



STAFF REPORT ACTION REQUIRED

Pickering Town Line Agreement Renewal

Date:	February 15, 2013
To:	Public Works and Infrastructure Committee
From:	General Manager, Transportation Services
Wards:	Ward 42 (Scarborough-Rouge River)
Reference Number:	P:\2013\ClusterB\TRA\TIM\pw13003tim

SUMMARY

This report requests authority to renew an agreement with The Corporation of the City of Pickering for the ongoing maintenance, repair and construction of the Pickering Town Line road, a 2.75 km north-south collector road extending between Finch Avenue East and Steeles Avenue East. The agreement identifies cost-sharing and the protocols of co-operation between The Corporation of the City of Pickering and the City of Toronto for the road, which are further detailed in the draft agreement appended to this report.

This new agreement would replace the old agreement, between both parties, that recently expired on January 1, 2013. The work-related terms will continue as they were, with the City of Pickering continuing to undertake all works on behalf of both parties. There is only one change in the agreement which is related to the timing of the invoicing sent to the City of Toronto for its share of the work completed by Pickering. This change is meant to better align the expenses with winter and summer maintenance activities. The annual cost for the ongoing maintenance of Pickering Town Line will be in the range of \$3000 to \$5000, which will be shared equally by both municipalities.

RECOMMENDATION

The General Manager, Transportation Services recommends that:

1. City Council grant approval to negotiate, enter into and execute a new agreement with The Corporation of the City of Pickering for the ongoing maintenance, repair and construction, and the cost-sharing of such maintenance, repair and construction, of the Pickering Town Line road on terms and conditions generally as set out in this report and

on such other terms and conditions satisfactory to the General Manager of Transportation Services and in a form satisfactory to the City Solicitor.

Financial Impact

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. It is anticipated that the average annual cost for maintaining the Pickering Town Line road, for the duration of the new agreement, to be in the range of \$3000 to \$5000, which will be shared equally by Toronto and Pickering. The funds to cover the City's share of the cost have been accommodated within the Transportation Services' annual Approved Operating Budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of September 22, 23, 24 and 25, 2003, City Council adopted, as amended, Clause 19 of Report No. 7 of the Works Committee, titled "Pickering Town Line Agreement Renewal," authorizing the execution of a new agreement between Toronto and Pickering. That agreement became effective January 1, 2003 and has expired on January 1, 2013, although the practices under that arrangement have continued.

ISSUE 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 (now City 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 Town Line. This road extends from Finch Avenue East to Steeles Avenue East (2.75 kilometres in length) and functions as a collector road, and forms the boundary between the City of Toronto ("Toronto") and The Corporation of the City of Pickering ("Pickering"). Under that agreement, Pickering carried out the necessary work and kept the former Scarborough informed and billed them for its share of the work.

That agreement terminated in 1999, although the practice under that arrangement continued. In 2003, City Council gave staff authority to enter into a new agreement with the City of Pickering. That agreement became effective January 1, 2003 and although it expired on January 1, 2013, the practices under that agreement have still continued.

Pickering and Toronto would like to update the expired agreement and extend it for another ten-year term, effective January 2, 2013 and expiring on January 1, 2023.

COMMENTS

City staff of both Toronto and Pickering have reviewed the terms and conditions in the expired agreement for the ongoing maintenance, repair and construction, and the cost-sharing of such maintenance, repair and construction, of the Pickering Town Line road. The work-related terms are still acceptable to both parties with the exception of one item which is related to the invoicing of Toronto's share of the work completed by Pickering.

In the past, invoicing was done on January 15th and July 15th of each year. The revised agreement would now see the invoicing dates changed to April 30th and November 30th of each year to better align with the winter and summer maintenance activities and expenses. As noted earlier, all other work-related terms of the new agreement are generally the same as the previous agreement with Pickering. Some of the key elements of the draft agreement are highlighted below.

Included in the Agreement:

- Pickering will carry out all maintenance and capital improvement work, with all associated costs shared equally between Toronto and Pickering on a 50/50 basis;
- Any planned capital work will be communicated to Toronto twelve (12) months prior to any work being undertaken. This will allow Toronto sufficient time to review the proposed work and budget accordingly;
- Timeframes for any capital work will be established by mutual agreement;
- The City of Pickering will also save harmless and fully indemnify the City of Toronto from any suits, claims, costs, damages, which may be brought against the City of Toronto as a result of work undertaken by the City of Pickering on the Pickering Town Line road or failure to maintain the condition of said road; and
- The new agreement will have a ten year term, effective January 2, 2013 to January 1, 2023, unless either party wishes to terminate the agreement upon giving written notice of at least twelve (12) months to the other party.

Annual Maintenance and Capital Costs

The agreement does not impose any unusual cost or additional work than in the past. It is anticipated that the average annual cost for maintaining the Pickering Town Line road, for the duration of the new agreement, to be in the range of \$3000 to \$5000, which will be shared equally by Toronto and Pickering. For the last three years, Toronto's share of the cost has been on average approximately \$1925. The funds to cover the City's share of the cost have been accommodated within the Transportation Services' annual Approved Operating Budget.

With respect to Capital costs there are currently no plans for any major capital expenditures in the foreseeable future. However, if the need arises, funding for such work will be accommodated in future Transportation Services Capital Budgets.

It is recommended that the longstanding agreement respecting the maintenance and repair of the Pickering Town Line road be renewed and that authority be granted to negotiate, enter into and execute a new agreement with The Corporation of the City of Pickering for the ongoing maintenance, repair and construction, and the cost-sharing of such maintenance, repair and construction of the Pickering Town Line road on terms and conditions generally as set out in this report and on such other terms and conditions satisfactory to the General Manager of Transportation Services and in a form satisfactory to the City Solicitor.

CONTACT

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Transportation Services Division
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SIGNATURE

Stephen M. Buckley
General Manager, Transportation Services

NC/cs

ATTACHMENT

Draft Agreement for Pickering Town Line

THIS AGREEMENT made this day of , 2013.
BETWEEN:

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

of the First Part

and

CITY OF TORONTO
herein called "Toronto"

of the Second Part

BACKGROUND:

WHEREAS pursuant to the *City of Toronto Act, 2006*, if a highway forms the boundary line between the City and another local municipality, the City and the other municipality have joint jurisdiction over the highway;

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;

WHEREAS pursuant to section 35 of the *City of Toronto Act, 2006*, the City and another municipality having joint jurisdiction over a boundary line highway may enter into an agreement under which each municipality agrees to keep any part of the highway in repair for its whole width and to indemnify the other municipality from any loss or damage arising from the lack of repair for that part;

WHEREAS pursuant to section 35 of the *City of Toronto Act, 2006*, if the City and another municipality enter into such an agreement, each municipality has jurisdiction over that part of the highway that it has agreed to keep in repair and is liable for any damages that arise from failure to keep the highway in repair and the municipality which no longer has jurisdiction is relieved from all liability in respect of the repair of that part;

WHEREAS that highway known as the Pickering Town Line 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; and

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, Pickering and Toronto hereto agree as follows:

ARTICLE I INTERPRETATION

1.1 **Definitions:** In this Agreement, except where the context or subject matter is inconsistent therewith, the following terms shall have the following meanings:

"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.

"Pickering" means The Corporation of the City of Pickering.

"Pickering Roads" mean that part of the road allowance on Pickering Town Line between The Corporation of 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, as shown on Appendix A, 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.

"Municipality" means either Pickering or Toronto, as the case may be, and **"municipalities"** means Toronto and Pickering.

"Maintenance 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.

"Construction" includes activities beyond normal Maintenance and Repair including but not limited to road reconstruction, major infrastructure repairs or replacement, asphalt patching or re-gravelling in excess of normal maintenance and repair.

"Maintenance Period" means the six (6) months immediately following the completion by either Municipality of any Construction, wherein any restoration, replacement or repair of works or services must be done to rectify any deficiency.

ARTICLE II TERMS AND CONDITIONS

2.0 **Term and Notice**

2.0.1 The term of the Agreement shall begin on January 2, 2013 and expire at the end of the day on January 1, 2023, unless this Agreement is earlier terminated pursuant to section 2.0.2.

- 2.0.2 Either Municipality may terminate this Agreement upon giving written notice of at least twelve (12) months to the Clerk of the other Municipality.
- 2.0.3 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.

2.1 **Maintenance and Repair**

- 2.1.1 Pickering covenants and agrees that it shall: (1) Maintain and Repair the Pickering Roads, 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 the Pickering Roads.
- 2.1.2 (1) If Pickering determines it is necessary to perform any Construction either on, in or over the portion of roads for which it has the obligation to maintain and repair, then
Pickering shall,
(i) twelve months prior to the commencement of such work, advise Toronto of the nature,
extent and projected costs of the work to be done;
(ii) arrange a mutually agreeable timetable for the performance of the work;
(iii) upon completion of the work, restore or replace the road back to the same condition it was prior to the commencement of work; and
(iv) advise Toronto, in writing, the date on which the work was 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 Construction, but must notify Toronto within 24 hours of the work commencing.

2.3 **Cost-Sharing Provisions:**

- 2.3.1 Each Municipality acknowledges and agrees:
- (1) that Pickering will be solely responsible for the cost to perform any of the Maintenance and Repair and Construction work 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 Maintenance and Repair and Construction to Pickering in accordance with subsection 2.3.2 and 2.3.3; and
- (3) Toronto agrees to pay one-half of the costs incurred for the restoration, replacement or repair of any work performed during the Maintenance Period in accordance with section 2.3.3.

2.3.2 On April 30th and November 30th 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.

2.3.3 Toronto agrees to pay upon completion the full amount invoiced for the performance of any Maintenance and Repair or Construction work within 30 days of receipt of the invoice therefore. All Maintenance and Repair and Maintenance Period costs are to be in accordance with Schedule A attached to this Agreement. In the event that payment has not been received by Pickering within 30 days, Toronto agrees to pay a penalty equal to 1% percent per month, calculated from the date of the invoice to the date of the payment.

ARTICLE III GENERAL PROVISIONS

3.1 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 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.

3.2 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.

3.3 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.

3.4 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.

3.5 The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The articles, section, subsection and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and should not be considered part of this Agreement.

3.6 The words expressed in the singular include the plural and vice versa and words in one gender

include all genders.

3.7 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

3.8 Unless otherwise indicated, all dollar amounts referred to in this Agreement are in Canadian funds.

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**

Per: _____
Dave Ryan, Mayor

Per: _____
Debbie Shields, City Clerk

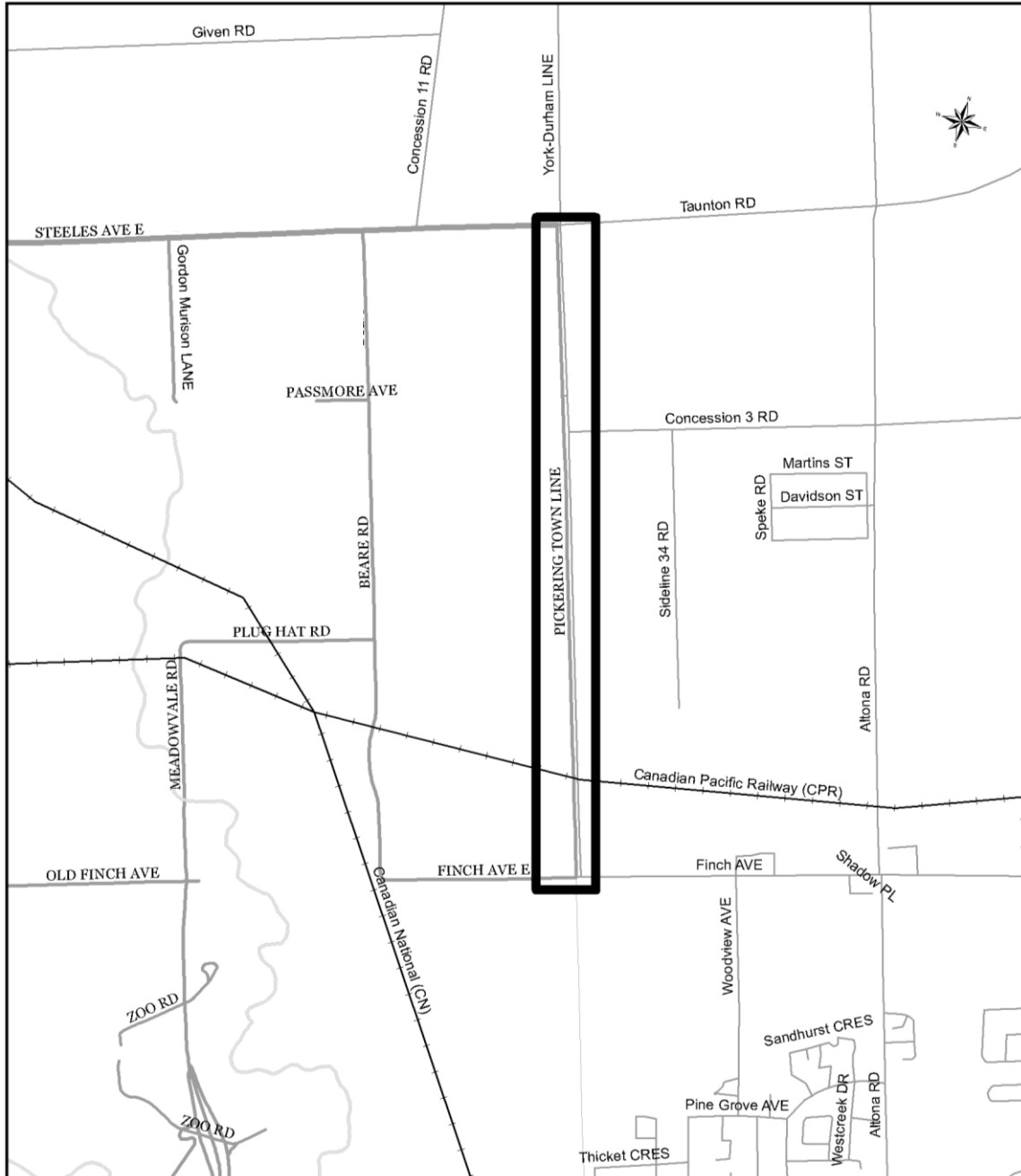
CITY OF TORONTO

Per: _____
Roberto Rossini,
Deputy City Manager and Chief Financial Officer

Per: _____
Ulli S. Watkiss, City Clerk

Appendix A

Pickering Town Line Location Map



Schedule A

Average Maintenance Unit Costs For Pickering Town Line

Activity	Measurement Unit	Unit Cost *
Winter Maintenance	Average cost in last 4 years	\$ 3,640 per year
Summer Maintenance		
<ul style="list-style-type: none"> • Illegal dumping cleanup 	At least once a week, 1-2 man crew	\$ 81.66 per visit
<ul style="list-style-type: none"> • Cold patch repairs (potholes) 	At least once a week, 1-2 man crew	\$ 234.50 per visit
<ul style="list-style-type: none"> • Replacement of damaged guard rail post 	Approx. 2 (per year), 2 man crew - 1 hour	\$ 127.82 per visit
<ul style="list-style-type: none"> • Line painting 	2 man crew, 1 hour	\$ 25.00 per metre
<ul style="list-style-type: none"> • Selective Paving 	Asphalt patching, as required	\$ 30.00 per sq. metre
<ul style="list-style-type: none"> • Ditching 	Per linear metre, as required	\$ 40.00 per metre
Capital Work	As jointly agreed	As contracted out

* Unit costs reflect the total cost to Pickering, 50% of which will be paid by Toronto
Unit costs, as per contract clause, will be jointly reviewed periodically to account for changing cost of work