

To:	Warden Halliday and Members of Grey County Council
Committee Date:	September 27, 2018
Subject / Report No:	TR-CW-49-18
Title:	The Blue Mountains Winter Maintenance Agreement
Prepared by:	Graham Wilson, Maintenance Manager
Reviewed by:	Pat Hoy, Director of Transportation Services
Lower Tier(s) Affected:	The Town of The Blue Mountains
Status:	Adopted by Committee of the Whole as presented per Resolution CW234-18; Endorsed by County Council per Resolution CC97-18 on October 11, 2018.

Recommendation

1. That Report TR-CW-49-18 be received and the Warden and Clerk be authorized to execute a three year winter maintenance agreement between the County of Grey and the Town of The Blue Mountains.

Executive Summary

The County of Grey and the Town of The Blue Mountains have historically entered into a Winter Maintenance Agreement for the upkeep and maintenance of certain roads in the Town of The Blue Mountains. The current winter maintenance agreement with the Town of The Blue Mountains expired in April, 2018. A new three year agreement is proposed. Under the new terms Grey County will no longer be responsible for the 2.4 km portion of Hwy 26 identified as a Connecting Link.

Background and Discussion

The County of Grey and the Town of The Blue Mountains have historically entered into an agreement for the County to complete the winter maintenance of the following roads within the Town of The Blue Mountains:

- Arthur Street and King Street East (Kings Highway No. 26) from Peel Street to Russell Street within the geographic Town of Thornbury a centerline distance of approximately 2.4 kilometres.
- Main Street within the geographic Village of Heathcote a centerline distance of approximately 0.4 kilometres.

- Church Street within the geographic Village of Heathcote, a centerline distance of approximately 0.2 kilometres.

In September, 2007 the Town of The Blue Mountains requested Grey County to plow the Highway 26 connecting link in the Town of Thornbury. Transportation Services has provided this service for the winter seasons since 2007 and the costs were tracked and the Town was invoiced.

Transportation Services completed a review of the Patrol B plow route (B3), which includes the connecting link for the Town of the Blue Mountains and determined that this work has an adverse effect on service levels and response times.

The following are the results of the review:

- Transportation Services' operations spend 45 to 60 minutes daily plowing and applying material on Highway 26 in the Town of Thornbury.
- The initial (early morning) service includes two complete rounds to plow turning lanes and through lanes. Material is applied on the second round.
- Transportation Services plows this part of the route first, which impacts our response time to Grey Roads 13, 113 and 119 (from Grey Road 13 to Ravenna).
- Later in the morning the plow cleans up any areas where slush or snow has accumulated. The shoulders are plowed at this time as well.
- The afternoon/evening shift will make two passes and usually does not plow the shoulders.
- The overall circuit time(s) to maintain the Thornbury connecting link has an adverse effect on winter maintenance service levels on Grey Rd.'s 13, 113, and 119.

Transportation Services has been in consultation with the Town of The Blue Mountains and they are in agreement with this revision as they have made alternate arrangements for having the winter maintenance completed.

Legal and Legislated Requirements

None. Terms of the proposed agreement are consistent with the winter maintenance agreements in effect with other municipalities and unchanged from previous versions with the exception of the removal of the maintenance of the connecting link (Arthur Street and King Street East; approximately 2.4 kilometres).

Financial and Resource Implications

The Blue Mountains will agree to compensate the County of Grey a lump sum payment of \$3,130.73 for the first year of the Agreement with the amount invoiced increased by two percent per year for each subsequent year. This is a reduction of \$12,216.00 from the 2017/18 cost for services paid by the Town of the Blue Mountains to Grey County.

Relevant Consultation

Internal - CAO

External - The Town of The Blue Mountains

Appendices and Attachments

Winter Maintenance Agreement 2018/2019, 2019/2020, 2020/2021

WINTER MAINTENANCE AGREEMENT 2018/2019, 2019/2020, 2020/2021

THIS AGREEMENT made this _____ day of _____, 2018, in duplicate between:

THE CORPORATION OF THE COUNTY OF GREY
Hereinafter referred to as "Grey County"

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
Hereinafter referred to as "Town"

WHEREAS the Town has authority over certain roads within the Town, in the County of Grey;

AND WHEREAS the Town wishes to contract with Grey County to provide winter maintenance services on some of these roads within the Town;

AND WHEREAS Grey County is willing to provide the winter maintenance services, and wishes to invoice the Town at the end of each winter season for costs incurred in providing those services;

NOW THEREFORE in consideration of the mutual covenants set out below together with other good and valuable consideration (the receipt of which is acknowledged), the parties agree as follows:

1.0 Definitions

- 1.1 "Agreement" means this Agreement, its appending schedules, and all instruments amending it.
- 1.2 "Roads" means the entirety of the approximately 0.6 kilometres of roads described in Section 3 of this Agreement.
- 1.3 "Winter Maintenance Season" means the continuous period of time between the fifteenth (15th) day of November and the thirty-first (31st) day of March.

2.0 Term

- 2.1 This Agreement shall be effective on the date that it is signed by both parties and shall continue until April 30, 2021 (the "Term").
- 2.2 Notwithstanding Section 2.1, this Agreement may be terminated by either party during the period of May 1 to August 31 in any year in which this Agreement is current, upon one hundred twenty (120) days' written notice.

3.0 Roads Subject to this Agreement

	Class	Road Name	Location Description	Distance One Way
a.	4	Main Street	Within the geographic Village of Heathcote	Approximately 0.4 kms
b.	4	Church Street	Within the geographic Village of Heathcote	Approximately 0.2 kms

4.0 Obligations of Grey County

- 4.1 Grey County shall undertake all winter maintenance activities, including but not limited to the patrolling, plowing and spreading of materials for winter road conditions of the Roads, during each Winter Maintenance Season throughout the Term of the Agreement. The level of service provided shall meet the minimum standards set forth in the Minimum Maintenance Standards for Municipal Highways, Ontario Regulation 239/02 of the Act where such standards apply and, in the event that there is no applicable Minimum Maintenance Standard, shall meet the standard of what is reasonable in the circumstances.
- 4.2 In addition to the requirements set out in 4.1 above, Grey County shall attend to winter events that occur prior to November 15th and after April 1st until winter events have subsided at the end of each season throughout the Term of this Agreement. Both parties acknowledge that the level of service provided outside of the Winter Maintenance Season may be at a lower level than during the Winter Maintenance Season, but that it shall meet the minimum standards set forth in regulations made by the Minister of Transportation as contemplated in section 44(4) of the Act (the "Minimum Maintenance Standards for Municipal Highways") where such standards apply and, in the event that there is no applicable Minimum Maintenance Standard, shall meet the standard of what is reasonable in the circumstances.
- 4.3 Grey County will be responsible for rectifying any damages which the parties agree was caused by the negligent operations of its equipment during the Winter Maintenance Season. This includes but is not limited to the replacement of signs, guide rails or other Town infrastructure at Grey County's expense. The Town shall give notice of the occurrence of such damage and where Grey County agrees that it caused such damage it shall have the option of repairing such damage or paying the Town for the cost of such repairs. No payment made by Grey County pursuant to this paragraph shall be construed as an admission of liability by Grey County for any purpose.

5.0 Obligations of the Town

- 5.1 The Town shall be responsible for all removal of snow beyond the travelled portion of the Roads if required.
- 5.2 The Town shall be responsible to provide snow blowing services required within the right of way of the Roads.
- 5.3 The Town shall be responsible for patrolling the Roads for routine maintenance purposes at all times throughout the entire term of the Agreement.
- 5.4 The Town shall be responsible for the drainage maintenance of the Roads, including but not limited to the clearing of ditches, curbs and gutters, catch basins, and storm drains.
- 5.5 The Town shall be responsible for the surface maintenance of the Roads, including repair of potholes, cracks and depressions.

6.0 Reimbursement

Grey County shall invoice the Town for services provided on the Roads not later than the 15th day of June following the Winter Maintenance Season in which the work was undertaken. The invoice shall be for \$3,130.73 for the first year of the Agreement and the amount invoiced shall increase by two percent per year in each subsequent year. The Town shall provide payment to Grey County no later than 30 days from the receipt of the statement.

7.0 Indemnification

- 7.1 Grey County agrees to defend, indemnify and save and hold harmless the Town from all claims, lawsuits, losses, expenses and costs, or any other liability imposed by statute or common law in any way connected to or in any way arising out of any actual or alleged breach, default or neglect of duty in respect of the winter maintenance of the Roads referred to in this Agreement as being the responsibility of Grey County to maintain.
- 7.2 The Town agrees to defend, indemnify and save and hold harmless Grey County from all claims, lawsuits, losses, expenses and costs, or any other liability imposed by statute or common law in any way connected to or in any way arising out of any actual or alleged breach, default or neglect of duty in respect of obligations imposed on the Town under the terms of this Agreement.

8.0 Insurance, Incident/Claims Notification

- 8.1 Each party shall, at its own expense, obtain and keep in force during the term of this Agreement, liability insurance satisfactory to the other party, including the following terms and minimum coverage and underwritten by an insurer licensed to conduct business in the Province of Ontario:
 - a) Municipal General Liability insurance on an occurrence basis for an amount of not less than Fifteen Million Dollars (\$15,000,000);
 - b) inclusion of the other party as an Additional Insured with respect to the operations of the named insured;
 - c) Cross liability and severability of Interest clauses;
 - d) Policies shall not be invalidated as respects the interests of the Additional Insured by reason of any breach or violation on any warranties, representations, declarations or conditions;
 - e) Non-owned automobile coverage with a limit of at least Ten Million Dollars (\$10,000,000) including SEF 96 (contractual liability);
 - f) Products and completed operations coverage with an aggregate limit of not less than Fifteen Million Dollars (\$15,000,000);
 - g) Automobile liability insurance for an amount not less than Ten Million Dollars (\$10,000,000) on forms meeting statutory requirements covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement;
 - h) A thirty day written notice of cancellation, termination or material change.
- 8.2 Each party shall provide the other party proof of insurance, each year, in the form of an insurance certificate.
- 8.3 Both parties agree to immediately notify the other party of any occurrence, incident or event which may reasonably be expected to expose either party to material liability of any kind in relation to the Roads.
- 8.4 In the event that either party receives a Statement of Claim, notice of claim or other information regarding a pending or possible claim by a third party with respect to liability for failure to keep the Roads in repair or for damages or injuries sustained relating thereto (and which damages or injuries were sustained during a period when Grey County was responsible under section 4 of this Agreement) such party shall immediately notify and provide to the other party such claim or notice of claim.

9.0 Force Majeure

- 9.1 Neither Grey County nor the Town shall be held responsible for any damage or delays as a result of war, invasions, insurrection, demonstrations, or as a result of decisions by civilian or military authorities, fire, flood, human health emergency, strikes and generally as a result of any event that is beyond Grey County or the Town's reasonable control.
- 9.2 Grey County and the Town agree that in the event of a disaster or Force Majeure the parties will co-operate and Grey County will make all reasonable efforts to provide temporary replacement service until permanent service is completely restored.

10.0 Governing Law

- 10.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

11.0 Severability

- 11.1 Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

12.0 Entire Agreement

- 12.1 This Agreement constitutes the entire agreement between the parties with respect to the winter maintenance for the Roads and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to winter maintenance for the Roads except as provided in this Agreement.

13.0 Waiver and Amendment

- 13.1 Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed, in writing, by the party to be bound. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver, even if similar in nature, unless otherwise expressly provided.

14.0 Successors and Assigns

- 14.1 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 written approval of the other party.

15.0 Notice

15.1 Any notice required to be given by Grey County to the Town shall be in writing and shall be sufficiently delivered if given to the Town Clerk by personal delivery or prepaid post, c/o the Town Clerk, to:

Town of The Blue Mountains
32 Mill Street
PO Box 310
Thornbury, ON N0H 2P0

Any notice required to be given by the Town to Grey County shall be in writing and shall be sufficiently delivered if given to the County Clerk by personal delivery or prepaid post, c/o the County Clerk, to:

County of Grey
595 9th Avenue East
Owen Sound, ON N4K 3E3

15.2 Notice delivered by mail shall be deemed to have been received on the fifth (5th) business day following the date of such mailing.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year set out above.

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS:

Reg Russwurm, Director of Infrastructure and Public Works

Serena Wilgress, Manager of Purchasing and Risk Management

We have the authority to bind the Town.

THE CORPORATION OF THE COUNTY OF GREY:

Stewart Halliday, Warden

Heather Morrison, Clerk

We have the authority to bind the County.