



THE CORPORATION OF THE CITY OF BRAMPTON

# BY-LAW

*Number* 273-79

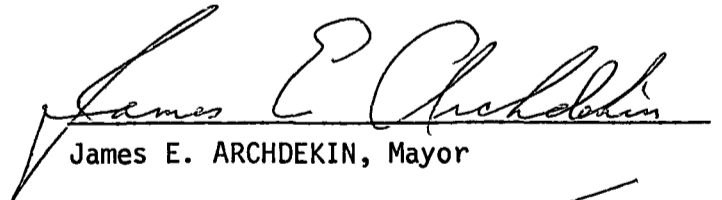
To authorize the execution of an agreement with POUNDER CONSTRUCTION LIMITED - Contract No. 79-43 (surface treating)

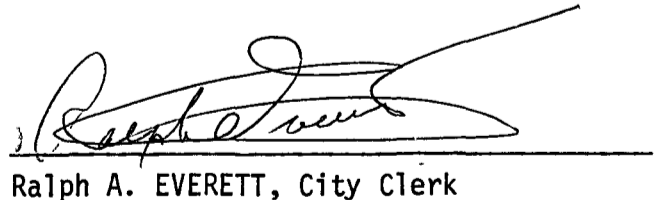
WHEREAS it is deemed expedient to enter into and execute Contract No. 79-43 with Pounder Construction Limited;

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 Contract No. 79-43 with Pounder Construction Limited, attached hereto as Schedule "A".
- (2) THAT the Mayor and the Clerk are hereby authorized to affix their signatures to the said Contract No. 79-43 with Pounder Construction Limited, attached hereto as Schedule "A".

READ a FIRST, SECOND and THIRD TIME and PASSED in Open Council this 10th day of October, 1979.

  
James E. ARCHDEKIN, Mayor

  
Ralph A. EVERETT, City Clerk

CONTRACT NO. 79-43

This Agreement made in Quadruplicate this 10th day of August, 1979

BETWEEN:

The Corporation of the City of  
Brampton  
(Hereinafter called "The Corporation  
of the First Part

- AND -

POUNDER CONSTRUCTION LIMITED  
(Hereinafter called "The Contractor  
of the Second Part

WITNESSETH

That the Corporation and the Contractor in consideration of the fulfillment of their respective promises and obligations herein set forth covenant and agree with each other as follows :-

ARTICLE 1.

(A) A general description of the work is :

Surface Treating

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(B) The contractor shall, except as otherwise specifically provided at his own expense provide all and every kind of labour, machinery, plan structures, roads, materials, appliances, articles and things necessary for the due execution and completion of all the work set out in this contract and shall forthwith according to the instructions of the Commissioner of Public Works, commence the works and diligently execute the respective portions thereof, and deliver the works complete in every particular way to the Corporation within the time specified in the General Conditions, Information to Bidders and in the Tender.

ARTICLE 2.

In the event that the tender provides for and contains a contingency allowance, it is understood and agreed that such contingency allowance is merely for the convenience of accounting by the Corporation, and the Contractor is not entitled to payment thereof except for extra work or additional work carried out by him in accordance with the Contract and only to the extent of such extra or additional work.

ARTICLE 3.

In case of any inconsistency or conflict between the provisions of this Agreement and the Plans or Specifications or General Conditions or Tender or any other documents or writing, the Provisions of such documents shall take precedence and govern in the following order, namely

- (1) This Agreement
- (2) Special and/or Supplemental Provisions
- (3) Information for Tenderers
- (4) General Conditions
- (5) Standard Specifications
- (6) Plans
- (7) Tender

The foregoing documents enumerated 1 to 7 inclusive are all the Contract documents and constitute the full agreement between the parties

ARTICLE 4.

The Corporation covenants with the Contractor that the Contractor having in all respects complied with the Provisions of this Contract, will be paid for and in respect of the works the sum of

One Hundred & Twenty Seven Thousand, Nine Hundred & Eighty Seven  
Dollars & Fifty Cents                      DOLLARS (\$ 127,987.50                      )

in accordance with the unit prices as set out in the Form of Tender, as may be applicable, forming part of this Contract, and in accordance with the Provisions as set out in the Conditions and Specifications forming part of this Contract.

Subject to Article 2 hereof and subject to such additions and deductions as may properly be made under the terms hereof, subject to the Provision that the Corporation may make payments on account monthly or otherwise as may be provided in the General Conditions attached hereto.

ARTICLE 5.

Where any notice, direction or other communication is required to be or may be given or made by one of the parties hereto to the other or to the Commissioner of Public Works, it shall be deemed sufficiently given or made if mailed by prepaid first class mail or delivered in writ to such party or to the Commissioner of Public Works at the following addresses :-

THE CONTRACTOR:

Pounder Construction Limited  
R.R. #2,  
Brampton, Ontario  
L6V 1A1.

THE COMMISSIONER,

J. F. Curran, P. Eng.,  
Commissioner of Public Works,  
City of Brampton  
24 Queen St. E.,  
Brampton, Ontario  
L6V 1A4.

ARTICLE 5. (Cont'd.)

However, in the matter of "Call Back Work", as defined in the Information to Tenderers, verbal communication with the Contractor shall be deemed as sufficient notice.

ARTICLE 6.

A copy of each of the Contract documents is hereto annexed and together with the Specifications and/or the Ministry of Transportation and Communications Specifications referred to in the Contract documents and the plans listed in the Specifications, are made part of this contract as fully to all intents and purposes as though recited in full herein.

ARTICLE 7.

No implied contract of any kind whatsoever by or on behalf of the Corporation shall arise or be implied from anything in this Contract contained, nor from any position or situation of the parties at anytime, it being clearly understood that the express covenants and agreements herein contained made by the Corporation shall be the only covenants and agreements upon which any rights against the Corporation may be founded.

ARTICLE 8.

Time shall be deemed the essence of this contract.

ARTICLE 9.

The Contractor declares that in tendering for the works and in entering into this contract he has either investigated for himself the character of the work and all local conditions above and below ground surface where applicable that might effect his tender or his acceptance of the work, or that not having so investigated he is willing to assume and does hereby assume all risk of conditions arising or developing in the course of the work which might or could make the work, or any items thereof, more expensive in character, or more onerous to fulfill, than was contemplated or known when the Tender was made or the Contract signed. The Contractor also declares that he did not and does not rely upon information furnished by any methods whatsoever, by the Corporation or its employees, being aware that any information from such sources was and is approximate and speculative only, and was not in any manner warranted or guaranteed by the Corporation.

ARTICLE 10.

This Contract shall apply to and be binding on the Parties hereto and their heirs, executors, administrators, successors and assigns and each of them.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written or caused their corporate seals to be affixed, attested by the signature of their proper officers as the case may be.

Thomas P. Ke  
WITNESS AS TO SIGNATURE OF CONTRACTOR

ADDRESS R R # 2  
Georgetown  
Ontario

OCCUPATION Manufacturer

POUNDER CONSTRUCTION LIMITED  
M. P. Lavery

CORPORATION OF THE CITY OF  
BRAMPTON

James E. Cahill  
MAYOR

[Signature]  
CLERK

( FORM OF TENDER )

FOR  
CONTRACT NO. 79-43

THIS TENDER SUBMITTED BY POUNDER CONSTRUCTION FIRM NAME OR  
R R #2 BRAMPTON INDIVIDUAL  
ADDRESS

846-1161 456-3457 TELEPHONE NUMBER

TO THE MAYOR AND COUNCIL OF THE CORPORATION  
OF THE CITY OF BRAMPTON.

I/We, the undersigned declare that no person, firm or corporation other than the one whose signature or the signatures of whose proper officers and the seal is or are attached below, has any interest in this Tender or in the Contract proposed to be taken.

I/We, further declare that this Tender is made without any connection, knowledge, comparison of figures or arrangement with any other company, firm or person making Tender for the same work and is in all respects fair and without collusion or fraud.

I/We, further declare that we have carefully examined the locality and site of the proposed works, as well as all the Plans, Drawings, Profiles, Specifications, Form of Tender, Information for Tenderers, General Conditions, Agreement and Bond relating thereto, prepared, submitted and rendered available by the Commissioner of Public Works and the Purchasing Agent, by and on behalf of the Corporation of the City of Brampton and hereby acknowledge the same to be part and parcel of any Contract to be let for the work therein described or defined and do hereby Tender and offer to enter into a Contract to do all of the work and to provide all of the labour and to provide, furnish, deliver, place and erect all materials mentioned and described or implied therein, including in every case, freight, duty, exchange and sales tax in effect on the date of acceptance of the Tender and all other charges, on the terms and conditions and under the provisions therein set forth and to accept in full payment therefore the sums calculated in accordance with the actual measured quantities and unit prices set forth in the Schedule of Quantities and Unit Prices attached hereto.

I/We, further declare that, if the tender is accepted by the City, we will execute whatever additional work may be required at the Unit Prices shown herein, in strict conformity and in all respects with the requirements of this tender, specifications, general conditions and form of agreement hereto annexed or to be annexed hereto.

I/We, also agree that deductions from the said contract, if any shall be made at the Unit Prices shown in the Schedule of Quantities and Unit Prices as herein contained.

I/We, agree that this offer is to continue open to acceptance until the formal contract is executed by the successful Tenderer for the said work or until sixty (60) days after the Tender Closing date whichever first occurs, and that the City may at any time within that period and without notice accept this Tender whether any other Tender had been previously accepted or not.

I/We, agree that if we withdraw this tender after closing and before the Council of the said City shall have considered the tenders and awarded the contract in respect thereof, during the time that this tender is open to acceptance as set out above in this tender form the amount of the deposit accompanying this tender shall be forfeited to the City.

I/We, agree that the awarding of the contract based on this tender by the Council for the said City shall be an acceptance of this tender.

If this tender is accepted, I/We agree to furnish the required Performance Bond and/or Deposit, Insurance Certificate and Workmen's Compensation Card Letter, and properly sign the contract documents in quadruplicate within ten (10) days after being notified so to do. In the event of default or failure on our part so to do, I/We agree that the Corporation of the City of Brampton shall be at liberty to retain the money deposited by Me/Us to the use of the City and to accept the next lowest or any tender or to advertise for new tenders, or to carry out the works in any other way they deem best and I/We also agree to pay to the said City the difference between this tender and any greater sum which the City may expend or incur by reason of such default or failure, or by reason of such acting, as aforesaid, on their part, including the cost of any advertising for new tenders; and to indemnify and save harmless the said City and their officers from all loss, damage, cost charges and expense which they may suffer or be put to by reason of any such default or failure on My/Our part.

I/We propose POUNDER CONSTRUCTION LTD

A company which is willing to become bound with Me/Us in the amount designated for the due performance and fulfillment of the contract for which this is the tender.

I/We, agree that the date of completion as referred to in the General Conditions shall be ; working days from the date of written order to commence work. The Contractor agrees to pay the Corporation as liquidated damages, per day for each and every day that any portion of the work remains incompleted, after the time of completion as specified above.

A certified cheque in the amount of \$ 10,000.00 /100 is enclosed.

Dated at BRAMPTON this 31 day of July, 1979.

M. F. Kawana  
SIGNATURE OF WITNESS

Thomas P. K.  
SIGNATURE & SEAL OF TENDERER

SCHEDULE OF ITEMS AND UNIT PRICES

DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	AMOUNT
To supply and apply RS-2K asphalt emulsion & washed stone chips	341,300	Souare Meters	<sup>JPK</sup> \$0.375	<sup>JPK</sup> 135778 127,981

TOTAL TENDER PRICE \$ <sup>JPK</sup> 135778 00

ESTIMATED VALUE OF MATERIALS TO BE INCORPORATED INTO PERMANENT WORKS	\$ <u>84023.50</u>
ESTIMATED VALUE OF LABOUR	\$ <u>36750.00</u>
ESTIMATED VALUE OF OTHER THINGS	\$ <u>15004.50</u>
TOTAL (MUST INCLUDE TOTAL TENDER PRICE)	\$ <u>135778,00</u>

  
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 CONTRACTOR'S SIGNATURE

\*  
90% Rural  
10% Urban



PERFORMANCE AND MAINTENANCE BOND

Bond No. 19C9937

Contract 79-43

Account \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we Pounder Construction Limited  
(The Contractor)

hereinafter called "The Principal", and  
CANADIAN GENERAL INSURANCE COMPANY  
(The Bonding Company)

hereinafter called "The Surety" are jointly and severally held and firmly bound unto the Corporation of the City of Brampton hereinafter called "The Obligee", its successors and assigns, in the sum of \$ 127,987.50 of lawful money of Canada to be paid unto the Obligee, for which payment well and truly to be made we the Principal and Surety jointly and severally bid ourselves, our and each of our respective heirs, executors, administrators, successors, and assigns by these presents.

SIGNED AND SEALED WITH OUR RESPECTIVE SEALS and dated this  
20th of SEPTEMBER, 19 79.

Whereas by an Agreement in writing dated the 10th day of August 19 79, the Principal has entered into a contract with the Obligee, hereinafter called the "Contract", for the ~~construction, alteration, repair, or maintenance of~~  
Surface Treating  
(Description of Works)

as in the contract provided, which contract is by reference herein made a part hereof as fully to all intents and purposes as though recited in full herein.

Now therefore the condition of this obligation is such that if the Principal shall at all times duly perform and observe the contract or as the same be changed, altered or varied as hereinafter provided, to the satisfaction of the Obligee and shall at all times fully indemnify and keep indemnified the Obligee from and against all and any manner of loss, damage, expense, suits, actions, claims, liens, proceedings, demands, awards, payments and liabilities arising out of or in any manner based upon or attributable to the contract and shall fully reimburse and repay the Obligee for all outlay, expense liabilities, or payments incurred or undertaken to be made by the Obligee pursuant to the contract, then this obligation shall be void, but otherwise it shall be and remain in full force and effect.

Provided always and it is hereby agreed and declared that the Obligee and Principal have the right to change, alter, and vary the terms of the contract and that the Obligee may in its discretion at any time or times take and receive from the Principal, any security whatsoever and grant any extension of time thereon or on any liability of the Principal to the Obligee.

Provided further and it is hereby agreed and declared that the Principal and the Surety shall not be discharged or released from liability hereunder and that such liability shall not be in any way affected by an such changes, alterations, or variations, taking or receiving of security, or extension of time, as aforesaid, or by the exercise by the Obligee of any of the rights or powers reserved to it under the contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the works

to be constructed, altered, repaired or maintained under the contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Obligee.

Provided further and it is hereby agreed and declared that the Surety shall not be liable for a greater sum than that specified in this bond.

IN WITNESS WHEREOF THE PRINCIPAL AND SURETY HAVE EXECUTED THESE PRESENTS.

SIGNED, SEALED AND DELIVERED BY THE PRINCIPAL IN THE PRESENCE OF

J. MacKenzie  
Witness signs here

M.P. Lavelle  
POUNDER CONSTRUCTION LIMITED (Seal)

Principal signs here and seal where applicable

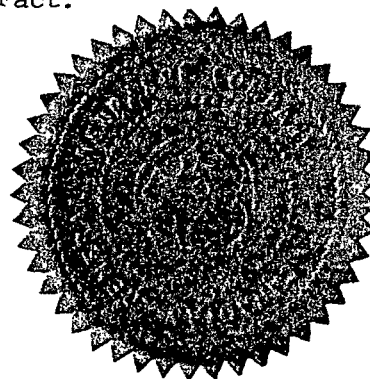
SIGNED, SEALED AND DELIVERED BY THE SURETY IN THE PRESENCE OF

E. F. Kyle  
Witness signs here

CANADIAN GENERAL INSURANCE COMPANY

BY E. R. Osborne (Seal)

Surety Company Officer signs here with seal  
E. R. OSBORNE,  
Attorney-in-Fact.



CERTIFICATE OF LIABILITY INSURANCE

The Canadian Indemnity Company  
(INSURANCE COMPANY)

TO: THE CORPORATION OF THE CITY OF BRAMPTON

ADDRESS: 24 QUEEN STREET, EAST, BRAMPTON, ONTARIO, L6V 1A4

THIS IS TO CERTIFY THAT Pounder Construction Limited  
(CONTRACTOR)

Whose Address is R.R. #2, Brampton, Ontario L6V 1A1.

has comprehensive liability insurance in this Company under Policy  
No. FL-6345 covering legal liability for damages because  
of:

- A. Bodily injury, sickness or disease, including death  
at any time resulting therefrom.
- B. Damage to or destruction of property of others caused  
by accident.

Subject to a limit of liability of not less than \$1,000,000.00  
inclusive for any one occurrence or accident which insurance applies  
in respect of all operations, including liability assumed under  
contract with the Corporation. The policy does not contain any ex-  
clusions or limitations in respect of the use of explosives or in  
respect of shoring, underpinning, raising or demolition of any  
building or structure, pile driving, caisson work, collapse of any  
structure, or subsidence of any property, structure, or land from  
any cause.

THE POLICY EXPIRES ON May 1, 1980

AND WILL NOT BE ALTERED, CANCELLED OR ALLOWED TO LAPSE WITHOUT  
THIRTY (30) DAYS PRIOR NOTICE TO THE CORPORATION.

With respect to Contract No. 79-43 for the ~~Construction of~~  
Surface Treating

We certify that the Corporation will be coinsured with the Contrac-  
tor.

DATE: Sept. 14, 1979.

COUNTERSIGNED: J. H. Koller

PASSED October 10th, 1979

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# BY-LAW

No. 273-79

To authorize the execution of an  
agreement with POUNDER CONSTRUCTION  
LIMITED - Contract No. 79-43  
(surface treating)