WHEREAS tenders were advertised and publicly opened on Tuesday, May 15, 2007 for Road Resurfacing – Hot Mix Asphalt – Contract No. IS.07RSRF (H), the results of which are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Located</th>
<th>Tender Price (Including 6% G.S.T.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norjohn Contracting &amp; Paving</td>
<td>Thorold Ontario</td>
<td>$282,215.04</td>
</tr>
<tr>
<td>Hard – Rock Construction Inc.</td>
<td>Port Colborne Ontario</td>
<td>$291,784.00</td>
</tr>
<tr>
<td>Rankin Construction</td>
<td>St. Catharines Ontario</td>
<td>$304,462.74</td>
</tr>
<tr>
<td>Economy Paving Company Ltd.</td>
<td>Niagara Falls Ontario</td>
<td>$343,546.00*</td>
</tr>
<tr>
<td>984265 Ontario Ltd.</td>
<td>Stevensville Ontario</td>
<td>$422,494.80</td>
</tr>
</tbody>
</table>

* Arithmetically corrected

WHEREAS at the Council-in-Committee meeting of May 22, 2007 Report No. IS-25-07 was accepted and approved authorizing the awarding of the tender for Road Resurfacing – Hot Mix Asphalt - Contract No. IS.07RSRF (H), to Norjohn Contracting & Paving Ltd. of Thorold, Ontario in the amount of $282,215.04 including G.S.T., and

WHEREAS it is deemed desirable to accept the tender from Norjohn Contracting & Paving Ltd. for the aforesaid 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 Norjohn Contracting & Paving Ltd. in the amount of $282,215.04 including g.s.t., for Road Resurfacing – Hot Mix Asphalt - Contract No. IS.07RSRF (H) be and it is hereby accepted and approved.

2. THAT the entry into an Agreement with Norjohn Contracting & Paving Ltd. in the amount of $282,215.04 including g.s.t., for Road Resurfacing – Hot Mix Asphalt - Contract No. IS.07RSRF (H) 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.

4. THAT pursuant to the provisions of Sections 23.1 to 23.5 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.


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. 76-07 of the said Town. Given under my hand and the seal of the said Corporation this day of , 2007.
AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement made on the ___________ day of ________________ in the year Two thousand and seven (2007).

by and between

The Corporation of the Town of Fort Erie

hereinafter called the "Owner"

and

Norjohn Contracting and Paving 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 defined in article A-2 for the 2007 Road Resurfacing Hot Mix Asphalt which have been signed by the parties, and which were prepared by The 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 by the ___________ day of ________________ 2007 and attain completion of the work, as certified by the Contract Administrator, twenty (20) 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
5. 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
   - Fire Hydrant Meter Application
6. Agreement to Bond
7. Form of Contract Agreement
8. Schedule of Drawings – N/A
9. Certificate of Insurance
11. Special Provisions – General Supplementary
13. Special Provisions - Contract Items - Supplementary
   (Refer to Niagara Peninsula Standard Contract Document)
15. Standard Drawings
16. Supplementary General Conditions of Contract –
   (Refer to Niagara Peninsula Standard Contract Document)
17. OPS General Conditions of Contract
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 successful bid submitted, 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 $ Two Hundred Eighty Two Thousand Two Hundred Fifteen Dollars and Four Cents. ($282,215.04) 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 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 hereunder 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 hereunder, 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, ON, L2A 2S6

The Contractor at:

Norjohn Construction and Paving Limited
9101 Brown Road, Niagara Falls, ON, L2E 6S5

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

Signature

Doug Martin - Mayor
Name and Title

Witness

Signature

Carolyn J. Kett - Clerk
Name and Title

CONTRACTOR

Norjohn Contracting and Paving Limited
Name

Signature

Name and Title

Witness

Signature

Name and Title