



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 70-05

**BEING A BY-LAW TO ACCEPT A TENDER FOR
BRUNSWICK AVENUE ROAD RECONSTRUCTION –
CONTRACT NO. IS.05BRUN
(360501-41)**

WHEREAS tenders were advertised and publicly opened on Wednesday, April 13, 2005 for Brunswick Avenue Road Reconstruction – Contract No. IS.05BRUN, the results of which are as follows:

Contractor	Tender Price (including 7% G.S.T.)	*Corrected Tender Price (including 7% G.S.T.)
Alfred Beam Excavating Ltd.	\$774,443.00	
Provincial Construction (Niagara Falls) Ltd.	\$830,097.03	*\$853,960.00
Nexterra Substructures Inc.	\$857,617.00	

**Arithmetically corrected*

WHEREAS at the Council-in-Committee meeting of April 18, 2005 Report No. IS-16-05 was accepted and approved authorizing the awarding of the tender for Brunswick Avenue Road Reconstruction – Contract No. IS.05BRUN to Alfred Beam Excavating Ltd. of Fort Erie, Ontario, in the amount of \$774,443.00 including g.s.t., and

WHEREAS it is deemed desirable to accept the tender from Alfred Beam Excavating Ltd. for the aforesated works and price;

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 Ltd. in the amount of \$774,443.00 including g.s.t. for Brunswick Avenue Road Reconstruction – Contract No. IS.05BRUN be and it is hereby accepted and approved.
2. **THAT** the entry into an Agreement with Alfred Beam Excavating Ltd. in the amount of \$774,443.00 including g.s.t., for Brunswick Avenue Road Reconstruction – Contract No. IS.05BRUN in the form of Schedule “A” annexed hereto to 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** pursuant to the provisions of Section 227 of the Municipal Act, 2001 the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the by-law and schedule(s) as may be deemed necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25th DAY OF APRIL 2005.



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. 70-05 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 2005.

SCHEDULE 'A' TO BY-LAW 70-05

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement made on the _____ day of _____ in the year two thousand and five. (2005)

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 A2, for the Brunswick Ave Road Reconstruction (Ridge Rd South to Ridgeway Rd), Contract No. IS.05BRUN which have been signed by the parties, and which were prepared by The Corporation of The Town of Fort Erie – Director of Infrastructure Services hereinafter called the Engineer.
- (b) do and fulfill everything indicated by this Agreement, and
- (c) commence the Work by the _____ day of _____ 2005 and attain completion of the Work, as certified by the Contract Administrator, within 65 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

Title Page

Table of Contents

Special Instructions to Bidders

Instructions to Bidders

Form of Tender

- Form of Tender Declaration
- Schedule of Quantities
- Statement A - List of Sub-Contractors
- Statement B - Tenderer's Experience in Similar Work
- Statement C - Federal Goods and Services Tax

Agreement to Bond

Form of Contract Agreement

Schedule of Drawings

Certificate of Insurance

Special Provisions – General (Refer to Niagara Peninsula Standard Contract Document)

Special Provisions – General Supplementary

Special Provisions - Contract Items (Refer to Niagara Peninsula Standard Contract Document)

Special Provisions – Contract Items - Supplementary

Special Provisions - Labour Conditions and Fair Wage Schedule (If Applicable)

(Refer to Niagara Peninsula Standard Contract Document)

Standard Drawings

Supplementary General Conditions of Contract –

(Refer to Niagara Peninsula Standard Contract Document)

OPS General Conditions of Contract

Geotechnical Investigation Excerpt – 2003 Town of Fort Erie

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 the Form of Tender submitted,
- (d) Based on the Schedule of Unit Prices, refer to in article A-3 (c) the tender price is

\$ Seven Hundred and Seventy-Four Thousand, Four Hundred and Forty Three Dollars.
(\$774,443.00) 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 a holdback of a ten percent (10%) Statutory Holdback and five percent (5%) Maintenance 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 tendered amount less (15%) fifteen percent holdback (10% Statutory Holdback and 5% Maintenance Holdback), 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

Municipal Centre, Fort Erie, Ontario, L2A 2S6

The Contractor at:

Alfred Beam Excavating Limited

1219 Sunset Drive, Fort Erie Ontario, L2A 5M4

The Contract Administrator at:

The Corporation of the Town of Fort Erie

Municipal Centre, Fort Erie, Ontario, 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. Redekop - Mayor
Name and title

Witness

Signature

Name and title

Carolyn J. Kett, - Town Clerk
Name and title

CONTRACTOR

Alfred Beam Excavating Limited
Name

Signature

Name and title

Signature

Witness

Name and title

Name and title