

To: Community Services Committee

From: Ron Diskey, Commissioner,
Community Services Department

Report Number: CS-20-30

Date of Report: June 10, 2020

Date of Meeting: June 15, 2020

Subject: Wilson Road North, South of Coates Road East: Winter
Maintenance Agreement

File: E-2150

1.0 Purpose

The purpose of the report is to recommend to City Council approval to proceed with the execution of the Wilson Road North, South of Coates Road East: Winter Maintenance Agreement between the City of Oshawa and The Township of Scugog.

2.0 Recommendation

That the Community Services Committee recommend to City Council:

1. That based on Report CS-20-30, dated June 10, 2020 regarding Wilson Road North, South of Coates Road East: Winter Maintenance Agreement, the City of Oshawa enter into a formal maintenance agreement with The Township of Scugog; and,
2. That the Chief Administrative Officer (C.A.O.) and Clerk be authorized to execute a winter maintenance agreement with The Township of Scugog, generally in the form outlined in Attachment 1 and that the final form be satisfactory to the C.A.O. City Solicitor.

3.0 Executive Summary

Not applicable

4.0 Input From Other Sources

- Legal Services
- Township of Scugog

5.0 Analysis

- City of Oshawa and Township of Scugog, pursuant to the Municipal Act, have recently agreed to execute a Boundary Road Agreement to understand and define the maintenance responsibilities and jurisdiction of Coates Road East and West.
- The Agreement defines that the Township of Scugog shall maintain Coates Road East as part of the Boundary Road Agreement.
- The Township of Scugog has been performing winter maintenance on Wilson Road North, from Coates Road East to 312 metres south, for many years due to its proximity to Coates Road thus gaining operational efficiencies.
- This long-standing practice was never formalized between the two Municipalities.
- During the review of the Boundary Road Agreement between the two municipalities, it was decided that the winter maintenance on Wilson Road North should be formalized.
- The new agreement will define responsibilities, term of the agreement, list maintenance activities to be performed and to formalize a Winter Maintenance Agreement between the two Municipalities.

6.0 Financial Implications

There are no financial implications to the City of Oshawa associated with this report as the Township of Scugog has agreed to cover the costs associated with the winter maintenance within their operating budget.

7.0 Relationship to the Oshawa Strategic Plan

The recommendations in this report support the Oshawa Strategic Plan goal of Accountable Leadership to ensure respect, responsiveness and transparency by providing the details of the agreement for service between the City of Oshawa and The Township of Scugog.



Mike Saulnier, Director,
Operations Services



Ron Diskey, Commissioner,
Community Services Department

WINTER ROAD MAINTENANCE SERVICE AGREEMENT

BETWEEN:

THE CORPORATION OF THE CITY OF OSHAWA

("Oshawa")

-and-

THE CORPORATION OF THE TOWNSHIP OF SCUGOG

("Scugog")

RECITALS:

1. Pursuant to section 11 of the Municipal Act, 2001, Scugog and Oshawa may pass by-laws respecting matters within the "highways" sphere of jurisdiction.
2. By this Agreement Oshawa and Scugog wish to make provision for all matters relating to winter road maintenance on a portion of Wilson Road North, South of Coates Road East.
3. Scugog has agreed to provide winter road maintenance services on Wilson Road North.

NOW THEREFORE in consideration of the mutual terms, conditions and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which by each of the Municipalities is hereby acknowledged, THE MUNICIPALITIES HERETO AGREE AS FOLLOWS:

1.0 INTERPRETATION

- 1.1 In this Agreement where words appear with their first letter capitalized, the words are intended to have the meanings set out for them in the lettered paragraphs of this Section. Otherwise, all words used in this Agreement are intended to have the meanings ordinarily ascribed to them in the English language.
 - (a) "Agreement" means this agreement for Winter Road Maintenance Service Agreement. All recitals and schedules to this Agreement are integral parts to it and are relied upon by the parties.
 - (b) "Claims" include any and all claims, actions, causes of action, complaints, demands, suits 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.
 - (c) "MMS" means the Minimum Maintenance Standards as prescribed in Ontario Regulation 239/02, under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

- (d) "Municipality" means Oshawa or Scugog.
- (e) "Municipalities" means both Oshawa and Scugog.
- (f) "Oshawa" means The Corporation of The City of Oshawa and where the context requires, includes all employees, officers, servants and agents of the City.
- (g) "Winter Road Maintenance" means activities relating to winter maintenance activities in accordance with the MMS, by-law and policies as applicable by Scugog for snow plowing, salting or sanding and winter patrol.
- (h) "Scugog" means The Corporation of the Township of Scugog and where the context requires, includes all employees, officers, servants and agents of the Township.
- (i) "Term" means the term of this Agreement as specified in Section 2.1 of this Agreement.
- (j) "Wilson Road North" means the Wilson Road North road segment from Coates Road East to 312m south, Oshawa, Ontario.

1.2 This Agreement shall be read with all changes in gender or number as the context may require.

1.3 Article, section, clause and/or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in the text of this Agreement.

1.4 References to federal or provincial statutes or regulations or municipal by-laws are deemed to refer to the relevant legislation as amended, including successor legislation.

2.0 TERM

2.1 This Agreement shall commence on October 1, 2020 (the "Effective Date") and expire on October 1, 2030 for a ten (10) year term (the "Term"), unless terminated earlier by either party in accordance with this Agreement. The parties have the option to extend this Agreement for a further term of ten (10) years, upon mutual written consent of at least ninety (90) days prior to the expiry of the term (the "Extension Term"). The Extension Term shall be on the same terms and conditions contained herein save and except that there shall be no further right of extension.

This Agreement may be terminated (i) by mutual written consent of both Municipalities; or (ii) upon thirty (30) days prior written notice by either Municipality.

3.0 DESCRIPTION OF WORK AREA

3.1 The area of the work to be performed under this Agreement is Wilson Road North, in accordance with Schedule "A", attached to and forming part of this agreement.

4.0 SPECIFICATIONS

- 4.1 The Winter Road Maintenance to be provided by Scugog under this Agreement are as set out as follows:
- (a) snow plowing
 - (b) salting or sanding
 - (c) winter patrol
- 4.2 The Winter Road Maintenance must meet at minimum the standards as set out in the MMS, as amended from time to time.

5.0 GENERAL

- 5.1 Scugog covenants and agrees that it shall indemnify and save harmless Oshawa from and against any Claims arising from or in any way related to any alleged failure by Scugog to perform any Winter Road Maintenance.
- 5.2 Notice or communication to be given pursuant to this Agreement shall be in writing, and delivered personally, by prepaid courier or by facsimile, to the following address, or to such other address as may be designated by such party by notice given to the other party in accordance with this section:

In the case of the City, to:

The Corporation of the City of Oshawa
Attention: Phil Lyon, Manager Road Operations
50 Centre Street South
Oshawa ON L1H 3Z7

In the case of Scugog, to:

The Corporation of the Township of Scugog
Attention: Carol Coleman, Director Public Works, Parks and Recreation
181 Perry St., Box 780
Port Perry, ON, L1N 0K1

Receipt of notice shall be deemed on the earlier of the date of delivery or five (5) days following the date of mailing of the notice or, if notice is given by way of personal delivery, email or facsimile, it shall be effective on the date on which the notice is sent. Either Municipality may change its address or number for notice by giving notice of change of address or number pursuant to this section.

- 5.3 Notwithstanding anything in this Agreement, neither Municipality 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 Municipality (unless such lack of control results from a deficiency in financial resources). Otherwise, time shall be of the essence of this Agreement and all the obligations contained herein.

- 5.4 The rights and liabilities of the Municipalities shall ensure to the benefit of and be binding upon the Municipalities and their respective successors and approved assigns.
- 5.5 Subject to section 5.6 of this Agreement, this Agreement contains the entire agreement between the Municipalities. There is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this Agreement. This Agreement fully replaces and supersedes any agreement or other contractual arrangement between the Municipalities related to the subject matter of this Agreement.
- 5.6 Nothing in this Agreement relieves either Municipality from any outstanding financial obligation to the other in respect of any prior agreement or other contractual arrangement between the Municipalities related to the subject matter of this Agreement.
- 5.7 If any article, section, subsection, paragraph, clause or sub clause or any of the words contained in this Agreement shall be held wholly or partially illegal, invalid or unenforceable by any court of competent jurisdiction, the Municipalities agree that the remainder of this Agreement shall not be affected by the judicial holding, but shall remain in full force and effect. The provisions of this Agreement shall have effect, notwithstanding any statute to the contrary.
- 5.8 No supplement, amendment or waiver of or under this Agreement shall be binding unless executed in writing by the Municipality to be bound thereby. No waiver by a Municipality of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision or a continuing waiver unless otherwise expressly provided.

