wages up to the amount required to be paid under this contract.

108-8 Books, Payrolls, Accounts and Records

The Contractor shall maintain and keep sufficiently complete and accurate books, payrolls, accounts and records relating to the