

Clause embodied in Report No. 7 of the Works Committee, as adopted by the Council of the City of Toronto at its meeting held on September 22, 23, 24 and 25, 2003.

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Pickering Townline Agreement Renewal

(City Council on September 22, 23, 24 and 25, 2003, amended this Clause by adding thereto the following:

“It is further recommended that the Chief Administrative Officer be requested to submit a report to the Policy and Finance Committee on all cross-jurisdictional agreements, with a view to updating or renegotiating these agreements in the interest of the City of Toronto.”)

The Works Committee recommends the adoption of the following report (August 20, 2003) from the Commissioner of Works and Emergency Services:

Purpose:

To seek authorization for the execution of an agreement between the City of Pickering and the City of Toronto respecting cost sharing and maintenance of Pickering Townline, a boundary road.

Financial Implications and Impact Statement:

There are no additional funding implications resulting from the adoption of this report, beyond what the City would have to pay in the absence of an agreement.

Recommendations:

It is recommended that:

- (1) authorization be granted to execute an agreement between the City of Toronto and the City of Pickering, generally in accordance with the terms and conditions contained in the draft agreement appended to this report; and
- (2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In 1989, the former Corporation of the City of Scarborough entered into a ten-year agreement with the former Corporation of the Town of Pickering regarding cost sharing and the protocols of co-operation between the two municipalities respecting the ongoing maintenance and repair of

the road known as Pickering Townline. This road extends from Old Finch Avenue to Steeles Avenue East and functions as a collector street, and forms the boundary between the City of Toronto and the City of Pickering. Under that agreement, the City of Pickering carried out the necessary work and kept Toronto informed and billed the City for its share of the work.

The agreement terminated in 1999, although the practice under that arrangement has continued.

Recent billings by the City of Pickering to the City of Toronto have been in the amount of \$2,175.00, \$932.60 and \$2,197.95 for the years 2001, 2002 and 2003 respectively. The amounts have been for maintenance and winter control activities along Pickering Townline. Future billing costs, for the duration of the Agreement, will be generally in the range of \$1000-\$3000 annually. Funds to cover the City's share of the cost have been accommodated within the Transportation Services annual operating budget. With respect to Capital, there are currently no plans for any major capital expenditures, in the foreseeable future, along Pickering Townline by either City.

The City of Pickering has requested that the City of Toronto renew the agreement. Staff of both municipalities have reviewed and updated the terms and conditions in the agreement.

The highlights include:

- City of Pickering will carry out the maintenance and capital improvement work, with actual costs shared equally between the City of Toronto and the City of Pickering;
- capital work will be communicated to the City of Toronto 12 months prior to start. This will allow Transportation Services to study any proposals and properly budget for the work;
- timetables for capital work will be established by mutual agreement;
- City of Toronto is completely indemnified from any claims resulting from road condition on Pickering Townline; City of Pickering will be solely responsible; and
- the term of the new agreement is January 1, 2003 to January 1, 2013.

A draft agreement prepared in consultation with the City Solicitor is attached.

Conclusion:

The agreement does not impose any unusual cost or additional work than in the past. Funds to cover the City's share of the cost have been accommodated within the Transportation Services annual operating budget. It is recommended that the longstanding agreement respecting the maintenance and repair of the Pickering Townline be renewed.

Contact:

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Attachment:

Agreement between City of Toronto and the City of Pickering

THIS AGREEMENT made January 1, 2003

B E T W E E N :

THE CORPORATION OF THE CITY OF PICKERING
herein called "Pickering"

OF THE FIRST PART,

- and -

THE CITY OF TORONTO
herein called "Toronto"

OF THE SECOND PART.

WHEREAS section 20 of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that municipalities may enter into agreements for undertaking, at their joint expense and for their joint benefit, any matter which they have jurisdiction to provide within their own boundaries; and

WHEREAS, that highway known as the Scarborough-Pickering Townline Road forms part of the boundary between Pickering and Toronto;

WHEREAS, Pickering and Toronto are adjoining municipalities and certain portions of highways form part of the boundary between Pickering and Toronto;

WHEREAS, by this Agreement, Pickering and Toronto wish to make provisions for all matters relating to the maintenance, repair and construction of certain parts of the roads forming the boundary between Pickering and Toronto;

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. DEFINITIONS

- 1.01 “Agreement” means this agreement, including its recitals and Schedule A, which form an integral part of it as amended from time to time. This Agreement shall be binding upon and ensure to the benefit of each of the municipalities and their respective successors and assigns.
- 1.02 “Pickering” means The Corporation of the City of Pickering.
- 1.03 “Pickering Roads” mean that part of the road allowance on Scarborough-Pickering Townline Road between the City of Pickering and the City of Toronto adjacent to Lot 35, Concession 2, Pickering, and the south 840 metres of Lot 35, Concession 3, Pickering, including the maintenance and repair of the St. Lawrence & Hudson Railway crossing, except the rails, tees, rail-bed and any other appurtenances owned by the St. Lawrence & Hudson Railway, and includes the maintenance and repair of the signal lights and bells at the crossing.
- 1.04 In this Agreement, “Municipality” means either Pickering or Toronto, as the case may be.
- 1.05 “Maintain and Repair” means activities relating to the normal maintenance and repair of municipal highways (excluding traffic signals, signs and lighting fixtures) in accordance with, and to the standard from time to time prescribed by by-law or statutes, and that service required to provide safe vehicular and pedestrian passage including the provision of normal seasonal maintenance and winter control.
- 1.06 “Construction” includes activities beyond normal maintenance and repair as described in section 1.05 including but not limited to road reconstruction, major infrastructure repairs or replacement, asphalt patching or regravelling in excess of normal maintenance and repair.
- 1.07 “Maintenance Period” means the six (6) months immediately following the completion by either Municipality, of any works done in accordance with section 1.06, wherein any restoration, replacement or repair of works or services must be done to rectify any deficiency.
- 1.08 This Agreement shall be interpreted according to the laws of the Province of Ontario.

2. TERM AND NOTICE

- 2.01 The term of the Agreement shall begin on January 1, 2003 and expire on January 1, 2013, unless this Agreement is earlier terminated pursuant to this section.
- 2.02 Either Municipality may terminate this Agreement, upon giving written notice of at least twelve (12) months to the Clerk of the other Municipality.
- 2.03 Receipt of notice shall be deemed to be the earlier of the date of delivery or five (5) days following the date of mailing. Either Municipality may change its designated person or address for notice by giving notice of such change to the other.

3. MAINTENANCE AND REPAIR

- 3.01 Pickering covenants and agrees that it shall,
- (1) maintain and repair the roads lying in Toronto and described in section 1.03 herein, excepting traffic signals, signs and lighting fixtures; and
 - (2) indemnify and save harmless Toronto from and against any claims arising from, or in any way related to, any alleged failure by Pickering to maintain the condition of and repair Toronto Roads.
- 3.02 (1) If Pickering determines it is necessary to perform any of the works set out in section 1.06 herein either on, in or over the portion of roads for which it has the obligated to maintain and repair, then Pickering shall,
- (i) twelve months prior to the commencement of such works, advise Toronto of the nature, extent and projected costs of the works to be done;
 - (ii) arrange a mutually agreeable timetable for the performance of the works;
 - (iii) upon completion of the works, restore or replace the road back to the same condition it was prior to the commencement of works; and
 - (iv) advise Toronto, in writing, the date in which the works were completed and the Maintenance Period commenced.

- (2) Despite subsection (1)(i) and (ii) above, Pickering may initiate, without giving prior notice to Toronto, in the event of an emergency, any of the works defined in section 1.06 herein, but must notify Toronto within 24 hours of the works commencing.

4. COST-SHARING PROVISIONS

4.01 Each Municipality acknowledges and agrees:

- (1) that Pickering will be solely responsible for the cost to perform any of the works set out in sections 1.05 or 1.06 herein on the portions of roads for which the Municipality has the obligation to maintain and repair pursuant to this Agreement;
- (2) Toronto agrees to pay one-half of the costs incurred for any of the works set out in sections 1.05 and 1.06 to Pickering in accordance with subsection 4.02 and 4.03; and
- (3) Toronto agrees to pay one-half of the costs incurred for the restoration, replacement or repair of any works performed during the Maintenance Period as defined in section 1.07 in accordance with section 4.03.

4.02 On January 15th and July 15th in each year of the term hereof, Pickering shall invoice Toronto for one-half of its costs in the preceding period of up to six months of the maintenance and repair as set out in section 1.05.

4.03 Toronto agrees to pay upon completion, the full amount invoiced for the performance of any works done pursuant to section 1.06 or 1.07 within 30 days of receipt thereof. In the event that payment has not been received by the Pickering within 30 days, Toronto agrees to pay a penalty equal to 1½ percent per month, calculated from the date of the invoice to the date of the payment.

5. GENERAL PROVISIONS

5.01 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, governments regulations or control, 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.

5.02 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.

- 5.03 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 out herein. This Agreement fully replaces and supersedes any agreement or other contractual arrangement between the Municipalities related to the subject matter save and except any outstanding contractual agreement or arrangement relating to any outstanding financial obligations between the Municipalities related to this.
- 5.04 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 or 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.

IN WITNESS WHEREOF Pickering and Toronto have hereunto affixed their respective corporate seals attested to by the hands of their proper authorized officers.

SIGNED, SEALED & DELIVERED

THE CORPORATION OF THE CITY OF PICKERING

Wayne Arthurs, Mayor

Bruce Taylor, Clerk

THE CITY OF TORONTO

