



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 127-04

**BEING A BY-LAW TO ACCEPT A TENDER FOR BERTIE STREET
RECONSTRUCTION – PHASE 2 PROJECT AND TO
AUTHORIZE ENTRY INTO AN AGREEMENT WITH
ALFRED BEAM EXCAVATING LIMITED**

WHEREAS tenders were called and opened for the Bertie Street Reconstruction Project - Phase 2, the results of which are as follows:

Contractor	Tender price (excluding 7% G.S.T.)	Tender Price (including 7% G.S.T.)
Alfred Beam Excavating Ltd.	\$1,747,354.50	\$1,869,669.32
DeRose Bros. General Contractors Ltd.	\$1,878,730.60	\$2,010,241.74
Trenchline & Roads Inc.	\$1,896,761.00	\$2,029,534.27

WHEREAS at the Council-in-Committee meeting of June 14, 2004 Report No. PW-36-04 was approved as follows:

1. **THAT** Council award the tender for Bertie Street Reconstruction – Phase 2 (Central Avenue to Niagara Boulevard) – Contract No. PW04.BEP2 at the tendered amount of \$1,869,669.32, including 7% G.S.T. to Alfred Beam Excavating Limited, of Fort Erie, Ontario; and
2. **THAT** Council authorize Staff to transfer funds in the amount of \$260,000.00 from Oakes Drive and Brunswick Avenue Capital Project Accounts to support the Bertie Street Reconstruction - Phase 2 Project; and
3. **THAT** Staff be authorized to prepare the necessary By-law authorizing the Mayor and Clerk to execute the contract on behalf of the Town of Fort Erie; and
4. **THAT** Council authorize Earth Tech Canada Inc., to proceed with Phase 2 Engineering Services for at an upset limit of \$97,055.00 for Bertie Street Reconstruction - Phase 2.

WHEREAS By-law No. 92-2001 was passed by the Municipal Council of the Town of Fort Erie on the 28th day of May, 2001 to award engineering services for Group “A” to Earth Tech Inc. which includes the Bertie Street Road Reconstruction – Phase 2 at an upset limit of \$88,835.15, and

WHEREAS it is deemed desirable to accept the tender received from Alfred Beam Excavating Limited in the amount of \$1,869,669.32 (including G.S.T.) and to authorize Earth Tech Canada Inc. to proceed with Phase 2 Engineering Services at an upset limit of \$88,835.15 pursuant to Schedule “A” to Schedule “A” of By-law No. 92-01 recognizing that Town staff will assume certain duties such as contract administration and inspection in order to reduce the cost to the amount agreed upon in 2001;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the tender received from Alfred Beam Excavating Limited in the amount of \$1,869,669.32 for the Bertie Street Reconstruction Project – Phase 2 (Central Avenue to Niagara Boulevard) be and it is hereby accepted and approved.

2. **THAT** the entry into an Agreement with Alfred Beam Excavating Limited in the form of Schedule "A" annexed hereto this by-law be and it is hereby authorized and approved.
3. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Agreement annexed hereto as Schedule "A" to this by-law and to affix the corporate seal thereto.
4. **THAT** the Director of Finance is hereby authorized to transfer funds in the amount of \$260,000.00 from the Oakes Drive and Brunswick Avenue Capital Project Accounts to the Bertie Street Reconstruction Project – Phase 2.
5. **THAT** Earth Tech Canada Inc. be and they are hereby authorized to proceed with the Engineering Services for the Bertie Street Reconstruction Project – Phase 2 at an upset limit of \$88,835.15 as set out in By-law No. 92-01.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 21st DAY OF JUNE, 2004.



MAYOR



CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 127-04 of the said Town. Given under my hand and the seal of the said Corporation this 21st day of June, 2004.

**SCHEDULE 'A' TO BY-LAW 127-04
BEING A BY-LAW TO AWARD A TENDER FOR BERTIE STREET
RECONSTRUCTION – PHASE 2 – CONTRACT NUMBER PW.04BEP2**

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement made on the _____ day of _____ in the year two thousand and four. (2004)

by and between

The Corporation of the Town of Fort Erie

hereinafter called the "Owner"

and

Alfred Beam Excavating Limited

hereinafter called the "Contractor"

witnesses: that the parties agree as follows

ARTICLE A-1 THE WORK

The Contractor shall:

- (a) perform the work required by the Contract Documents, as described in Article A-2 for Bertie Street Reconstruction – Phase 2, which have been signed by the parties, and which were prepared by The Corporation of the Town of Fort Erie – Director of Public Works acting as hereinafter called the Engineer
- (b) do and fulfill everything indicated by this Agreement, and
- (c) commence the work by the _____ day of _____ 2004 and attain completion of the work, as certified by the Contract Administrator, within 120 working days.

ARTICLE A-2 CONTRACT DOCUMENTS

The following is an exact list of the Contract Documents referred to in Article A-1 of this Agreement. This list is subject to subsequent amendments in accordance with the provisions of the Contract and agreed upon between the parties.

1. Title Page
2. Table of Contents
3. Special Instructions to Bidders
4. Instructions to Bidders – (Refer to Niagara Peninsula Standard Contract Document)
5. Form of Tender
 - a. Form of Tender Declaration
 - b. Schedule of Quantities
 - c. Statement A - List of Sub-Contractors
 - d. Statement B - Tenderer's Experience in Similar Work
 - e. Statement C - Federal Goods and Services Tax
 - f. Statement D – Agreement to Bond
6. Certificate of Insurance
7. Form of Contract Agreement
8. Schedule of Drawings
9. Special Provisions – General - (Refer to Niagara Peninsula Standard Contract Document)
10. Special Provisions - Contract Items -(Refer to Niagara Peninsula Standard Contract Document)
11. Special Provisions – Supplementary Special Provisions
12. Supplementary General Conditions of Contract
(Refer to Niagara Peninsula Standard Contract Documents)
13. OPS General Conditions of Contract
(Refer to Niagara Peninsula Standard Contract Documents)

ARTICLE A-3 CONTRACT PRICE

- (a) The quantities shown in the Schedule of Contract Unit Prices are estimated. The Tender Price shall be the final sum of the products of the actual quantities that are incorporated in, or made necessary by the Work, as confirmed by count and measurement, and the appropriate Tender Unit Prices, together with any adjustments that are made in accordance with the provisions of the Contract Documents.
- (b) The Estimated Tender Price shall be the sum of the products of the estimated quantities and the appropriate Tender Unit Prices in the Schedule.
- (c) Schedule of Tender Unit Prices, as per pages FT-4 – FT-10, included as part of this contract.
- (d) Based on the Schedule of Unit Prices, refer to in article A-3 (c) the tender price is one million eight hundred sixty nine thousand six hundred sixty nine dollars and thirty two cents, \$1,869,669.32 in Canadian Funds *Including G.S.T.*

ARTICLE A-4 PAYMENT

- (a) The Owner shall pay the Contractor in Canadian funds for the performance of the Contract, the amounts being determined by actual measured quantities of the individual work items contained in the Schedule of Tender Unit Prices in Article A-3 (c) of this Agreement, and measured in accordance with the methods of measurement given in the specifications.
- (b) Subject to applicable legislation and the provisions of the Contract Documents, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to five percent (5%) 1 Year Maintenance Holdback and a ten percent (10%) 45 day Statutory Holdback, the Owner shall:
 - (1) make monthly payments to the Contractor on account of the work performed as certified by the Contract Administrator, and
 - (2) upon completion of the Work as certified by the Contract Administrator pay to the Contractor the unpaid balance of holdback monies then due, and
- (d) If the Owner fails to make payments to the Contractor as they become due under the terms of this Contract or in an award by arbitration or court, interest of one percent (1 %) per annum on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

ARTICLE A-5 RIGHTS AND REMEDIES

- (a) The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- (b) No action or failure to act by the Owner, Contract Administrator or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES

Communications in writing between the parties or between them and the Contract Administrator shall be considered to have been received by the addressee on the date of delivery if delivered by hand 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 fax, to have been delivered within five (5) working days of the date of mailing , or dispatch when addressed as follows:

The Owner at:

_____ The Corporation of the Town of Fort Erie
_____ 1 Municipal Centre, Fort Erie, ON, L2A 2S6

The Contractor at:

_____ Alfred Beam Excavating Limited
_____ 1219 Sunset Drive, Fort Erie, ON, L2A 5M4

The Contract Administrator at:

_____ The Corporation of the Town of Fort Erie
_____ 1 Municipal Centre Drive, Fort Erie, ON, L2A 2S6

ARTICLE A-7 LAW OF THE CONTRACT

The law of the Place of the Work shall govern the interpretation of the Contract.

ARTICLE A-8 LANGUAGE OF THE CONTRACT

This Agreement is drawn in English at the request of all parties hereto.

ARTICLE A-9 SUCCESSION

The General Conditions of the Unit Price Contract hereto annexed, and the other aforesaid Contract Documents, are to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

In witness whereof the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers thereunto duly authorized.

SIGNED, SEALED AND DELIVERED
in the presence of:

OWNER

The Corporation of the Town of Fort Erie
Name

Signature

Wayne H. Rekekop - Mayor

Signature

Carolyn J. Kett – Town Clerk

Witness

Name and Title

CONTRACTOR

Alfred Beam Excavating Limited
Name

Signature

Name and title

Signature

Name and title

Witness

Name and Title