



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 95-09

BEING A BY-LAW TO AWARD A TENDER AND TO AUTHORIZE THE ENTRY INTO AN AGREEMENT WITH 984265 ONTARIO LTD. (CIRCLE P PAVING) FOR ASPHALT PATCHING (TOWN WIDE FOR 2009 SEASON) – CONTRACT NO. ISO-02-2009

WHEREAS tenders were advertised and publicly opened on June 2, 2009 for 2009 Asphalt Patching Town Wide – Contract No. ISO-02-2009, the results of which were as follows:

Contractor	Located	Tender Price (including 5% g.s.t.)
984265 Ontario Ltd. (Circle P Paving)	Stevensville, Ontario	\$102,348.75
Economy Paving Company Limited	Niagara Falls, Ontario	\$126,000.00
Coliseum Paving	Fort Erie, Ontario	\$154,402.50
Norjohn Contracting & Paving	Thorold, Ontario	\$171,769.50

, and

WHEREAS at the Council-in-Committee Meeting held June 8, 2009 Report No. IS-30-2009 was accepted and approved authorizing the awarding of the tender and the entry into an agreement with 984265 Ontario Ltd. (Circle P Paving) of Stevensville, Ontario for the Asphalt Patching (Town Wide for 2009 Season) – Contract No. ISO-02-2009 in the amount of \$102,348.75 (including g.s.t.), and

WHEREAS it is deemed desirable to accept the tender and authorize the entry into an agreement with 984265 Ontario Ltd. (Circle P Paving) for the aforesaid works and price;

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

- 1. THAT** the tender received from 984265 Ontario Ltd. (Circle P Paving) in the amount of \$102,348.75 (including g.s.t.) for the Asphalt Paving (Town Wide for 2009 Season) – Contract No. ISO-02-2009 be hereby accepted and approved.
- 2. THAT** the entry into an agreement with 984265 Ontario Ltd. (Circle P Paving) for the Asphalt Paving (Town Wide for 2009 Season) – Contract No. ISO-02-2009 in the form of Schedule “A” annexed hereto to this by-law be 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 the corporate seal affixed thereto.

4. **THAT** pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the *Municipal Act, 2001*, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 15TH DAY OF JUNE, 2009.



MAYOR



CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 95-09 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 2009 .

FORM OF CONTRACT AGREEMENT

**ASPHALT PATCHING TOWN WIDE
FOR 2009 SEASON**

CONTRACT NO. ISO-02-2009

FORM OF CONTRACT AGREEMENT

INDEX

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
A-1	Agreement between Owner and Contractor to Perform the Work	FA-1
A-2	Contract Documents	FA-2
A-3	Contract Price	FA-3
A-4	Payment	FA-4
A-5	Rights and Remedies	FA-4
A-6	Receipt and Addresses for Notices	FA-5
A-7	Law of the Contract	FA-5
A-8	Language of the Contract	FA-5
A-9	Succession	FA-6

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement made on the _____ day of _____ in the year two thousand and nine (2009)

by and between

The Corporation of the Town of Fort Erie

hereinafter called the "Owner"

and

984265 Ontario Ltd. (a.k.a Circle P Paving)

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 defined in article A-1 for Asphalt Patching Town Wide for 2009 Season which have been signed by the parties, and which were prepared by Corporation of the Town of Fort Erie – Director of Infrastructure Services acting as hereinafter called the Engineer,
- (b) do and fulfill everything indicated by this Agreement, and
- (c) commence the work on initial phase of work by the ____ day of _____ 2009 and attain completion of the initial work, as certified by the Contract Administrator, by December 31, 2009 unless it is decided by both parties that the contract is to be extended until December 31, 2010.

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. Notice – Niagara Peninsula Standard Contract Document
3. Table of Contents
4. Special Instructions to Bidders
5. Instructions to Bidders
6. 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
7. Agreement to Bond
8. Form of Contract Agreement
9. Special Provisions – General (Refer to Niagara Peninsula Standard Contract Document)
10. Special Provisions – General - Supplementary
11. Special Provisions - Contract Items (Refer to Niagara Peninsula Standard Contract Document)
12. Special Provisions - Contract Items – Supplementary
13. Schedule of Drawings/Standard Drawings (Refer to Niagara Peninsula Standard Contract Document) – N/A
14. Special Provisions - Labour Conditions and Fair Wage Schedule (Refer to Niagara Peninsula Standard Contract Document) (If Applicable)
15. Standard Drawings (Refer to Niagara Peninsula Standard Contract Document)
16. Supplementary General Conditions of Contract (Refer to Niagara Peninsula Standard Contract Documents)
17. OPS General Conditions of Contract (Refer to Niagara Peninsula Standard Contract Document)

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 to FT-5, included as part of this contract are binding for the life of this contract December 31, 2009 or if agreed upon, December 31, 2010.
- (d) Based on the Schedule of Unit Prices, referred to in article A-3 (c) the tender price is \$ One Hundred and Two Thousand, Three Hundred and Forty-eight Dollars and Seventy-five cents (\$ 102,348.75) 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 five percent (5%) Maintenance Holdback), and
- (c) 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 Drive, Fort Erie, L2A 2S6

The Contractor at 984265 Ontario Ltd. (Circle P Paving)

1994 Stevensville Rd, Stevensville On, L0S 1S0

The Contract Administrator at The Corporation of the Town of Fort Erie

1 Municipal Centre Drive, Fort Erie, 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
Doug G. Martin - Mayor

Name and title

witness

Signature
Carolyn J. Kett – Town Clerk

Name and title

name and title

CONTRACTOR

984265 Ontario Ltd.
Name

Signature

Name and title

witness

Signature

name and title

Name and title