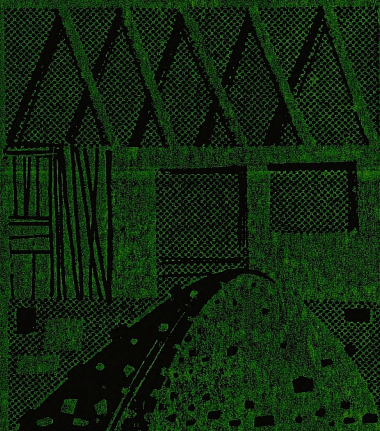


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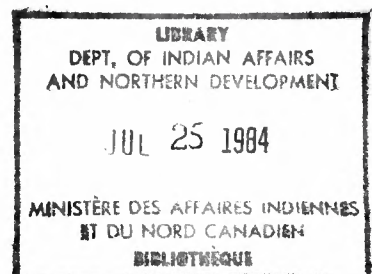
Canada

Technical Services
and Contracts

Services techniques
et marchés

CONSTRUCTION CONTRACTING GUIDELINES
FOR BAND COUNCILS

August 1981



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Guide de l'adjudication des contrats de
construction par les conseils de bande

- 8.4 General Liability Insurance
- 8.5 Vehicle Insurance
 - 8.5.1 Owned Vehicles
 - 8.5.2 Unowned Vehicles
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CONSTRUCTION CONTRACTING GUIDELINES FOR BAND COUNCILS

1.0 INTRODUCTION

This manual is issued as a guideline to band councils when purchasing services and carrying out construction by contract.

The purpose of the manual is to acquaint band councils with the ethical and common practices generally followed in the design and construction industry. It is also intended to assist band councils in arranging design and construction contracts, in which not only their own interests are properly protected but also the interests of the contractor, both of which are essential in reaching a good contractual arrangement.*

The band can expect best value for funds spent when following these procedures.

It is standard practice in industry to insist that only registered engineers and architects be engaged to design projects of a specialized or complicated nature and other projects having a cost estimate exceeding \$25,000.

In addition to the guidelines, the appendices contain examples of various forms used in the contracting process. The band may wish to use all or any of these documents. On the other hand, they may choose to prepare their own forms; however, it is recommended that legal assistance be obtained.

*It will not answer all questions relating to problems which may be encountered, because these are too numerous to detail. The document provides a general outline of the procedures involved in the contracting process. Use of the manual together with training courses will assist band councils in developing contract administrators.

Contracting by band councils should be conducted in a manner that will ensure honesty, integrity and fairness in the spending of monies administered by the Council.

2.0 GLOSSARY

2.1 Abstract

This is a form which is completed after unit price tenders are opened. All contractors are listed together with their unit prices and total amounts for each item in the tender. This is completed for easy comparison of tender prices.

2.2 Bid Bond

This is a bond provided by a bonding company to guarantee entry into contract by a contractor.

2.3 Bonding Company

This is a company authorized by law to issue guarantee bonds.

2.4 Certification Stamp

This is a rubber stamp which indicates that tenders either were or were not received within the time specified. The first stamp is placed on the tender and related documents at the time of opening and signed by the committee members. The second stamp is placed on the unopened envelope of late tenders and signed by the committee members.

2.5 Completion Certificate (Interim)

This document is issued by the consultant at the time of substantial completion of the work. Upon issuance of this document the work is considered complete, with the exception of minor deficiencies which the engineer will list, together with their values to complete. This will permit use of the facilities.

2.6 Completion Certificate (Final)

This document, issued by the consultant, certifies that all work has been satisfactorily completed in accordance with the terms of the contract. If all final documents called for by the contract have been supplied, this permits release of the holdback and contract security deposit.

2.7 Consultant

This refers to a firm or individual engaged under contract by the band council, who has professional engineering or architectural qualifications and is registered with a professional association, to act on their behalf.

2.8 Contract

This is an agreement between two parties whereby one party agrees to do or not to do something for the other party. The contract can only provide for the items agreed upon at the time the agreement was reached. No more and no less should be covered in the written agreement.

2.9 Contract Security

This consists of a certified cheque, negotiable bonds, performance bond or labour and material payment bonds provided after award of contract to guarantee performance of the contracted work and payment of accounts.

2.10 Engineer

This is a registered professional engineer or architect engaged under contract by the band council to act on its behalf.

2.11 General Conditions

These are clauses relating to the performance of the contract and protection of both the band council's and contractor's interests under the contract. They

also define actions which can be taken by the band council or its representative and the contractor.

2.12 Insurance Schedule

This is a form showing the types of insurance and minimum amount required by the band on a contract for protection of both parties to the contract.

2.13 Labour Conditions

This is a schedule of hourly rates for workmen or construction works together with conditions relating to the application. These documents are obtained for each individual project from Labour Canada and are identified to the project by a code number which must show on the tender documents and be referred to in the contract.

2.14 Labour and Material Payment Bond

This is a bond provided by a bonding company to guarantee payment of all accounts, suppliers and sub-contractors having direct contracts with the contractor arising out of the work.

2.15 Performance Bond

This is a bond provided by a bonding company to guarantee performance of the work specified.

2.16 Plan Deposit

This is an amount deposited by a contractor to obtain plans, specifications and tender documents.

2.17 Security Deposit

This is in the form of a negotiable instrument such as a certified cheque or bond which can be converted to cash.

2.18 Special Conditions

This is a document outlining conditions which may be peculiar to the specific site or conditions required, and that are not provided for in the other documents.

2.19 Statutory Declaration (Interim)

This is a document issued by the contractor, and made under oath, stating that monies received from the previous progress claim have been paid to those who performed the work or supplied material.

2.20 Statutory Declaration (Final)

This is a document issued by the contractor and signed under oath, stating that all suppliers and sub-contractors have been paid in full and that all amounts owed by the contractor for work performed under the contract have been paid in full.

2.21 Surety Company

This is a company authorized by law to issue guarantee bonds and referred to in this document as the "bonding company".

2.22 Tender

This refers to an offer from a contractor, on a form provided by the band council, for works, services or materials.

2.23 Tender Document Control Form

This is a form which is completed by the tender-opening committee before tenders are opened, indicating what was contained in the tender call package, including amendments and items which the contractor bidding was required to provide in or with the tender.

2.24 Tender Instructions

This consists of information given to bidders relating to the tender call and completion of the tender form.

2.25 Tender-opening Committee

This is a committee of three persons authorized by the band council to open tenders and commonly referred to as chairman, secretary and witness.

2.26 Tender Security

This consists of a certified cheque, negotiable bonds or a bid bond provided with the tender to guarantee entry into contract.

2.27 Terms of Payment

These are instructions and conditions provided to a contractor relating to the method and time for payments requested under the terms of the contract.

3.0 CONTRACT

3.1 Certainty of Terms

In order to be enforceable, an agreement must be so precise in its terms as to enable a court (a neutral third party) to establish what the parties to the contract undertook to do or not to do.

3.2 Offer and Acceptance

3.2.1 Expression of Common Intention

In order that there may be an agreement amounting to a contract between two parties, there must be an expression of their common intention to bind themselves.

This is accomplished by an offer by one party and acceptance of that offer by the other. It is

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emphasized that the acceptance must include no more or less than the offer; a conditional acceptance constitutes a counter offer. The acceptance of the offer completes the formation of the contract.

3.2.2 Offer

The offer may consist of:

- a. an act offered in return for a promise; or
- b. a promise offered in return for an act; or
- c. a promise offered in return for a promise.

An offer is not considered to be made until it is communicated to the one to whom the offer is made. An offer cannot be accepted by a person before he has knowledge of it.

3.2.3 Acceptance

Acceptance of an offer must be communicated to the one making the offer. This should be confirmed in writing. The contractor may not stipulate or assume that silence on the part of the band council constitutes acceptance.

Usually, acceptance of an offer is communicated in the same manner as the offer is communicated. In the absence of a prescribed method to communicate the acceptance, it is understood that the postal service shall be used.

The offer is accepted when the band council posts the letter of acceptance. As previously stated, acceptance must exactly correspond with the terms of the offer. If the band council qualifies its acceptance in any way, it is not considered acceptance in law, but rather a counter-offer to be accepted or rejected in turn by the original contractor. A qualified acceptance or an absolute rejection by the band council has the effect of terminating the offer, and that offer cannot be accepted later unless it is renewed by the contractor. The same principle applies to an offer which is made subject to acceptance within a

specified time, for example, standard construction tender, calendar days from tender closing. If no time is fixed for acceptance of the offer, the offer lapses after the expiration of a reasonable time, usually no more than 30 calendar days.

3.2.4 Withdrawal of Offer

An unaccepted offer does not bind the contractor and he may withdraw, revoke or vary his offer at any time before the band council accepts it. To be effective, the withdrawal or variation must be acutally brought to the band council's attention by the contractor.

An offer made under seal may not be revoked and may be accepted at any time before it lapses unless both parties agree otherwise in writing.

Once the offer is accepted by the band council and the acceptance has been placed in the mail box or post office it is too late for the contractor to revoke his offer.

3.3 Form

As a general rule, agreements need not be sealed to be enforceable. An offer made under seal is enforceable in the courts. Methods of sealing today take various forms, for example, impression in the document or in wax on the document or a red paper wafer affixed to the document which is clearly intended to serve as a seal.

4.0 PRE-TENDER CONSIDERATIONS

4.1 General Remarks

Before proceeding with the contract administration process or calling tenders, the band council should ensure that all pre-planning, such as funding,

arrangements with local utilities, etc. has been completed in order that the project may proceed smoothly.

4.2 Cost Estimating

When budgeting for the project, the band council should consider the following items in the overall cost of the work:

- a. planning;
- b. design;
- c. administration;
- d. advertising;
- e. cost estimate for facility (construction);
- f. other related services, such as hydro, water, sewer, etc.; and
- g. resident supervision of the contracted works.

NOTE: At this time, consideration should be given to the post-construction stage. The band should establish an estimate of cost to cover annual operation and maintenance of the completed facility or service.

4.3 Hiring Consultants by Contract

"Terms of Reference"; "Consultant Services"; "Statement of Services"; "Description of Work" or other documents with like headings used to describe the work or service to be provided under a service contract or agreement must be accurate and brief, and must contain the actual description of the work or services.

When no standard documents exist for general conditions, basis and terms of payments, or other required terms and conditions, they must also be prepared for each individual contract. They must be written in clear, accurate and brief language,

covering both general contract requirements and those of the specific contract. These documents should be separate from the "terms of reference" and clearly identified, while interlocking with the "terms of reference" and each other in the same manner as described for construction contracts.

If the band has the professional engineering or architectural expertise to produce the required plans and specifications, the person appointed should be provided with complete terms of reference and a project brief indicating the requirements.

However, if the band does not have the professional engineering or architectural expertise available, it should take steps to get the necessary outside services. These services may be available from provincial or federal government departments or from professional engineers or architects in private industry.

The band, on the other hand, may wish to engage a qualified consulting firm (professional engineers or architects) specializing in the relevant field.

When considering the hiring of a consultant, it should be remembered that engineers and architects are members of a professional association and are licensed by the province to practice in that particular province. Professionals may be licensed in more than one province.

Unlike contractors, professional engineers and architects are forbidden by their professional associations to tender for works in the same manner as a contractor: tendering is against their code of ethics. However, engineers and architects may be asked to give proposals.

The fees for consulting services are established by the associations and meet the approval of the provinces. Each provincial association issues a minimum fee schedule booklet relevant to the various categories including per day and percentage of cost

rates. Band councils should obtain copies of these schedules from the associations for the province in which the work is being carried out before seeking proposals.

The normally accepted practice for payment of fees which are based on a percentage of estimated cost of the design of the work is to pay the consultant one third of his fee upon completion and acceptance by the band council of the preliminary design sketches, one third on approval of the final design, and one third on approval of the working drawings and specifications.

If the contract with the consultant included supervision of the project, the payment of fees would be $1/4 + 1/4 + 1/4$, with the final payment being made upon completion of the contracted work.

These procedures should be considered when selecting a consultant:

- a. All projects estimated at more than \$25,000 should be designed by a professional engineer or architect in order to protect the interest of the band.
- b. There also may be other smaller projects of a complex or complicated nature which should be designed by a professional engineer or architect.
- c. The three types of consultant contracts which may be entered into relating to construction projects are:

Phase 1	preliminary group
Phase 2	final plans and specifications
Phase 3	general review or resident supervision during construction.

4.4 Conflict Between Specifications and Other Contract Documents

Similar to the relationship between plans and specifications, there is a relationship between the specifications and the other contract documents.

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Each of the elements of the tender document has a function, and none should encroach upon the requirements of the others. For example, items which refer solely to tendering do not form part of the specifications, but must be stated in the tender form and supporting documents. Items relating to the specifications should not be in the Tender Form and supporting documents.

Generally what is stated in the specifications takes precedence over the plans unless otherwise specifically stated.

4.5 Design (Plans & Specifications)

Design is an important part of construction contract documents. Before a project can proceed, it is necessary to prepare complete and accurate plans and specifications for the goods required or work to be performed. This will enable each prospective bidder to make offers on the same basis.

The plans and specifications provide the contractor with all the information necessary for the actual construction. They must complement each other.

Each document has a unique function. In broad terms, the drawings are a graphic portrayal and the specification is a written description of the technical requirements. Each should convey its own part of the story completely, and neither should repeat any part that properly belongs to the other; duplication can result in differences of meaning.

The plans give the size, form, location and arrangement of the various construction elements. In fact, a drawing is a special means of communication to convey ideas of construction.

Specifications describe the quality of materials, processes and workmanship required to complete a construction project.

When a contractor follows a specified method correctly, he cannot be held responsible if the desired end result is not achieved.

4.6 Selection of Advisor/Consultant

If an advisor or consultant is required for the proposed project, the band should:

- a. study the proposed project to determine the scope of the work required of the consultant, for example, architectural, engineering or planning;
- b. determine from experience or a professional association the names of several consultants who are qualified to give the required type of service;
- c. contact each consultant so selected, outline the nature of the project and enquire if he is interested;
- d. interview the interested consultants separately to examine the qualifications and record of each and to determine time factors and availability of personnel;
- e. check the performance of each consultant with recent clients, and select the one who appears best suited to the requirements;
- f. invite the selected consultant for a second interview to discuss the project in detail and the fee;
- g. execute a contract for services if agreement is reached. If agreement is not reached, terminate negotiations, notify the consultant in writing to that effect and invite the next consultant, in order of preference, to appear for a similar interview; and
- h. notify all those interviewed when agreement has been reached.

The selected consultant should be asked to:

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- a. study the proposed project to determine the extent of consulting services required;
- b. demonstrate that he has sufficient technical competence to carry out the assignment, or inform the client that other professionals or specialists should be retained for advice, if they are available;
- c. provide a list of recent clients for whom similar work has been done; and
- d. provide an outline of the basis of payment of fees and estimated total cost for services.

The consultants may be engaged individually to provide one or more of the three consulting disciplines--engineering, architecture and planning.

5.0 TENDER CALL (CONSTRUCTION CONTRACTS)

5.1 Pre-tender Requirements

Before tendering for the works, the band council should satisfy these questions:

- a. Have final design plans and specifications been either received and accepted or approved by the band for tender call?
- b. Is the cost estimate provided by the consultant within the band's budget limitations?
- c. Will tenders be called publicly through public advertising in the press or by invitation, depending on cost of the project?
- d. Will it be a fixed price (lump sum) or unit price contract?
- e. Where will the advertisement be placed and in how many papers? Where will documents be displayed? How long will they be displayed? When will tenders close?
- f. Will tender security be required?

- g. What is the required completion date for the work?

5.2 Type of Contract

In considering the foregoing, the band council should bear in mind that the most common acceptable methods in the construction industry for obtaining offers are the fixed price and unit price methods.

Tenders are normally called for structures on a fixed price basis. Roadworks, water and sewer distribution systems are normally called on a unit price basis because estimated quantities are provided in the tender documents on which the contractor bases his unit prices for a total tender amount. In this type of contract, the contractor is paid on the basis of actual quantities measured on the project. There are instances when road, water and sewer contracts might best be called on a fixed price basis. It is suggested the band follow the consultant's advice in this matter.

5.3 Method of Obtaining Tenders

When considering the method of obtaining tenders from contractors, these criteria apply:

5.3.1 Public Tender Method

- a. All projects, in excess of \$15,000.00 but less than \$100,000.00 should be advertised in the news media in the area of the proposed work. In order to attract contractors, it may be necessary to advertise in larger cities to ensure adequate competition.
- b. Projects in excess of \$100,000 should be given province-wide advertising coverage in order to attract as many major contracting firms as possible and to ensure adequate competition. Large projects should also be advertised in

construction papers, such as Daily Commercial News, Heavy Construction News, etc.

- c. Tender documents for major projects exceeding \$100,000 should be displayed in the band office, regional director general's office, builders' exchanges (if located in area) and construction association offices.
- d. Tender documents should be made available, upon receipt of a refundable plan deposit, at the band office and regional director general's office.
- e. To generate additional interest in the project, contractors in the area may be contacted and advised of the project. However, the contractor should never be left with the impression that his is the only firm being requested to bid.

5.3.2 Direct Solicitation

For proposed contracts estimated at \$15,000.00 or under, tenders should be invited from at least three firms qualified to carry out the type of work involved. The cost does not justify public advertising.

5.4 Plan Deposits

It is normal practice in the construction industry to require contractors to provide a deposit for plans, specifications and tender documents when a project is publicly advertised. This deposit is refunded to the bidder when the documents are returned in good order within 30 days.

When the band decides to negotiate or obtain bids by direct solicitation, no plan deposit is required.

The normal prices for plan deposits are:

- a. project value \$ 25,000 - \$ 25.00 per set;

b. project value \$100,000 - \$ 50.00 per set; and

c. project value \$200,000 - \$100.00 per set.

Charging for plans, specifications and tender documents stops the issue of documents to persons who are not seriously interested in bidding.

5.5 Project Estimate

THE PROJECT ESTIMATE SHOULD BE TREATED AS CONFIDENTIAL AND NEVER GIVEN OUT TO PROSPECTIVE BIDDERS.

6.0 TENDER DOCUMENTS

6.1 Advertisement

The advertisement (see Appendix 2) should include:

- a. sufficient detail of the project, i.e., a brief, for bidders to visualize the scope and nature of the work and to enable them to decide whether they should bid;
- b. hour and date for receipt of tenders;
- c. location for receipt of tenders;
- d. amount of plan deposit;
- e. location of pick-up and display points; and
- f. a statement to the effect that "the lowest or any tender will not necessarily be accepted".

6.2 Tender Form

In preparing the tender form, the band requires certain information from a bidder who in turn

provides the information requested in the hope that his bid will be accepted.

The band should provide the following information on the tender form:

- a. description of the work as contained in the advertisement;
- b. the closing date;
- c. list of sub-trades involved;
- d. a realistic completion date;
- e. security and insurance requirements;
- f. an appendix listing items and estimated quantities, if applicable;
- g. listing of related documents, for example, Articles of Agreement, plans, specifications, Tender Instructions, General Conditions, Terms of Payment, Labour Conditions and Insurance Requirements.

The following information is required from the bidder:

- a. name and address;
- b. amount of tender;
- c. unit prices and totals for each item (if applicable);
- d. sub-contractors' names and addresses;
- e. proposed work commencement date;
- f. tender security;
- g. signature; and

- h. contractor's qualification statement (statement of firm's construction and financial ability).

7.0 TENDER AND CONTRACT SECURITY

7.1 Financial Security

Normally in the construction industry, a 10% tender security is obtained on construction contracts with the tender, and contract security is obtained after award of the contract.

The intent of the various forms of financial security is to guarantee that contractors will enter into contract or to ensure that contractors complete the work and meet their obligations as defined in the contract. The principal types of financial security are:

7.1.1 Surety Bonds

With this type of financial security, a third party, a bonding company, undertakes to protect the band, within specified limits, against a contractor's failure to carry out his obligations. These can be in the form of a bid bond--10% of the tender--or payment bond or a performance bond, each in the amount of 50% of the contract value.

7.1.2 Security Deposits

In this case, the contractor provides securities (certified cheque or negotiable bond) which the band may convert to cash to complete the contractor's obligation (10% with tender or 20% of contract value).

7.1.3 Holdbacks

In this case, an amount is withheld, from progress payments to ensure the due fulfilment of the contract. If security deposits are provided, 10% is deducted from each progress claim and, if labour and material payment bonds are provided, 5% is deducted.

7.2 Security Deposits

When security deposits are in cheque form, they should be certified by the banking institution on which they are drawn.

The term "security deposit" refers to a negotiable instrument only, for example, cheque, bearer bond, etc., but not to bonds issued by a Surety: bid, performance and labour and material payment.

The amount of the security deposit must be in accordance with the requirements of the tender documents.

7.3 Bonds - Government-guaranteed

Government of Canada Bonds or bonds unconditionally guaranteed as to principal and interest by the Government of Canada must be Bearer Bonds, or, if registered, registered in the name of the band council. Coupon bonds must have all unmatured coupons attached.

7.4 Surety Bonds - Bid

Bid bonds acceptable as tender security must be in the form prescribed by the band and be guaranteed by a company whose guarantee bonds are acceptable by the band. Many guarantee bonds which differ from the prescribed form and bonds underwritten by firms other than those acceptable to the band are available in Canada: they are "improper security". Extreme care must be taken that each bid bond accepted complies with all the specified requirements.

In addition to ensuring the above, the band council should ensure that each bid bond has been properly executed and meets these requirements:

- a. the bond is a minimum of 10% of the offer;
- b. the name of the principal is precisely the same in both the body of the bond and the signature block, and they agree precisely with the name of the tenderer inserted in the tender;
- c. the name of the obligee (band council) is precisely the same as stated in the Tender Instructions; and
- d. the description of the project is precisely the same as it appears in the tender advertisement and tender form.

NOTE: Bid Bonds in combination with either certified cheques or "bearer" bonds are "improper security". Submission of this type of security may be an indication that the bonding company is not prepared to put up the full amount of the required contract security.

It must be understood that issuance of a bid bond by a Bonding Company to a contractor does not guarantee the technical capability, financial resources of the experience and integrity of the contractor to carry out the contract according to its letter and spirit. Nor does it bind the bonding company to issue the appropriate "performance" and "labour and material payment" bonds, if the contract is awarded to that contractor.

All too often, surety bonds are issued not on the proven resources of a contractor but on the strength of a guarantor, who will guarantee payment to the bonding company should the bonding company be required to pay on behalf of the contractor.

A recommended procedure to ensure that a bonding company will undertake to issue a "performance" and "labour and material payment" bond when a contract has been awarded to a contractor who has provided a

bid bond, is to specify that all bid bonds be accompanied by an undertaking signed (and sealed) by the bonding company to issue them. This is known as an AGREEMENT TO BOND.

In his tender, the contractor agrees to provide surety bonds in accordance with the Tender Instructions within 10 days of notification of contract award.

The procedures outlined under Subsection 7.4 are appropriate to ensure that the bonds received conform to all requirements. For this operation, the term "Contract/Acceptance of Tender" must be substituted for "Tender " when reading the procedure.

NOTE: Work should not be permitted to commence until the contractor has complied with the obligation to provide contract security.

7.5 Tender Security - Return

Securities submitted with tenders shall be returned promptly (generally within 48 hours of the opening of tenders) to unsuccessful bidders. A covering letter shall be prepared and forwarded by the band council. Normally, only the security submitted by the lowest bidder (determined by evaluation) shall be retained.

7.6 Contract Security - Security Deposit

Security deposits are dealt with in accordance with the terms of the specific contract and should be deposited to accrue interest during the term of the contract. If the successful contractor requests that the deposit be held uncashed, the band council should comply. Contract surety bonds and uncashed security deposits should be retained by the band council in a safe place.

8.0 INSURANCE REQUIREMENTS

8.1 General Remarks

It is normal practice for contractors to carry insurance to protect themselves from various types of claims. It is also normal for the client of a contractor to require the contractor to protect him from and against all claims. This is known as a cross liability clause.

Details of all insurance requirements to be included in a contract must be given to prospective bidders at the tendering stage so that the cost of such protection can be computed and included in the tender prices.

8.2 Methods of Securing Protection

The Band Council should secure contract protection, where appropriate, by:

- a. incorporating into the contract conditions such protection known as a "save harmless" clause, transferring any possible responsibilities and liabilities it faces as a third party to the contractor;
- b. requiring the contractor to purchase necessary insurance policies to protect the band's interests; and
- c. ensuring that their stipulated insurance requirements have been met, by obtaining originals or certified copies of the policies.

Insurance requirements in band contracts should consist of the following: fire, general liability and vehicle.

8.3 Fire Insurance

Fire insurance is required to protect the band against losses arising from fire damage to structures or to work in progress together with

materials on site intended for incorporation into work and plant.

The originals of these policies must be filed with the Band Council.

Policies should be made payable to the band council, and all deductibles applicable to the policy are the contractor's responsibility.

8.4 General Liability Insurance

This insurance protects the band against claims by third parties for loss of or damage/injury to persons or property caused by the contractor's operations under the contract, to the limit of the liability stated in the policy*. Such policies do not cover liabilities arising from the use of aircraft, watercraft and licenced vehicles and liabilities imposed by Workmen's Compensation Plans for employees.

*This includes payment for the care of injured persons, loss of services, bodily injury, sickness or disease, and death of persons as well as destruction or loss of property or the use thereof.

This insurance also covers payment of certain additional costs over and above the amount of any damages described above awarded against the insured including costs for provision of defence through use of lawyers and investigators, negotiations with claimants, and immediate medical aid to injured Persons. This latter coverage is not limited by the money limitations of the policy but operates as a supplementary protection.

The protection described above in turn supports the financial stability of the contractor.

8.5 Vehicle Insurance

8.5.1 Owned Vehicles

This insurance protects against claims by third parties for bodily injury, death or property damage arising out of the use or operation of licensed vehicles, in essentially the same manner as indicated above for general liability insurance.

8.5.2 Non-owned Vehicles

This insurance protects against claims brought against the insured because a vehicle not owned by him caused injury, death or property damage while being used by him or on his behalf.

Claims of this nature against the contractor can arise when:

- a. independent truckers use vehicles on his behalf;
- b. his own employees use their own vehicles on his behalf; or
- c. the contractor leases vehicles from a company.

All policies maintained pursuant to general liability and vehicle insurance must be issued in the joint names of the band council and the contractor as their respective interests may appear, and must include the following cross liability clause:

"The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against either of the named insureds by the other named insured".

Certified copies (rather than certificates of insurance) of the policies maintained pursuant to 8.4 and 8.5 must be filed with the band council to

confirm that the policies are properly written and adequate.

8.6 Insurance Schedule

The band council should prepare an insurance schedule establishing the types of insurance and minimum coverage required for "construction" contracts. This document should be attached and form part of the tender documents.

Public liability (P.L.) and property damage (P.D.) insurance (including vehicular insurance) etc., is required on all construction contracts. Fire insurance is not required on construction contracts for underground works or roadwork.

If, in the opinion of the band council, the minimum insurance limits are inconsistent with the work involved (value or degree of hazard), the limits shown in the insurance schedule may be increased by altering the appropriate section of the tender. An example is given below in a case of renovations to an existing building:

Value of renovations - \$ 50,000
Value of building - \$500,000

The renovations require extensive use of blow torches, cutting torches, etc., - very hazardous.

The tender should specify fire insurance to the value of the building.

Hazardous work close to a heavily travelled highway, waterway or railway. Value of contract - \$375,000

The limits of P.L. and P.D. should be increased to amounts consistent with possible claims.

The provision of insurance coverage by the contractor does not relieve him of his

responsibility under the contract, nor does the specifying of types and amounts of insurance to be provided make the Band Council liable for the Contractor's responsibilities.

9.0 AMENDMENTS DURING TENDER CALL

Occasionally, during the tender call period, the band council will receive requests to clarify an item in the tender form or in the plans and specifications. Requests may also be received for substitution of materials, naming of equals, or extension of the closing date for tenders. If an enquiry concerns alterations to the details of the plans and specifications, the enquirer should be advised to bid according to the tender documents and seek changes after the contract is awarded.

Bidders should not be informed independently, by phone or letter, of any changes in the plans, specifications or tender documents. Instead, an amendment should be issued to all prospective bidders. This should be issued in duplicate, enabling the bidder to acknowledge receipt by attaching one copy to his tender.

Copies of all amendments must go to offices where documents are displayed or be picked up for attachment to documents they have on hand.

Amendments should not be issued within seven days of the time set for receipt of tenders.

When an extension to the closing date has been authorized, contractors who have already submitted their tenders should be advised that they may revise their offers by mail, etc.

9.1 Tender Documents

If the amendment is major, it may be necessary to issue new tender documents. The new or revised

documents should be clearly marked "revised" so that they are immediately distinguishable from the original documents. These new documents must be issued to all bidders and others who are recorded as having received Tender Documents.

9.2 Plans and Specifications

During tender call, it may be necessary to issue changes or corrections to both plans and specifications. These corrections are issued as a numbered addendum, e.g. "ADDENDUM #1". The addendum may be a simple instruction or a sketch showing a revised detail on the plans, a rewritten section of the specification or a completely revised drawing. In any case, the addendum must amend the plans and specifications in a clear and concise manner. Care must be taken to issue each addendum to all bidders who are recorded as having received tender documents and to all display points.

9.3 Extension of Closing Date

The tender closing date may have to be extended if it is found that contractors have not had sufficient time to complete their pricing. For example, another major tender may be closing at the same time or this project may require extra time due to its difficult or unusual nature. An extension is usually granted at the request of a number of major bidders.

The extension of the tender closing date may be publicly advertised. In addition each bidder should be advised, and display points having received documents for the project should be updated.

10.0 RECEIPT AND RETENTION OF TENDERS AND AMENDMENTS

10.1 Received by Mail or by Hand

Tenders and related adjustments received by mail shall be delivered immediately to the person designated on the tender envelope who shall receive, time-stamp, record and place in locked cabinet, each tender and each written adjustment to tender (letter, telegram, etc.) immediately upon receipt.

Amendments received by telecommunication shall be dealt with in the same manner as a tender and be attached to the tender envelope.

10.2 Tenders on Improper Forms

Tenders received on forms other than those provided by the band will not be considered.

10.3 Recording

All tenders and related adjustments received by the band shall be recorded and held in secure and confidential custody until the official time set for the final receipt of tenders. If possible, a time clock, accurately synchronized with the Dominion Observatory (radio frequencies 3330, 7335, 14760 s.w. Kilohertz) shall be provided. The clock shall be capable of printing, on the tender envelope, the date and time (hour and minute) of receipt. If a clock is not available, this information will be recorded on the envelope in ink, and signed by the person making the entry.

10.4 Safekeeping

A locked cabinet, under joint custody of two members of the tender-opening committee, shall be provided. Tenders shall be placed in the cabinet on receipt and removed only when the two appointed persons are present-- generally immediately after the time fixed for the receipt of tenders (closing time) has

passed, when a tenderer has formally requested the return of the tender prior to the official closing time, or to attach amendments to the envelope.

Tenders will never be opened to attach amendments prior to the official closing time specified.

11.0 RETURN OF TENDERS

11.1 Return Prior to Closing Time

Occasionally, a bidder may wish to regain his tender before the official closing time. Provided that the request in writing, the sealed tender may be returned. A receipt shall be obtained which may be a covering letter if the tender is returned by mail. The receipt shall subsequently be filed with the other tenders, and an appropriate comment written on the "Register of Tenders".

11.2 Late Tenders

Each tender received after the official time stated for the final receipt of tenders is returned unopened under covering letter the day it is received. The following procedure is recommended:

- a. The chairman of the tender-opening committee shall imprint the tender envelope with the "Late Tender" stamp.
- b. Each member of the tender-opening committee shall sign in the appropriate space.
- c. Each side of the envelope shall be photocopied.
- d. The chairman of the tender-opening committee shall sign the covering letter.

- e. The photocopies shall be attached to the copy of the letter and all placed with the other tenders on the file.

Tender adjustments received after the official time stated for the final receipt of tenders shall be processed in the same manner as late tenders. The only exception to this would be if a downward revision is received from the low bidder, established at the official tender opening. In this case only would the late revision be acceptable.

12.0 TENDER OPENING

12.1 Tender-opening Committee

The tender-opening committee shall consist of at least three members, duly appointed:

- a. chairman, secretary and witness; or
- b. a quorum of at least three persons selected to act on behalf of the committee in the absence of one or more of its members.

The committee shall open all tenders placed in the locked cabinet and prepare and sign a register of Tenders for the project.

12.2 Role of Chairman

The chairman shall ascertain from the "Tender Document Control Form" what is mandatory for the proposed contract. He shall open all tenders, duly received up to the final time set for their receipt by the band council, in the presence of at least two other persons duly authorized to act with him on the tender-opening committee.

He shall announce:

- a. the official name of the project;
- b. the name and address of the tenderer appearing on page 1 of the tender;

- c. the total amount of the tender as it appears on the tender; and
- d. when received in writing or by telecommunication, the adjustment(s) to the amount (total) of the tender. When the adjustment is expressed as a reduction or increase, the revised total amount shall be calculated and announced by the secretary.

No other announcements shall be made, nor shall any other information (details, unit prices, etc., of bids) be given by the tender-opening committee.

The chairman shall ensure that it is understood by all present at the opening that the announced bids are subject to evaluation and technical assessment.

The chairman shall stamp each tender and adjustment with the "certification stamp". Each member of the committee shall sign every tender, related telegram and/or letter and the Register of Tenders in the appropriate space.

12.3 Role of Secretary

The secretary shall record the following information on the register of tenders in the spaces provided:

- a. the correct name and address of each tenderer, (occasionally the name and address appearing on the envelope are inconsistent with those appearing on the tender);
- b. the amount of each tender originally announced and each and every change to the amount, the revised tender amount and the type of communication (letter, telegram, etc.) and the time of receipt of each adjustment;
- c. the amount and type of security, for example, \$10,000 Certified Cheque, Bank of Montreal, Quebec and Leduc Branch, Montreal, P.Q.; or

\$10,000 Bid Bond No. 10436, Canadian Surety Company; and

- d. the names of those persons present at the opening of tenders.

12.4 Disposition of Tender Documents

After tenders have been opened and tender securities removed for safekeeping, all tenders, related amendments and the completed register of tenders shall be transferred to the band council.

12.5 No Tenders

If no tenders are received by the appointed time, the tender-opening committee shall produce a Register of Tenders duly noted "No Tenders Received".

12.6 Public Opening

Contractors submitting tenders should be permitted to attend the opening of tenders. However, no discussions should take place as to the content of any tender.

13.0 EVALUATION AND TECHNICAL ASSESSMENT OF TENDERS

The purpose of the tender evaluation is to determine the lowest acceptable tender submitted by a responsible contractor.

The evaluation also discloses errors and omissions in the tenders. These in turn indicate:

- a. possible weaknesses in procedures and in tender and contract documents issued by the band; and
- b. improper tendering practices of bidders.

13.1 Determining Dependability of Contractors

The resources and competence of contractors shall be measured to determine their dependability. These factors shall be considered:

- a. financial resources;
- b. organization, plant and equipment;
- c. personnel - managerial, technical;
- d. experience;
- e. performance - demonstrated capacity and ability; skill;
- f. integrity - trustworthiness;
- g. judgement;
- h. other resources, depending on the specific task to be undertaken.

To assist in this assessment, financial and technical reports shall be obtained on all contractors under consideration. Requests and responses shall be expedited.

Bidders are required to submit a "Contractor's Qualifications Statement" (Appendix 23) with the tender or within a time specified by the band.

Information provided by the contractor or factual information provided by outside sources on the contractor's abilities must be treated as confidential.

The dependability of a contractor should be carefully assessed and all facts and information carefully reviewed.

13.2 Disqualification

The administrative evaluation of tenders and securities by the band council may disclose adequate reasons to disqualify a tender, or tenders.

Tenders may be subject to disqualification if:

- a. the tender is not on the prescribed document supplied in the tender package;
- b. the tender is conditional in some manner or form;
- c. the tender is not consistent with the plans and specifications;
- d. security is not provided when mandatory;
- e. "improper" security has been provided; or
- f. the contractor is not considered a responsible contractor.

This list is not exhaustive; it merely sets out some prime examples of tenders subject to disqualification. When the band council decides to disqualify a contractor's tender because he is not considered responsible, the former should obtain legal direction.

13.2.1 Tender Not on Prescribed Documents

If the tender is submitted by telegram only it is not acceptable; however, if the prescribed tender form has been submitted with certain portions left blank but signed and dated, the information contained in the telegram can be considered an amendment to the offer and the tender considered.

If the tenderer submits his tender totally by letter, it too is subject to disqualification.

13.2.2 Conditional Tender

If the tenderer has qualified his tender in any of the following manners, the tender is subject to disqualification:

- a. either amended or expanded the prescribed documents;
- b. neglected to submit information requested, for example, the unit price for an item in a unit price contract;
- c. indicated that a certain sub-trade listed in the tender form is not applicable to the particular contract; or
- d. failed to list either "own forces" or a sub-contractor for a significant sub-trade.

13.2.3 Tender Inconsistent with Plans and Specifications

If the tenderer in any way indicates that the tender is not in strict accordance with all requirements of the plans and specifications, that tender is subject to disqualification. An example would be if the contractor states or implies that he will not comply with certain standards required by the specifications. Regardless of whether or not the contractor's approach appears otherwise acceptable, his offer must be submitted in strict accordance with the requirements as specified.

13.2.4 Improper Security

Tender security which does not conform to the requirements of the tender documents is improper.

13.2.5 Information Omitted

Tenderers must name sub-contractors for all sub-trades called for on the prescribed tender documents. If from the documents it is obvious that

the contractor has avoided this requirement, his tender shall be subject to disqualification. Where a tenderer intends to carry out the listed sub-trades by "own forces", he must so state in the tender documents. In cases where the tenderer appears to have overlooked the requirement to list a sub-contractor or "own forces", the band council will determine from the bidder who is to perform the particular sub-trade.

If a bidder has not extended unit prices for a total, or if figures have been omitted from a total and it is obviously an oversight, the band council shall complete the calculations.

This step, where necessary, must be taken in auditing all tenders in order to fairly and equally determine which tender is the lowest.

13.2.6 Missing Tender Documents

If the lowest acceptable tenderer has failed to submit the complete tender, for example, tender and amendments (including revised pages of tender), appendices, etc., the band council must contact that tenderer immediately to ascertain that the price(s) submitted are firm, and that the tenderer confirms that the tender as submitted includes provision for the missing documents. If the tenderer does so confirm, the missing documents, properly executed,

together with formal confirmation, must be submitted before the particular tender may receive further consideration.

NOTE: Tenders falling into the above categories (Subsection 13.72 Disqualification) are SUBJECT TO DISQUALIFICATION; this does not necessarily mean that they must be disqualified. In dealing with such cases, however, the band council must always ensure that all actions are consistent with accepted principles and practices.

13.3 Notification of Disqualification

If a tender is officially disqualified as a result of the tender evaluation, the tenderer shall be notified by registered letter, signed by the band council, stating the reason for disqualification and referring to the applicable clauses in the tender documents. The invalid tender and all attached documents shall be clearly marked "DISQUALIFIED", attached to the file copy of the letter to the contractor and placed on the file.

The details of any tender thus disqualified WILL NOT appear on the "Abstract". The notation "DISQUALIFIED" shall be typed below the name of the tenderer in the appropriate column of the "Abstract".

13.4 Further Consideration

The decision to further consider a tender subject to disqualification must be made only after all the facts and conditions stated above have been duly considered. Such a decision usually necessitates communication with the tenderer to rectify the particular tender. Such action, if not carried out with tact, might suggest to the tenderer that the band council is inclined to deal lightly with tenders, particularly if it is to the band's advantage. It is emphasized that decisions to give further consideration to tenders falling into these categories must be the result of exhaustive consideration of all the facts and conditions. All actions must be completed within the 30-60-day time frame agreed to for acceptance of the offer.

13.5 Technical Assessment

The technical assessment of tenders is undertaken by the band's consultant.

This assessment determines whether the tenders are in strict accordance with the plans and specifications and are fair and reasonable. The findings are referred to the band council for subsequent action.

Usually, some errors or inconsistencies are disclosed by the technical review. A few common examples are:

- a. inconsistency between the band estimate and the tenders;
- b. inadequate tenders (bid prices);
- c. excessive tenders (bid prices); and
- d. technical inconsistencies in the tenders.

The band council should re-examine the estimate with the consultant to establish positively whether the lowest offer is fair and reasonable if:

- a. the amount of the lowest offer submitted by a responsible contractor varies more than 10% (plus or minus) with the band estimate prepared by the appropriate discipline of group, or;
- b. significant firm unit prices comprising the offer vary to the same degree with the respective unit prices in the bands estimate; or
- c. the amount (or significant unit prices) of the offer, although consistent with the band's estimate, varies significantly with the other offers received.

If the review discloses that the band estimate is excessive or inadequate, a revised estimate shall be developed.

13.6 Inadequate Offers

When the lowest offer is obviously too low, and/or the tenderer does not have the necessary resources to complete the work, the band council shall ensure that the tenderer is fully aware of his position.

The tenderer may confirm in writing that he can carry out the project at the price quoted, in which case the band council should give the tender further consideration.

The tenderer may on review of his tender find errors or omissions and advise the band council in writing requesting withdrawal. The band council should permit withdrawal in this case, without penalty. No increase in price should be permitted to cover errors or omissions by the tenderer.

13.7 Excessive Offers

When the lowest offer of two or more is obviously in excess of the band estimate, and a review of the requirements does not disclose any valid reason to increase the band estimate to a point where the lowest offer may be considered acceptable, the band council may request the tenderer to review, with the band, the estimate on which the offer was based, in order to justify acceptance of the offer. The tenderer is not obligated to reveal the details of his estimate.

The review could result in:

- a. a revised band estimate;
- b. the tenderer reducing his offer;
- c. a combination of both, sufficient to justify acceptance of the offer; or
- d. no change in position.

If a satisfactory result cannot be achieved, the band administrator can do one of the following on behalf of the band council:

- a. cancel the tender call;

- b. re-design and recall tenders; or
- c. negotiate with the low bidder on a reduced scope of work.

13.8 Identical Tenders

When identical tenders are received and both are still in the same position after the evaluation, the band council can use the fair coin method to establish the successful firm. Both contractors should be advised that this method has been chosen and a coin is then tossed. Both contractors must be advised of the results if they are not present. The tender-opening committee should carry out this function, with a member of the council in attendance.

14.0 CONFLICT OF INTEREST

When selecting prospective bidders for public tender, the band council should eliminate any possibility of conflict of interest. Therefore, it should be declared if any member of the band has ownership or financial interest in a firm submitting a tender which would give him an advantage over other bidders. That band councillor should refrain from the decision-making process relating to acceptance of the tender or the administration of the contract. Charges of favouritism or unfair advantage through inside knowledge may be levelled at the council even if there is no basis for the charge.

15.0 AWARD OF CONTRACT

15.1 General Remarks

Once authority has been obtained to award a contract resulting from a tender call, award notification shall be prompt. Before dispatch, however, these notifications are carefully reviewed to ensure that:

- a. the validity period of the offer has not expired;
- b. the project number is as quoted in the tender documents;
- c. the project description and location is identical to that quoted in the tender documents;
- d. the award is made out to the approved contractor;
- e. the contractor's proper name and full address are identical to those under which his offer was made, for example, if the abbreviations "Co." and "Ltd." are used, these should be reproduced exactly. Telegraphed notifications should quote the contractor's telephone number, particularly if his address is a P.O. Box Number;
- f. The contract price shown conforms with the contractor's offer, including amendments thereto;
- g. the offer accepted is correctly identified, including all pertinent correspondence relating thereto, for example, date(s) of tender, amendments, letters, and the telegrams, etc., as applicable;
- h. the contract security is properly identified as to appropriate section of the Tender Instructions;
- i. the insurance policy requirements are correctly identified with the applicable sub-sections of the Tender and Insurance Schedule;
- j. the project consultant is correctly identified; and that
- k. the date shown on the award notifications is correct, and the award telegram and letter bear identical dates.

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The contract award telegram or letter and the contract itself must contain the same dates, as all documents form part of the contract.

The band council should maintain a file of all award letters and all such letters involving unique or unusual situations.

Contract award notification should normally be signed by the band council or by a duly authorized officer. Copies should be given to personnel involved in the project, and in the administration of the contract.

15.2 Acceptance Period

Tenders usually contain a clause which limits the terms of the offer.

Contracts should be awarded within 30 days of the tender opening. It should be realised that the bidder also has sub-contractors and suppliers who have placed a validity period on their offers to him.

The formal contract should also be written within one week after the award of contract.

15.3 Extension of Acceptance Period

Normally the acceptance period for the tender will be as stipulated in the tender documents or by the bidder in his tender. If the processing time for the tender approaches the tender acceptance period, it will be necessary to negotiate an extension of the acceptance period with the bidder. The contractor will not be permitted to increase his price as a result of an extension which falls within that time permitted by the tender documents.

15.4 Post Award

A site meeting with the contractor, band representative and project supervisor should be held

within 5 days after award of the contract, to establish lines of communication, method of payment, payment forms, work schedules, etc.

16.0 FAILURE TO SIGN A CONTRACT

16.1 General Remarks

Acceptance period for tenders is normally 30 days; in some instances this is extended to 60 days. This means that an offer submitted by a contractor is open for acceptance by the band council for a 30-or 60-day period unless the contractor wishes to withdraw his offer prior to award of the contract. Should the contractor withdraw on this basis, his tender security would be returned. If the offer is under seal, mutual agreement in writing by both the band and the contractor would permit return of the tender security.

16.2 Cash Security

If a contract was awarded within the acceptance period, the contractor must enter into contract. If the contractor refuses to enter into contract, the tender security is forfeited and used to make up the difference in cost between his tender price and the next lowest acceptable tender which the band council would accept, up to the limit of the security. Should the difference not be as great as the security, the balance would be due and payable to the original contractor.

16.3 Bid Bond Security

When a bid bond is provided as tender security, the bonding company should be immediately advised of the action the band proposes to take. The bonding company would be liable to the limit of the bid bond.

17.0 CHANGES IN THE WORK

The band council may make changes through the engineer without invalidating the contract, by altering, adding to, or deducting from the work, with the contract price and the time being adjusted accordingly.

The band council must agree to the changes and certify that funds are available for the full extent (cost) of the work prior to any additional work taking place.

Any changes, additional costs or credits must be confirmed in writing by the contractor before proceeding.

Except in emergencies, no change shall be made without a written order from the consultant and no claim for an addition to or deduction from the contract price or change in the completion date shall be valid unless so ordered.

The value of any change may be determined by:

- a. preparation of a cost estimate for the work and acceptance of the contractor's lump sum offer;
- b. unit prices being set out in the contract or subsequently agreed upon; or
- c. cost and a fixed or percentage fee.

When a change in the work is proposed or required, the contractor shall present his claim for any change in the contract price and/or contract time to the consultant for approval. The latter shall satisfy himself as to the correctness of such claim and, when approved by him, shall issue a written order to the contractor to proceed with the change. The value of work performed in the change shall be included for payment with the regular certificates for payment.

In the case of changes in the work to be paid for under methods (b) and (c) above, the form of

presentation of costs and methods of measurement shall be agreed to by the consultant and contractor before proceeding with the change. The contractor shall keep accurate records, as agreed upon, of quantities or costs and present an account of the cost of the change in the work, together with vouchers when applicable.

If the method of valuation, measurement and the change in contract price and/or change in completion date cannot be promptly agreed upon, and the change is required immediately, the consultant shall determine the method of valuation, measurement and the change in contract price and/or completion date subject to final determination. In this case, the consultant shall issue a written authorization for the change, setting out the method of valuation and, if by lump sum, his valuation of the change in contract price and/or completion date.

In the case of a dispute in the valuation of a change authorized in the work and pending final determination of such value, the consultant shall certify the value of work performed and include the amount with the regular certificates for payment.

Both the consultant and contractor shall act promptly in all matters referred to above.

When disputes between the band council, and contractor cannot be resolved, the band council should obtain legal assistance and the problem should be resolved as quickly as possible.

18.0 PROGRESS PAYMENTS

Applications for payment on account (progress payments) provided for in the contract may be made monthly as the work progresses. They shall be dated the last day of the agreed monthly payment period, and the amount claimed shall be for the value, proportionate to the amount of the contract, of work

performed and material incorporated into the work at that date less the holdback. All claims must be supported by a Statutory Declaration.

The contractor shall submit to the consultant before the first application for payment, a schedule of values of various parts of the work, totalling the full amount of the contract price to facilitate evaluation of applications for payment. This schedule shall be made out in such form, and supported by such evidence as to its correctness, as the consultant may reasonably direct, and when approved by him, shall be used as the basis for application for payment, unless it is found incorrect.

When making application for payment, the contractor shall submit a statement based upon this schedule. All progress claims are subject to a holdback deduction, depending on the type of contract security supplied, for example, labour and material bond - holdback 5%; cash security - holdback 10%.

In no case will a progress payment be made until the consultant has certified its correctness.

19.0 PERFORMANCE OF CONTRACT

19.1 Certificates and Payments

Within ten days of receipt of an application for payment from the contractor, submitted in good order, the consultant shall issue a certificate for payment in the amount applied for or such other amount as he shall determine to be properly due. If the consultant amends the application, he shall promptly notify the contractor in writing, giving his reasons for the change.

Within 30 days of the issuance of a certificate for payment by the consultant, the band shall make

payment to the contractor in accordance with the provisions of the contract.

The making of a payment by the band council in accordance with the Terms of Payment shall not be considered as evidence that the work, material, or any part thereof is complete, satisfactory, or in accordance with the contract.

Partial or entire use or occupancy of the facility by the band will not constitute an acceptance of any work or products nor in accordance with the contract.

Notwithstanding any other provisions of the contract, if on account of climatic or other conditions reasonably beyond the control of the contractor, there are items of work that cannot be performed, the payment in full for work which has been performed as certified by the consultant shall not be withheld or delayed by the band. The band may withhold from the contract price until the remaining work is finished only such monies as the consultant shall determine are sufficient and reasonable to cover the cost of performing such remaining work and to adequately protect the band from claims.

19.2 Interim Certificate - Substantial Performance of Contract

Within ten days of receipt of an application from the contractor for a certificate of substantial performance, the consultant shall inspect and assess the work to verify the validity of the application. Within seven days of his inspection the consultant shall notify the contractor of his approval or disapproval of the application. When the consultant finds the work to be substantially performed, he shall issue an Interim Certificate of Completion. The date of this certificate shall be the date of "substantial performance" of the contract. Immediately following the issuance of the Interim Certificate of Completion, the consultant, in consultation with the contractor, shall establish a reasonable date for the "total performance" of the contract.

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Following the issuance of the Interim Certificate of Completion and when all documentation called for in the contract documents has been received from the contractor, the consultant may issue a certificate for payment of holdback monies. The release of holdback monies authorized by this certificate shall become due and payable within 30 days after the date of the Interim Certificate of Completion.

At this point, if the insurance coverage is no longer required, the policies may be released to the contractor for cancellation.

19.3 Final Certificate - Total Performance of Contract

Within 10 days of receipt of an application from the contractor for payment upon Total Performance of the contract, the consultant shall inspect and assess the work to verify the validity of the application. Within 7 days of his inspection, he shall notify the contractor of his approval or disapproval of the application. When the consultant finds the work to be totally performed to his satisfaction, he shall issue a Final Certificate of Completion and certify for payment the remaining monies due to the contractor under the contract, less any holdback monies which should be retained. The date of this certificate shall be the date of total performance of the contract. Within 30 days of issuance of such certificate, the band shall make payment to the contractor.

Any remaining holdback monies shall become due and payable within 30 days of the issuance of the Final Certificate of Completion, provided all necessary final documents called for in the contract have been supplied.

The Final Certificate of Completion is issued by the consultant when he has completed his inspection of the project and is satisfied that the work has been performed in accordance with the contract and no deficiencies exist. The inspection should be carried out by the consultant, with representatives of the contractor and band council attending. The certificate will be signed by the consultant and a

copy given to the contractor. The latter should acknowledge receipt in writing.

The issuance of the Final Certificate of Completion shall constitute a waiver of all claims by the band against the contractor except any previously made in writing and still unsettled and those arising from the provisions of the warranty.

The acceptance of the Final Certificate of Completion or of the payment due thereunder shall constitute a waiver of all claims by the contractor against the band except any made in writing prior to his application for payment upon total performance of the contract and still unsettled.

19.4 Security and Insurance Release

Upon issuance of the Final Certificate of Completion, the contractor is entitled to have insurance policies returned. The contractor's cash security should also be returned within 60 days if he has supplied all final documents, warranties, etc., with his final payment claim, and there are no outstanding claims for work performed under the contract.

When the band council wishes to retain cash security for a 12-month guarantee period, it may do so provided it states this condition in the tender documents.

If performance and labour and material payment bonds have been provided as contract security, these will be retained by the band for the 12 month warranty period, commencing on the date of the Final Certificate of Completion.

20.0 WARRANTY

The contractor shall correct at his own expense any defects in the work due to faulty products and/or workmanship appearing within a warranty period of

one year from the date of issuance of the Final Certificate of Completion for the work.

The contractor shall correct and/or pay for any damage to other work resulting from any corrections required under the contract.

Neither the consultant's Final Certificate nor payment thereunder shall relieve the contractor of his responsibility.

The band and/or the consultant shall give the contractor prompt written notice of observed defects.

21.0 DELAYS IN COMPLETION

21.1 Delays by Others

If the contractor is delayed in the performance of the work by any act or neglect of the band council, the consultant or any other contractor, the completion date shall be extended at the request of the contractor for such reasonable time as the consultant may decide in consultation with the band council and contractor.

21.2 Other Delays beyond the Control of the Contractor

If the contractor is delayed in the performance of the work by any cause of any kind whatsoever beyond his control, then the band council, upon written request from the contractor, can extend the completion date for such reasonable time as may be mutually agreed upon between the band council and the contractor. The contractor shall not be reimbursed for any costs incurred by him as a result of such delay. This shall be confirmed with the contractor before granting any extension of time.

21.3 Delays Caused by the Contractor

If the contractor is delayed in the performance of the work for any reason within his control, the band

council, upon written request from the contractor, can extend the completion date, provided the band council and consultant agree that the reasons put forward by the contractor justify an extension. The contractor shall not be reimbursed for any costs incurred by him as a result of such delay, and this should be confirmed with the contractor before granting any extension of time.

No extension shall be made for delay unless written notice is given to the consultant prior to the completion date specified in the contract.

If the contractor fails to request an extension within the time specified in the contract, or if the band council does not accept the justification put forward by the contractor, the band council must advise the contractor in writing that he will be permitted to continue working to completion of the contract, subject to the band council's assessing costs for expenses and damages incurred or suffered by the band council by reason of the delay. No extension to the completion date is granted in these situations.

Although the band council reserves the right to claim for damages due to delays, it may also waive the damage claim upon completion of the contract.

The consultant shall not, except by written notice to the contractor, or as provided in the contract, stop or delay any part of the work, pending instructions on proposed changes in the work.

22.0 DEFAULT BY CONTRACTORS

If the contractor should neglect to carry out the work properly or fail to perform any provisions of the contract, the band council, subject to the recommendation of the consultant may notify the contractor in writing by registered mail that he is in default of his contractual obligations, and instruct him to correct the default within six working days of receiving the notice.

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If the correction of the default cannot be completed within the six working days specified, the contractor shall advise the band council, in which case he will be considered to be in compliance with the band council's instructions.

The contractor shall:

- a. commence the correction of the default within the specified time;
- b. provide the band council with an acceptable schedule for such correction; and
- c. complete the correction in accordance with such schedule.

If the contractor fails to comply with the above provisions, the band council may, without prejudice to any other right or remedy it may have, correct such default and deduct the cost thereof from the payment then or thereafter due the contractor. However, the consultant must approve both the action and the amount subsequently charged to the contractor.

23.0 REMEDIAL ACTION - NON-PERFORMANCE: TAKING THE WORK
OUT OF THE CONTRACTOR'S HANDS

23.1 Circumstances

Construction contracts should provide certain safeguards or remedies to the band to counteract delay, default, insolvency, bankruptcy, abandonment of work, or non-compliance by the contractor. One of these is to "take the work out of the contractor's hands". By this action the contractor is relieved only from further physical execution of the work. However, the contractor remains legally liable for all obligations under the contract, including the cost of completion. Before proceeding with this action, the band council should seek legal advice and the contractor's recommendations.

The General Conditions of a contract should contain and outline the conditions under which the work may be taken out of the contractor's hands and the effect of taking the work from the contractor. same General Conditions must detail the methods by which notices, orders, etc., must be given or delivered. All persons administering work undertaken by construction contract must carefully review these conditions.

Only the band council should be empowered to take all or any contractor's hands although the consultant may place the contractor on notice. Therefore, the consultant must be absolutely certain of and carefully document the facts leading to the notice to the contractor. For example, a certified copy of the petition in bankruptcy or of the court order appointing the trustee would be considered minimum evidence of bankruptcy. Rumour, heresay or even radio or newspaper reports cannot be accepted as factual evidence. If such accounts come to the notice of the band council it shall immediately determine their authenticity and take appropriate action.

Regardless of the reason for taking the work from the contractor, the general routine to be followed is the same. The exception would be if a bonding company has provided either a labour and material payment bond only, or a labour and material payment bond and a performance bond as contract security. The bonding company and the contractor are then placed on notice by a registered letter signed by the band council. A copy of the letter dispatched to the contractor shall accompany the letter to the bonding company.

23.2 Procedure

When it has been decided to remove the work from the contractor's hands, the band council should immediately determine and record the following:

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- a. the total value of the work completed to date;
- b. the total value of all materials on site not already incorporated into the work;
- c. total payments made to the contractor;
- d. total value of the contract, including approved change orders;
- e. an evaluation of the cost of completing the work under the contract (This must be a fair estimate of the amount involved to complete the contract, regardless of whether or not that estimate exceeds the balance left in the contract);
- f. a list of all equipment on site;
- g. a determination of additional costs relevant to the contract, for example, the cost of maintaining a watchman on the site after the contractor has been removed; additional charges for supervision, inspection, etc; loss of revenue; costs of providing alternate services, shelter, etc.; other charges; and
- h. a list of all known suppliers and sub-contractors on the project showing the unpaid balance due to each [Any claim from such suppliers and sub-contractors must be supported by a statement made under oath (affadavit) declaring the claim is for work or materials supplied to the project only.]

The band council should make every effort to have the contractor verify and confirm items (a), (b), (c), (d), (f), and (h). If a bonding company is involved, its agreement on these items should be obtained also. Receipt of verification and confirmation of these items by the appropriate parties should tend to eliminate or reduce disputes with and claims from the contractor.

The letter advising the contractor that the work is being removed from his hands must be signed by the band council, registered, and sent to the contractor upon expiration of the period specified in the notice issued by the consultant.

If no bonding company is involved, the band council shall take necessary measures (call tenders, or negotiate contract, etc.) to have the project completed by others. The second contract must be completed and the contractor paid before any remaining monies are paid over to the original contractor or his successors or assigns, and not even then until suppliers and sub-contractors with lawful claims against the original contractor for work done before the band council removed the work from his hands, have been satisfied. All costs (including those suggested in step e of procedures) incurred in completing the contract shall be carefully and accurately recorded by the Band Council. These costs would be the basis for claim against the original contractor if the funds remaining in the contract are inadequate. The conditions of the contract should clearly define the band council's responsibilities in such cases.

When a bonding company is involved, as above stated, the bonding company must be notified of the band council's actions to remove the work from the contractor's hands. In addition to this notification, the letter to the bonding company must include a request that the bonding company take necessary action (under the performance bond) to complete the project within the time stipulated in the contract or be subject to the same liquidated damages applicable to the original contractor under the contract. A specific date must be set by which the bonding company must officially reply, usually one week after the dispatch of the notification and request.

If a satisfactory response is not received from the bonding company within the time stipulated, a second letter is to be forwarded to the company advising it

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that the band council is proceeding to complete the work at the expense of the bonding company under the said performance bond.

Immediately thereafter, the band council shall take action to obtain the services of a contractor to complete the contract. All costs (including extra inspection, supervision, administration, etc.) incurred in completing the contract shall be carefully and accurately recorded. If the funds remaining in the original contract are inadequate. If the procedures outlined herein are followed, the band's interest should be protected at all times and the work completed with a minimum of delay, if not within the time stipulated in the original contract.

When work is removed from the contractor's hands this refers only to the physical execution of that portion of the work. This does not relieve the contractor of any other obligations he has under the terms of the contract.

24.0 CONTRACT TERMINATION

The conditions of the contract should also contain a clause permitting termination of the contract. If the contractor fails to perform, the band council may, without prejudice to any other right or remedy it may have, terminate the contract by giving the contractor written notice. The band council should seek legal advice and the consultant's recommendation before proceeding with this action.

Subject to the receipt of a certificate from the consultant verifying that sufficient cause exists, the band council may notify the contractor by registered letter that he is in default of his contractual obligations, if the contractor:

- a. refuses or fails to supply sufficient properly skilled workmen or proper workmanship, products or construction machinery and equipment for the scheduled performance of the work within six working days of receiving written notice from the band; or
- b. persistently disregards laws or ordinances, or the consultant's instructions.

If the contractor fails to correct the default within the time specified or subsequently agreed upon, the band council may, without prejudice to any other right or remedy it may have, terminate the contract.

If the band council terminates the contract under the conditions set out above, it is entitled to:

- a. take possession of the premises and products and utilize the construction machinery and equipment, the whole subject to the rights of third parties, and to finish the work by whatever method they may deem expedient but without undue delay or expense;
- b. withhold any further payments to the contractor until the work is finished;
- c. upon total performance of the work, charge the contractor the amount by which the full cost of finishing the work exceeds the unpaid balance of the contract price, as certified by the consultant and including compensation to the consultant for his additional services and a reasonable allowance, determined by the consultant, to cover the cost of any corrections required by warranty; or if such cost of finishing the work is less than the unpaid balance of the contract, pay the contractor the difference;
- d. on expiry of the warranty period, charge the contractor the amount by which the cost of corrections under warranty exceeds the allowance provided of such corrections, or if the cost of

corrections is less than the allowance, pay the contractor the difference; and

- e. when a performance bond has been provided as contract security, the band council must keep the bonding company advised of all actions taken. The band council may request the bonding company's assistance in getting the contractor to remedy any default.

25.0 RECORDS

It is most important that the band council maintains complete files and records of the project from start to finish. In this way every step of the project will be fully documented and in the case of dispute or later problems with the project, the necessary data to support the band council will be available.

25.1 General List of Data Required

In general, the files should contain:

- a. preliminary and design notes, minutes and correspondence;
- b. tender and related documents;
- c. award telegram, letter, contract and insurance policies;
- d. construction correspondence;
- e. minutes of project meetings;
- f. progress payments and certificates;
- g. change orders;
- h. shop drawings;
- i. warranties; and

j. as-built drawings and maintenance manuals.

25.2 Examination

The band council should maintain records of actual cost of the work, together with all proper tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and if required, shall make them available to examination and inspection.

The records maintained by the band council, pursuant to this section, shall be kept intact for two years from the date of issuance of the Final Certificate of Completion or until the expiration of such other period as the band council may direct.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT dated the _____ day
of _____ 19__ between:

THE BAND COUNCIL OF THE _____
hereinafter called the "Band Council"
OF THE FIRST PART

and:

(hereinafter called "the Consultant")
OF THE SECOND PART
THE PARTIES COVENANT AND AGREE AS FOLLOWS

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1 Work

1. In a manner satisfactory to the Band Council, the Consultant agrees to provide the Band Council with the following services:

2 Extent of Work

The Consultant shall not undertake any work, in connection with the said work, additional to or supplemental to or in substitution of the work specified herein unless authorized in writing by the Band Council.

3 Payments by
Band Council

1. Payment for services rendered under this Agreement will be calculated on the basis of:

2. Payment will be made by the Band Council to the Consultant at the intervals specified in Clause 3.1 hereof and upon receipt by the Band Council of itemized statements showing in detail the work performed and the costs and expenses incurred by the Consultant during the period covered by each statement, subject to the Council's having ascertained that the statements are true and exact.
3. The Band Council will reimburse the Consultant for travelling expenses when prior approval has been requested and such travel has been authorized by the Band Council in the manner and at the rates prescribed under this Agreement.
4. The Band Council will reimburse the Consultant at actual cost for other expenditures properly incurred in the execution of the work to the satisfaction of the Band Council. This does not include normal head office administration costs.
5. In consideration of the premises and of the observance and performance on the part of the Consultant of all the covenants, provisoes and conditions contained in this Agreement, the Band Council will pay the Consultant certain sums of money not to exceed a total amount of \$_____ (estimated maximum) unless specifically authorized in writing by the Band Council.

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4 No Other
 Benefits

It is understood and agreed that the Consultant will act as an independent contractor, whether or not some or all of the services are to be performed by the Consultant himself or by his own employees, and that he is entitled to no other benefits or payments whatsoever in addition to those provided for in the present Agreement.

5 Band Council's
 Responsibilities

The Band Council will provide written decisions, instructions, acceptance and such other information reasonably required by the Consultant under this Agreement.

6 Evidence Work
 Free from
 Claim

Before making any payment the Band Council may require the Consultant to furnish evidence that all the Consultant's services performed, matters and things required to be done, furnished and performed under this Agreement for which payment is being made are free and clear from all lawful claims.

7 Termination

It is expressly understood and agreed that notwithstanding anything contained herein the Band Council may terminate this Agreement at any time by a notice in writing, signed by the Band Council and either delivered to the Consultant or mailed addressed to the last known place of business of the Consultant, and thereupon after the mailing of such notices this Agreement shall be determined and ended, in which event the Consultant shall have no claim against the Band Council under this Agreement, except to be paid pursuant to and in accordance with clause 3 hereof for the said work performed up to the expiration of the said notice, and such payment to the Consultant shall include all firm commitments made by the Consultant prior to the receipt of the said notice and in respect of which commitments the Consultant is

liable for payment, less any sums theretofore paid on account thereof, all as may be evidenced by the certificate of the Band Council, which certificate shall be a condition precedent to the right of the Consultant to any payment under this clause.

8 Suspension

The Band Council may at any time by notice in writing suspend the work of the Consultant or any part thereof.

9 Indemnity

The Consultant shall indemnify and save harmless the Band Council from and against all claims, demands, loss, cost, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the performance or purported performance of this Agreement by the Consultant or his servants or agents.

10 Members of
of Commons

No member of the House of Commons shall be admitted to any share or part of the Agreement or to any benefit to arise therefrom.

11 Enures to
Benefit

This Agreement shall enure to the benefit of and be binding upon the parties hereto, their executors, administrators, successors and assigns.

12 Property of
Documents

All surveys, reports, drawings, calculations, designs, plans, specifications and other data, information and material collected, compiled, drawn and produced during the performance of the work are the property of the Band Council, and the copyright therein vests in the Band Council. The Consultant may retain one complete set of the above-described material for his records, but it is expressly understood that no further use will be made of the said material

without the written consent of the Band Council. It is also understood and agreed that no use of the material will be made unless the Consultant's name and seal are obliterated or obscured and the Consultant shall not be deemed to warrant the fitness of the material for such further use.

13 Assignment

This Agreement may not be assigned or subcontracted in whole or in part by the Consultant without prior written consent of the Band Council.

14 Right of
Audit

The Consultant will keep and maintain accurate time sheets, proper accounts and records of all expenditures in connection with the services performed under this Agreement including services performed on his behalf by any agent. These shall at all times be open to audit and inspection by the authorized representative of the Band Council who may make copies thereof and take extracts therefrom. The said accounts and records are to be kept for a period of at least two years following the completion or the termination of his services under this Agreement and the Consultant hereby agrees to furnish the Band Council such information as may be required in connection with such audit.

15 Confidentiality

It is understood and agreed that the Consultant shall treat as confidential, during as well as after the rendering of the services contracted for, any information of a character confidential to the affairs of the Band Council to which he becomes privy as a result of the performance of this Agreement.

- 16 Canadian Labour In engaging labour for any work or service contemplated by this contract, the Consultant will employ, as far as practicable and consistent with efficiency and economy, only Canadian labour, with local labour receiving preference.

In witness whereof the parties hereto have duly executed these Presents as of the day and year first before written.

SIGNED, SEALED AND DELIVERED)
by The Band Council in the)
presence of -)
)
)
)
)
)
)
_____)
(Witness))

The Band Council

SIGNED, SEALED AND DELIVERED)
by the Consultant in the)
presence of -)
)
PER:))
)
_____)
(Witness))
PER:))

Consultant

NEWSPAPER ADVERTISEMENT

THE BAND COUNCIL OF THE _____
TENDER

Project:

Sealed Tenders, marked as to content, addressed to
_____, will be
received up to:

3:00 p.m. _____ 19__.

All tenders must be for a complete project as indicated in
the tender documents.

Tender documents can be obtained on deppsit of \$ _____ in
the form of a CERTIFIED CHEQUE payable to THE BAND COUNCIL,
from:

1) BAND OFFICE

2)

and can be examined at the Construction Association offices
at _____

Lowest or any tender not necessarily accepted.

BAND COUNCIL

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TENDER

File No. _____

Contract No. _____

Band Council of the _____

CLOSING DATE: _____

1. Work (Project)

2. Tender Documents:

- (a) Tender; Appendix "I"
- (b) Tender Instructions
- (c) Contractor's Qualifications Statement
- (d) Articles of Agreement
- (e) Specifications and Plans "A"
- (f) Terms of Payment "B"
- (g) General Conditions "C"
- (h) Labour Conditions "D"
- (i) Insurance Schedule "E"

3. I/We _____
(Official name of Company/Contractor)

(Business address for purposes of this contract)

having made or caused to be made an inspection of the site of the work described above and having examined all the documents listed above, do hereby tender and offer to enter into a contract within a prescribed time to perform the said work in strict accordance with the said

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documents and such further details, plans and instructions as may be supplied from time to time and to furnish to the Band Council all labour, equipment and materials necessary for the construction or carrying out and proper completion of the said work for the following sums of lawful money of Canada.

\$ _____

4. With the tender I am/we are providing tender security (in accordance with Section 4 and 5 of the Tender Instructions) in one of the following forms and amounts:

(i) a bid bond in the amount of _____,
issued by _____;
or

(ii) security deposit in an amount of \$ _____, or
having a par value of \$ _____.

NOTE: Bidders are to strike out and initial the non-applicable items (i) or (ii) above.

5. I/We understand this project must be completed

If my/our tender is accepted I/We agree to start work within _____ calendar days of notification of contract award and to work vigorously and continuously to complete the project as specified in the preceding paragraph.

6. I/We submit herewith a list of sub-contractors whom I/We propose to employ for the performance of such portion of the work as indicated. I/We have investigated the following sub-contractors and confirm that they are reliable and competent to carry out the work satisfactorily. It is agreed that there will be no substitution in sub-contractors without the approval of the Engineer, having been previously obtained in writing.

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	<u>TRADE</u>	<u>SUB-CONTRACTOR</u>
(a)	_____	_____
(b)	_____	_____
(c)	_____	_____
(d)	_____	_____
(e)	_____	_____
	_____	_____
	_____	_____

NOTE

Where the tenderer plans to use his own forces for any of the sub-trades mentioned above he will so indicate in the space provided by inserting "own forces". If it is his intention to use more than one sub-contractor for any sub-trade he is to submit the name of each and to indicate the portion or portions of the work to be performed by each.

7. I/We understand and agree that all applicable Federal, Provincial and Municipal taxes, permits and fees are my/our responsibility and are included in my/our tender price.
8. If my/our tender is accepted, it is understood and agreed that I/We will, within ten days of notification of contract award, provide:
 - (1) contract security for the due performance and fulfillment of the contract in accordance with Sections 5 and 6 of the Tender Instructions. This security will be retained by the Band Council, in accordance with the General Conditions, "C", and Articles of Agreement; and

NOTE

Where a certified cheque is provided as security, the Band Council will, at the direction of the contractor, hold the cheque uncashed; and

- (2) insurance in accordance with Insurance Schedule "E" in the following amounts:

Section 1. Fire insurance

Section 3. Liability insurance

NOTE

The original fire insurance policy and certified copies of all other insurance policies, all correctly drawn to insure the interests of the Band Council as defined in Section 4 and 5 of Insurance Schedule "E", are required.

9. If my/our tender is accepted it is agreed that I/We will execute (if called upon to do so), a formal contract based on the terms and conditions contained in the documents listed in Section 2, herein.
10. It is understood and agreed that in the event of this tender being accepted within 30 calendar days of the time stated for closing of tenders and my/our failing or declining to enter into a contract in accordance with the terms of my/our tender, my/our security deposit shall be forfeited to the Band Council, or if in the form of a bid bond the bonding company shall be liable in accordance with the terms of the bond, in lieu of any damages to which the Band Council may be entitled by reason of my/our failure or refusal to enter into such a contract, and it shall not be necessary to prove any special damages.
11. I/We further acknowledge that the Band Council may extend the above 30-day period to 60 days provided that notification of extension will be made within 15 days after the tender closing date.

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APPENDIX "I"

UNIT PRICE SCHEDULE

Where quantities are mentioned below for unit price items, these are estimated quantities only and may be increased or decreased in accordance with the requirements of the work. All payments for these items shall be based upon the actual quantities of material supplied and work performed as certified by the Engineer.

BIDDERS PLEASE NOTE: All information to be inserted below shall be typewritten.

Item	Class of Labour Plant or Material (Description of Work)	Unit of Measure- ment	Estimated Quantity	Price Per Unit	Amount
				\$	\$

TOTAL items	to	inclusive above	\$_____
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Appendix 3

- 5 -

Signature

Address

Title

Date

Telephone

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The Band Council of the _____

TENDER INSTRUCTIONS

NOTE: All inquiries and tender revisions PRIOR TO CLOSE OF TENDERS are to be addressed to:

1. Each tenderer must inform himself fully of the conditions relating to the work to be performed and shall inspect the site and be thoroughly familiar with the plans, specifications and all terms and covenants of the contract documents. Failure to do so will not relieve the successful tenderer of his obligation to enter into the contract and to carry out the work for the consideration as set forth in his offer.
2. Tenderers are advised that no requests for suggested amendments to the tender documents, i.e. extension of the scheduled closing date, the completion date and the like, can be entertained unless the request is received at least seven (7) calendar days before the time set for the closing of tenders.
3. Tenders shall be submitted on the tender provided together with security as specified. The Tender and all amendments thereto must be signed.

NOTE: It is not necessary, or desirable, to submit the other tender documents with the Tender.

4. (1) The tender will be invalid if security as specified is not submitted with the offer. Tender security shall be in one of the following forms:
 - (a) a bond, to be known as a bid bond, (see also subsection (1) of section 5) given to guarantee entry into the contract that is in the amount of at least 10% of the tender; or

- (b) a security deposit (as defined in subsection (2) of the section 5) in an amount, or having a par value, of not less than:
 - (i) 10% of the tender where the amount does not exceed \$250,000, or
 - (ii) \$25,000 for the first \$250,000 of the tender amount plus 5% of the amount exceeding \$250,000.
 - (2) If a tender is not accepted, the tender security will be returned to the tenderer.
5. (1) A bid bond, performance bond or labour and material payment bond submitted pursuant to sections 4 and 6 shall be in a form approved by the Band Council and issued by a Company whose guarantee bonds are acceptable to the Band Council.

NOTE: Such bonds must be in favour of the Band council. The name of the work (project) to be inserted in these bonds must be exactly as set out in section No. 1 of the Tender.

- (2) A security deposit submitted pursuant to section 4 shall be:
 - (a) a certified cheque payable to the Band Council
 - (b) bonds of the Government of Canada or of a company included in "National Railways" (as that expression is defined in the Canadian National Railways Capital Revision Act) unconditionally guaranteed as to principal and interest by the Government of Canada, if such bonds are:
 - (i) payable to bearer,
 - (ii) hypothecated to the Band Council in accordance with the Domestic Bonds of Canada Regulations, or

- (iii) registered in the name of the Band Council and shall have attached thereto all coupons that are unmatured at the time such bonds are submitted.

NOTE: A certified cheque provided as security will, at the direction of the Tenderer, be held uncashed.

- 6. (1) Where a tender is accepted the tenderer shall provide contract security in one of the following forms within 10 days of notification of contract award:
 - (a) a performance bond and a labour and material payment bond, each in the amount of at least fifty per cent of the amount payable under the contract to be entered into;
 - (b) a labour and material payment bond in the amount of at least fifty per cent of the amount payable under the contract to be entered into and a security deposit in an amount calculated in accordance with paragraph (b) subsection (1) of section 4; or
 - (c) a security deposit in an amount calculated in accordance with paragraph (b) subsection (1) of section 4 and an additional security deposit of at least ten per cent of the amount payable under the contract to be entered into.
- (2) Where contract security pursuant to paragraph (a) of subsection (1) is provided the tender security submitted with the tender will be returned to the Contractor.
- (3) Where a security deposit other than an additional security deposit required pursuant to paragraph (c) of subsection (1), is required to be given by a tenderer under this paragraph, the tenderer shall be credited with any security deposit previously given under section 4, and that part which exceeds the amount required will be returned to the Contractor.

7. In order to be considered, tenders must be received on or before the exact time set for the receipt of tenders. Tenders received after this time will not be considered regardless of the reason for their being late. In considering whether or not to send tender documents by registered mail, tenderers should bear in mind that a registered letter takes longer to handle in the post office and therefore requires a somewhat earlier mailing date.
8. Telegraphic tenders will not be accepted; but where a formal tender on the official tender form supplied is received before the specified tender closing time, said tender may be revised by letter or telegram provided the request for revision:
 - (1) is received on, or before, the exact time and date fixed for the receipt of tenders;
 - (2) sets forth complete and precise details of all changes, e.g., to Firm Price, Unit Prices, Subcontractors, etc., and
 - (3) identifies any changes in sub-contractors by quoting the particular sub-trade(s) involved and the names of the firm(s) deleted and substituted.

All such revisions shall be delivered to the address which follows the Note preceding Section 1 of these instructions.

9. Any alteration to the preprinted part of the tender may render it liable to rejection.
10. All spaces in the tender must be completed and all handwriting or typewritten alterations to the parts so completed must be initialled by the person or persons executing the tender on behalf of the bidder. The initials must be adjacent to the alterations or correction.
11. A list of subcontractors to be employed for the project must be included as provided for in the tender. Failure to do so may render the tender invalid.

12. Tenders must be in strict accordance with the documents listed in Section 2 of the tender.
13. The contract agreement shall consist of all documents as listed in Section 2 of the Tender.
14. The contract documents are complementary and what is called for by any one shall be as binding as if called for by all. Where specifications and plans are at variance with the other tender documents, the other tender documents will govern.
15. Each tender and supporting documents (security, amendments, etc.) shall be enclosed in a sealed envelope provided with the tender documents. The complete name and address of the bidder and the name of the project must be inserted in the spaces provided on the envelope.
16. The "Contractor's Qualification Statement", - shall be completed by the tenderer.

It shall be submitted:

 - (a) With the tender (option of the tenderer); or
 - (b) within twenty-four hours of receipt of request.
17. The successful tenderer (Contractor) shall keep in good order on the job one (1) complete set of all contract documents to be available to subcontractors and to the engineer.
18. The successful tenderer will be required to furnish a general analysis of the contract sum, the total to aggregate the amount of the tender. This analysis, to be submitted prior to or concurrent with the first progress claim, must show separate prices for each phase of the work as it is required as a guide in submitting progress estimates. In addition, he will be required to furnish a complete time schedule of the various operations of the work.

19. A deposit as called for in the tender advertisement is required for each complete set of plans, specifications and tender documents. This deposit will be refunded if the complete plans and specifications are returned prepaid in good condition within thirty days after the award of contract.
20. The Band Council reserves the right to reject any or all tenders, and the lowest of any tender will not necessarily be accepted.

UNIT PRICE CONSTRUCTION CONTRACT

File No. _____

Contract No. _____

Band Council of the _____

These ARTICLES OF AGREEMENT made in duplicate this
_____ day of _____
in the year Nineteen Hundred and _____ A.D.

BETWEEN

The Band Council of the

(referred to in the documents forming the contract as "Band
Council")

AND

(referred to in the documents forming the contract as the
"Contractor")

Witness that the Band Council and the Contractor
covenant and agree as follows:

ARTICLE I

The Contractor will between the date of these Articles
of Agreement and the _____ day of
_____ 19__ in a careful and workmanlike
manner execute the following work:

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which work is more particularly described in the documents that are attached hereto, entitled "Plans and Specifications" and marked "A" (referred to in the documents forming the contract as the "Plans and Specifications") at the place and in the manner therein set out.

ARTICLE II

- (1) The Band Council will pay to the Contractor as consideration for the execution of the work a sum equal to the number of units of measurement of each class of labour, plant or material actually performed, used or supplied by the Contractor in the execution of the work as measured by the Engineer and set out in the Engineer's Final Certificate of Measurement multiplied by the price for each unit of measurement as set out in the Unit Price Table as added to or amended in accordance with subsections (2), (3) and (4) of this Article or as, in a proper case, determined in accordance with subsection (5) of this Article (such sum being subject to any additions or deductions provided for in the General Conditions, Terms of Payment, Labour Conditions, except any addition or deduction which is expressly stated to be applicable only to a fixed price arrangement) at the times and in the manner set out or referred to in the document that is attached hereto entitled "Terms of Payment" and marked "B" (referred to in the documents forming the contract as the "Terms of Payment").
- (2) The Engineer and the Contractor may by agreement in writing add to the Unit Price Table classes of labour, plant or material together with units of measurement, prices per unit and estimated quantities therefor where any labour, plant or material which will be included in the Engineer's Final Certificate of Measurement is not included in any class of labour, plant or material set out in the Unit Price Table.
- (3) The Engineer and the Contractor may by agreement in writing amend the price per unit set out in the Unit Price Table for any class of labour, plant or material included therein where an estimated quantity is set out therein for that class of labour, plant or material, if the Engineer's Final Certificate of Measurement shows or

will show that the total quantity of that class of labour, plant or material performed, used or supplied by the Contractor in executing the work is less than 85% of that estimated quantity.

- (4) The Engineer and the Contractor may by agreement in writing amend the price per unit set out in the Unit Price Table for any class of labour, plant or material included therein where an estimated quantity is set out therein for that class of labour, plant or material, by establishing a price unit for units of that class of labour, plant or material performed, used or supplied by the Contractor in executing the work which are in excess of 115% of that estimated quantity.
- (5) Where the Engineer and the Contractor do not agree as contemplated in subsections (2), (3) and (4) of this Article, the Engineer shall determine the class of and the unit of measurement of the labour, plant or material involved, and the price per unit therefore shall be determined in accordance with section 46 of the General Conditions.
- (6) For the information and guidance of the Contractor and the persons administering the contract on behalf of the Band Council, but not so as to constitute a warranty, representation or undertaking of any nature, either by the Band Council to the Contractor or by the Contractor to the Band Council, it is estimated that the total amount payable under the contract by the Band Council to the Contractor will not exceed
\$ _____.

ARTICLE III

The document attached hereto, entitled "General Conditions" and marked "C" except any such condition or part thereof which is expressly stated to be applicable only to a fixed price arrangement (referred to in the documents forming the contract as the "General Conditions"), the document attached hereto entitled "Labour Conditions" and marked "D" (referred to in the documents forming the contract as the "Labour Conditions"), the document attached hereto and entitled "Insurance Schedule" and marked "E" (referred to in the documents forming the contract as the "Insurance Schedule"),

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the "Plans and Specifications", the "Terms of Payment" except any such term or part thereof which is expressly stated to be applicable only to a fixed price arrangement and these Articles of Agreement all form part of the contract between the Band Council and the Contractor.

ARTICLE IV

The amount of \$_____ that has been deposited with the Band Council by the Contractor as a security deposit for the due fulfilment of the contract will be dealt with in accordance with the provisions concerning security deposit contained in the General Conditions.

The Contractor has furnished and the Band Council accepts a Performance Bond, i.e.,

(insert details - name of Company, amount, date, etc.)

and a Labour and Material Payment Bond, i.e.,

(insert details - name of Company, amount, date, etc.)

with respect to the execution of the work by the Contractor, which bond or bonds shall operate according to their tenor. The Contractor shall post on the site of the work a notice that a Labour and Material Payment Bond is in force together with the name and address of the surety thereunder, definition of those persons protected thereunder and an outline of the procedure for submitting a claim thereunder.

For all purposes of or incidental to the contract, the Contractor's address shall be deemed to be:

UNIT PRICE CONSTRUCTION CONTRACT

Column 1	Column 2	Column 3	Column 4
Class of Labour			
Plant or Material	Unit of Measurement	Price per Unit	Estimated Quantity

SIGNED, SEALED AND DELIVERED)
by the contractor, in the presence)
of:) _____
) _____ Title
) _____
) _____
) _____

Witness) _____
) _____ Title
) Contractor

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SIGNED, SEALED AND DELIVERED
on behalf of the Band Council,
in the presence of:

Chief

Councillor

Witness

Councillor

Band Council

FIXED PRICE CONSTRUCTION CONTRACT

File No. _____

Contract No. _____

The Band Council of the _____

These ARTICLES OF AGREEMENT made in duplicate this
_____ day of _____ in the
year nineteen hundred and _____ A.D.

BETWEEN

The Band Council of the

(referred to in the documents forming the contract as "Band
Council")

AND

(referred to in the documents forming the contract as the
"Contractor")

Witness that the Band Council and the Contractor
covenant and agree as follows:

ARTICLE I

The Contractor will between the date of these Articles
of Agreement and the _____ day of
_____ 19__ in a careful and workmanlike
manner execute the following work:

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which work is more particularly described in the documents that are attached hereto, entitled "Plans and Specifications" and marked "A" (referred to in the documents forming the contract as the "Plans and Specifications") at the place and in the manner therein set out.

ARTICLE II

The Band Council will pay to the Contractor as consideration for the execution of the work the sum of \$ _____ (subject to any additions or deductions provided for in the General Conditions, the Terms of Payment, or the Labour Conditions except any addition or deduction which is expressly stated to be applicable only to a unit price arrangement), at the times and in the manner set out or referred to in the document that is attached hereto entitled "Terms of Payment" and marked "B" (referred to in the documents forming the contract as the "Terms of Payment").

ARTICLE III

The document attached hereto, entitled "General Conditions" and marked "C" except any condition or part thereof which is expressly stated to be applicable only to a unit price arrangement (referred to in the documents forming the contract as the "General Conditions"), the document attached hereto entitled "Labour Conditions" and marked "D" (referred to in the documents forming the contract as the "Labour conditions"), the document attached hereto and entitled "Insurance Schedule" and marked "E" (referred to in the documents forming the contract as the "Insurance Schedule"), the "Plans and Specifications", the "Terms of Payment" except any term or part thereof which is expressly stated to be applicable only to a unit price arrangement and these Articles of Agreement all form part of the contract between the Band Council and the Contractor.

ARTICLE IV

The amount of \$ _____, that has been deposited with the Band Council by the Contractor as a security deposit for the due fulfilment of the contract will be dealt with in accordance with the provisions concerning security deposit contained in the General Conditions.

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The Contractor has furnished and the Band Council accepts a Performance Bond, i.e.,

(insert details - name of Company, amount, date, etc.)

and a Labour and Material Payment Bond, i.e.,

(insert details - name of Company, amount, date, etc.)

with respect to the execution of the work by the Contractor, which bond or bonds shall operate according to their tenor. The Contractor shall post on the side of the work a notice that a Labour and Material Payment Bond is in force together with the name and address of the surety thereunder, definition of those persons protected thereunder and an outline of the procedure for submitting a claim thereunder.

ARTICLE V

For all purposes of or incidental to the contract, the Contractor's address shall be deemed to be:

ARTICLE VI

The Band Council and the Contractor agree that the following table is the Unit Price Table for the purpose of the contract:

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
Class of labour, plant or material	Unit of Measurement	Price Per Unit

SIGNED, SEALED AND DELIVERED
by the contractor, in the presence
of:

)	_____
)	
)	_____ Title
)	
)	
_____)	_____
Witness)	
)	
)	_____ Title
)	Contractor

SIGNED, SEALED AND DELIVERED
on behalf of the Band Council,
in the presence of:

)	_____
)	Chief
)	
)	_____
)	Councillor
)	
_____)	_____
Witness)	Councillor
)	
)	Band Council

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"B"

TERMS OF PAYMENT

1. The Band Council will pay to the Contractor at the times and in the manner hereinafter set out the amount by which:
- Amount Payable
- General

- (a) the aggregate of the amounts described in section 2 of the Terms of Payment exceeds
- (b) the aggregate of the amounts described in section 3 of the Terms of Payment

and the Contractor will accept the payment as full consideration for everything furnished and done by him in respect of the work.

2. (1) The amounts referred to in paragraph (a) of section 1 of the Terms of Payment are:
- Amounts Payable
to the
Contractor
- (a) the amount set out in Article II of the Articles of Agreement;
- (b) the amount, if any, payable to the Contractor pursuant to section 12 of the General Conditions relating to unexpected soil conditions, neglect or delay;
- (c) the amount, if any, payable to the Contractor pursuant to section 32 of the General Conditions relating to work not required to be done under the contract but done by the Contractor under order of the Engineer;
- (d) the amount, if any, payable to the Contractor by reason of an

order or change pursuant to section 33 of the General Conditions; and

- (e) the amount, if any, payable to the Contractor pursuant to section 34 of the General Conditions relating to cooperation with other contracting persons and workmen.
- (2) Paragraph (d) of subsection (1) is applicable only to a fixed price arrangement.
- 3. (1) The amounts referred to in paragraph (b) of section 1 of the Terms of Payment are: Amounts Payable to the Band Council
 - (a) the amount, if any, which the Contractor is liable to pay to the Band Council pursuant to section 14 of the General Conditions relating to damage to the Band Council's material, plant and real property;
 - (b) in the event of delay in completing the work, the amount payable to the Band Council pursuant to section 15 of the General Conditions;
 - (c) the amount, if any, paid by the Band Council in satisfaction of obligations of the Contractor or a subcontractor pursuant to section 19 of the General Conditions;
 - (d) the amount, if any, payable by the Contractor to the Band

Council pursuant to section 31 of the General Conditions relating to matters done by the Band Council which the Contractor refused or failed to do; and

- (e) the amount, if any, by which the cost of the work to the Contractor was decreased by reason of dispensations or changes pursuant to section 33 of the General Conditions.
- (2) Paragraph (e) of subsection (1) is applicable only to a fixed price arrangement.
- 4. (1) For the purpose of this section Time of
"payment period" means an Payment
interval of one month or such
other interval as the Contractor and
the Engineer agree upon.
- (2) The Contractor shall upon the expiration of a payment period deliver to the Engineer a progress claim in writing and shall describe therein any portion of the work completed during the Payment Period in respect of which the progress claim is made.
- (3) Within 6 days of receipt by the Engineer of the progress claim the Engineer shall inspect the portion of the work and the material described therein and shall issue a progress report, which may take the form of an endorsement on the progress claim, indicating the value of the portion of the work and the materials described in the progress claim which meet with his

satisfaction and which, in his opinion, have been completed or delivered in accordance with the contract and which are not included in any other progress report.

- (4) Fourteen days after the expiration of the six days referred to in subsection (3) and if the Contractor has made and delivered to the Engineer his Statutory Declaration deposing to the fact that as at the date of Progress Claim, all his lawful obligations to subcontractors, workmen and suppliers of material in respect of the work are fully discharged, an amount equal to 85% of the value of the work as shown in the progress report shall become due and be payable by the Band Council to the Contractor; the remaining 15% of the value of the work becomes a holdback and is dealt with in accordance with General Conditions, Section 44.
- (5) Upon the expiration of 60 days from the date of issuance of an Interim Certificate of Completion under subsection (2) of section 35 of the General Conditions and if the Contractor has made and delivered to the Engineer his Statutory Declaration deposing to the fact that full obligations to subcontractors, workmen and suppliers of material in respect of the work are fully discharged, the amount described in section 1 of the Terms of Payment less the aggregate of:

- (a) all payments made pursuant to subsection (4);
- (b) an amount equal to double the cost to the Band Council of completing the items and doing the things described in the Interim Certificate of Completion which, in the opinion of the Engineer, are brought about by defects and faults in the work; and
- (c) an amount equal to double the cost to the Band Council of completing the items and doing the things described in the Interim Certificate of Completion other than items or things to which paragraph (b) applies;

shall become due and be payable by the Band Council to the Contractor.

- (6) Upon the expiration of 60 days from the date of issuance of a Final Certificate of Completion under subsection (1) of section 35 of the General Conditions and if the Contractor has made and delivered to the Engineer his Statutory Declaration desposing to the fact that all his lawful obligations and lawful claims against him, arising out of the execution of the work, have been discharged and satisfied, the amount described in section 1 of the Terms of Payment less the aggregate of:
 - (a) all payments made pursuant to subsection (4); and

(b) all payments made pursuant to subsection (5);

shall become due and be payable by the Band Council to the Contractor.

- | | |
|---|--|
| 5. Neither a progress report nor a payment by the Band Council pursuant to the Terms of Payment shall be construed as evidence that the work material or any part thereof is complete, is satisfactory or is in accordance with the contract. | Progress Report and payment thereunder not binding on the Band Council |
|
 | |
| 6. Delay by the Band Council in making payment when it becomes due and is payable pursuant to the Terms of Payment shall be deemed not to be a breach of the contract by the Band Council but such delay shall, if the payment involved is payable pursuant to subsection (4) of section 4 of the Terms of Payment and if the delay continues for more than 15 days, entitle the Contractor to interest on the amount overdue and the Band Council will, when making payment of the amount overdue, pay to the Contractor interest on the amount overdue, calculated for the period of the said delay at 1 1/2% per annum plus the average accepted tender rate of Government of Canada three-month treasury bills, as announced each week by the Bank of Canada on behalf of the Minister of Finance, Canada, which rate shall be that which is announced immediately preceding the date on which payment was originally due the Contractor. | Delay in Making Payment |
|
 | |
| 6. (Alternative) Delay by the Band Council in making payment when it becomes due and is payable pursuant to the Terms of Payment shall be deemed to be a breach of the contract by the | Delay in Making Payment |

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Band Council. If the payment involved is payable pursuant to subsection (4) of section 4 of the Terms of Payment and if the delay continues for more than 15 days, the Contractor is entitled, to interest on the amount overdue and the Band Council will, when making payment of the amount overdue, pay to the Contractor interest on the amount overdue, calculated for the period of the said delay at 1 1/2 % per annum plus the average accepted tender rate of Government of Canada three-month treasury bills, as announced each week by the Bank of Canada on behalf of the Minister of Finance, Canada, which rate shall be that which is announced immediately preceding the date on which payment was originally due the Contractor.

7. (1) Without restricting any right of set-off given or implied by law, the Band Council may set-off against any amount payable to the Contractor under the contract, any amount payable to the Band Council by the Contractor under this contract or under any current contract and without restricting the generality of the foregoing the Band Council may when making payment pursuant to section 4 of the Terms of Payment deduct from the amount payable any amount which is then payable to the Band Council by the Contractor under the contract or which, by virtue of the right of set-off, may be retained by the Band Council.

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(2) For the purpose of this section
"current contract" means:

- (a) a contract between the Band Council and the Contractor under which the Contractor has an undischarged obligation to perform or supply work, labour or materials, or
- (b) a contract between the Band Council and the Contractor in respect of which the Band Council has since the date on which these Articles of Agreement were made exercised the right to take the work, the subject of that contract, out of the Contractor's hands.

"C"

GENERAL CONDITIONS

1. (1) In the contract Interpretation
- (a) "Engineer" means a Professional Engineer or Architect appointed by the Band Council to act on its behalf, and includes a person specially authorized by the Engineer to perform on its behalf any function under the contract;
 - (b) "herein", "hereby", "hereof", "hereunder" and similar expressions refer to the contract as a whole and not to any particular subdivision or part thereof;
 - (c) "material" includes all materials, commodities, articles and things required to be furnished under the contract for incorporation in the work;
 - (d) "Band Council" includes the duly elected Chief and councillors of the _____, and includes their successors in the office;
 - (e) "plant" includes all animals, tools, implements, machinery, vehicles, buildings, structure, equipment, articles and things required for the execution of the work;

- (f) "subcontractor" means a person, firm or corporation to whom or to which the Contractors has, pursuant to section 4 of the General Conditions and with the consent of the Engineer, subcontracted the whole or any portion of the work;
 - (g) "superintendent" means the employee of the Contractor who is designated by the Contractor as being in full charge of the field operations of the Contractor for the purposes of the contract; and
 - (h) "work" includes the whole of the works, materials, matters and things required to be done, furnished and performed by the Contractor under the contract.
- (2) The marginal notes in the contract form no part of the contract but shall be deemed to be inserted for the convenience of reference only.
 - (3) Unless the context otherwise requires, where in the contract reference is made to a subsection or paragraph, the reference shall be deemed to be a reference to a subsection or paragraph of the section or subsection, as the case may be, in which the reference is made.
 - (4) In interpreting the contract in the event of discrepancies or conflicts between anything in the Plans and Specifications and the General Conditions, the General Conditions shall govern.

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(5) In interpreting the Plans and Specifications

- (a) in the event of discrepancies or conflicts between the Plans and Specifications, the Specifications shall govern;
- (b) in the event of discrepancies or conflicts between the plans, the Plans drawn with the largest scale shall govern; and
- (c) in the event of discrepancies or conflicts between figured dimensions and scaled dimensions, the figured dimensions shall govern.

2. The contract shall inure to the benefit of and be binding upon the parties hereto and their executors, administrators, successors and assigns.

Successors and
Assigns

3. The contract or any portion thereof may not be assigned by either party to the contract without the written consent of the other.

Assignment of
Contract

4. (1) Neither the whole nor any part of the work may be subcontracted by the Contractor without the consent of the Engineer.

Subcontracting
by Contractor

(2) Every subcontracting by the Contractor shall provide that the subcontractor comply with all terms and conditions of this contract which can reasonably be applied to his undertaking.

- | | | |
|----|---|---|
| 5. | The description of the work and material set out in the contract includes not only the particular kind of work and material mentioned but also all labour, plant and material necessary for the full execution, completion, and delivery ready for use of the work and material. | Description
of Work
all-inclusive |
| | | |
| 6. | No implied obligation of any kind by or on behalf of the Band Council shall arise from anything in the contract, and the express covenants and agreements herein contained and made by the Band Council are and shall be the only covenants and agreements upon which any rights against the Band Council are to be founded; and, without limiting the generality of the foregoing, the contract supersedes all communications, negotiations and agreements, either written or oral, relating to the work and made prior to the date of the contract. | No Implied
Obligations |
| | | |
| 7. | Time is of the essence of the contract. | Time of
Essence |
| | | |
| 8. | (1) Except as provided in section 9 of the General Conditions, the Contractor shall indemnify and save harmless the Band Council from and against all claims, demands, losses, costs, damage, actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor in executing the work under the contract or to an infringement or an alleged infringement by the Contractor of a patent of invention. | Indemnification
by Contractor |

- (2) For the purposes of subsection (1), "activities" includes an act improperly carried out, an omission to carry out an act and a delay in carrying out an act.
9. The Band Council shall indemnify and save harmless the Contractor from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the Contractor's activities under the contract which are directly attributable to
- Indemnification
by the Band
Council
- (a) lack of or a defect in, title or an alleged lack of or defect in, title to the site of the work; or
- (b) an infringement or an alleged infringement of any patent of invention in executing anything for the purposes of the contract, the model, plan or design of which was supplied by the Band Council to the Contractor.
10. No Member of the Band Council shall be admitted to any share or part of the contract or to any benefit arising therefrom.
- Members of Band
Council not to
Benefit
11. (1) Notices for the purposes of paragraph (a) of subsection (1) of section 16, shall be in writing and shall:
- Notices,
Orders, etc.
to Contractor,
to Band Council,
To Engineer.
- (a) be delivered to the Contractor in person or, if the Contractor is a corporation or partnership, be delivered to a senior administrative or executive officer of the corporation or partnership, or

- (b) sent by mail to the Contractor or his superintendent addressed to the address mentioned in the contract,

and if any question arises as to whether any such notice was communicated to the Contractor it shall be deemed to have been sufficiently communicated to him:

- (c) if it was delivered pursuant to paragraph (a), on the day it was delivered, and
- (d) if it was sent by mail pursuant to paragraph (b), on the day it was received by the Contractor or on the sixth day after it was mailed, whichever is earlier.

- (2) Any notice, order, direction, decision or communication other than a notice to which subsection (1) refers, which may be given to the Contractor pursuant to the contract may be given in any manner, but it shall be deemed to have been sufficiently communicated to the Contractor if it was put in writing and the writing was:

- (a) delivered to the Contractor in person, or if the Contractor is a corporation or partnership was delivered to a senior administrative or executive officer of the corporation or partnership,
- (b) delivered to the Contractor's superintendent,

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- (c) left at the Contractor's office or, if he has more than one office, at one of them, or
 - (d) sent by mail to the Contractor or his superintendent addressed to the address mentioned in the contract or to the Contractor's last known place of business or residence.
- (3) Any notice or communication which may be given to the Band Council or the Engineer pursuant to the contract may be given in any manner by the Contractor but it shall be deemed to have been sufficiently communicated to the Band Council or the Engineer respectively if it was put in writing and the writing was:
- (a) delivered to the Chief or Band Manager in person at the Band office or
 - (b)
 - (i) delivered to the Engineer personally or
 - (ii) left at the Engineer's office on site, or
 - (c)
 - (i) sent by mail to the Band Council at the address mentioned in the contract, or
 - (ii) sent by mail to the Engineer at his principal place of business

and if any question arises as to whether any such notice was communicated to the Band Council or the Engineer it shall be deemed to have been sufficiently communicated to him:

- (d) if it was delivered pursuant to paragraphs (a) and (b), on the day it was delivered, and
- (e) if it was sent by mail pursuant to paragraph (c), on the day it was received by the Band Council or the Engineer or on the sixth day after it was mailed, whichever is earlier.

12. (1) No payment will be made by the Band Council to the Contractor in addition to the payment expressly promised by the contract on account of any extra expense, loss or damage incurred or sustained by the Contractor for any reason including a misunderstanding on the part of the Contractor as to any fact, whether or not such misunderstanding is attributable directly or indirectly to the Band Council or any of the Band Council's agents or servants (whether or not any negligence or fraud on the part of the Band Council's agents or servants is involved) unless, in the opinion of the Engineer, the extra expenses, loss or damage is directly attributable to:
- Changes in Soil
Conditions and
Neglect or
Delay by the
Band Council

- (a) a substantial difference between information relating to soil conditions at the site of the work, or a reasonable assumption of fact based thereon, in the Plans and Specifications or other documents or material communicated by the Band

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Council to the Contractor for his use in preparing his tender and the real soil conditions encountered at the site of the work by the Contractor when executing the work, or

- (b) neglect or delay occurring after the date of the contract on the part of the Band Council in providing any information or in doing any act which the contract either expressly requires the Band Council to do or which would be done by an owner, in accordance with the usage of the trade, to enable his Contractor to carry out an undertaking similar to the work being executed under the contract for the Band Council,

in which case, if the Contractor has given to the Engineer written notice of his claim before the expiration of thirty days from the encountering of the soil condition giving rise to the claim or from the day on which the neglect occurs or the delay commences, as the case may be, the Band Council will pay to the Contractor in respect of the additional expense, loss or damage incurred or sustained by reason of that difference, neglect or delay, an amount equal to the cost, calculated in accordance with sections 39

to 42 of the General Conditions of the additional plant, labour and materials necessarily involved.

- (2) If, in the opinion of the Engineer, the Contractor has effected a saving of expenditure by reason of the execution of the work by the Contractor being rendered less difficult and less costly because the soil conditions actually encountered by the Contractor at the site of the work when executing the work are substantially different from soil conditions indicated in information or a reasonable assumption of fact based thereon in the Plans and Specifications or other documents or material communicated by the Band Council to the Contractor for his use in preparing his tender, the amount set out in Article II of the Articles of Agreement shall be reduced by an amount equal to the saving effected by the Contractor.
- (3) Paragraph (a) of subsection (1) and subsection (2) are applicable only to a fixed price arrangement.
- (4) If information relating to soil conditions at the site of the work appeared in the Plans and Specifications or in other documents or material communicated by the Band Council to the Contractor for his use in preparing his tender and if the real soil conditions encountered at the site of the work by the Contractor when executing the work are substantially different from such information, or a reasonable assumption of fact based thereon, so

that the cost to the Contractor of executing the work is directly and substantially increased or decreased by reason of such difference, then the Engineer and the Contractor shall exercise their powers under subsection (2) of Article II of the Articles of Agreement relating to amendment of the Unit Price Schedule so that the benefit of a substantial decrease in cost shall accrue to the Band Council and the burden of a substantial increase in cost will not be borne by the Contractor.

- (5) Subsection (4) is applicable only to a Unit Price Arrangement.

13. (1) All materials and plant and the interest of the Contractor in all real property, licences, powers and privileges acquired, used or provided by the Contractor for the work shall from the time of being so acquired, used or provided, become the property of the Band Council for the purposes of the work, and they shall continue to be the property of the Band Council
- Materials,
Plant and Real
Property Become
Property of the
Band Council

- (a) in the case of materials, until incorporated in the work or until the Engineer indicates that he is satisfied that they will not be required for the work, and

- (b) in the case of plant, real property, licences, powers and privileges, until the Engineer indicates that he is satisfied that the interest vested in the Band Council therein is no longer required for the purposes of the work.
 - (2) Material or plant that is the property of the Band Council by virtue of this section shall not be taken away from the site of the work, or used or disposed of, except for the purposes of the work, without the consent in writing of the Engineer.
 - (3) The Band Council is not liable for loss or damage to material or plant that is the property of the Band Council by virtue of this section and the Contractor is liable for such loss or damage notwithstanding that the material or plant is the property of the Band Council.
14. (1) The Contractor is liable to the Band Council for loss of or damage to material, plant or real property, whether or not attributable to causes beyond his control, supplied or made available by the Band Council to the Contractor for use in connection with the work other than loss or damage resulting from and directly attributable to reasonable wear and tear.
- Materials,
Plant and Real
Property
Supplied by
The Band
Council
- (2) The Contractor will not use material, plant or real property to which this section applies except

for the purpose of carrying out this contract.

- (3) When the Contractor has failed within a reasonable time after being required by the Engineer to do so, to make good any loss or damage for which he is liable under this section, the Engineer may cause the loss or damage to be made good, and the Contractor shall thereupon be liable to the Band Council for the cost thereof and shall on demand pay to the Band Council an amount equal to such cost.
- (4) The Contractor shall keep records of material, plant and real property to which this section applies that the Engineer from time to time requires and shall, from time to time as the Engineer requires, satisfy the Engineer that such material, plant and real property are at the place and in the condition that they ought to be.
- (5) This section applies to material, plant and real property supplied or made available by the Band Council to the Contractor for use in connection with the work.

15. (1) The Band Council may, on the application of the Contractor made before the day fixed by Article I of the Articles of Agreement for completion of the work or before any new date for completion fixed under this subsection, extend the time for completion of the work by fixing a new day for completion of the work.
- Extension of
Time

- (2) Where the Contractor does not complete the work by the day fixed by Article I of the Articles of Agreement for completion of the work but does complete the work thereafter, the Contractor shall pay to the Band Council
- (a) an amount equal to all salaries, wages and travelling expenses paid by the Band Council to persons superintending the work during the period of delay,
 - (b) an amount equal to the value to the Band Council of the use of the completed work for the period of delay, and
 - (c) an amount equal to all other expenses and damages incurred or sustained by the Band Council as a result of the work not being completed during the period of delay.
- (3) For the purposes of this section,
- (a) the work shall be deemed to be completed on the day the Engineer issues his Interim Certificate of Completion, and
 - (b) "period of delay" means the period commencing on the day fixed by Article I of the Articles of Agreement for completion of the work and ending on the day immediately preceding the day on which the work is completed, but excluding therefrom any day within a period of extension granted under subsection (1),

if on such day, in the opinion of the Band Council causes beyond the control of the Contractor delayed completion of the work.

- (4) The Band Council may waive the right of the Band Council to the whole or any part of a payment payable pursuant to subsection (2).

16. (1) In any of the following cases, Taking the
namely, Work out of the
 Contractor's
 hands

- (a) where the Contractor has made default or delayed in commencing or in diligently executing the work or any portion thereof to the satisfaction of the Engineer and the Band Council or the Engineer has given notice thereof to the Contractor and has by such notice required the Contractor to put an end to such default or delay, and such default or delay continues for six days after such notice was communicated;
- (b) where the Contractor has made default in the completion of the work, or any portion thereof, within the time limited for such completion by the contract;
- (c) where the Contractor has become insolvent;
- (d) where the Contractor has committed an act of bankruptcy;

- (e) where the Contractor has abandoned the work;
- (f) where the Contractor has made an assignment of the contract without the required consent; or
- (g) where the Contractor has otherwise failed to observe or perform any of the provisions of the contract;

the Band Council may, without any other authorization, take all or any part of the work out of the Contractor's hands and may employ such means as it may see fit to complete the work.

- (2) Where the work or any portion thereof has been taken out of the Contractor's hands under subsection (1) the Contractor shall not except as provided in subsection (3), be entitled to any further payment including payments then due and payable but not paid and the obligation of the Band Council to make payments as provided for in the Terms of Payment shall be at an end and the Contractor shall be liable to and upon demand therefor pay to the Band Council an amount equal to all loss and damage suffered by the Band Council by reason of the non-completion of the work by the Contractor.
- (3) Where the work or any portion thereof has been taken out of the Contractor's hands under subsection (1) and that portion is subsequently completed by the Band Council, the

Engineer shall determine the amount, if any, of holdback and progress claims of the Contractor unpaid at the time of taking the work out of his hands that in his opinion are not required by the Band Council for the purposes of the contract and the Band Council shall, if it is of opinion that no financial prejudice to the Band Council will result, authorize payment of that amount to the Contractor.

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| 17. (1) | The taking of the work, or any portion thereof, out of the Contractor's hands pursuant to section 16 of the General Conditions does not operate so as to relieve or discharge the Contractor from any obligation under the contract or imposed upon him by law except the obligation to complete the physical execution of that portion of the work so taken out of his hands. | Effect of
Taking the
Work from
Contractor |
| (2) | If the work or any part thereof is taken out of the Contractor's hands pursuant to section 16, all materials and plant and the interest of the Contractor in all real property, licences, powers and privileges acquired, used or provided by the Contractor for the purposes of the work shall, notwithstanding subsection (1) of section 13 of the General Conditions, be the property of the Band Council without compensation to the Contractor. | |

- (3) If the Engineer certifies that any interest in the property of the Band Council by virtue of subsection (2) is no longer required for the purposes of the work and that it is not in the interests of the Band Council to retain the interest, it shall become the property of the Contractor.
18. The Contractor will provide everything for the execution of the work except things in respect of which the contract expressly provides otherwise and except the site of the the work if the work when completed is to remain permanently affixed thereon. Provision for Execution of Work
19. (1) The Band Council may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a subcontractor arising out of the execution of the work, pay any amount which is due and payable to the Contractor pursuant to the Terms of Payment or is payable pursuant to section 36 of the General Conditions following a conversion or negotiation of the security deposit directly to the obligees of and the claimants against the Contractor or the subcontractor. Claims Against and Obligations of the Contractor or Subcontractor
- (2) A payment made pursuant to subsection (1) is to the extent of the payment a discharge of the Band Council's liability under the contract to the Contractor.

- (3) To the extent that the circumstance of the work being executed for the Band Council permits it, the Contractor will comply with all laws in force in the province where the work is being executed relating to payment periods, mandatory holdbacks, and creation and enforcement of mechanics' liens or, if such province is the Province of Quebec, the law relating to privileges.
- (4) The Contractor will discharge all lawful obligations of his and will satisfy all lawful claims against him arising out of the execution of the work at least as often as the Terms of Payment require the Band Council to discharge its obligations to the Contractor.
- (5) The Contractor will, whenever so requested by the Engineer, make a statutory declaration deposing to the existence and condition of the obligations and claims referred to in subsection (4).
20. The Contractor will permit the Engineer to have access to the work at all times during the execution of the work, will provide the Engineer with full information concerning what is being done to execute the work, and will give the Engineer every possible assistance in respect of the performance of his duty to see that the work is executed in accordance with the contract and also in respect of the performance and exercise of the duties and powers specially imposed or conferred on him by the contract.
- Execution of
Work Subject
to Inspection
by Engineer

21. The Contractor will upon completion of the work clear and clean the work and its site to satisfaction of and in accordance with any directions of the Engineer. Clearing of Site
22. (1) The Contractor will, during working hours, until the work has been completed, keep on the site a competent superintendent who has authority to receive on behalf of the Contractor any order, direction or other communication that may be given under the contract. Contractor's Superintendent
- (2) The Contractor will, upon the request of the Engineer, remove any Superintendent who, in the opinion of the Engineer, is incompetent or has been conducting himself improperly and shall replace a Superintendent so removed with another Superintendent as described in subsection (1).
23. The Contractor will, at the request of the Engineer, remove from the work any person employed on the work who, in the opinion of the Engineer, is incompetent or has been conducting himself improperly and the Contractor shall not permit a person so removed to remain on the site of the work. Unsuitable Workers
24. (1) The amount payable to the Contractor under the contract will not be increased or decreased by reason of any increase or decrease in the cost of the work brought about by an increase or decrease in the cost of plant, labour, or material. No Additional Payment for Increased Costs

- (2) Unless otherwise stated, the Contractor shall pay all government sales taxes, customs duties and excise taxes with respect to the Contract.
- (3) Notwithstanding sub-section (1) any increase or decrease in costs to the Contractor due to changes in such taxes and duties after the final date established for receipt of tenders by the Band Council shall increase or decrease the Contract price accordingly.
25. (1) The Contractor will use Canadian labour and material in carrying out the work, to the full extent to which they are procurable, consistent with proper economy, and the expeditious carrying out of the work. Canadian Labour and Materials
- (2) Subject to subsection (1), the Contractor will employ labour from the locality where the work is being executed to the extent to which it is available.
26. (1) The Contractor will as his expense maintain insurance contracts in a form and with companies approved by the Band Council of the nature, in the amounts, for the periods and containing the terms and conditions, if any, set out in the Insurance Schedule. Insurance
- (2) All fire insurance contracts maintained by the Contractor pursuant to subsection (1) shall provide that the proceeds thereof are payable to the Band Council.

- (3) The Contractor will deposit with the Engineer the originals of all contracts of insurance maintained by the Contractor pursuant to subsection (1) and the Contractor will, when required by the Engineer, submit to him proof that such policies are in force.
27. (1) If the work or any portion thereof is lost or destroyed and monies are paid to the Band Council in respect of the loss or damage under a contract of fire insurance maintained by the Contractor pursuant to section 26 of the General Conditions the monies will be held by the Band Council for the purposes of the contract. Insurance Proceeds
- (2) The Band Council may elect to retain absolutely the monies held under subsection (1) and, in such event, the monies belong absolutely to the Band Council and
- (a) the Contractor is liable to the Band Council in an amount equal to the amount by which the insurance monies payable is less than the loss and damages suffered and sustained by the Band Council, including costs associated with clearing and cleaning the site of the work, and
- (b) there shall be a financial accounting between the Band Council and the Contractor in respect of the portion of the work which was lost or damaged and in respect of which monies have been retained absolutely by the Band Council, and there

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shall be included in the financial accounting all amounts paid or payable by the Band Council under the contract together with all amounts paid or payable by the Contractor under the contract to the Band Council. The Band Council will pay to the Contractor any amount which the financial accounting shows to be payable by the Band Council to the Contractor under the contract and similarly the Contractor will pay to the Band Council by the Contractor to the Band Council under the contract. any amount which the financial accounting shows to be payable

- (3) Upon payments as required by subsection (2) by the Band Council or the Contractor, as the case may be, the Band Council and the Contractor are discharged from all rights and obligations under the contract in respect of the portion of the work which was lost or damaged and in respect of which monies have been retained absolutely by the Band Council, as though such portion of the work had been fully completed and executed by the Contractor in accordance with the contract.
- (4) If an election is not made under subsection (2), the Contractor shall restore and replace the portion of the work lost or damaged and the monies shall be disbursed by the Band Council to the Contractor in the manner and subject to the terms and conditions governing monies

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payable under the contract to the Contractor by the Band Council, except that for the purpose of monies "100%" shall be substituted in subsection (4) of section 4 of the Terms of Payment for "85%".

28. (1) The Contractor shall at his own expense do whatever is necessary to ensure that
- Precautions
against
Damage,
Infringements
of Rights,
Fire, etc.
- (a) no person, property, right, easement or privilege is injured, damaged, or infringed by reason of the Contractor's activities under this contract;
 - (b) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted, or endangered by the execution or existence of the work and plant;
 - (c) fire hazards are eliminated, and in the case of a fire in or about the works, that it is promptly extinguished;
 - (d) the health of all persons employed on the work is not endangered;
 - (e) adequate medical supervision of all persons employed on the work is maintained;
 - (f) adequate sanitation measures in respect of the work are taken; and

- (g) all stakes, buoys, and marks placed on or about the works by or under the authority of the Engineer are protected and are not removed, defaced or altered.
 - (2) The Engineer may direct the Contractor to do such things and to construct such works which the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of subsection (1).
 - (3) The Contractor will at his own expense comply with a direction of the Engineer made pursuant to subsection (2).
29. (1) If at any time before the work has been completed and the Engineer has issued his Final Certificate of Completion, any question arises as to whether anything has been done as required by the contract or as to what the Contractor is required by the contract to do, and, in particular, and without limiting the generality of the foregoing, as to
- Interpretation
of Contract
by Engineer
- (a) the meaning of anything in the Plans and Specifications;
 - (b) the meaning to be given to the Plans and Specifications in case of any error therein, an omission therefrom, or an obscurity or discrepancy in their wording or intention;
 - (c) whether the quality or quantity of any material or workmanship meets the requirements of the contract;

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- (d) whether the plant, materials or workmen provided by the Contractor for executing the work and carrying out the contract are adequate to ensure that the work will be executed in accordance with the contract and that the contract will be carried out in accordance with its terms;
 - (e) what quantity of any kind of work has been completed by the Contractor; or
 - (f) the timing and scheduling of the various phases of the various phases of the execution of the work, the question will be decided by the Engineer.
- (2) The Contractor will construct the work in accordance with the decisions and directions of the Engineer given under this section and in accordance with any consequential decisions and directions given by the Engineer.
30. (1) Without restricting any warranty or guarantee implied or stipulated by law, the Contractor will at his own expense rectify and make good any defect or fault however caused, that within twelve months from the date of the Engineer's Final Certificate of Completion appears in the work. Rectification of Defects in Work
- (2) If any defect or fault appears in the work and the Engineer is of the opinion that it is one which the Contractor, either under subsection (1) or under a warranty or guarantee implied or stipulated by law, is obligated to remedy and make good, the Engineer may direct the

Contractor to remedy and make good the defect or fault by giving notice to the Contractor of the existence of the defect or fault and the notice may specify the time within which the defect or fault is to be rectified and made good.

- (3) The Contractor will rectify and make good the defect or fault described in a notice given pursuant to subsection (1) within the time specified in the notice.

31. (1) Where the Contractor has failed to comply with any decision or direction given by the Engineer under sections 21, 28, 29 or 30 of the General Conditions, the Band Council may employ such methods, as he deems advisable, to do that which the Contractor failed to do. Non-compliance by Contractor

- (2) The Contractor shall on demand pay to the Band Council all costs, expenses and damage incurred or sustained by the Band Council by reason of the Contractor's non-compliance with any decision or direction given by the Engineer under sections 21, 28, 29 or 30 of the General Conditions and by the action taken by the Engineer pursuant to subsection (1).

32. If the Contractor has, within ten days of communication to him by the Engineer of any decision or direction of the Engineer under sections 21, 28, 29 or 30 of the General Conditions given notice to the Engineer in writing that the decision or direction is accepted under protest, the Band Council will pay to the Protesting Engineer's Decisions

Contractor for anything the Contractor was required by the Engineer's decision or direction to do beyond what the contract correctly understood and interpreted would have required the Contractor to do, the cost, calculated in accordance with sections 39 to 42 of the General Conditions, of the labour, materials and plant necessarily involved in carrying out the decision or direction.

33. (1) The Engineer may at any time before he issues his Final Certificate of Completion, in writing, Engineer may order Additional Work, Changes, etc.
- (a) order work or material in addition to that provided for in the Plans and Specifications; and
- (b) dispense with or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the work or material provided for in the Plans and Specifications or as ordered pursuant to paragraph (a),

and the Contractor will execute the work in accordance with such orders, dispensations and changes as if the same had appeared in and been part of the Plans and Specifications.

- (2) The Engineer shall determine whether anything done or not done by the Contractor pursuant to an order, dispensation or change made by the Engineer pursuant to subsection (1) increased or decreased the cost of the work to the Contractor.
 - (3) If the Engineer determines under subsection (2), that the cost has been increased, the Band Council will pay to the Contractor the cost, calculated in accordance with sections 39 to 42 of the General Conditions, of the labour, material and plant necessarily involved.
 - (4) If the Engineer determines under subsection (2), that the cost has been decreased, the Band Council may reduce the amount payable to the Contractor under the contract by an amount equal to the cost, calculated in accordance with sections 39 to 42 of the General Conditions, of the labour, material and plant necessarily involved.
 - (5) Subsections (2), (3) and (4) are applicable only to a fixed price arrangement.
34. (1) Where, in the opinion of the Engineer, it is necessary that contracting persons or workmen, with or without plant and materials, be sent on to the site of the work the Contractor shall, to the satisfaction of the Engineer, allow them access to the work and shall cooperate with them in the carrying out of their duties and obligations.
- Cooperation
with other
Contractors

- (2) If the sending onto the work of a contracting firm or workmen under subsection (1) could not have been reasonably foreseen or anticipated by the Contractor when entering into the contract and if, in the opinion of the Engineer, the Contractor has incurred expense in complying with subsection (1) in respect of that contracting firm or those workmen, the Band Council, if the Contractor has given to the Engineer written notice of his claim before the expiration of thirty days from the sending onto the work of the contracting firm or workmen involved, shall pay to the Contractor the cost, calculated in accordance with sections 39 to 42 of the General Conditions, of the material, labour and plant necessarily involved.

35. (1) On the day that

Engineer's
Certificates

- (a) the work has been completed,
and
- (b) the Contractor has complied
with the contract and all
orders and directions made
pursuant thereto

to the satisfaction of the Engineer,
he shall issue to the Contractor a
Final Certificate of Completion.

- (2) If the Engineer is satisfied that
the work is substantially completed
and is acceptable for use by the
Band Council, he may at any time
before issuance of a Final
Certificate of Completion issue to

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the Contractor an Interim Certificate of Completion, and shall describe therein the portions of the work not completed to his satisfaction and all things which must be done by the Contractor before a Final Certificate of Completion can be issued.

- (3) The Engineer, before issuing a Final Certificate of Completion, may, in addition to the matters described in the Interim Certificate of Completion, require the Contractor to rectify any other portions of the work not completed to the satisfaction of the Engineer and to do any other things necessary for the completion of the work.
- (4) The Engineer shall measure and keep records of his measurements of the quantities of labour, material and plant, performed, used and supplied by the Contractor in executing the work and shall, at the request of the Contractor, inform him of his measurements, and the Contractor will assist and cooperate with the Engineer in such measuring and is entitled to inspect the records of measurement kept by the Engineer.
- (5) On the day that the Engineer issues his Final Certificate of Completion under subsection (1), he shall issue a Final Certificate of Measurement showing the quantity of labour, plant and material, performed, used and supplied by the Contractor in executing the work and all measurements included therein shall be binding upon the Band Council and the Contractor and are conclusive

between them as to the quantity of any labour, plant or material performed, used or supplied by the Contractor in executing the work.

- (6) Subsections (4) and (5) are applicable only to a unit price arrangement.

36. If the work is taken out of the Contractor's hands pursuant to section 16 of the General Conditions or if the Contractor is in breach of or in default under the contract, the Band Council may negotiate the security deposit, in the case of bonds, or convert the security deposit to its own use, in the case of money. The amount thus realized by the Band Council shall be deemed to be a debt payable by the Band Council to the Contractor and the Band Council shall have the right of set-off and may set-off against the debt any sum or amount which the Contractor may be liable to pay to the Band Council and the balance of the debt, if any, after the right of set-off has been exercised, and such balance, if in the opinion of the Engineer it is not required for the purposes of the contract, shall be paid by the Band Council to the Contractor.
- Security
Deposit-
Forfeiture or
Return

37. (1) Upon the Engineer's Interim Certificate of Completion being issued, the Band Council will, if the Contractor is not in breach of or in default under the contract, return to the Contractor that part of the security deposit which, in the opinion of the
- Security
Deposit-Return
all or any
part thereof

Engineer, is not required for the purposes of the contract.

- (2) If the security deposit was negotiated by the Band Council, the Band Council will pay to the Contractor interest thereon at the prime lending rate established at the Bank of Canada.
38. (1) The laws of the place of building shall govern the Work. Laws, Notices, Permits and Fees
- (2) The Contractor shall obtain all permits, licences, and certificates, and pay all fees required for the performance of the Work which are in force at the final date established for receipt of tenders by the Band Council (but this shall not include the obtaining of permanent easements or rights of servitude).
- (3) The Contractor shall give all required notices and comply with all laws, ordinances, rules, regulations, codes and orders of all authorities having jurisdiction relating to the Work, to the preservation of the public health and construction safety which are or become in force during the performance of the Work.
39. Whenever it is necessary for the purposes of sections 12, 32, 33 and 34 of the General Conditions to determine the cost of labour, plant or material, the Unit Price Table shall be used, that is the cost shall be equal to the product of the quantity of such labour, plant or material expressed in the unit set out in column 2 of the Unit Price Table in respect of the Determination of Cost-Unit Price Table

labour, plant or material involved, multiplied by the price in respect of the unit set out in column 3 of the Unit Price Table.

40. If the method of determination in section 39 of the General Conditions cannot be used because the labour, plant or material involved is not included in the Unit Price Table, the cost of the labour, plant or material for the purposes of sections 12, 32, 33 and 34 of the General Conditions shall be the amount agreed upon from time to time by the Contractor and the Engineer. Determination of Cost-Agreement
41. (1) If the method of determination in section 39 of the General Conditions cannot be used and if the Contractor and the Engineer cannot agree as contemplated by section 40 of the General Conditions, the cost of labour, plant or material for the purposes of sections 12, 32, 33 and 34 of the General Conditions shall be equal to the aggregate of Determination of Cost-Failing Agreement
- (a) all reasonable and proper amounts actually expended by or legally payable by the Contractor in respect of the labour, plant or material which fall within one of the classes of expenditure described in subsection (2) (being costs

which are directly attributable to the execution of the work and are not costs in respect of which the allowance in paragraph (b) is made); and

- (b) 10% of the total of the expenditures of the Contractor that meet the test in paragraph (a), being an allowance for all other expenditures by the Contractor and for profit and without limiting the generality of the foregoing, being also an allowance for payments and charges relating to overhead, head office expenses and general administrating costs of the Contractor, including finance and interest charges.

- (2) Classes of expenditure that are allowable are:

- (a) payments to subcontractors;
- (b) wages, salaries, and travelling expenses of employees of the Contractor while they are actually and properly engaged on the work other than wages, salaries, bonuses, living and travelling expenses of personnel of the Contractor generally employed at the head office, or at a general office, of the Contractor unless such personnel is engaged at the site of the work with the approval of the Engineer;

- (c) payments for materials necessary for and incorporated in the work, or necessary for and consumed in the execution of the work;
- (d) payments for tools, other than tools customarily provided by tradesmen, necessary for and used in the execution of the work;
- (e) payments for preparation, inspection, delivery, installation, and removal of plant and materials necessary for the execution of the work;
- (f) payments for renting, erecting, maintaining, and removing temporary offices, sheds and similar structures necessary for and used by the Contractor in executing the work;
- (g) assessments payable under any statutory scheme relating to workmen's compensation, unemployment insurance or holidays with pay;
- (h) payments for renting plant and allowances for plant owned by the Contractor necessary for the execution of the work, providing that such payments or allowances are reasonable or have been agreed to by the Contractor and the Engineer; and

- (i) payments made with the approval of the Engineer that are necessary for the execution of the work.

42. (1) For the purposes of sections 40 and 41 of the General Conditions "plant" does not include tools. Determination of Cost-Clarification of Terms

- (2) For the purposes of sections 39, 40 and 41 of the General Conditions "Unit Price Table" means the table set out in Article VI of the Articles of Agreement.

43. (1) The Contractor shall maintain full records of his estimates of and actual cost to him of the work together with all proper tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, shall make them available to audit and inspection by the Band Council or by persons acting on their behalf, shall allow them to make copies thereof and to take extracts therefrom, and shall furnish them with any information which they may require from time to time in connection with such records. Records to be Kept by the Contractor

- (2) The records maintained by the Contractor pursuant to this section shall be kept intact until the expiration of two years from the date of issuance of the Final Certificate of Completion under subsection (1) of section 35 of the

General Conditions or until the expiration of such other period as the Band Council may direct.

- (3) The Contractor shall require all subcontractors and all firms, corporations and persons directly or indirectly controlled by or affiliated with the Contractor and all firms, corporations and persons directly or indirectly having control of the Contractor to comply with subsections (1) and (2) as if they were the Contractor.

44. (1) The Band Council will withhold from the Contractor fifteen percent (15%) of all monies as they become due and payable, for sixty days after the Final Certificate of Completion, or the Interim Certificate of Completion, if one is issued, is issued by the Engineer, to enable labourers and suppliers of materials to commence legal action for payments due them for the work. The funds held back by the Band Council will be deposited into an account to be held in trust until the expiry of the 60-day period from the issuance of the Final Certificate of Completion, or the Interim Certificate of Completion, if one is issued, by the Engineer, or abandonment of the work. Unless the labourers or suppliers of materials deliver to the Band office a certified copy of the Statement of Claim commencing an action in the courts having jurisdiction prior to 60 days after the issuance of the Final Certificate of Completion, or the Interim Certificate of Completion, if one is issued, or the
- Holdback to
Project
Suppliers of
Labour and
Materials

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work is abandoned, the Band Council will pay the monies so withheld to the Contractor.

- (2) If the labourers or suppliers of materials to the work file a Statement of Claim or commence an action to realize their claim the Band Council will pay the money in the trust fund into the court having jurisdiction in the matter.
- (3) When an Interim Certificate of Completion is issued by the Engineer the Band Council will withhold 15% of all monies due and payable to the Contractor for work completed after the issuance of the Interim Certificate of Completion. The Band Council will deal with the holdback in accordance with sub-sections (1) and (2).
- (4) The Contractor shall post on the site of the work a notice that a holdback of 15% of all payments due the Contractor under the contract is to be retained by the Band Council for the protection of claims by labourers and suppliers of materials connected with the work.



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Submitted by — Soumis par

Tender for — Soumission par

Due Date — Date limite

SPECIMEN

BID BOND

No.

\$

KNOW ALL MEN BY THESE PRESENTS, that
as Principal, hereinafter called Principal, and
as Surety, hereinafter called Surety, are held and firmly
bound unto
as Obligee, hereinafter called Obligee, in the full and just
sum of

Dollars (\$) .

lawful money of Canada, for the payment of which sum, well
and truly to be made, the Principal and the Surety bind
themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by
these presents.

SIGNED, SEALED AND DATED this day of
19 .

WHEREAS, the principal has submitted a written tender to
the Obligee, dated the day of
19 , for

NOW, THEREFORE, the condition of this obligation is such
that if the Principal shall have the said tender accepted
within sixty days from the closing date of the tender call
and shall enter into a contract with the Obligee and furnish
a Performance Bond and a Labour and Material Payment Bond
each in the amount of 50% of the contract and satisfactory
to the Obligee or other acceptable security, then this
obligation shall be void, otherwise to remain in full force
and effect.

IN TESTIMONY WHEREOF, the Principal has hereto set its
hand and affixed its seal, and the Surety has caused these
presents to be sealed with its corporate seal duly attested
by the signature of its authorized, the day and year first
above written.

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SPECIMEN

PERFORMANCE BOND

No.

\$

KNOW ALL MEN BY THESE PRESENTS, that
as Principal, hereinafter called the Principal, and
as Surety, hereinafter called the Surety, are held and
firmly bound unto
as Obligee, hereinafter called the Obligee, in the full
and just sum of
Dollars (\$),
lawful money of Canada, for the payment of which sum, well
and truly to be made, the Principal and the Surety bind
themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by
these presents.

SIGNED, SEALED AND DELIVERED this day of
19 .

WHEREAS, the Principal has entered into a written
contract with the Obligee, dated the day of
19 , for

in accordance with the plans and specifications submitted
therefor which are made part and parcel of this obligation.

NOW, THEREFORE, the condition of this obligation is such
that if the Principal shall well and faithfully observe and
perform all the obligations of the said contract on the part
of the Principal to be observed and performed, then this
obligation shall be void, otherwise to remain in full force
and effect.

PROVIDED, HOWEVER, that the surety shall not be liable
for a greater sum than specified penalty of this bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its
hand and affixed its seal, and the Surety has caused these
presents to be sealed with its corporate seal duly attested
by the signature of its authorized signing authority, the
day and year first above written.

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SPECIMEN

LABOUR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that
as Principal, hereinafter called Principal, and
as Surety, hereinafter called Surety, are held and firmly
bound unto
as Obligee, hereinafter called Obligee, for the use and
benefit of claimants as hereinbelow defined, in the amount
of

Dollars (\$) .

lawful money of Canada, for the payment of which sum, well
and truly to be made, the Principal and the Surety bind
themsevlles, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by
these presents.

SIGNED AND SEALED THIS day of
19 .

WHEREAS, the Principal has entered into a written
contract with the Obligee, dated the
day of 19 , for which contract is by
reference made a part hereof, and is hereinafter referred to
as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such
that, if the Principal shall promptly make payment to all
claimants as hereinafter defined, for all labour and
material used or reasonably required for use in the
performance of the Contract, then this obligation shall be
void: otherwise it shall remain in full force and effect,
subject, however, to the following conditions:

- (1) A claimant is defined as one having a direct
contract with the Principal for labour, material,
or both, used or reasonably required for use in the
performance of the contract, labour and material
being construed to include that part of water, gas,
power, light, heat, oil, gasoline, telephone
service or rental of equipment (but excluding rent

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of equipment where the rent pursuant to an agreement is to be applied towards the purchase price thereof) directly applicable to the Contract.

- (2) The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labour was done or performed, or materials were furnished by such claimant, may sue on this bond, prosecute the suit to final judgement for such sum or sums as may be justly due claimant, and have execution thereon.
- (3) No suit or action shall be commenced hereunder by any claimant,
 - (a) unless claimant shall have given written notice to the Principal and the Surety above-named, within one hundred and twenty (120) days after such claimant did or performed the last of the work or labour, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labour was done or performed. Such notice shall be served by mailing the same by registered mail to the Principal, and Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the province or other part of Canada in which the aforesaid project is located;
 - (b) after the expiration of one (1) year following the date on which Principal ceased work on said Contract including work performed under the guarantees provided in the Contract.;

- (c) other than in a court of competent jurisdiction in the Province or District in which the project, or any part thereof, is situated and not elsewhere.
- (4) The amount of this bond shall be reduced by and to the extent of any payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.
- (5) The Surety shall not be liable for a greater sum than the specified penalty of this bond.

IN TESTIMONY WHEREOF, The Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

LIST OF BONDING COMPANIESCANADIAN COMPANIES

Aetna Casualty Company of Canada
Allstate Insurance Company of Canada
British American Assurance Company
The Canada Accident and Fire Assurance Company
Canada Security Assurance Company
Canadian General Insurance Company
Canadian Home Assurance Company
The Canadian Indemnity Company
The Canadian Mercantile Insurance Company
Canadian Pioneer Insurance Company
The Canadian Surety Company
The Casualty Company of Canada
The Century Insurance Company of Canada
Chateau Insurance Company
CNA Assurance Company
The Commerce General Insurance Company
Commonwealth Insurance Company
Consolidated Fire and Casualty Insurance Company
Co-operative Fire and Casualty Company
The Dominion Insurance Corporation
The Dominion of Canada General Insurance Company
Eagle Star Insurance Company of Canada
Eaton Insurance Company
Economical Mutual Insurance Company
Elite Insurance Company
Federal Fire Insurance Company of Canada
Federation Insurance Company of Canada
Fidelity Insurance Company of Canada
The Fire Insurance Company of Canada
The General Accident Assurance Company of Canada
General Security Insurance Company of Canada
The Glove Indemnity Company of Canada
Gore Mutual Insurance Company
Grain Insurance and Guarantee Company
The Guarantee Company of North America
Guardian Insurance Company of Canada
The Halifax Insurance Company
Herald Insurance Company
The Hudson Bay Insurance Company

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The Imperial Guarantee and Accident Insurance Company of
Canada
London and Midland General Insurance Company
London-Canada Insurance Company
Markel Insurance Company of Canada (Surety only)
The Missisquoi and Rouville Insurance Company
The Mortgage Insurance Company of Canada (Surety only)
La Paix General Insurance Company of Canada (Surety only)
The Personal Insurance Company of Canada
Perth Insurance Company
Pitts Insurance Company
Pheonix Assurance Company of Canada
Quebec Assurance Company
Royal General Insurance Company of Canada
Scottish Canadian Assurance Corporation
The Sovereign General Insurance Company (formerly Merit
Insurance Company)
The Stanstead & Sherbrook Insurance Company
Sun Alliance Insurance Company
Toronto General Insurance Company
Traders General Insurance Company
Travelers Indemnity Company of Canada
United Security Insurance Company
The Waterloo Mutual Insurance Company
The Wawanesa Mutual Insurance Company
Wellington Fire Insurance Company
The Western Assurance Company
Western Surety Company

BRITISH COMPANIES

Commercial Union Assurance Company Limited
Co-operative Insurance Society Limited (Fidelity only)
Eagle Star Insurance Company Limited
General Accident Fire and Life Assurance Corporation,
Limited
Law Union and Rock Insurance Company Limited
The Liverpool and London and Globe Insurance Company Limited
The London & Lancashire Insurance Company, Limited
The New Zealand Insurance Company Limited
North British and Mercantile Insurance Company Limited

The Northern Assurance Company Limited
Norwich Union Fire Insurance Society Limited
Pearl Assurance Company Limited
Phoenix Assurance Company Limited
The Prudential Assurance Company Limited (of England)
Royal Insurance Company Limited
Sphere Insurance Company Limited
Sun Insurance Office Limited
The Yorkshire Insurance Company Limited

PROVINCIAL COMPANIES, AND PROVINCES IN WHICH LICENSED TO DO
BUSINESS

Constitution Insurance Company of Canada

Prince Edward Island
New Brunswick
Ontario
Manitoba
Saskatchewan
Alberta

Co-operators Insurance Association
Ontario (Guelph)

Gerling Global General Insurance Company

New Brunswick
Quebec
Ontario
Manitoba
Saskatchewan
Alberta
British Columbia

Insurance Corporation of British Columbia

British Columbia

The Provident Assurance Company

New Brunswick
Quebec
Ontario
Alberta

L'Union Canadienne Compagnie d'Assurance

Quebec

Saskatchewan Government Insurance Office

Saskatchewan

Simcoe & Erie General Insurance Company

Quebec

Ontario

Manitoba

Alberta

British Columbia

Manitoba Public Insurance Corporation

Manitoba

The Band Council of the _____

"E"

INSURANCE SCHEDULE

1. (1) If requested in the tender, the Contractor will at his own expense maintain fire insurance, including insurance against lightning or explosion of natural, coal or manufactured gas, on all buildings and structures in connection with the work and all materials, plant or real property at the site of the work, whether or not such materials, plant or real property, shall have been supplied or made available to the Contractor by the Band Council in an amount at least equal to the contract price plus the value of the materials, plant or real property supplied or made available to the Contractor by the Band Council, less the cost of excavation and the undersurface of the lowest basement floor or, where there is no basement, that are below the surface of the ground, until the work is substantially completed and is accepted by the Band Council on the Engineer's interim certification of completion.
- (2) The insurance policies maintained pursuant to subsection (1) shall describe the work names in the contract and contain a provision that the policies may not be cancelled or materially changed without permission in writing by the Engineer.
- (3) Fire insurance, including insurance against lightning or explosion or natural, coal or manufactured gas, shall not be maintained, unless otherwise directed by the Engineer, on buildings and structures owned by the Band Council that are being repaired, added to, improved, maintained or rehabilitated, but the Contractor may, at this option and at his own expense, insure the work

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being performed such buildings and structures against loss or damage by fire.

2. The Contractor will, at his own expense, maintain boiler and machinery insurance on all pressure vessels (boilers, compressors, etc.) used in connection with the work until completion of the work, as evidenced by the Engineer's final certificate of completion, which insurance shall include provision for an inspection service by the insurer.
3. (1) The Contractor will, at his own expense, maintain insurance against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect to damage to property arising out of the performance of the work until completion, including, without limiting the generality of the foregoing, public liability and property damage insurance.
 - (2) The insurance policies maintained under subsection (1) shall:
 - (a) include the following "Cross Liability" clause. "The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against either of the named insureds by the other named insured";
 - (b) cover the cost of defence or adjustment of claims over and above the money limitations of the policies;
 - (c) be in an amount specified by the Engineer, or in an amount not less than the following limits:
 - (i) general public liability to third parties, not less than \$100,000.00 for death or injury to one person arising from one accident; and \$200,000.00 for death or injury to more than one person arising from one accident; and property

damage not less than \$100,000.00 for damage to property arising from any one accident;

(ii) automobile, horse-drawn and other vehicular coverage for public liability not less than \$100,000.00 for death or injury to any one person arising from one accident; and \$200,000.00 for death or injury to more than one person arising from one accident; and property damage not less than \$25,000.00 for any one accident; and

(iii) workmen's compensation insurance, or employer's liability insurance in accordance with the legal requirements of the Province or Territory where the work is being carried out.

(d) cover not only liability imposed by law on the Contractor but also liability assumed by him under this contract, and shall so specify.

4. All insurance policies maintained pursuant to section 1 shall provide that the proceeds thereof are payable to the Band Council.
5. All insurance policies maintained pursuant to sections 2 and 3 shall be issued in the joint names of the Band Council and the contractor, as their respective interest may appear.
6. The originals of all insurance policies maintained pursuant to section 1 together with certified copies of all the insurance policies maintained pursuant to sections 2 and 3 shall be filed with the Engineer prior to submission of the first progress claim, and when requested the contractor shall provide proof that such policies are in force.

AMENDMENT TO TENDER

The Band Council of the _____ File No. _____

_____ Contract No. _____

AMENDMENT TO TENDER NO. _____ Closing Date _____

_____ Date of Issue _____

PROJECT

The purpose of this amendment is to give effect to the following

We hereby acknowledge receipt of the amended instruction and confirm that provisions therefor have been made in our tender.

Signed

Title

Company

Date

N.B. Signed copy of this amendment must accompany each tender in order that the tender be considered.

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TENDER & CONTRACT

File No.

(Minor Works)

Contract No.

Authority

Financial Code

Tenders must be delivered
to:

TENDER CLOSING TIME

Hour:..... p.m. ()

Date:.....

1. Description of Works:

2. Tender Documents:Pages

Tender and Contract	1-4
General Conditions	1-5
Tender Instructions	1-4
Labour Conditions	
Insurance Schedule	1-2
Contractor's Qualifications Statement	1-2
Specifications - Index No.	
Plan - Index No.	

3. The undersigned tenderer (hereinafter called the "Contractor") hereby offers to the Band Council the necessary labour, materials, transportation, tools, plant and equipment required to carry out in a substantial, careful and workmanlike manner, complete in all respects, to the entire satisfaction of the Band Council, or its representative, and in accordance with all documents and instructions prepared and issued by the Band Council, the work as set out under the "Description of Works"

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(a) hereon, for the fixed price of (\$)

(b) hereon, for the unit prices set out below
*(Total Tender) (\$).

3b) (1) The Contractor agrees that these are the unit prices referred to in 3b) above:

Item	Class of Labour, Plant or Material	Unit of Measure	Estimated Quantity	Price per Unit	Total
------	---	-----------------------	-----------------------	-------------------	-------

*Total tender \$
items 1 to —
inclusive

3b) (2) The contractor further understands and agrees that where quantities are mentioned above for unit price items, these are estimated quantities only and may be increased or decreased in accordance with the requirements of the work and that all payments for these items shall be based upon the actual quantities of materials supplied and work performed as authorized and certified by the Engineer.

4. The contractor, having made or caused to be made an inspection of the site of the work and having satisfied himself as to its conditions and any and all conditions surrounding or affecting the proper carrying out of the work, agrees that the sum, as herein set out, comprises the full value of the labour, material, transportation, tools, plant and equipment required to complete the work including all sub-traces (if any) and all applicable

Federal, Provincial and Municipal taxes, permits and fees.

5. (a) tender security () is required
 () is not required

- (b) Contract security () is required
 () is not required

6. The undersigned Contractor hereby agrees:

- (a) in the event that the tender documents specify tender security is required, the tender when submitted must be accompanied by security in the form and amount specified in Section 4 of the Tender Instructions;

- (b) (i) that insurance in accordance with Insurance Schedule "E" in the following amounts:

Section 1. Fire Insurance

Section 3. Liability Insurance - and,

- (ii) when contract security is specified in subsection 5(b), above, such security in the form and amount specified in Section 6 of the Tender Instructions will be provided by the Contractor to the Band Council within 10 days of notification that the contract has been awarded to him;

- (c) to begin work immediately upon notification of contract award and to work vigourously and continuously to complete the project within _____ calendar days of notification of contract award;

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- (d) that this offer together with all addenda and documents listed in Section 2 shall be and are the complete tender and this offer is made subject to the provisions contained therein;
 - (e) that the complete tender together with and subject to all the provisions contained therein, shall when accepted and executed on behalf of the Band Council constitute a binding contract between the Contractor and the Band Council;
 - (f) that this offer supersedes and cancels all communications, negotiations and agreements relating to the work and made prior to the date thereof;
 - (g) that this offer is valid for 30 days from the tender closing time shown hereon, and further agrees that the Band Council may extend the above 30 days period to 60 days provided that notification of extension will be made within 15 days after the tender closing date; and
 - (h) where a tender security deposit is provided and after acceptance of the tender the Contractor fails or refuses to carry out any part or all of the contract then the tender security deposit shall be forfeited to the Band Council, or if the tender security is in the form of a bid bond, the bonding company shall be liable in accordance with the terms of the bond, in lieu of any damages to which the Band Council may be entitled by reason of such failure or refusal, and it shall not be necessary to prove any special damages.
7. The words "Band Council" when used in this tender includes all persons duly authorized to sign on its behalf.

08/06/79

Dated at

this

19.

day of

SIGNED, SEALED AND DELIVERED
by the contractor, in the
presence of:

Witness

SIGNATURES, TITLES AND
BUSINESS ADDRESS

Contractor

SIGNED, SEALED AND DELIVERED
on behalf of the Band Council
in the presence of:

Witness

Band Council

Marginal Note:

Where this document is signed by a
Company, the signatures of the
president and the Secretary or other
official authorized to bind the company
to a contract are required and the
Corporate seal is to be affixed.

Where the firm is a partnership only,
all partners shall sign.

GENERAL CONDITIONS

1. DEFINITIONS OF TERMS: In the contract,
 - (a) "the Engineer" means such person as may be specifically designated by or on behalf of the Band Council upon the award of this contract, and includes a person specially authorized by the Engineer to act on his behalf; and
 - (b) "work" includes the whole of the works, materials, matters and things to be done, furnished and performed by the Contractor under the contract.
2. ASSIGNMENT AND SUBCONTRACTING: This contract may not be assigned without the written consent of the Band Council, and neither the whole nor any part of the work may be subcontracted by the Contractor without the consent of the Engineer. Every subcontract shall incorporate all the terms and conditions of the contract which can reasonably be applied thereto.
3. MEMBERS OF THE HOUSE OF COMMONS: No Member of the House of Commons shall be admitted to any share or part of the contract or to any benefit arising therefrom.
4. INDEMNIFICATION: The Contractor shall indemnify and save harmless the Band Council from and against all claims, losses, costs, damages, suits, proceedings, or actions arising out of or related to the Contractor's activities in executing the work, including his omissions, improper acts or delays in executing the work under the contract.
5. PROPERTY OF BAND COUNCIL: The Contractor shall be responsible for any loss of or damages to any property of the Band Council arising out of the performance of the work whether or not such loss arises from causes beyond his control. Such property shall only be used by the Contractor as may be directed by the Engineer and the Contractor shall, at any time when requested to do so, account to the Engineer for the use of such property.

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6. PERMITS AND BY-LAWS: The Contractor shall comply with all laws and regulations whether federal, provincial or municipal as if the work were being constructed for a person other than Band Council and shall pay for all permits and certificates required in respect of the execution of the work.
7. CANADIAN LABOUR AND MATERIALS: In so far as is practicable the Contractor shall employ and use only Canadian labour and materials in the execution of the work, employ local labour with a reasonable proportion of men who have served on active service with the Canadian Armed Services and utilize the services of the Canadian Manpower Centre in the recruitment of such labour.
8. PUBLICITY: The Contractor will neither permit any public ceremony nor erect or permit the erection of any sign or advertising, in connection with the work without the approval of the Band Council.
9. MATERIALS' EQUIPMENT, ETC. TO BECOME PROPERTY OF THE BAND COUNCIL: All materials and plant used or provided for the work shall be the property of the Band Council, shall not be removed from the site of the work and shall be used only for the purpose of the work, until the Engineer shall certify that they are no longer required for the purpose of the work. The Contractor shall be liable for all loss or damage to material or plant that is the property of the Band Council by virtue of this section.
10. CONTRACTOR'S SUPERINTENDENT: The Contractor will keep a competent superintendent on the site of the work at all times during the progress of the work unless otherwise authorized by the Engineer. The superintendent must be acceptable to the Engineer and have the authority to receive on behalf of the contractor any order or communication in respect of the contract. Any superintendent not acceptable to the Engineer will be removed and replaced forthwith.

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11. CO-OPERATION WITH OTHER CONTRACTORS: The Contractor will co-operate fully with other Contractors or workman sent onto the site of the work by the Engineer. If the sending onto the work of other Contractors and workmen could not have been reasonably foreseen by the Contractor when entering into the contract, and if, in the opinion of the Engineer, the Contractor has incurred additional expense by such action, and if the Contractor has given written notice of claim within thirty days of such action, the Band Council will pay the cost of such additional expense to the Contractor calculated in accordance with Section 20.
12. CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR: The Contractor shall ensure that all his lawful obligations and lawful claims against him arising out of the execution of the work are discharged and satisfied, at least as often as this contract requires the Band Council to discharge its obligations to the Contractor and shall supply the Engineer with a Statutory Declaration deposing to the existence and condition of such claims and obligations when called upon to do so. The Band Council may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a sub-contractor arising out of the execution of the work, pay any amount which is due and payable to the Contractor under the Contract and from a conversion or a negotiation of the security, if any, directly to the obligees of and the claimants against the Contractor or the sub-contractor.
13. ENGINEER'S RIGHTS AND OBLIGATIONS: The Engineer shall:
- (a) have access to the work at all times during its execution and the Contractor will provide the Engineer with full information and assistance in order that he may ensure that the work is executed in accordance with the contract;

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- (b) decide any question as to whether anything has been done as required by the contract or as to what the Contractor is required by the contract to do, including questions as to the acceptability of, the quality or quantity of any labour, plant or material used in the execution of the work, and the timing and scheduling of the various phases of the work; and
- (c) have the right to order additional work, dispense with, or change the whole or any part of the work provided for in the plans and specifications. The Engineer shall decide whether anything done or not done as a result of directions given under this sub-section has increased or decreased the cost of the work to the Contractor and the amount payable under the contract to the Contractor will be increased or decreased accordingly by an amount calculated in accordance with Section 20 hereof.

The Contractor shall comply with any decision or direction of the Engineer given under this section.

14. DELAY, NON-COMPLIANCE, OR DEFAULT BY THE CONTRACTOR: If the Contractor delays in the commencement, execution or completion of the work, fails to comply with a direction or decision of the Engineer properly given, or is in default in any other manner under the contract, the Engineer may do such things as he deems necessary to correct the Contractor's default. The Contractor will reimburse the Band Council for all costs, expenses and damage incurred or sustained by the Band Council by reason of the Contractor's default, or in correcting the default. In addition to the aforementioned remedies in this section, the Band Council may, if the default continues for six (6) days after the notice in writing of default has been given to the Contractor by the Engineer, terminate the contract in accordance with Section 17 (b).

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15. CHANGES IN SOIL CONDITIONS, DELAY BY: The Band Council, Etc;

(a) No extra payment will be made to the Contractor for any extra expense, loss or damage for any reason unless the Engineer shall certify that such extra expense, loss or damage is directly attributable to:

(i) in the case of a fixed sum Contract, a substantial difference between the soil conditions at the site of the work indicated by plans and specifications and the actual soil conditions found there;

(ii) neglect or delay by the Band Council occurring after the date of contract in providing any information or doing any act which is required expressly by the contract or by usage of the trade, or suspension of the work by the Band Council;

and the Contractor has within thirty (30) days of encountering such soil conditions or of the commencement of such neglect or delay, given written notice to the Engineer or of a claim for such extra expense, loss or damage. The amount of any extra payment to be made under this section will be calculated in accordance with Section 20.

(b) If, in the opinion of the Engineer, any difference in soil conditions referred to in sub-section (a) (i) hereto results in the saving of expenditure to the Contractor the amount of such saving shall be paid to the Band Council by the Contractor.

16. PROTESTING ENGINEER'S DECISION: If the Contractor, within ten (10) days of receiving a decision or direction of the Engineer, gives written notice to the Engineer that the decision or direction is accepted under protest, the Band Council will pay to the Contractor the cost, calculated according to Section 20,

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of anything that the contractor was required to do, as a result of the decision of direction, beyond what the contract correctly understood would have required him to do.

17. SUSPENSION OR TERMINATION OF THE CONTRACT:

- (a) Band Council may upon notice in writing to the Contractor suspend or terminate the Contract at any time. The Contractor will comply with such notice immediately.
- (b) if the Band Council terminates the contract because of default by the Contractor, the insolvency of or the commission of an act of bankruptcy by the Contractor, the obligation of the Band Council to make payments to the Contractor shall cease and no further payments shall be made to the Contractor unless the Engineer shall certify that no financial prejudice will result to the Band Council from such further payments. Termination under this subsection shall not relieve the Contractor of any legal or contractual obligations other than the physical completion of the work. In such circumstances the Engineer may complete or have the work completed as he sees fit and all costs and damages incurred by the Band Council due to the non-completion of the work by the Contractor shall be payable by the Contractor to the Band Council.
- (c) if the Band Council suspends the work for a period in excess of thirty (30) days the Contractor may, in addition to his remedy under Section 15 hereof, request the Band Council to terminate the work under sub-section (d) hereof.
- (d) if the Band Council terminates the work other than in accordance with sub-section (b) hereof the Band Council will pay to the Contractor the lesser of an amount calculated in accordance with Section 20 hereof subject to any additions or deductions otherwise provided by the general conditions or labour conditions less any amount paid pursuant to Section 26 (c) hereof and the amount which would

have been payable to the Contractor had the contract been completed.

18. SECURITY DEPOSIT: If any security deposit is provided by the Contractor pursuant to this contract, it shall be dealt with in accordance with the Band Council's Regulations, provided that if the Contractor is in breach or default under the contract the Band Council may convert or negotiate such security to its own use. If a Labour and Material Payment Bond is provided pursuant to the contract the Contractor shall post on the site of the work a notice to that effect which shall include the name and address of the Surety, definition of those persons protected therein and an outline of the procedure for submitting a claim.
19. NO ADDITIONAL PAYMENTS: The amount payable to the Contractor under this contract will not be increased or decreased by reason of any increase or decrease in the cost of plant labour or material, except that in the event of a change in any tax that affects the cost of the work to the Contractor imposed under the Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act or Customs Tariff made public after the date of the submission of the tender by the Contractor, an adjustment may be made.
20. DETERMINATION OF COSTS: For the purposes of Sections 11, 13(c), 15, 16 and 17(d) the amount payable to the Contractor shall, subject to the provisions of Section 26(b) (ii) hereof, be based upon the unit prices, if any set out in Clause 3 of the Offer and Agreement. If such unit prices are not applicable the Engineer and the Contractor may mutually agree on the amount payable. Failing such agreement the amount payable shall be the reasonable and proper expenses paid or legally payable by the Contractor directly attributable to the work plus 10% of such expenses to cover overhead and profit, as certified by the Engineer.

21. RECORDS TO BE KEPT: The Contractor shall for a period of two years from the date of the Final Certificate of Completion, maintain and keep full records, vouchers, other writings and information in respect of his estimates and actual cost of the work and shall make them available for copy, audit or inspection by any persons acting on behalf of the Band Council.
22. EXTENSION OF THE TIME: The Band Council may, on the application of the Contractor, made before the day fixed for the completion of the work, extend the time for completion of the work. The Contractor shall pay to the Band Council an amount equal to the Band Council's expenses and damages incurred or suffered by reason of the delay in completion of the work unless in the opinion of the Band Council such delay was due to causes beyond the control of the Contractor.
23. CLEANING OF WORK: The Contractor will upon completion of the work, clear and clean the work and its site to the satisfaction of and in accordance with any directions of the Engineer.
24. ENGINEER'S CERTIFICATE:
- (a) On the day that the work has been completed and the Contractor has complied with the contract and all orders and directions pursuant thereto to the satisfaction of the Engineer, the Engineer will issue to the Contractor a final certificate of completion. In the case of a unit price contract, the Engineer will at the same time issue a final certificate of measurement setting out the final quantities used or employed in respect of the classes and units set out in the unit price table, and any subsequent amendments thereto, under Clause 3 of the Offer and Agreement, such certificate to be binding upon the Contractor and the Band Council.
 - (b) If the Engineer is satisfied that the work is substantially completed and is acceptable for use by the Band Council he may at any time before issuance of a Final Certificate of completion issue to the Contractor an Interim Certificate of

Completion, and shall describe therein the portions of the work not completed to his satisfaction and all things which must be done by the Contractor before a Final Certificate of Completion can be issued.

- (c) The Engineer, before issuing a Final Certificate of Completion, may, in addition to the matters described in the Interim Certificate of Completion, require the contractor to rectify any other portions of the work not completed to the satisfaction of the Engineer and to do any other things necessary for the completion of the work.

25. RECTIFICATION OF DEFECTS: The Contractor will, upon notice from the Engineer and within such time as specified in said notice, rectify at his own expense any defect or fault, however caused, which appears in the work within twelve (12) months of the date the final certificate of completion.

26. PAYMENT:

- (a) The Band Council will pay and the Contractor will accept as full consideration for the work performed and executed an amount by which the amount referred to in Clause 3 of the Offer and Agreement together with the aggregate of the amounts payable by the Band Council under sections 11, 13(c), 15(a), 16 and 19 exceed the aggregate of any payments by the Band Council under Section 12 and indemnification and amounts payable to or costs and damages incurred by the Band Council under sections 4, 5, 9, 13(c), 14, 15(b), 17(b), 19 and 22.

- (b) In the case of a unit price contract:

- (i) the amount referred to in Clause 3(b) of the Offer and Agreement will be deemed to be the amount computed by totalling the products of the unit prices set out in 3(b) (i) and the actual quantities of such units as set out in

the Engineer's final certificate of measurement, subject to any adjustment provided for in subparagraph (ii) of this subsection.

- (ii) the Engineer and the Contractor may by agreement in writing add to the aforesaid unit price table other classes of labour, etc., units of measure, estimated quantities and prices per unit, and may, if the actual quantities as set out in the aforesaid final certificate of measurement exceed or fall short of the estimated quantities in respect of any item(s) shown in the aforesaid unit price table by more than 15%, amend the unit prices shown in the unit price table for such items. Where the Engineer and the Contractor fail to agree on the amount of any adjustment as contemplated by this subsection the revised or new prices per unit shall be determined in accordance with Section 20 hereof.
- (c) If the amount of the contract is in excess of \$5,000, the contractor shall be entitled to receive progress payments based upon progress certificates issued by the Engineer at monthly intervals. The amount to be paid to the Contractor for a progress payment shall be 90% of the value of the work certified by the Engineer in the progress certificate as having been completed since the date of the immediately preceding progress certificate, if any. When a Labour and Material Payment Bond has been furnished under the contract the amount to be paid under this subsection shall be 95% of the value certified by the Engineer.
- (d) Sixty (60) days after the issue by the Engineer of the final certificate of completion there shall become due and payable to the Contractor the amount described in subsection (a) of this section less the aggregate of the amounts, if any, paid pursuant to subsection (c) of this section.

- (e) Notwithstanding subsection (c) and (d) of this section, no payments shall be due or payable to the Contractor if he has failed to supply a Statutory Declaration pursuant to Section 12, if requested by the Engineer, and contract security pursuant to Clause 6(1) of the Tender Instructions if called for in the Offer and Agreement.
- (f) A payment by the Band Council pursuant to this section shall not be construed as evidence that the work is satisfactory or in accordance with the contract.
- (g) Delay in making a payment by the Band Council under this section shall not be deemed to be a breach of the contract. However, subject to subsection (e) of this section, if payment of any progress claim under subsection (c) of this section is not made within sixty (60) days of the date of the Engineer's Progress Certificate, such progress claim shall be deemed to be overdue and the Contractor shall be entitled to interest at the rate of 5% per annum of the amount overdue for the period commencing at the end of the said sixty (60) days and ending on the date paid.
- (h) The Band Council may set-off against any amount payable or debt due by the Band Council under this contract the amount of any debt due to the Band Council under this contract or any other contract between the Contractor and the Band Council.

TENDER & CONTRACT

(For Service or work
not exceeding \$5,000.00)

	Project No.	Contract No.
Correspondence and Invoices must show these numbers		

Authority

GENERAL DESCRIPTION OF WORK OR SERVICE

I/We hereby offer to supply the materials and perform the
work or service referred to hereunder on the covenants and
agreements contained hereunder, WITHIN THE TIME SPECIFIED

Details	Unit Price	Total
---------	---------------	-------

THE MAXIMUM AMOUNT PAYABLE UNDER THIS
CONTRACT SHALL NOT EXCEED \$

GRAND TOTAL

08/06/79

_____	_____	_____
Signature of Contractor	Date	Witness
Name and Address of Contractor	Accepted on Behalf of the Band Council of the _____	
	_____ Day of _____, 19__.	
Mail Invoices (__ copies to:	_____	_____
	Title	Signature

The parties of this contract covenant and agree as follows:

1. The Contractor will indemnify and save harmless the Band Council 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 attributable to the activities of the Contractor under this contract.
2. The various works or services are to be carried out and completed to the full satisfaction of the officer signing on behalf of the Band Council.
3. The Contractor may not assign or sublet this contract or any part thereof without the written consent of the officer signing on behalf of the Band Council.
4. The Band Council reserves the right to terminate this contract at any time before completion for any reason whatsoever. In the event of such termination the Band Council will pay to the Contractor an amount that, in the opinion of the officer signing on behalf of the Band Council, is equal to that portion of the work or service completed up to the day of termination.

5. In engaging labour for the work or service contemplated by this contract the contractor will employ as far as practicable and consistent with efficiency and economy only Canadian labour with local labour receiving preference.
6. No member of the Band Council shall be admitted to any share or part of this contract or any benefit arising therefrom.
7. Labour Conditions attached are included in this contract.

REGISTER OF TENDERS RECEIVED BY TENDER OPENING COMMITTEE

Box		Work (Project)				Estimate	
Project File No.						Certified Unencumbered Balance	
Contract No.						Req'd. Completion	
Closing Date	Tenders Opened	Valid for	Date Recommended	Exceptions	Date Awarded		
By		Chairman				Secretary	
		Amount Bid				Security	
Rating		Tenderer				Revisions - Comments	
						1	

BAND COUNCIL OF THE _____

TENDER EVALUATION

CHECK OF TENDERS

Project File No.

EACH TELEGRAM OF REVISIONS
ENTERED; TENDERS AMENDED AND
INITIALLED

Contract No.

EACH TENDER CHECKED AND
INITIALLEDUNIT PRICE TENDER: EXTENSIONS
AND ADDITIONS CHECKED

INCONSISTENCIES - ALTERNATIVES

Low Bid \$ _____ FirmBand Council
Estimate \$ _____Certified Unencumbered
Balance \$ _____

Referred to for Technical Review	Reason	Date	Date Reply Received
-------------------------------------	--------	------	------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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CHECK OF DOCUMENTS

Documentation - Missing items

Anomalies

**Unit Price Extensions - Errors
Noted**

**Unit Prices - Exceptions
Noted**

CHECK OF CONTRACTOR'S QUALIFICATIONS

Records on File	Info. Satisfactory	Report Requested	Reply Received
----------------------------	-------------------------------	-----------------------------	---------------------------

		19__	19__
--	--	-------------	-------------

		19__	19__
--	--	-------------	-------------

ABSTRACT TYPED AND CHECKED

Date

08/06/79

The Band Council of the _____

CONTRACTOR'S QUALIFICATION STATEMENT
(BUILDING CONSTRUCTION)

(Required in advance of invitation to tender and/or in advance of award of contract to establish whether a contractor possesses the capacity, skill and integrity necessary to the faithful performance of the work).

Submitted to the Band Council of the _____

By _____

A Corporation _____

Address _____

A Partnership _____

An Individual _____

If a Corporation, answer below:

If a Partnership,
answer below:

Year incorporated _____
Federal _____ or
Provincial _____ (which
Province)

Date of organization _____

Names and addresses of
of all partners:

or Year registered _____
(which Province) _____
President's name _____

Name(s) of Vice-President(s):

How many years has the organization been in business as a
contractor in Canada? _____

Approximate total Canadian volume of construction work for the last five years?

_____ 19____, _____ 19____, _____ 19____,
_____ 19____, _____ 19____.

LIST BELOW THE RELATED CONSTRUCTION EXPERIENCE
OF THE PRINCIPAL INDIVIDUALS IN THE
CONTRACTOR'S ORGANIZATION:

Individual's Name and Professional Qualifications	Present Position/Office	Years of Construction Experience	In What Capacity
---	----------------------------	--	---------------------

LIST MAJOR PROJECTS YOUR ORGANIZATION HAS COMPLETED IN
CANADA IN THE PAST FIVE YEARS:

Project	Officer	Architect/ Engineer	When Completed	Contract Amount
---------	---------	------------------------	-------------------	--------------------

LIST OF THE MAJOR CONSTRUCTION PROJECTS YOUR
ORGANIZATION HAS UNDER WAY ON THIS DATE:

<u>Project</u>	<u>Owner</u>	<u>Architect/ Engineer</u>	<u>Value</u>	<u>% Complete</u>	<u>Scheduled Completion</u>
----------------	--------------	--------------------------------	--------------	-----------------------	---------------------------------

DATA ON PROJECT BEING BID

<u>Name of Project Superintendent to be Assigned to this Project</u>	<u>Years of construction Experience</u>	<u>Typical \$ Amount and Type of Work for Which Responsible</u>	<u>In What Capacity</u>
--	---	---	---------------------------------

Other Key
Supervisors:

Additional Data:

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REFERENCES:

(a) Banking_____

(b) Bonding_____

The answers to the foregoing questions and all statements therein contained are true and correct.

Name of Organization:_____

Authorized Signature:_____

Title:_____

This _____ day of _____ 19__.

Note: Please use a blank sheet if additional space needed for any replies.

CONTRACT RECORD

File No.	Name	Contract No.	
Project	Plan No.	Authority	
Contractor	Address		
Reserve	Location	Nearest Centre	Miles
Advertising Dates	Display Dates		Closing Date
Extended	Deferred	Year	Cost per set
Labour Rates Rec.	Labour Ref. No.	Date	\$
Security Deposit	Retained	Returned	Revised Date
Extended	Fire Ins.	Expiry Date	Compl'n Date
Liability Insurance	Extension	Returned	Extension
Roof Bond	Elect. Insp. Cert.	Date of Award	Comp. B.D. Stat.
Returned	Signed by Band Council	Copy to Contractor	To Contractor
Auth. Sign. Off.		Atty. Mat. Completed	Tendering Mat. Completed

Remarks

[illegible]

REQUEST FOR CHANGE NO. _____

NOTE - Contractor's quotation must be attached

Project	Location	Proj. file No.
---------	----------	----------------

Financial Coding	Contract No.
------------------	--------------

REASON FOR CHANGE:	Revision of plans and specifications	On site design change
	()	()

Field engineering change	()	Other	()	Amount \$
--------------------------	-----	-------	-----	--------------

Firm price	()	Upset price	()	Estimated price (i.e. based on unit prices etc.)	()
------------	-----	-------------	-----	--	-----

Complete 1 or 2 as indicated	1. As a result of this change the completion date to be changed
---------------------------------	--

From _____	To _____
------------	----------

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2. No change in completion date

Beneficial Occupancy
Date

Explanation of necessity for change

Project engineer's description and analysis of Work (where
unit prices are involved, indicate if same as in contract)

I certify that the above quotation is fair and reasonable
and that necessary funds have been allocated.

Recommended by:

_____	_____	_____
Name	Title	Date

Approved by:

_____	_____	_____
BAND COUNCIL	Title	Date

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CHANGE ORDER

File No.

CHANGE ORDER NO _____

Contract No.

N.B. All Correspondence and
Invoices must show the
file and contract numbers

Authority

Fin. Code

TO -

WORK -

DATE

	Revision to plans and specifications ()	On site design change ()
Reason for change	Field engineering change ()	Other change ()

YOUR CONTRACT IS AMENDED AS FOLLOWS:

A Original Contract Value

\$

B Net Change by Change
Order No'sAdd
()Subtract
()

\$

\$

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C This Change Order No.	Add	Subtract	\$	\$
	()	()		

D Revised Total Value of Contract	\$
-----------------------------------	----

We acknowledge receipt of this
change Order No. and
agree to the Terms and
conditions set out therein

Signed, Sealed and Delivered
on Behalf of The Band
Council

Contractor

Date

By

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BAND COUNCIL OF THE _____
BUILDING PROGRESS ESTIMATE (CONTRACT)

Project _____	Authority _____
Location _____	Estimate No _____ Month _____
_____	Contractor _____
Project No _____ Year _____	Address _____
Contract Price \$ _____	

General Items of Work	Total Value of Unit	Value to Date	Value Previously Executed	Value of this Estimate
	\$	\$	\$	\$

General Conditions
Site-Demolition
Excavation - Earth,
Rock
Fill and Grading
Drains and Sewers
Concrete
Waterproofing:
Concrete
Septic Tanks
and Pits
Miscell. Steel
and Metal Work
Hardware Rough
and Miscell.
Hardware Finish
Kalamein - Work
Doors, Etc.
Masonry
Roofing and Sheet
Metal
Carpentry
Insulation
Lath and Plaster -
Wallboard
Painting and Glazing

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General Development of Site

TOTAL

LESS RETAINED

NET TOTAL

AMOUNT OF THIS PAYMENT \$

PAYMENT

Certified that the above
work has been done and
that the claim is in
accordance with the
contract.

Contractor

Supervising Officer

Approved for payment

Band Council

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DETAIL SHEET

DETAIL SHEET
For Unit Price
Contract

Contract No.

Request No.

NO.	DESCRIPTION	U OF M	THIS AUTHORIZED	THIS PERIOD	TO DATE	UNIT PRICE	AMOUNT
-----	-------------	-----------	--------------------	----------------	------------	---------------	--------

SIGN LAST PAGE ONLY

I hereby certify that work done and material delivered to site up to date specified are as listed. Work, material and prices are according to contract (if prices not specified by contract they are reasonable).

Project Officer_____
Date

FINAL CERTIFICATE OF MEASUREMENT

The quantities shown are those obtained in the final measurement of this contract. I hereby issue this final certificate of measurement in accordance with Section 40 (4) or 24 of the General Conditions

Engineer_____
Date

08/06/79 .

CERTIFICATE OF COMPLETION

(Please see next page for instructions)

1. Interim Final	() ()	2. Effective Date
3. Financial Code	4. Contract No.	5. Location
6. Contractor	7. Project Title	
8. Incomplete work, deficiencies, and faults		

Appendix attached () yes () no

The Engineer, before issuing a final certificate of completion, may, in addition to the matters described in the interim certificate of completion, require the contractor to rectify any other portions of the work not completed to the satisfaction of the engineer and do any other things necessary for the completion of the work.

9. Remarks

Final certificate of measurement attached () yes
() no

Appendix attached () yes () no

10. Statement of Band Council representative

I hereby certify that all the work called for in the contract described above has been completed in accordance with section 40(1), (A) and (B) or 24 of the general conditions of the contract.

Date_____
Signature_____
Title

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INSTRUCTIONS FOR COMPLETION OF FORM

1. Check either INTERIM or FINAL.
2. Insert the effective date on which the Band Council accepts custody of the facility from the Contractor, which is:
 - (a) the date of issue of the Interim Certificate of Completion (if issued); otherwise
 - (b) the date of issue of the Final Certificate of Completion.
3. Insert the complete financial coding.
4. Insert the contract number as it appears on the tender form.
5. Insert the name of the area, municipality, settlement, or reservation where the project is located.
6. Insert the Contractor's complete name and mailing address at it appears on the contract.
7. Insert the title of the project as shown on the contract.
8. (a) List:
 - (i) all authorized work not done and not paid for;
 - (ii) all deficiencies (including work improperly done but paid for; as-built drawings, warranties, catalogues, etc., not supplied by the Contractor; and
 - (iii) all faults in the work together with the Engineer's estimate of cost for each, based on the assumption that Band Council will be required to complete the work and rectify the deficiencies and faults.

- (b) Outline the reason(s) for non-completion and state the forecast completion date.

NOTE: If the space provided is sufficient, attach a separate list as an Appendix to the Certificate and so indicate in this Section.

9. Indicate any additional remarks applicable, such as:

- a) Where the project completion date established in the Contract occurs before the date on which the Engineer issues the Interim Certificate of Completion or the Final Certificate of Completion (Whichever is first issued), the Engineer shall attach to the Certificate a statement regarding the Contractor's liability for such delay, pursuant to Section 15, sub-sections (2), (3) and (4) of the General Conditions "C" and Section 3(1) (b) of the Terms of Payment "B"; or good and sufficient reasons for waiving such liabilities.
- b) Recommendations concerning release or retention of holdback, security deposit, insurance and delay liabilities.
- c) Reference to documents forwarded with Certificate.

10. a) The STATEMENT is only applicable if Certificate is FINAL.

- b) The Certificate is signed by the Engineer.

INTERIM AND FINAL CERTIFICATES OF COMPLETION: These are defined in Section 40 of the General Conditions to Contract.

STATUTORY DECLARATION

Progress Payments (interim)

Canada

Province of

To Wit:

I,of The City
of in the Province of
.....do solemnly declare:

1. That I am
(President, Secretary, Treasurer, a partner)
of
the contractor named in the contract made between
The Band and
dated19.. and as such have
personal knowledge of the facts hereunder declared:
2. That no accounts remain unpaid that are due and
payable on or before the date hereof with respect
to the performance of that portion of the work
covered by the said contract set forth in the
progress estimate next preceding the progress
estimate attached to this declaration;
3. That all wages paid in connection with the said
contract are the same as or above those set out in
the Schedule of Wages attached to and forming part
of the said contract;
4. That all amounts owing for Workmen's Compensation,
employees' income tax deducted at source,
unemployment insurance deducted from wages and
salaries, vacation with pay allowances and all

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other charges of a similar nature due and payable by reason of the performance of that portion of the work covered by the said contract as set forth in the progress estimate next preceding the one attached hereto have been duly deducted or paid according to law;

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at _____
in the Province of _____
this _____ day of _____ A.D. 19..

A Notary Public, Commissioner for Oaths, etc.

Note: Where the contractor is a corporation or a partnership, declarer's position in the corporation or partnership and company or partnership name should be clearly shown in No. 1.

STATUTORY DECLARATION

Progress Payments (final)

Canada

Province of

To Wit:

I, of the City
of in the Province of
..... do solemnly declare:

1. That I am
(President, Secretary, Treasurer, a partner)
of
the contractor named in the contract made between
The Band Council and
dated 19.. and
as such have personal knowledge of the facts
hereunder declared;
2. That all accounts for sub-contracts, labour and
materials and other accounts whatsoever in respect
of the performance of the work covered by the said
contract have been duly paid;
3. That the wages paid are in all cases the same as or
above those set out in the Schedule of Wages
attached to and forming part of the said contract;
4. That all amounts owing for workmen's compensation,
employees' income tax deducted at source,
unemployment insurance deducted from wages and
salaries, vacation with pay allowances and all
other charges of whatsoever nature due or payable

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by reason of the performance of the work covered by the said contract have been duly deducted or paid according to law;

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at _____

in the Province of _____

this _____ day of _____ A.D. 19__

A Notary Public, Commissioner for Oaths, etc.

NOTE: Where the contractor is a corporation or a partnership, declarer's position in the corporation or partnership and company or partnership name should be clearly shown in paragraph 1.