

**The Township of Cavan Monaghan**

**By-law No. 2023-32**

**Being a by-law to authorize the execution of the Agreement for Contract No. T-PW-23-04 for the Main Street Reconstruction capital project between the Corporation of the Township of Cavan Monaghan and Behan Construction Limited.**

**Whereas** Behan Construction Limited was awarded the tender T-PW-23-04 during the April 3, 2023 Regular Council Meeting; and

**Whereas** the Township of Cavan Monaghan desires to reconstruct Main Street watermains and road surfaces through Behan Construction Limited as further defined in the Agreement and tender document T-PW-23-04; and

**Now Therefore** the Council of the Township of Cavan Monaghan hereby enacts as follows:

1. That Council authorizes an agreement to pay for Behan Construction Limited to complete the works set in Contract No. T-PW-23-04 for the Main Street Reconstruction capital project; and
2. That the Mayor and Clerk are hereby authorized to execute such agreement attached as Schedule 'A'.

Read a first, second and third time and passed this 15<sup>th</sup> day of May, 2023.

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**Matthew Graham**  
**Mayor**

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**Cindy Page**  
**Clerk**

# Schedule 'A' to By-law 2023-32

**The Corporation of the Township of Cavan Monaghan**



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**Contract Documents  
for  
Contract No. T-PW-23-04  
Main Street Reconstruction**

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**The Corporation of the Township of Cavan Monaghan**

**Contract # T-PW-23-04**

**Articles of Agreement**

**This Agreement** made the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Between**

**The Corporation of the Township of Cavan Monaghan**

hereinafter called the "**Township**"

**and**

**Behan Construction Limited**

hereinafter called the "**Contractor**"

In consideration of the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. The Work**

The Contractor shall:

- (a) Perform the Work required by the Contract Documents for Contract No. **T-PW-23-04** for the **Reconstruction of Main Street**
- (b) Do and fulfil everything indicated by the Contract Documents; and
- (c) Schedule of work:

**Anticipated Start Date – May 15, 2023**

**Contract Completion – September 22<sup>nd</sup>, 2023**

subject with the provisions of the Contract Documents.

## **2. Contract Documents**

The following is an exact list of the Contract Documents referred to in “# 1. The Work” of this Agreement.

1. This Agreement;
2. Drawing Nos. 1 through 23 “21076-Main Street Watermain Replacement & Road Rehabilitation” dated March 3<sup>rd</sup>, 2023;
3. Tender Documents for Tender No. **T-PW-23-04** ‘Main Street Reconstruction’
4. Tender Addendum No.1 dated March 3<sup>rd</sup>, 2023;
5. Tender Submission dated March 9<sup>th</sup>, 2023;
6. Ontario Provincial Standards as per contract drawings and tender;
7. Book 7 Traffic Standards.
8. Appendix A – Behan Submission (Unit Rates)

## **3. Contract Price**

The Contract Price is **\$1,366,146.72 (excluding HST)** in Canadian funds, which price shall be subject to adjustments as may be required in accordance with the provisions of the Contract Documents.

The Contractor shall provide a Pre-Construction survey with an up-set limit of \$7,475 (**excluding HST**) as per email correspondence dated April 24, 2023.

## **4. Time Schedule**

The Contractor shall perform the Services with the utmost dispatch and, subject to delays beyond its control, shall complete the Services in accordance with the Tender.

## **5. General Specifications**

The Contractor shall schedule and coordinate all onsite testing and sampling as per the Contract Documents. The costs associated with the Geo-technical Consultant shall be paid by the Contractor. In the event re-sampling or re-testing are required due to rejectable material, the costs shall be the responsibility of the Contractor.

The Contractor shall make the material available for testing and sampling and reasonably aid the Geo-technical Technician during testing. At no time shall a material be placed prior to the material being field tested and approved by the Geo-technical Consultant.

It shall be the Contractor's responsibility to obtain the latest edition of the Ontario Provincial Standard Specifications and Drawings. Only the municipal and provincial common standards in OPS Volumes 1 to 4 and the municipal-oriented specifications in OPS Volumes 7 and 8 apply to this Contract, unless specified

otherwise in the Contract Documents. The Ontario Provincial Standards in effect immediately prior to the pricing for this Contract shall apply for the duration of the Contract.

## **6. OPS General Conditions**

Wherever in this Contract reference is made to the General Conditions it shall be interpreted as meaning the OPSS MUNI 100 General Conditions of Contract, November 2019.

## **7. Insurance**

The Contractor shall take out and keep in force while under Contract with the Township, a comprehensive policy of public liability and property insurance acceptable to the Township. The insurance policy shall provide coverage in respect of any one accident to the limit of at least five million dollars (\$5,000,000.00) exclusive of interest and cost against loss or damage resulting from bodily injury to or death of one or more persons and loss of or damage to property.

The policy shall name **The Corporation of the Township of Cavan Monaghan & Engage Engineering Ltd.** as additional insured thereunder and shall protect the Township against all claims for all damage or injury including death to any person or persons for damage to any property of the Township or any other public or private property resulting from or arising out of any act or omission on the part of the Contractor or any of his servants or agents during the execution of the Contract.

The Contractor is required to file the pertinent certificates of insurance at the time of execution of the Contract and to maintain them while under contract for the Township. Failure to provide or maintain adequate insurance shall result in cancellation of the contract.

The Insurance Certificate must include a clause requiring thirty (30) days notice be given to the Township prior to expiry.

## **8. Workplace Safety and Insurance Board**

The Contractor shall be responsible for and shall pay dues and assessments payable under the Workers Compensation Act, the Unemployment Insurance Act or any other Act, whether Provincial or Dominion, in respect to all his employees or operations, and shall furnish the Township with satisfactory evidence that he, the Contractor, has complied with the provisions of any such Act.

The Contractor will provide W.S.I.B. Clearance Certificate and five million dollars (\$5,000,000.00) Certificate of Insurance naming The Corporation of the Township of Cavan Monaghan as additionally insured at the time of execution of the Contract and to maintain them while under contract for the Township and the duration of the Contract.

## **9. Contractor's Health and Safety Policy**

The Contractor shall submit the latest edition of their Health and Safety Policy prior to commencement of work. The Health and Safety Policy shall include the latest updates with relation to the ongoing Covid-19 restrictions and policies as updated by Ontario Health and the local Health Unit. The Contractor shall update and submit revised policies as they are updated throughout construction.

## **10. Payment**

- A) Provided that the Contractor is not in default under the Contract Documents, the Township shall pay the Contractor in Canadian funds for the performance of the Contract, subject to acceptance of the Contractor's Services.
- B) Subject to applicable legislation and the provisions of the Contract Documents and in accordance with legislation and statutory regulations respecting holdback percentages, the Township shall:
  - i.) Make monthly payments to the Contractor on account of the Work performed, subject to acceptance of the Contractor's Services;
  - ii.) Pay to the Contractor the unpaid balance of all holdback monies when permitted by law to do so; and
  - iii.) Upon Completion of the Contract, pay to the Contractor the unpaid balance of monies then due.
- C) A twelve month warranty period will be in effect upon acceptance or termination of the work.

## **11. 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 Township or the Contractor shall constitute a waiver of any right or duty afforded 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.

## **12. Implied Contract**

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

### **13. Warranty Period**

The warranty period shall be twenty-four (24) months from the date of Total Performance of the Work or such longer periods as may be specified for certain Products or work.

Substantial Performance of Work shall be granted upon final inspection of the completed works, completion of any known deficiencies of the project and receipt of the as-constructed drawings from the Contractor.

### **14. Receipt of and Addresses for Notices**

Any notices, requests, demands or other communications (a "notice") required or permitted to be given hereunder shall be in writing and delivered by hand as follows:

The Corporation of the Township of Cavan Monaghan,  
988 County Road 10,  
Millbrook, ON, L0A 1G0

Behan Construction Ltd.,  
P.O. Box 596  
Cobourg, ON, K9A 4L3

or at such other address as may from time to time be designated by notice given in the manner herein provided. Such notice shall be deemed to have been given when delivered, provided that if notice is delivered by telecopier or by hand on a day other than a Working Day or after 3:00 p.m. on a Working Day, then the same shall be deemed to have been given on the next Working Day.

### **15. Law of the Contract**

The law of the Province of Ontario shall govern the interpretation of the Contract Documents referred to in #2 of this Agreement.

### **16. Language of the Contract**

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

### **17. Succession**

The General Conditions of the 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 inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

### **18. Severability**

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to

any person or circumstance is determined to be invalid or unenforceable to any extent:

- A) The remainder of this Agreement or the application of such provision to any other person or circumstance shall not be affected thereby; and
- B) The parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth.

## **19. Termination**

If the Contractor fails in the Township's reasonable opinion to give satisfactory service to the Township in accordance with the terms of this Agreement and the Tender forms and specifications attached to this Agreement, or if for any other reason the Contractor's services are no longer required, then the Township may terminate this Agreement on giving 60 days notice in writing to the Contractor.

## **20. Termination for Non-Compliance**

In the event that it should come to the attention of the Township that:

- The Contractor has failed to comply with any terms of this Agreement; or
- The Contractor has failed to comply with any terms of any applicable license, law, regulation; or
- The Contractor or any employee of the Contractor has conducted themselves in an inappropriate or unbecoming manner;

then the Township may notify the contractor in writing of the Township's concern, and if the matter is not corrected to the satisfaction of the Township within five (5) days of such notice, then the Township may unilaterally terminate this Agreement and the Contractor shall have no recourse against the Township by reason of such termination save and except for the collection of any outstanding payment obligations due to the date of termination only.

## **21. Arbitration and Mediation**

Despite anything contained in this Agreement to the contrary, in the event that a dispute or difference arises with respect to this Agreement that cannot be resolved by negotiation between the parties and the parties agree that they do not wish to terminate this Agreement, then in such event the parties agree to use the services of an experienced, qualified mediator to attempt to resolve their dispute or difference and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the "Rules of Procedure for the Conduct of Mediations" of the Arbitration and Mediation Institute of Ontario.

## **22. Indemnity**

The Contractor shall be responsible for and shall give adequate attention to the faithful prosecution and completion of all matters pursuant to this Agreement. In addition to the protection provided, the Contractor shall promptly indemnify and

save harmless the Township from all suits and actions for damages and costs to which the Township might be put by reason of injury to or death of persons and damage to property resulting from negligence, breach, fault, act, omission, default, carelessness or any other cause in the performance of this work. The indemnity obtained in this Agreement shall not be prejudiced by, and shall survive, the termination of this Agreement.

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

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Behan Construction Ltd.**

Per: \_\_\_\_\_  
(signature) (print name – title)

\_\_\_\_\_  
Witness as to Signature  
Or Seal Affixed Contractor I/we have the authority to bind the Corporation or  
Business

Per: \_\_\_\_\_  
(signature) (print name – title)

Dated at Milbrook, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**The Corporation of the  
Township of Cavan Monaghan**

\_\_\_\_\_  
Mayor, Matthew Graham

\_\_\_\_\_  
Clerk, Cindy Page

## APPENDIX A – BEHAN SUBMISSION (UNIT PRICES)

Item No.	Item	Quantity	Unit	Behan Construction	
				Unit Price	Total Construction Cost
<b>1.0 Site Preparation, Removals, Earthworks and Erosion Control</b>					
1.01	Insurance and Bonding	1.00	LS	\$ 16,952.19	\$ 16,952.19
1.02	Mobilization / Demobilization	1.00	LS	\$ 5,537.87	\$ 5,537.87
1.03	Erosion & Sediment Control	1.00	LS	\$ 3,833.16	\$ 3,833.16
1.04	Concrete Sidewalk Removal	680.00	m <sup>2</sup>	\$ 12.51	\$ 8,506.80
1.05	Concrete Curb Removal	32.00	m	\$ 14.75	\$ 472.00
1.06	Asphalt Removal	6090.00	m <sup>2</sup>	\$ 1.96	\$ 11,936.40
1.07	Culvert Removal	218.00	m	\$ 28.89	\$ 6,298.02
1.08	Watermain Removal	880.00	m	\$ 21.94	\$ 19,307.20
1.09	Water Service Removal	28.00	ea	\$ 188.59	\$ 5,280.52
1.10	Tree Clearing and Grubbing	1.00	LS	\$ 2,991.26	\$ 2,991.26
1.11	Strip and Export Topsoil	3500.00	m <sup>2</sup>	\$ 3.80	\$ 13,300.00
1.12	Earth Excavation	3000.00	m <sup>3</sup>	\$ 17.32	\$ 51,960.00
1.13	Traffic Control	1.00	LS	\$ 3,192.54	\$ 3,192.54
				<b>SUBTOTAL</b>	<b>\$ 149,567.96</b>
<b>2.0 Storm Sewer</b>					
2.01	300mm HDPE Culvert	102.80	m	\$ 200.10	\$ 20,570.28
2.02	375mm HDPE Culvert	192.70	m	\$ 218.33	\$ 42,072.19
2.03	450mm HDPE Culvert	80.20	m	\$ 299.07	\$ 23,985.41
2.04	1200mm Manhole c/w frame and grate	1.00	ea	\$ 7,274.64	\$ 7,274.64
				<b>SUBTOTAL</b>	<b>\$ 93,902.53</b>
<b>3.0 Watermain</b>					
3.01	250mm DR18 Watermain	625.00	m	\$ 463.24	\$ 289,525.00
3.02	150mm DR18 Watermain	295.00	m	\$ 336.59	\$ 99,294.05
3.03	250mm Valve	10.00	ea	\$ 3,486.59	\$ 34,865.90
3.04	Hydrant Set	8.00	ea	\$ 8,525.82	\$ 68,206.56
3.05	19mm Water Service Long	11.00	ea	\$ 3,341.54	\$ 36,756.94
3.06	19mm Water Service Short	18.00	ea	\$ 2,430.24	\$ 43,744.32
3.07	Testing and Commissioning	1.00	LS	\$ 14,497.78	\$ 14,497.78
3.08	Temporary Watermain	1.00	LS	\$ 49,460.22	\$ 49,460.22
				<b>SUBTOTAL</b>	<b>\$ 636,350.77</b>
<b>4.0 Road Construction</b>					
4.01	Granular 'B' (250mm depth-Main Street)	5050.00	m <sup>2</sup>	\$ 10.95	\$ 55,297.50
4.02	Granular 'B' (150mm depth-side streets)	2700.00	m <sup>2</sup>	\$ 6.78	\$ 18,306.00
4.03	Granular 'A' (150mm depth) Roadway	7400.00	m <sup>2</sup>	\$ 10.33	\$ 76,442.00
4.04	Granular 'A' (200mm depth) - Driveway	680.00	m <sup>2</sup>	\$ 15.69	\$ 10,669.20
4.05	Hot Mix HL4 Asphalt (60mm depth-Main Street)	4960.00	m <sup>2</sup>	\$ 22.47	\$ 111,451.20
4.06	Hot Mix HL4 Asphalt (50mm depth-side streets)	2440.00	m <sup>2</sup>	\$ 18.40	\$ 44,896.00
4.07	Hot Mix HL3 Asphalt (50mm depth) Driveways	625.00	m	\$ 46.89	\$ 29,306.25
4.08	Concrete Curb and Gutter	32.00	m <sup>2</sup>	\$ 186.37	\$ 5,963.84
4.09	Concrete Sidewalk incl. Granular 'A'	680.00	m <sup>2</sup>	\$ 107.07	\$ 72,807.60
4.10	Topsoil and Seed	5250.00	LS	\$ 7.63	\$ 40,057.50
4.11	Pavement Markings / Signage	1.00	ea	\$ 6,032.76	\$ 6,032.76
4.12	Adjust Existing Structures, c/w New Frame and Grate (Type A)	9.00	ea	\$ 1,196.20	\$ 10,765.80
4.13	Tactile Walking Surface Indicators	8.00	LS	\$ 540.84	\$ 4,326.72
				<b>SUBTOTAL</b>	<b>\$ 486,322.37</b>
<b>SUBTOTAL (ALL SECTIONS)</b>					<b>\$ 1,366,143.63</b>
				<b>HST (13%)</b>	<b>\$ 177,598.67</b>
<b>CONSTRUCTION COST TOTAL</b>					<b>\$ 1,543,742.30</b>
<b>5.0 Provisional</b>					
5.01	25mm Water Service - Long	1	ea	\$ 3,500.00	\$ 3,500.00
5.02	25mm Water Service - Short	1	ea	\$ 2,600.00	\$ 2,600.00
5.03	Remove and Replace Existing Sanitary Sewer Services	6	m	\$ 450.00	\$ 2,700.00
5.04	Removal/Disposal of Existing Boulders	3	m <sup>3</sup>	\$ 100.00	\$ 300.00
5.05	Hydro-Vac for Site Exposures	12	hr	\$ 400.00	\$ 4,800.00
5.06	Dust Suppression (Calcium Chloride)	400	kg	\$ 2.00	\$ 800.00