

From: Marisa Carpino
Director, Community Services

Subject: Municipal Highway Winter Maintenance Agreement
- Third Concession Road (Peter Matthews Drive) in the City of Pickering
- File: A-1440-001-19

Recommendation:

1. That Council authorize the Mayor and City Clerk to execute a Municipal Highway Winter Maintenance Agreement with the Regional Municipality of Durham set out in Attachment 1 to this report, subject to minor revisions as may be required by the Director, Community Services, and the Director, Corporate Services & City Solicitor; and,
 2. That the appropriate City officials be authorized to take the necessary actions as indicated in this report.
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Executive Summary: The Municipal Highway Winter Maintenance Agreement with the Regional Municipality of Durham will provide for winter patrol and maintenance services by the City of Pickering for Third Concession Road (Peter Matthews Drive) which extends from Brock Road westerly to Grand Valley Park (also known as the off leash dog park), as set out in Attachment 1. Winter patrol and maintenance by the City of Pickering has been requested by the Regional Municipality of Durham and will result in a more consistent level of service for City of Pickering residents.

The Regional Municipality of Durham will continue to be responsible for routine patrol and maintenance of Third Concession Road (Peter Matthews Drive). It is staff's understanding that the Regional Municipality of Durham will resume winter patrol and winter maintenance once Peter Matthews Drive extends into the south Lamoreaux subdivision in Seaton connecting to Taunton Road with an anticipated increase in traffic volume. The Municipal Highway Winter Maintenance Agreement would remain in effect until such time as the Regional Municipality of Durham advises the City of Pickering by written notice within 90 days of its intention to resume winter patrol and winter maintenance.

Financial Implications: The Regional Municipality of Durham will compensate the City of Pickering for winter patrol and maintenance services provided between the dates of November 5 through April 30, at a flat annual rate of \$2,500.00 per lane-kilometre. Based on an estimate of 2.6 lane/kilometres, the anticipated annual revenue is \$6,500.00.

Discussion: At the present time, Third Concession Road (Peter Matthews Drive) between Brock Road and Grand Valley Park behaves like a collector road requiring maintenance in accordance with the Minimum Maintenance Standards (MMS) for Class 3 or 4 roads. Although a Regional Road, winter maintenance for this road type is better suited to the City of Pickering's equipment and plow routes.

As such, City of Pickering (as a service provider) has agreed to provide winter patrol and maintenance for Third Concession Road (Peter Matthews Drive), subject to the terms and conditions outlined in the attached Municipal Highway Winter Maintenance Agreement. The City will continue to sand, salt, plow, and remove snow and ice as needed in accordance with MMS standards during the term of this agreement. The Regional Municipality of Durham will be responsible to provide all other routine patrol, maintenance and repair requirements, such as grading, pothole repairs, signage and drainage.

Interestingly, the City of Pickering is currently responsible for the year round patrol and maintenance, including winter maintenance, on Third Concession Road from Brock Road easterly to the Ajax/Pickering border ending at Bunting Court. As such, the additional winter maintenance services will provide consistent and continuous winter maintenance for those who travel on Third Concession Road at the present time.

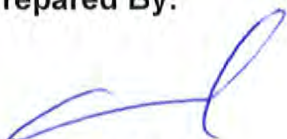
Once Peter Matthews Drive is built out and connects to Taunton Road through the South Lamoreaux subdivision in Seaton, it will attract larger volumes of traffic and behave more like an arterial road. At that time, the Regional Municipality of Durham will resume winter patrol and winter maintenance.

The Municipal Highway Winter Maintenance Agreement, as set out in Attachment 1, is for a one year term ending April 30, 2020, with automatic renewal for additional one year periods, and as authorized by Council, will be executed subject to minor revisions as may be required by the Director, Community Services and the Director, Corporate Services & City Solicitor.

Attachment:

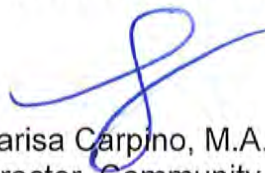
1. Municipal Highway Winter Maintenance Agreement
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Prepared By:



Rob Burlie, P. Eng.
Manager, Public Works

Approved/Endorsed By:



Marisa Carpino, M.A.
Director, Community Services



Brian Duffield
Division Head, Operations

Recommended for the consideration
of Pickering City Council

 *Nov. 13, 2019*

Tony Prevedel, P. Eng.
Chief Administrative Officer

RB:nm

Municipal Highway Winter Maintenance Agreement

This Agreement made this ____ day of _____, 2019

Between:

The Regional Municipality of Durham
(the "Region")

- and -

The Corporation of the City of Pickering
(the "City")

WHEREAS Third Concession Road (Peter Matthews Drive), being Part of Lot 19, Concession 2, Part of Lots 19 and 20, Concession 3, Part of the Road Allowance between Concessions 2 and 3, and Part of Clearside Court, Plan 40M-1887, designated as Parts 1 to 7, Plan 40R-30215 (the "Road") located within the City of Pickering is under the jurisdiction and ownership of the Region;

AND WHEREAS Section 11 and Section 20(1) of the *Municipal Act, 2001*, S.O. 2001, c. 24 (the "Municipal Act") permit municipalities to enter into an agreement to provide for the operation and maintenance of roads;

AND WHEREAS the City and the Region are desirous of entering into an agreement pursuant to the provisions of Section 11 and Section 20(1) of the Municipal Act, wherein the City will undertake agreed upon winter maintenance services of the Road on behalf of the Region in exchange for payment by the Region to the City for the agreed upon winter maintenance services;

NOW THEREFORE in consideration of the covenants herein contained and upon the terms and conditions expressed herein the parties agree as follows:

1. Definitions

- (1) "Agreement" means this agreement, including its recitals and any Schedules which form an integral part of it, as amended from time to time.
- (2) "Capital Improvements" means any road repair or improvement that is not Regular Maintenance, including, but not limited to, major repairs, improvements and replacements such as resurfacing and reconstruction of the Road, bridge replacement or reconstruction, culvert replacement, or the installation of new or expanded drainage systems.

- (3) “Claims” include any and all claims, actions, causes of action, complaints, demands, suites or proceedings of any nature or kind in respect of any and all losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third person or otherwise), the costs or expenses of complying with any environmental laws, and any economic losses, consequential, indirect, special and incidental damages resulting from or in any way related to a breach of a term of this Agreement, loss of life, personal injury (including, in all cases, personal discomfort and illness), and loss of and damage to property.
- (4) “Minimum Maintenance Standards” means those standards established by Ontario Regulation 239/02, as amended, pursuant to Section 44 of the Municipal Act.
- (5) “Regular Maintenance” means all routine or normal road maintenance including, but not limited to, shouldering, asphalt repair, pothole patching, crack sealing, depression settlement repairs, catch basin and storm sewer cleanout, litter pick up, inspection, repair and replacement related to signs, vegetation control, road and roadside drainage, entrances and entrance culverts, dust control, road surfacing, road stability, and grading, and excludes Winter Maintenance.
- (6) “Road” means Third Concession Road (Peter Matthews Drive), being Part of Lot 19, Concession 2, Part of Lots 19 and 20, Concession 3, Part of the Road Allowance between Concessions 2 and 3, and Part of Clearside Court, Plan 40M-1887, designated as Parts 1 to 7, Plan 40R-30215, being 2.6 lane-kilometres, as further identified in the location map attached hereto as Schedule A.
- (7) “Routine Road Patrol” means the process of driving each section of the Road in one direction to monitor road conditions and assess the need for Regular Maintenance, and shall not include Winter Road Patrol.
- (8) “Term” means the term of this Agreement as specified in Section 2 of this Agreement.
- (9) “Winter Maintenance” means snow ploughing, ice control, application of sand and/or salt mixture, application of brine direct liquid, snow removal where necessary and Winter Road Patrol, and excludes Capital Improvements, Regular Maintenance and Routine Road Patrol. Winter Maintenance shall occur throughout the Winter Maintenance Term.

- (10) "Winter Maintenance Term" shall occur through November 5 to April 30, inclusive, in each calendar year of the Term.
- (11) "Winter Road Patrol" shall occur throughout the Winter Maintenance Term and means the process of driving each section of the Road in one direction to monitor winter road conditions and assess the need for Winter Maintenance, and shall not include Routine Road Patrol.

2. **Term**

This Agreement shall commence on January 4, 2019 for a term of one (1) year expiring on January 3, 2020, unless terminated earlier as provided hereunder (the "Initial Term"). The Initial Term will thereafter automatically renew for additional one (1) year periods (the Initial Term and any renewal thereof being collectively referred to herein as the "Term") unless either party terminates this Agreement, without cause, by no less than 90 days written notice prior to the end of the then current Term.

3. **Maintenance and Repair**

- (1) The City shall provide Winter Maintenance of the Road in accordance with the Minimum Maintenance Standards.
- (2) Notwithstanding any other provision contained herein, the obligations set out in this Agreement shall not include any obligation or responsibility of the City for any maintenance services and/or improvements, including, but not limited to, Capital Improvements, Regular Maintenance and Routine Road Patrol of the Road that are the responsibility of the Region to provide, whether pursuant to this Agreement or otherwise. Furthermore, the Region acknowledges and agrees that the physical condition of the Road may affect the manner in which Winter Maintenance is delivered by the City.
- (3) The Region, at its sole cost and expense, shall provide all Capital Improvements, Regular Maintenance and Routine Road Patrol of the Road in accordance with the Minimum Maintenance Standards.

4. **Fee and Payment**

- (1) The Region agrees to pay \$6,500.00 (\$2,500.00 per lane-kilometre of road maintained where the Road is 2.6 lane-kilometres) annually to the City throughout the Term of this Agreement for costs incurred by the City in performing Winter Maintenance of the Road. The parties acknowledge and agree that the commencement date of this Agreement is not the first day of the Winter Maintenance Term and that the Region shall pay to the

City \$4,290.00 for the remainder of the Winter Maintenance Term from January 4, 2019 to April 30, 2019.

- (2) Within 60 days of the end of each year throughout the Term, the City shall submit to the Region annual invoices and the Region shall pay the annual invoices submitted by the City within 30 days of receipt of said invoices.

5. Default

- (1) Upon default by either party (the "Defaulting Party") under any terms of this Agreement, and at any time after the default, the other party (the "Non-Defaulting Party") shall have all the rights and remedies provided by law and by this Agreement.
- (2) No delay or omission by the Non-Defaulting Party in exercising any right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of such right or remedy, or the exercise of any other right or remedy. Furthermore, the Non-Defaulting Party may, but is not required to, remedy any default by the Defaulting Party in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Defaulting Party. All rights and remedies of the Non-Defaulting Party granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

6. Liability

The parties acknowledge and agree that, upon execution of this Agreement, the City shall perform Winter Maintenance of the Road in accordance with the maintenance obligations set out in this Agreement. Notwithstanding any other provision contained herein, the City shall only be liable for any damages that arise from Winter Maintenance of the Road, to the extent that such obligations have been assigned to the City in accordance with this Agreement, and that the City shall be relieved from all liability in respect of any maintenance services and/or improvements not included as part of the Winter Maintenance of the Road.

7. Notice of Claims

The Region and the City shall notify each other forthwith of any Claims or other information regarding pending or possible Claims by a third party arising from the responsibilities set out in this Agreement, and shall provide each other with copies of any correspondence with the claimant or the claimant's representatives upon request.

8. Indemnification

- (1) The City agrees to defend, indemnify and save the Region harmless from all Claims in any way caused or alleged to be caused by the negligence or wrongdoing of the City, its employees, agents, contractors and councillors related to or arising out of the performance of this Agreement, including the Winter Maintenance of the Road.
- (2) The Region agrees to defend, indemnify and save the City harmless from all Claims in any way caused or alleged to be caused by the negligence or wrongdoing of the Region, its employees, agents, contractors and councillors related to or arising out of the performance of this Agreement unless the allegations are made in relation to the Winter Maintenance of the Road.

9. Insurance

- (1) During the Term of this Agreement, the City shall maintain a policy of General Liability insurance providing coverage in respect of any incident bringing rise to a claim pertaining to this Agreement to the limit of a minimum of Ten Million Dollars (\$10,000,000.00) exclusive of interest and costs, against death, injury, property damage and personal injury. Such insurance policy shall contain provisions for cross liability and severability of interest and further that the policy will not be cancelled until 30 days after written notice of such change or cancellation shall have been given to the Region. The General Liability policy shall include the Region as an additional insured with respect of all operations performed by or on behalf of the City pertaining to this Agreement. The City shall also maintain automobile Liability Insurance in respect to licensed vehicles and trailers owned and/or leased by the City, with limits of not less than Five Million Dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property. The City shall provide to the Region a Certificate of Insurance verifying the above.
- (2) During the Term of this Agreement, the Region shall maintain a policy of General Liability insurance providing coverage in respect of any incident bringing rise to a claim pertaining to this Agreement to the limit of a minimum of Ten Million Dollars (\$10,000,000.00) exclusive of interest and costs, against death, injury, property damage and personal injury. Such insurance policy shall contain provisions for cross liability and severability of interest and further that the policy will not be cancelled until 30 days after written notice of such change or cancellation shall have been given to the City. The General Liability policy shall include the City as an additional insured with respect of all operations performed by or on behalf of the Region pertaining to this Agreement. The Region shall also maintain automobile Liability Insurance in respect to licensed vehicles and trailers owned and/or leased by the Region, with limits of not less than Five Million Dollars (\$5,000,000.00)

inclusive per occurrence for bodily injury, death and damage to property. The Region shall provide to the City a Certificate of Insurance verifying the above.

10. Notice

- (1) Any notice, document or communication to be given under this Agreement shall be in writing and delivered by hand, registered or pre-paid mail, courier, fax or email (as appropriate) to the party to which it is to be given, as follows:

to the Region at:

605 Rossland Road East, Whitby, ON L1N 6A3
Attention: David Hagner, Fax No.: 905.668.2051

and to the City at:

Pickering Civic Complex, One The Esplanade, Pickering, ON L1V 6K7
Attention: City Clerk, Fax No.: 905.420.9685

Any notice or other communication will be deemed to have been received, if delivered or sent by email or fax, on the date of delivery or transmittal and if mailed by registered post, on the 10th day following the date of mailing.

- (2) Notwithstanding the foregoing, unless otherwise specified, notice of any immediate matter concerning the performance of the maintenance obligations of the Road under this Agreement shall be made to the following:

to the Region:

Attention: Shawn Downey
Phone No.: 905.683.1471
Email: shawn.downey@durham.ca

to the City:

Attention: Rod Marshall
Phone No.: 905.420.4660 ext. 5221
Email: rodmarshall@pickering.ca

11. General

- (1) Schedule A attached hereto shall form part of this Agreement.
- (2) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Neither party may assign all or any part of this Agreement without the prior written approval of the other party.

- (3) All words in this Agreement shall be deemed to include any number or gender as the context requires.
- (4) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- (5) In this Agreement, headings are for convenience of reference and are not to be used to interpret this Agreement, and words in the singular include the plural and vice versa.
- (6) This Agreement constitutes the entire agreement between the parties concerning the maintenance of the Road and may only be amended or supplemented by an agreement in writing signed by both parties.
- (7) The parties shall comply with all legal requirements (including statutes, laws, by-laws, regulations, ordinances, orders, rules and regulations of every governmental authority having jurisdiction) that relate to the maintenance of the Road.
- (8) All paragraphs, terms and conditions of this Agreement are severable, and the invalidity, illegality or unenforceability of any such paragraph, term or condition shall be deemed not to affect the validity, enforceability or legality of the remaining paragraphs, terms and conditions.
- (9) Notwithstanding anything in this Agreement, neither party shall be in default with respect to the performance of any of the terms of this Agreement if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the party.
- (10) The parties acknowledge that this Agreement and any information or documents that are provided hereunder may be released pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. M.56, as amended. This acknowledgement shall not be construed as a waiver of any right to object to the release of this Agreement or of any information or documents.

In witness whereof the parties have duly executed this Agreement as of the date first written above.

The Regional Municipality of Durham

The Corporation of the City of Pickering

David Ryan, Mayor

Susan Cassel, City Clerk

**Schedule A
Location Map Identifying the Road**

