

Report TR-TAPS-58-15

To: Chair and Members of the Transportation and Public Safety Committee
From: Ron Parkin, Maintenance Manager
Meeting Date: September 17, 2015
Subject: Grey County/Wellington North Boundary Road Maintenance Agreement
Status: Recommendation adopted by Committee as presented per Resolution TAPS119-15; Endorsed by County Council October 6, 2015 per Resolution CC139-15;

Recommendation(s)

WHEREAS Sections 20, 29, 29.1 and 52 of the Municipal Act allow for agreements between adjoining municipalities for the maintenance and repair of any highway forming a boundary road;

AND WHEREAS Grey Road 109 from Kings Highway 6, easterly for approximately 1.0 kilometer to the point at which the entire road, known as Grey Road 109, is located in Grey County, is a boundary road shared by Grey County and the Township of Wellington North;

AND WHEREAS Grey County has historically completed the maintenance on this section of road known as Grey Road 109;

AND WHEREAS the County of Grey and the Township of Wellington North have agreed that it is mutually beneficial that Grey County continue to assume the annual maintenance of the boundary roads between their municipalities with the costs shared equally between the parties;

NOW THEREFORE BE IT RESOLVED THAT Report TR-TAPS-58-15 be received;

AND THAT the Warden and Clerk be authorized to execute the Boundary Road Agreement for the aforementioned section of Grey Road 109 between the County of Grey and the Township of Wellington North;

AND THAT the appropriate By-Law be prepared for Council's consideration.

Background

Grey County and the Township of Wellington North historically have entered into a maintenance agreement on the section of boundary road from Kings Highway 6, easterly approximately 1.0 kilometer to the point at which the entire road, known as Grey Road 109, is located in Grey County.

As with previous agreements, Grey County completes the annual maintenance of this section of boundary road with the costs shared equally between each party. Additionally, each party is responsible for one-half of all agreed capital improvements on the boundary road.

Grey County has been updating and standardizing all of its Boundary Road Agreements. The proposed agreement is very similar to all other Boundary Road Agreements.

Financial / Staffing / Legal / Information Technology

Considerations

The Agreement provides remuneration in the form of a lump sum payment, which is calculated from a five (5) year average to maintain this road. An increase of 2% is added annually to this payment for the term of the agreement.

Each party at its own expense maintains liability insurance during the term of the agreement.

Staff at Wellington-North have reviewed the agreement and have no concerns with the content, but approval at its September 2 committee meeting is required before the agreement can be finalized.

Link to Strategic Goals / Priorities

It is with this agreement in mind that a continued good working relationship between the County of Grey and the Township of Wellington North continues to meet with Corporate Strategic Goal 5.2; to collaborate with other governments to improve delivery of County services.

Attachment

Boundary Road Agreement Wellington North (Fall 2015 to December 31, 2020)

Respectfully submitted by,

Ron Parkin
Maintenance Manager

Director Sign Off: *M.J. Kelly, Director of Transportation Services*

BOUNDARY ROAD AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20____, in between:

The Corporation of the County of Grey

Herein after referred to as “Grey County”

- and –

The Corporation of the Township of Wellington North

Herein after referred to as “Township”

WHEREAS Sections 20, 29, 29.1 and 52 of the Municipal Act, 2001 (the “Act”) make provision for agreements between adjoining municipalities for the maintenance and repair of any highway forming the boundary between such municipalities, including the bridges thereon;

WHEREAS portion of the highway as particularly described herein comprise a shared boundary road between the Township and Grey County the “Road”;

AND WHEREAS both parties wish for Grey County to provide year-round oversight, maintenance, and repair on this Road;

AND WHEREAS the parties wish to agree on a manner in which capital upgrades of this Road shall be completed;

AND WHEREAS the parties wish to share the costs equally for both maintenance and capital projects;

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 “Road” means the section of Grey Road 109 located on the Grey/Wellington boundary line, beginning at King’s Highway 6, running easterly for a distance of approximately 1.0 kilometres, to the point at which the entire road known as Grey Road 109 is located in Grey County, within the Township of Southgate.
- 1.3 “Winter Maintenance Season” means the continuous period of time between the fifteenth (15th) day of November and the first (1st) day of April.

2.0 Term

- 2.1 This Agreement shall be effective on the date that it is signed by both parties and shall continue until December 31, 2020 (the “Term”).
- 2.2 The parties acknowledge that since the previous boundary road agreement expired, which was April 30, 2015, both have continued to act in good faith according to the operating terms of the previous agreement as if it had been in effect, pending the execution of this Agreement.
- 2.3 Notwithstanding section 2.1, this Agreement may be terminated by either party during the period of April 15 – August 15 in any year in which this Agreement is current, upon one hundred twenty (120) days’ written notice.

3.0 Road(s) Subject to this Agreement

| Road Name | Location Description | Distance One Way |
|------------------|---|-------------------------|
| Grey Road 109 | From King's Highway 6 easterly to the point at which the entire road known as Grey Road 109 is located in Grey County | Approximately 1.0 km |

A map showing the geographical location of the Road is attached to the Agreement as Schedule "A".

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 road, during each Winter Maintenance Season throughout the Term of the Agreement.
- 4.2 Grey County shall also 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 time of this Agreement. Both parties acknowledge that the level of service provided outside of the Winter Maintenance Season will 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 circumstances.
- 4.3 The winter maintenance level of service to be provided by Grey County on the Road shall comply with the level of service policy, as defined in the attached Schedule "B" of this Agreement.
- 4.4 The parties acknowledge that the level of service to be provided by Grey County on the Road may change throughout the Term of the Agreement. Any changes to the level of service shall meet the minimum standards as set forth in 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.
- 4.5 Grey County shall be responsible for all removal of snow beyond the width of the road and shoulders, if required.
- 4.6 Grey County shall be responsible to provide snow blowing services required within the right of way, if deemed necessary by Grey County.
- 4.7 Grey County shall be responsible for the drainage maintenance of the Road, including the clearing of ditches, curbs and gutters, catch basins, and storm drains.
- 4.8 Grey County shall be responsible for the surface maintenance of the Road, including the repair of potholes, cracks and depressions.
- 4.9 Grey County shall be responsible for all routine patrolling and maintenance activities throughout the entire Term of this Agreement. Grey County shall provide routine maintenance service levels compliant with the Minimum Maintenance Standards as identified in Ontario Regulation 239/02 (The "Regulation").

5.0 Reimbursement

- 5.1 The Township and Grey County shall each be responsible for one-half of the maintenance costs of the Road. Grey County shall invoice the Township as follows:
 - a) On or about December 31, 2015, in the amount of \$2,476.15; and
 - b) On or about December 31 of each following year throughout the Term, from 2016 up to and including 2020. The invoice shall be in the amount of \$3,788.51 in 2016, and the amount invoiced shall increase by 2 percent per year in each subsequent year.
- 5.2 The Township shall provide payment to Grey County no later than 30 days from the receipt of the invoice.

6.0 Capital Costs

- 6.1 Subject to the further terms set out in the is section, the Township and Grey County shall each be responsible for one-half of all capital improvements on the Road, including but not limited to items such as road construction, hot mix asphalt resurfacing, and the shoulder gravelling associated with this resurfacing, bridge repairs and replacement, and surface treatment.
- 6.2 Prior to completing any capital improvements, Grey County will identify the required work to the Township.
- 6.3 If both the Township and Grey County agree that the work is required, the Township and Grey County will mutually agree how the work will be completed and whether the Township or the County will administer the work.
- 6.4 Except in the case of emergencies, Grey County shall notify the Township two (2) years in advance of any such capital improvement work proposed and the extent and cost of the capital improvement work shall be mutually agreed upon prior to proceeding with the work.
- 6.5 The party who administers the work as determined in section 6.3 shall invoice the other party for one half of the capital costs no later than then the 31st of December in the year in which the work was undertaken. Payment of the invoice shall be made no later than 30 days from receipt of the invoice.

7.0 Indemnification

- 7.1 Grey County agrees to defend, indemnify and save and hold harmless the Township 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 Grey County under the terms of this Agreement.
- 7.2 The Township 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 Township under the terms of this Agreement.

8.0 Insurance

- 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);
 - i) Inclusion of the other party as an Additional Insured with respect to the operations of the named insured;
 - ii) Cross liability and severability of Interest clauses;
 - iii) 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;
 - iv) Non-owned automobile coverage with a limit of at least Ten Million Dollars (\$10,000,000) including SEF 96 (contractual liability);
 - v) Products and completed operations coverage with an aggregate limit of not less than Fifteen Million Dollars (\$15,000,000);
- b) 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;
- c) A thirty (30) day written notice of cancellation, termination or material change.

8.2 Each party shall provide the other party proof of insurance, each year throughout the Term, in the form of a certificate of insurance.

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 Road.

9.0 Force Majeure

9.1 Neither Grey County nor the Township 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 Township's reasonable control.

9.2 Grey County and the Township agree that in the event of a disaster or Force Majeure the parties will co-operate and the County will make all reasonable efforts to provide temporary replacement service until permanent service is completely restored.

10.0 Governing Law

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 Enforcement of Individual Municipal By-Laws

Dealing with the Road

Except for the provisions of this Agreement respecting maintenance of the Roads, it is specifically acknowledged in accordance with Section 28 of the Act, that the by-laws passed by each of Grey County and the Township relating to their respective portions of the Road, such as, but not limited to, entrances,

setbacks and parking shall remain in force and effect unless a bylaw passed by the Councils of both Grey County and the Township shall designate otherwise.

12.0 Severability

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.

13.0 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the year round maintenance and capital improvement projects for the Road 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 year round maintenance and capital improvement projects for the Road except as provided in this Agreement and the attached Schedule(s).

14.0 Waiver and Amendment

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.

15.0 Successors and Assigns

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.

16.0 Notice

- 16.1 Any notice required to be given, served or delivered must be in writing and sent to the other party at the address indicated below, or to such other address as may be designated by notice provided by either party to the other.

For Grey County:

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

For the Township:

Township Clerk
Wellington North Township
PO Box 125
Kenilworth, ON
N0G 2E0

16.2 Any notice required to be given by either party shall, in the absence of proof to the contrary, be deemed to have been received by the addressee if:

- a) Delivered personally on a business day, then on the day of delivery;
- b) Sent by prepaid registered post, then on the second day following the registration thereof;
- c) Sent by ordinary mail, then on the third business day following the date on which it was mailed; or
- d) Sent by facsimile or email, upon confirmation of successful transmission of the notice.

17.0 Dispute Resolution

A dispute between the parties relating to the interpretation or implementation of this Agreement will be addressed through good faith negotiation, with or without the assistance of a mediator. The parties agree that in the event that they are not able to reach a resolution of all the matters in dispute after mediation, then the matters remaining in dispute will be finally determined by arbitration in accordance with the provisions of the Ontario *Arbitrations Act, 1991*.

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

THE CORPORATION OF THE TOWNSHIP OF WELLINGTON NORTH:

ANDY LENNOX, MAYOR

KARREN WALLACE, TOWNSHIP CLERK

We have the authority to bind the Corporation.

THE CORPORATION OF THE COUNTY OF GREY:

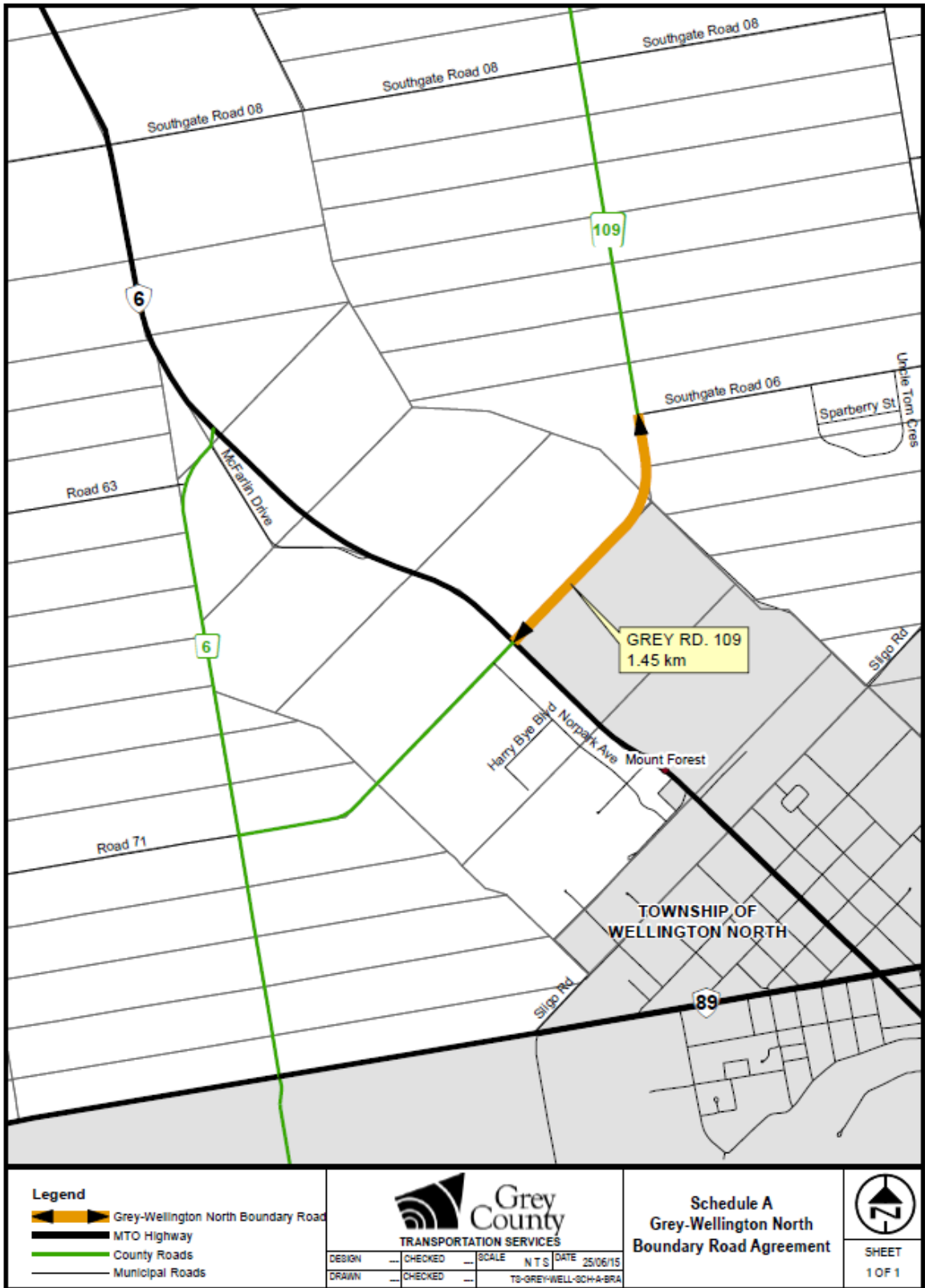
KEVIN ECCLES, WARDEN

SHARON VOKES, CLERK

We have the authority to bind the Corporation.

Schedule "A"

Geographical Location Map



Schedule "B"

Level of Service

WINTER MINIMUM MAINTENANCE STANDARDS

The County of Grey will strive to meet the Minimum Maintenance Standards as identified in Ontario Regulation 239/02 (The "Regulation") and the Common Law test of reasonableness.

WINTER MAINTENANCE- Spreading and Plowing Times

Objective:

(For Road Classification Description see Table "A")

CLASS 2 The objective will be to make best efforts to achieve bare pavement.

Spreading Materials - Class 2 roads will have materials spread within 4 hours after becoming aware that such treatment is required. (See Table "B")

Snow Plowing - Class 2 roads will have both sides of the road plowed one time within 6 hours after it has been determined that there is 5 cm of snow accumulated on the road surface. (See Table "B")

CLASS 3 The objective will be to make best efforts to achieve center bare or track bare pavement.

Spreading Materials -- Class 3 roads will have materials spread within 8 hours after becoming aware that such treatment is required. (See Table "B")

Snow Plowing - Class 3 roads will have both sides of the road plowed one time within 12 hours after it has been determined that there is 8 cm of snow accumulated on the road surface. (See Table "B")

CLASS 4 The objective will be to make best efforts achieve center bare or track bare pavement.

Spreading Materials - Class 4 roads will have materials spread within 12 hours after becoming aware that such treatment is required. (See Table "B")

Snow Plowing - Class 4 roads will have both sides of the road plowed one time within 16 hours after it has been determined that there is 8cm of snow accumulated on the road surface. (See Table "B")

This Level of Service Policy :

- 1)
 - a. Only applies to one through lane in each direction and does not apply to auxiliary lanes such as parking, passing or turning lanes, and
 - b. Only applies to a municipality during the season when the municipality performs winter highway maintenance
- 2) In this section, "snow accumulation" means the natural accumulation of any of the following that, alone or together, covers more than half a lane width of a roadway:

- a. New fallen snow.
- b. Wind-blown snow
- c. Slush.

The following table is a guideline for Grey County Winter operations. Once it has been determined by Transportation Services staff that conditions warrant spreading materials and /or snow clearing efforts, the following timelines will be followed.

Table “A”

| CLASSIFICATION OF HIGHWAYS | | | | | | | |
|---|---|----|----|----|----|----|----|
| Average Annual Daily Traffic (number of motor vehicles) | Posted or Statutory Speed Limit (kilometres per hour) | | | | | | |
| | | 90 | 80 | 70 | 60 | 50 | 40 |
| 15,000 or more | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 12,000 - 14,999 | 1 | 1 | 1 | 2 | 2 | 3 | 3 |
| 10,000 - 11,999 | 1 | 1 | 2 | 2 | 3 | 3 | 3 |
| 8,000 - 9,999 | 1 | 1 | 2 | 3 | 3 | 3 | 3 |
| 6,000 - 7,999 | 1 | 2 | 2 | 3 | 3 | 3 | 3 |
| 5,000 - 5,999 | 1 | 2 | 2 | 3 | 3 | 3 | 3 |
| 4,000 - 4,999 | 1 | 2 | 3 | 3 | 3 | 3 | 4 |
| 3,000 - 3,999 | 1 | 2 | 3 | 3 | 3 | 4 | 4 |
| 2,000 - 2,999 | 1 | 2 | 3 | 3 | 4 | 4 | 4 |
| 1,000 - 1,999 | 1 | 3 | 3 | 3 | 4 | 4 | 5 |
| 500 - 999 | 1 | 3 | 4 | 4 | 4 | 4 | 5 |
| 200 - 499 | 1 | 3 | 4 | 4 | 5 | 5 | 5 |
| 50 - 199 | 1 | 3 | 4 | 5 | 5 | 5 | 5 |
| 0 - 49 | 1 | 3 | 6 | 6 | 6 | 6 | 6 |

Table “B”

| Class of Highway | Spreading Time | Plowing Depth | Plowing Time |
|------------------|-----------------|---------------|-----------------|
| 2 | 4 hours | 5cm | 6 hours |
| 3 | 8 hours | 8cm | 12 hours |
| 4 | 12 hours | 8cm | 16 hours |

The objective of the Grey County Transportation Services Department will be to provide winter maintenance given the resources available for winter control purposes and given the weather conditions. It is also recognized that conditions do occur that will preclude the defined Winter Level of Service from being achieved.

Grey County will make best efforts to monitor road conditions and weather information.

