

THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW NUMBER 51-74

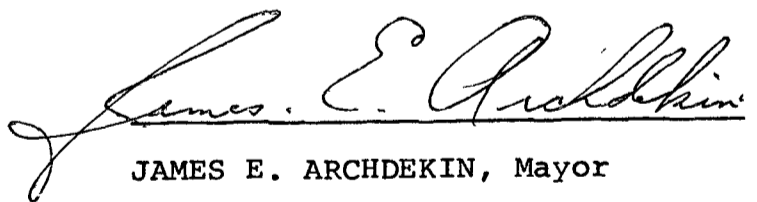
A By-law to authorize the execution of a contract with W. E. Marshall Construction Limited (Construction of Boathouse, Bandshell and Skating Pavilion).

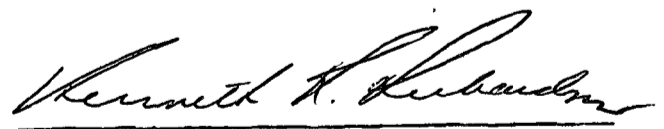
WHEREAS it is deemed expedient to enter into and execute a Contract with W. E. Marshall Construction Limited (Construction of Boathouse, Bandshell and Skating Pavilion);

NOW THEREFORE the Council of the Corporation of the City of Brampton ENACTS as follows:

1. That the City of Brampton enter into and execute a Contract, attached hereto as Schedule "A", with W. E. Marshall Construction Limited (Construction of Boathouse, Bandshell and Skating Pavilion).
2. That the Mayor and the Clerk are hereby authorized to affix their signatures to the said Contract, attached hereto as Schedule "A", with W. E. Marshall Construction Limited.

READ A FIRST, SECOND and THIRD TIME and PASSED in Open Council this *31st* day of *May*, 1974.


JAMES E. ARCHDEKIN, Mayor


KENNETH R. RICHARDSON, Clerk

CANADIAN STANDARD FORM
OF
CONSTRUCTION CONTRACT

For use ONLY when the work is being done for a

STIPULATED SUM

ALSO

GENERAL CONDITIONS GOVERNING SAME

BY AND BETWEEN

THE CORPORATION OF THE CITY OF BRAMPTON

OWNER

W. E. MARSHALL CONSTRUCTION LTD.

CONTRACTOR

PROJECT BANDSHELL, BOATHOUSE AND SKATING PAVILION
CHINGUACOUSY PARK, BRAMPTON, ONTARIO.

DATE MAY 27th, 1974.

MANDEL C. SPRACHMAN ARCHITECT

Registered under the Copyright Act
CANADA
1964

Approved by

THE ROYAL ARCHITECTURAL INSTITUTE OF CANADA
151 Slater Street
OTTAWA 4, CANADA

THE CANADIAN CONSTRUCTION ASSOCIATION
151 O'Connor Street
OTTAWA 4, CANADA

and prepared in consultation with

THE ASSOCIATION OF CONSULTING ENGINEERS OF CANADA
176 St. George Street
TORONTO 5, ONTARIO

THE ENGINEERING INSTITUTE OF CANADA
2120 Sherbrooke Street East
MONTREAL 2, QUEBEC

Handwritten initials and signature

CANADIAN STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

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

THIS AGREEMENT made in duplicate the 27th day of MAY in the year Nineteen hundred and SEVENTY-FOUR by and between THE CORPORATION OF THE CITY OF BRAMPTON herein (and in the General Conditions) called the "Owner",

and

W. E. MARSHALL CONSTRUCTION LTD.

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

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

ARTICLE A-1 The Contractor shall:

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

CONSTRUCTION OF BOATHOUSE, BANDSHELL, AND SKATING PAVILION

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

MANDEL SPRACHMAN, ARCHITECT

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

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

- (c) complete substantially as certified by the Architect, all the work by the FOURTH day of OCTOBER 19 74.

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

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ARTICLE A-2

The following is an exact list of the Drawings and Specifications referred to in Article A-1:-
(Here insert, attaching additional pages if required, a list identifying all contract documents including Drawings, giving drawing number, title, date, revision date or mark, Specifications, giving a list of contents with section numbers and titles, number of pages, and date or revision mark, if any; and clearly identify any modifications to the contract documents if any).

INSTRUCTIONS TO BIDDERS	Pages A1 - A6
SUPPLEMENTARY AND GENERAL CONDITIONS	" 1 - 6
Division 1 - General Requirements-Rules and Regulations	" 1 - 7
Division 2 - Site Work	
Section 2A - Excavating & Grading	" 2A1 - 2A3
Division 3 - Concrete	
Section 3A - Plain & Reinforced Concrete	" 3A1 - 3A5
Division 4 - Masonry	
Section 4A - Masonry	" 4A1 - 4A4
Division 5 - Metals-Structural & Miscellaneous	
Section 5B - Misc. & Ornamental Metal Work	" 5B1 - 5B4
Division 6 - Carpentry	
Section 6A - Carpentry	" 6A1 - 6A9
Division 7 - Moisture Protection	
Section 7A - Roofing	" 7A1 - 7A3
Section 7B - Caulking	" 7B1 - 7B2
Division 9 - Finishes	
Section 9A - Ceramic Tile	" 9A1 - 9A3
Section 9D - Painting & Decorating	" 9D1 - 9D5
Division 15- Mechanical & Electrical Supplementary Conditions	
Section 15A - Mechanical & Electrical Supplementary Conditions	" 15A1 -15A4
" 15B - Plumbing & Drainage	" 15B1 -15B5 & PD1
" 15C - Heating & Ventilation	" 15C1 - & V-1
Division 16 -Electrical	
Section 16A - Electrical Work	" 16A1 -16A6

LIST OF DRAWINGS

Architectural	1,2,3,4,5,6,7,8.
Standard Details	SD-1,SD-6,SD-8
Structural	S1,S2,S3.
Mechanical	M1,M2,M3.
Electrical	E1,E2,E3,E4,E5.

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ARTICLE A-3

(a) The Owner shall:—

- (1) pay the Contractor in lawful money of Canada for the work aforesaid-----
 ---ONE HUNDRED AND SIXTY-TWO THOUSAND, FOUR HUNDRED AND
 FIFTY-----
 ----- and 00/100----- dollars (\$162,450.00)
 100

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

- (2) pay on account thereof upon the Architect's certificate, and within the time stipulated in Article 28 of the General Conditions of the Contract, _____ percent (%) of the value, proportionate to the amount of the Contract, of the work completed and materials delivered at the site up to and including the last day of the month preceding, as invoiced by the Contractor and approved by the Architect, less the aggregate of previous payments, and
- (3) on completion of the entire work and one day after all lien rights have expired, pay the balance owing under the Contract.

(b) Notwithstanding the provisions contained in sub-section (2) above:—

- (1) if on account of climatic or other conditions reasonably beyond the Contractor's control there are items of work that cannot readily be completed, the payment in full for the work which has been completed shall not be delayed on account thereof, but the Owner may withhold a sufficient and reasonable sum, as determined by the Architect, until the uncompleted work is finished and such sum as will adequately protect the Owner against liens; and
- (2)**where the Architect has issued a certificate confirming that a subcontract made by the Contractor in respect to a portion of the work covered by this Contract has been completed to his satisfaction, the Owner shall, one day after all lien rights under such subcontract have expired but not otherwise, pay to the Contractor, out of the monies then being retained by the Owner under this Agreement, the balance of the fixed price of such subcontract as certified by the Architect or if there is no specific subcontract price, the balance of the value of the work or materials incorporated in the said building under such subcontract as certified by the Architect.

ARTICLE A-4

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

*Include any special provisions with respect to taxes or their rebate in the Supplementary General Conditions.
 **This paragraph will apply where the relevant lien legislation permits release of holdback on completed subcontracts.

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ARTICLE A-5

All communications in writing between the parties or between them and the Architect shall be deemed to have been received by the addressee if delivered to the individual or to a member of the firm or to an officer of the Corporation for whom they are intended or if sent by post or by telegram addressed as follows:—

The Owner at 24 Queen Street East, Brampton, Ontario.
(street and number) (post office)

The Contractor at 3054 Mavis Road, Mississauga, Ontario.
(street and number) (post office)

The Architect at 30 Roden Place, Toronto, Ontario. M5R 1P5
(street and number) (post office)

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

James E. Archdekin MAYOR
Therese K. Richardson CLERK

WITNESS

CORPORATION OF THE CITY OF BRAMPTON
(Owner)

(SEAL)

WITNESS

A. Marshall Pres.
W. E. MARSHALL CONSTRUCTION LTD.
(Contractor)

(SEAL)

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THE GENERAL CONDITIONS OF THE CONTRACT FOR STIPULATED SUM CONTRACT

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ARTICLE 1. Definitions.

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

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

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

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

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

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

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

ARTICLE 2. Documents.

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

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ARTICLE 3. Detail Drawings & Instructions.

The Architect shall furnish as necessary for the execution of the work, additional instructions, by means of drawings or otherwise. All such additional instructions shall be consistent with the contract documents. The work shall be executed in conformity therewith and the Contractor shall do no work without such additional instructions. In giving such additional instructions, the Architect shall have authority to make minor changes in the work, not inconsistent with the Contract.

If either the Contractor or the Architect so requests they shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Architect shall furnish them in accordance with this schedule; and on like request, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

ARTICLE 4. Copies Furnished.

The Architect shall furnish to the Contractor, without charge, as many copies of all Drawings and Specifications as are reasonably necessary for the proper execution of the work.

ARTICLE 5. Shop Drawings.

The Contractor shall furnish to the Architect, at proper times, all shop and setting drawings or diagrams which the Architect may deem necessary in order to clarify the details of the work. The Contractor shall make any changes in such drawings or diagrams which the Architect may require consistent with the Contract, and shall submit sufficient copies of the revised prints to the Architect for approval, all but one of which shall be returned to the Contractor if approved by the Architect. When submitting such shop and setting drawings the Contractor shall notify the Architect in writing of changes made therein from the Architect's Drawings or Specifications. The Architect's approval of such drawings or of the revised drawings shall not relieve the Contractor from responsibility for errors made by the Contractor therein or for changes made from the Architect's Drawings or Specifications not covered by the Contractor's written notification to the Architect.

ARTICLE 6. Drawings and Specifications on the Work.

The Contractor shall keep one copy of all Drawings, Specifications and approved shop drawings on the work, in good order, available to the Architect and to his representatives.

ARTICLE 7. Ownership of Drawings and Models.

All Drawings, Specifications and copies thereof and all models furnished by the Architect are his property. They are not to be used on other work, and, with the exception of the signed contract set of the Drawings and Specifications, are to be returned to him on request on the completion of the work. Any models furnished by the Contractor or the Owner are the property of the Owner.

ARTICLE 8. Samples.

The Contractor shall furnish for the Architect's approval such samples as he may reasonably require. The work shall be in accordance with approved samples.

ARTICLE 9. Material Tests and Mix Designs.

The Contractor shall furnish for the Architect's approval such material tests and mix designs as he may reasonably require. The cost of providing the foregoing beyond the extent called for in the Specifications shall be charged to the Owner. The work shall be in accordance with approved material tests and mix designs.

ARTICLE 10. Architect and Contractor.

The Architect is in the first instance the interpreter of the Contract and the judge of its performance; he shall use his powers under the Contract to enforce its faithful performance by both parties hereto. The Contractor shall, however, have complete control, subject to Article 12, of his organization. In case of the termination of the employment of the Architect, the Owner shall appoint an Architect whose status under the Contract shall be that of the former Architect.

ARTICLE 11. The Architect's Decisions.

The Architect shall decide on questions arising under the contract documents, whether as to the performance of the work or the interpretation of the Specifications and Drawings; but should the

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

ARTICLE 12. Superintendence.

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

ARTICLE 13. Materials, Appliances, Employees.

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

ARTICLE 14. Inspection of Work.

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

ARTICLE 15. Rejected Work.

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

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

ARTICLE 16. Deductions for Uncorrected Work.

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

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ARTICLE 17. Correction after Completion

Subject to any special provisions in the contract documents, the Contractor shall remedy any defects due to faulty materials or workmanship appearing within a period of one year from the date of substantial completion of the work and shall pay for any damage to other work resulting therefrom which appears within such period and neither the final certificate nor payment thereunder shall relieve the Contractor from responsibility hereunder. The Owner shall give notice of observed defects promptly. Questions arising under this Article may be decided as provided in Article 44.

This Article shall not be deemed to restrict any liability of the Contractor arising out of any law in force in the province.

ARTICLE 18. Emergencies.

The Architect has authority in an emergency to stop the progress of the work whenever in his opinion such stoppage may be necessary to ensure the safety of life, or of the structure, or neighbouring property. This includes authority to make such changes and to order, assess and award the cost of such work extra to the Contract or otherwise as may in his opinion be necessary. This condition shall apply in Quebec notwithstanding Article 1690 of the Quebec Civil Code.

ARTICLE 19. Protection of Work and Property.

The Contractor shall maintain continuously adequate protection of all his work from damage and shall take all reasonable precautions to protect the Owner's property from all injury arising in connection with this Contract. He shall make good any damage or injury to his work and shall make good any damage or injury to the property of the Owner resulting from the lack of reasonable protective precautions. He shall not be responsible, however, for any damage or injury to his work and to the property of the Owner which may be directly due to errors in the contract documents or caused by the Owner, his agents or employees, or from any work or risk which the Owner has agreed to insure, provided the Contractor has taken reasonable protective precautions. He shall adequately protect adjacent property as required by law and the contract documents.

ARTICLE 20. Contractor's Liability Insurance.

The Contractor shall protect himself and indemnify and save the Owner harmless from any and all claims which may arise from the Contractor's operations under the Contract where bodily injury, death, or property damage is caused and for this purpose shall, without restricting the generality of the foregoing, maintain insurance acceptable to the Owner, to the limits set forth in the contract documents.*

The Contractor shall furnish evidence of compliance with all requirements of the applicable workmen's compensation Act or Ordinance of the province or territory concerned including payments due thereunder.

The Contractor shall maintain comprehensive general liability insurance covering premises and operations liability, elevators (if applicable), contractor's contingency liability with respect to the operations of subcontractors, completed operations liability, contractual liability; and automobile liability insurance (owned, non-owned, or hired units).

All liability insurance policies shall be written in such terms as will fully protect the Contractor notwithstanding his assumption of liability and his indemnity covenants under the Contract.

Prior to the commencement of any work hereunder, the Contractor shall file with the Owner a copy of each insurance policy and certificate required. All such insurance shall be maintained until final completion of the work including the making good of faulty work or materials pursuant to Article 17; except that coverage of completed operations liability shall in any event be maintained for Twelve (12) months from date of substantial completion as certified by the Architect.

ARTICLE 21. Fire Insurance.

The Contractor** shall maintain Fire Insurance acceptable to the Owner, with standard Extended Coverage Endorsement, in the joint names of the Owner and Contractor to a total no less than Eighty (80) percent of the total value of the work done and material delivered to the site, payable to the Owner and Contractor as their respective interests may appear, and protecting each in such terms as will preclude subrogation claims by the Insurer against anyone insured thereunder.

*Requirements and limits should be set out in detail in the Supplementary General Conditions.

**If the Owner decides to insure, interchange the word "Owner" and "Contractor" where appropriate.

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

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

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

ARTICLE 22. Performance Bond.

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

ARTICLE 23. Cash Allowances.

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

ARTICLE 24. Subsurface Conditions.

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

ARTICLE 25. Changes in the Work.

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

ARTICLE 26. Valuation of Changes.

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

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

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In cases of additional work to be paid for under methods (c) or (d), the Contractor shall keep and present in such form as the Architect may direct, a correct account of the net cost of labour and materials, together with vouchers. In any case, the Architect shall certify to the amount, including a reasonable profit, due to the Contractor.

Pending final determination of value, payments on account of changes shall be made on the Architect's certificate.

ARTICLE 27. Application for Payments.

The Contractor shall before the first application for payment submit to the Architect a schedule of values of the various parts of the work, aggregating the total sum of the Contract, divided so as to facilitate payments, made out in such form, and supported by such evidence as to its correctness, as the Architect may direct. This schedule when approved by the Architect, shall be used as a basis for applications of payment, unless it be found to be in error.

In applying for payments, the Contractor shall submit a statement based upon this schedule and itemized in such form and supported by such evidence as the Architect may direct showing his right to the payment claimed.

ARTICLE 28. Certificates and Payments.

The Architect shall within Ten (10) days of the receipt of an application for payment, certify the account for payment or advise the Contractor promptly in writing why the account is amended or disapproved. Such certificate may provide for holdbacks sufficient to protect the Owner against all liens of which he has notice.

The Owner shall within Five (5) days of the Architect's certificate, make payment of the account in accordance with Article A-3 of the Agreement.

No payment made to the Contractor and no partial or entire use or occupancy of the work by the Owner shall be construed as an acceptance of any work or material not in accordance with this Contract. The issuance of the final certificate shall constitute a waiver of all claims by the Owner otherwise than under Article 17 of these Conditions and the acceptance of such final certificate by the Contractor shall constitute a waiver by him of all claims except those previously made and still unsettled if any. Should the Owner fail to pay the sum named in any certificate of the Architect or in any award by arbitration, upon demand when due, the Contractor shall receive, in addition to the sum named in the certificate, interest thereon at the rate of NIL % per *.....

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ARTICLE 29. Taxes.

Unless otherwise provided herein, the Contractor shall pay all government sales or excise taxes in force at the date of the Agreement, provided that any increase or decrease in such taxes shall increase or decrease the contract sum accordingly.

ARTICLE 30. Permits, Notices, Laws and Rules.

The Contractor shall apply and pay for all necessary permits or licences required for the execution of the work (but this shall not include the obtaining of permanent easements or rights of servitude). The Contractor shall give all necessary notices and pay all fees required by law and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health. The Contractor shall be responsible for the safety of all workmen and equipment on the project in accordance with all applicable safety legislation passed by federal, provincial and local authorities governing construction safety.

If the contract documents are at variance therewith, any resulting additional expense incurred by the Contractor shall constitute an addition to the contract price.

ARTICLE 31. Patent Fees.

The Contractor shall pay all royalties and licence fees and shall save the Owner harmless from loss on account of suits or claims for infringement of patents in the doing of the work.

- *1. annum
- 2. month for each calendar month outstanding.
- 3. month or fraction thereof.

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ARTICLE 32. Use of Premises.

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

ARTICLE 33. Cleaning Up.

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

ARTICLE 34. Cutting, Patching and Digging.

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

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

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

ARTICLE 35. Delays.

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

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

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

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

ARTICLE 36. Owner's Right to do Work.

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

ARTICLE 37. Owner's Right to Terminate Contract.

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

Handwritten initials: A. M.

workmen or materials, or if he should fail to make prompt payment to Subcontractors or for material or labour, or persistently disregard laws, ordinances or the instruction of the Architect, or otherwise be guilty of a substantial violation of the provisions of the Contract, then the Owner, upon the certificate of the Architect that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy he may have, by giving the Contractor written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient, but without undue delay or expense. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation to the Architect for his additional services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, shall be certified by the Architect.

ARTICLE 38. Contractor's Right to Suspend Work or Terminate Contract.

If the work should be stopped under an order of any court, or other public authority through no act or fault of the Contractor or of anyone employed by him or if the Architect fails to issue a certificate in accordance with Article 28, or if the Owner should fail to pay to the Contractor within Seven (7) days of its maturing and presentation, any sum certified by the Architect or awarded by arbitrators, then the Contractor may upon Five (5) days written notice to the Owner and the Architect stop work and/or terminate this Contract without prejudice to any other right or remedy he may have, and recover from the Owner payment for all work executed and any loss sustained upon the plant or material with reasonable profit and damages.

ARTICLE 39. Damages and Mutual Responsibility.

If either party to this Contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him then he shall be reimbursed by the other party for such damage. Claims under this paragraph shall be made in writing to the party liable within a reasonable time after the first observance of such damage and not later than the time of final certificate, except as expressly stipulated otherwise in the case of faulty work or materials, and may be adjusted by agreement or in the manner set out in Article 44, and the party reimbursing the other party as aforesaid shall thereupon be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party. Should the Contractor cause damage to any Other Contractor on the work, the Contractor agrees upon due notice to settle with such Other Contractor by agreement or arbitration, if he will so settle. If such Other Contractor sues the Owner on account of any damage alleged to have been so sustained the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense and if any final order or judgment against the Owner arises therefrom the Contractor shall pay or satisfy it and pay all costs incurred by the Owner. Provided that if the Contractor becomes liable to pay or satisfy any final order or judgment against the Owner then the Contractor shall have the right, upon undertaking to indemnify the Owner against any and all liability for costs, to appeal in the name of the Owner such final order or judgment to any and all courts of competent jurisdiction.

ARTICLE 40. Separate Contracts with Other Contractors.

The Owner reserves the right to let separate contracts in connection with the undertaking of which the work is a part and the Contractor shall connect properly and co-ordinate his work with that of Other Contractors. If any part of the Contractor's work depends for its proper execution or result upon the work of any Other Contractor, the Contractor shall in writing report promptly to the Architect any defects in the work of such Other Contractor as may interfere with the proper execution of the Contractor's work. Should the Contractor fail so to inspect and report he shall have no claim against the Owner by reason of the defective or unfinished work of any Other Contractor except as to latent defects not reasonably noticeable at the time of the commencement of the Contractor's work. In letting separate contracts the Owner shall be responsible for the co-ordination of fire and other insurance coverage and shall take all precautions reasonably possible to avoid possible occurrence of a labour dispute or disputes on the work.

ARTICLE 41. Assignment.

Neither party to the Contract shall assign the Contract without the written consent of the other.

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A. M.

ARTICLE 42. Subcontracts.

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

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

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

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

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

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

ARTICLE 43. Relations of Contractor and Subcontractor.

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

ARTICLE 44. Arbitration.

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

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

Signed: *A. Woodman & Prod.*

Name of Contractor: W. E. MARSHALL
CONSTRUCTION LTD.

Signed: *James E. Archdekin*
Kenneth R. Richardson

Name of Owner: CORPORATION OF THE CITY
OF BRAMPTON.

MAYOR
CLERK

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