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**Subject:** Winter Maintenance Extension

**Report to:** Public Works Committee

**Report date:** Tuesday, April 16, 2019

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## Recommendations

1. That the amending agreement option to extend the term of the Area Winter Maintenance Services Contract under 2008-RFP-40 for an additional one year term ending September 3, 2020, as outlined in Appendix 1 of Report PW 18-2019, **BE APPROVED**;
2. That an amending agreement with Steed and Evans Limited **BE PREPARED** by the Director of Legal and Court Services to exercise the one year option and extend the contract end date to September 3, 2020, following Council approval; and
3. That the Chief Administrative Officer **BE AUTHORIZED** to execute the amending agreement with Steed and Evans Limited.

## Key Facts

- The purpose of this report is to seek approval to exercise the option agreed to as part of the first amending agreement to extend the terms of the Area Winter Maintenance Services Contract - 2008-RFP-40 (Contract) with Steed and Evans Limited for one additional winter season (2019-2020) for reasons outlined in this report.
- The Purchasing By-law 2016-02 requires that Council approve negotiation awards/extensions greater than \$1,000,000.
- The Contract negotiated in 2008 with Steed and Evans Limited was scheduled to expire on September 6, 2018.
- Staff proceeded with an amending agreement to extend the Contract for an additional winter season (2018-2019) and include an option for a further one year extension (2019-2020).
- The negotiation award extension (2018-2019) to Steed and Evans Limited was done in accordance with Purchasing By-law 2016-02 Section 19 (a) (vi) - the extension of an existing Contract being more effective than undertaking a formal procurement process – approved by the CAO under delegated authority in the fall of 2018 pursuant to Report GM 8-2018 for a total amount of \$2,599,822 before taxes and Consumer Price Index (CPI) increase.

## Financial Considerations

The amending agreement (Appendix 1) entered into with Steed and Evans Limited extended their contract to cover one additional winter season (2018-2019) and included an option for a further one year extension (2019-2020). Staff are now recommending to exercise the second one-year option on the 2019-2020 winter season. In year 11 (2018-2019), Steed and Evans Limited's contract increased by \$40,000 to cover increases to their insurance premiums plus the annual CPI increase of 2.5% (approximately \$63,995). In year 12 (2019-2020), only an annual CPI increase would be applied.

Funding for the Contract and anticipated Contract increases is provided for in the approved 2019 Transportation Services operating budget and will be provided for in the 2020 operating budget.

Transportation Operations winter maintenance budget totalling \$7,971,739 in 2016, \$8,482,487 in 2017 and \$8,301,562 in 2018 is divided into four (4) sections. A detailed budget breakdown is outlined in Appendix 2 comparing actuals to budget for calendar years 2016 - 2018. A summary of 2018 actual costs are noted below by section:

- 1) Niagara Region utilizes regional staff and equipment to provide winter maintenance to 990 lane kilometers of roadway with an actual cost of \$3,995,834 for the 2018 calendar year. It is important to note that this cost represents all vehicles and equipment, over a five-month period, within the Transportation Operations section. A more precise figure will be made available in the coming months once staff are further able to isolate work-specific tasks for each vehicle/equipment.
- 2) Area Winter Services Maintenance Contract utilizes Steed and Evans Limited staff and equipment to provide winter maintenance to 674 lane kilometers of roadway with an actual cost of \$2,821,368 for the 2018 calendar year.
- 3) City of St Catharines utilizes city staff and equipment to provide winter maintenance to 126 lane kilometers of roadway at a cost of \$348,617 for the 2018 calendar year.
- 4) Supporting winter services activities are delivered across the entire regional road network of 1790 lane kilometers with a budget of \$852,498 for the 2018 calendar year. Services such as snow fence erection and removal, winter sand cleanup and winter drainage are delivered through a combination of Niagara Region staff and outside contractors.

Niagara Region's actual costs in 2016 and 2017 are significantly lower than budgeted cost due to the milder winter conditions resulting in lower overtime costs and lower fuel usage. The 2018 calendar year costs are higher due to the increase in winter events

from January to April. The City of St. Catharines' actual costs are relatively constant from 2016 - 2018. The Contract, with Steeds and Evans Limited, (a fixed price plus contract) actual costs are relatively flat to budget costs with the slight variance attributed to adjustments for fuel and salt usage.

## Analysis

Niagara Region operates within a "hybrid" business model during the winter season utilizing the Niagara Region, City of St. Catharines and an Area Maintenance Contractor (currently Steed and Evans Limited) forces.

- Niagara Region Staff maintain 19 plow routes covering 990 lane kilometers of roadway.
- City of St. Catharines maintain 126 lane kilometers of Regional Roads through an amalgamation of Region Roads within in the City's own routing system.
- Steed and Evans Limited maintains 10 plow routes covering 674 lane kilometers.

As outlined in the Corporate Value for Money Audit of Snowplowing, Road Maintenance and Land Scaping Services eight (8) recommendations were provided concerning value-for-money, effective risk management and operational Improvement for winter control.

Several of these recommendations required staff to collect the necessary data, which will influence the terms of a new Area Winter Maintenance Services Contract.

- **R1: Document the end time of winter events so it is possible to measure the time it takes to reclaim bare pavement.**
  - Starting in 2016, Staff have collected this information and at the end of the 2018-2019 winter season will have three (3) complete winter seasons to analyse. This information measures timeframes for reclaiming bare pavement as per winter Maintenance Standards contained in Ontario Regulation 366/18. This data will be used to update our Level of Service documents to be included in the tendering of a new Area Maintenance Services contract.
- **R2: Restructuring budgeting/ accounting to separate core winter services from supporting services and allow accurate comparisons of the costs of direct delivery versus contracted delivery for winter control.**
  - The implementation of The Enhanced Financial Management Service has allowed Staff to streamline finance processes and provide comprehensive reporting capabilities. As shown in Appendix 1, Niagara Region winter control costs are in line with Steed and Evans Limited costs. At the end of the 2018-2019 winter season, Staff will have three (3) full years of data to analyse.
- **R3: Collect and use pass kilometer data to better monitor and report on winter control activities.**

- In 2016 staff began to collect this information and determined that comparing costs against actual lane kilometers was a more productive measure because it could be calculated utilizing our existing plow routes. This GIS data could be updated yearly to reflect any additions or subtractions of road segments throughout the year as indicated in Appendix 2.
- **R4: Implement winter control achievement reports for winter storm events.**
  - Niagara Region Staff have collected this information starting in the 2016–2017 winter season. In the 2017-2018 winter season Steed and Evans Limited also began collecting this data. This data measures the event responses by Niagara Region and its contracted service providers.
    - System wide winter event responses > 24 hours in duration;
    - System wide winter event responses < 24 hours in duration
    - Significant localized winter event responses > hours in duration.

This data will be used to update our Level of Service documents to be included in the tendering of a new Area Maintenance Services contract.

- **R5: Provide Annual reports to Council on the level of service achievement for the winter season.**
  - Staff have developed a process to collect the necessary data recommended over the last two winter seasons and will provide a report outlining these findings at the end of the 2018 - 2019 winter season.
- **R6: Reduce the Winter Control Budget to the level required for a typical winter instead of a severe winter.**
  - Through the annual budget approval process over the last three (3) years, staff have adjusted the budgets accordingly based on Council guidance.
- **R7: Prepare in advance for forecasted winter storm events by rescheduling staff shifts within the two-week pay period.**
  - Staff have adjusted winter shift schedules accordingly based on weather forecasts and the conditions outlined in the CUPE 1287 Collective Agreement.
- **R8: Conduct a competitive service delivery exercise at the end of the current winter contract encompassing all established routes.**
  - This analysis will be completed after the 2018 – 2019 winter season. Yard replacement/rehabilitation decisions at Niagara Region’s Smithville and Pelham patrol yards will have to be taken into consideration as part of this analysis.

Staff have been in communication with the MTO on their new Contractor Directed Maintenance Contract model that commenced in August 2018. Staff will be reviewing

the effectiveness of this new contract throughout the 2018-2019 winter season with MTO staff in order to see if the principle concepts in this contract can be applied to Niagara Region's next Area Maintenance Services contract.

The Transportation Master Plan has put more emphasis on street scaping and active transportation. In the short term, by 2021, the Region will focus on implementing policies that will transform its approach to transportation, addressing existing constraints in the road system, filling in gaps in the active transportation network, and taking the next steps to plan for the major network needs for the future. Specifically, the early actions to be undertaken in the first five (5) years of the program include incorporating the Complete Streets approach in the Region's design process. Staff are gathering information on how these changes will impact winter maintenance costs.

The major objective for winter operations are to meet or exceed the Minimum Maintenance Standards for Municipal Highways (Ontario Provincial Regulation 239/02 – Municipal Act 2001). This regulation was amended May 3, 2018 to the Minimum Maintenance Standards for Municipal Highways O. Reg. 366/18 (Appendix 3). These amendments added maintenance sections on snow accumulation on bicycle lanes. Staff will be compiling data on additional maintenance costs associated with this change that will be incorporated into a new winter maintenance services contract to ensure compliance with the Act.

### **Alternatives Reviewed**

In 2017, staff considered issuing a two year contract to cover the 2018-2019 and 2019 – 2020 winter seasons. When reviewing this option, Staff felt it was an unreasonable expectation to ask a contractor to capitalize a fleet in a competitive procurement process for this short duration (2 years). It is Staff's recommendation to go forward with a procurement in the fall of 2019 for a new 10-year winter maintenance contract once the data collection analysis identified in the Value for Money Audit, as noted above, is completed, and staff can incorporate necessary changes in the new Area Maintenance Services Contract document. The new contract will commence in October 2020.

Steed and Evans Limited has indicated they have no concerns utilizing their existing fleet throughout the proposed extension.

### **Relationship to Council Strategic Priorities**

Moving people and goods: winter maintenance activities allow for the safe movement of vehicles and pedestrians throughout the Niagara Region.

## Other Pertinent Reports

- Value for Money Audit of Snowplowing, Roads Maintenance, and Landscaping Services – Final Report 15-2387

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### Recommended by:

Catherine Habermehl  
Acting Commissioner  
Public Works Department

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### Submitted by:

Ron Tripp, P.Eng.  
Acting Chief Administrative Officer

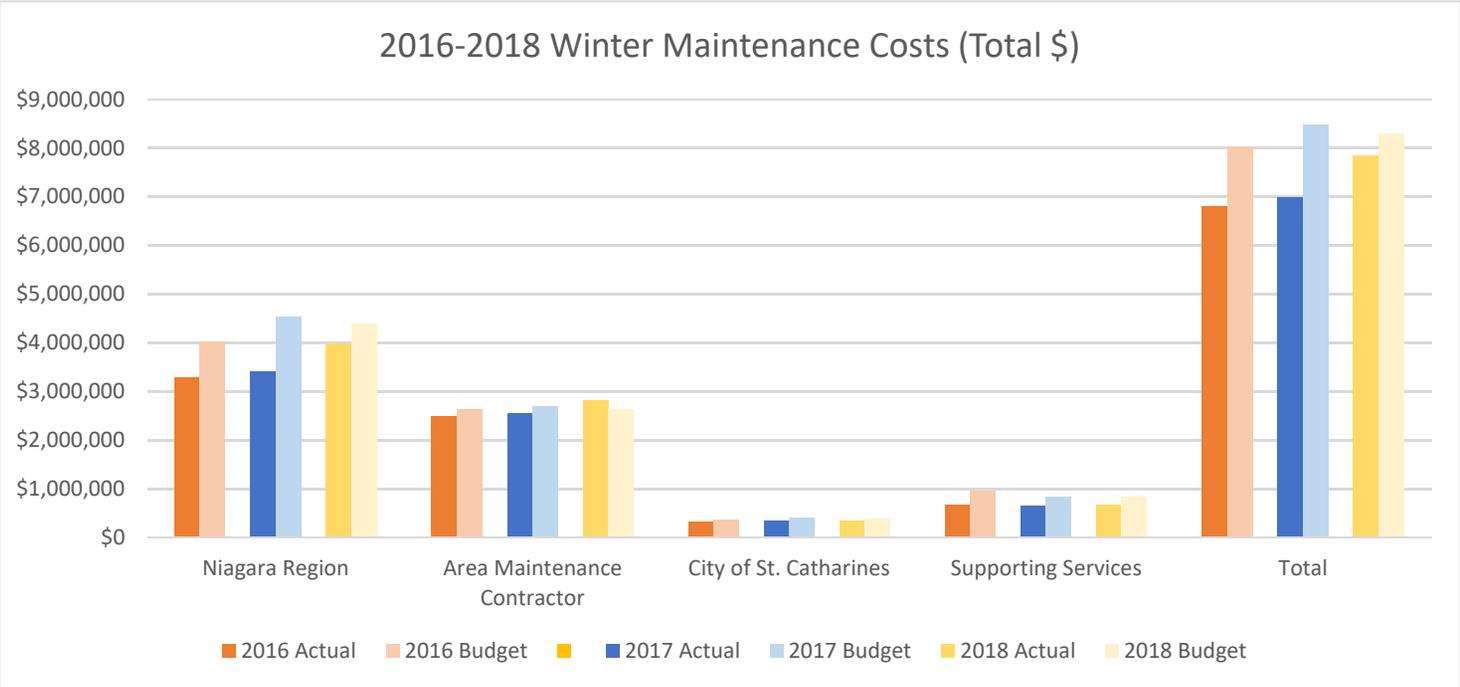
*This report was prepared in consultation with Brian McMahon Program Financial Analyst, reviewed by Carolyn Ryall, Director Transportation Services and Curt Anderson, Manager Road and Bridge Operations.*

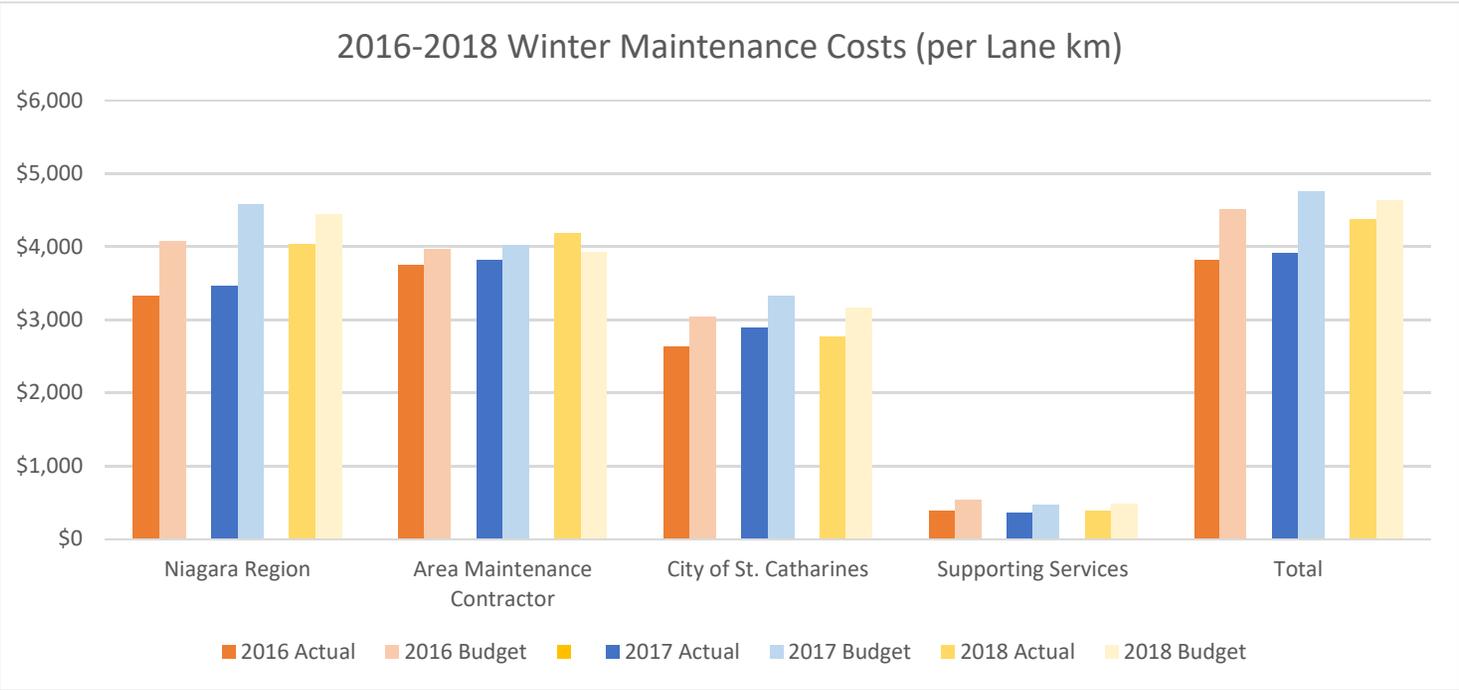
## Appendices

Appendix 1	Winter Maintenance Costs
Appendix 2	Amending Agreement 2008-RFP-40
Appendix 3	Minimum Maintenance Standards for Municipal Highways O. Reg. 366/18

2016-2018 Winter Maintenance Costs  
Budget vs Actuals

Budget vs Actual \$	Niagara Region			Area Maintenance Contractor			City of St. Catharines			Supporting Services			Total		
	989	989	990	668	670	674	125	122	126	1782	1781	1790	1782	1781	1790
Year	2016	2017	2018	2016	2017	2018	2016	2017	2018	2016	2017	2018	2016	2017	2018
<b>Total Lane Km's Maintained</b>															
<b>Winter Budget</b>	4,037,881	4,533,599	4,399,064	2,650,000	2,700,000	2,650,000	381,000	406,000	400,000	968,289	842,888	852,498	8,037,170	8,482,487	8,301,562
<b>Winter Actual</b>	3,287,709	3,425,507	3,995,834	2,504,624	2,559,293	2,821,368	329,728	353,490	348,617	687,276	648,681	686,215	6,809,336	6,986,972	7,852,034
<b>Budgeted Cost per lane Km</b>	4,083	4,584	4,443	3,967	4,030	3,932	3,048	3,328	3,175	543	473	476	4,510	4,763	4,638
<b>Actual Cost per Lane Km</b>	3,324	3,464	4,036	3,749	3,820	4,186	2,638	2,897	2,767	386	364	383	3,821	3,923	4,387





PW 18-2019 Appendix 2

**AMENDING AGREEMENT**

**THIS AGREEMENT** made as of the 4<sup>th</sup> day of September, 2018.

**BETWEEN:**

**THE REGIONAL MUNICIPALITY OF NIAGARA**

(Hereinafter called the "**Region**")

- and -

**STEED AND EVANS LIMITED**

(Hereinafter called the "**Contractor**")

**WHEREAS** by an Agreement dated the 6<sup>th</sup> day of October, 2008 (hereinafter called the "Original Agreement"), the Region and the Contractor agreed that the Contractor shall provide Area Winter Maintenance Services under 2008-RFP-40 (hereinafter called the "Project");

**AND WHEREAS** the parties hereto desire to amend the Original Agreement to extend the term of the Original Agreement;

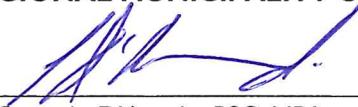
**NOW THEREFORE** this in consideration of the sum of TWO DOLLARS (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Original Agreement shall be amended as of the date set out above for one additional year ending on September 3, 2019 with the option in favour of Niagara Region and at Niagara Region's sole and absolute discretion to extend the term for one additional one year term ending on September 3, 2020.
2. Payment to the Contractor shall be in accordance with the terms and conditions outlined in the Original Agreement, save an except for a one-time increase to the annual payment of \$40,000.00 to cover increased insurance premiums. The parties agree the applicable aggregate fee, inclusive of the \$40,000.00 increase, for the period September 4, 2018 to September 3<sup>rd</sup>, 2019, is \$2,599,822.11.
3. Section 2.5 Contract Security in 2008-RFP-40 forming part of the Original Agreement shall be amended by requiring the substitution of a Performance Bond in the amount of \$2,000,000.00 in place of the Original Agreement requirement of a combination Performance Bond and Letter of Credit, which replacement Performance Bond shall will remain in effect for the duration of the contract.
4. The terms, covenants, provisos, and stipulations in the Original Agreement are hereby confirmed in full force save and except such modifications only as are necessary to make them applicable to this Amending Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

**THE REGIONAL MUNICIPALITY OF NIAGARA**

Per:



Name: Carmelo D'Angelo, BSC, MPA

Title: Chief Administrative Officer

I have the authority to bind the Corporation.

**STEED AND EVANS LIMITED**

Per:

*Bob Hunter*



Name:

*CONSTRUCTION MGR*

Title:

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Name:

Title:

We have the authority to bind the Corporation.

PW 18-2019 Appendix 3

# O. Reg. 366/18: MINIMUM MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS

filed May 3, 2018 under [Municipal Act, 2001, S.O. 2001, c. 25](#)

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ontario regulation 366/18

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Municipal Act, 2001

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Amending O. Reg. 239/02

(MINIMUM MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS)

1. (1) The definition of “surface” in subsection 1 (1) of Ontario Regulation 239/02 is amended by striking out “roadway or shoulder” and substituting “sidewalk, roadway or shoulder”.

**(2) Subsection 1 (1) of the Regulation is amended by adding the following definitions:**

“bicycle facility” means the on-road and in-boulevard cycling facilities listed in Book 18 of the Ontario Traffic Manual;

“bicycle lane” means,

(a) a portion of a roadway that has been designated by pavement markings or signage for the preferential or exclusive use of cyclists, or

(b) a portion of a roadway that has been designated for the exclusive use of cyclists by signage and a physical or marked buffer;

“encroachment” means anything that is placed, installed, constructed or planted within the highway that was not placed, installed, constructed or planted by the municipality;

“pothole” means a hole in the surface of a roadway caused by any means, including wear or subsidence of the road surface or subsurface;

“sidewalk” means the part of the highway specifically set aside or commonly understood to be for pedestrian use, typically consisting of a paved surface but does not include crosswalks, medians, boulevards, shoulders or any part of the sidewalk where cleared snow has been deposited;

“significant weather event” means an approaching or occurring weather hazard with the potential to pose a significant danger to users of the highways within a municipality;\_

“utility” includes any air, gas, water, electricity, cable, fiber-optic, telecommunication or traffic control system or subsystem, fire hydrants, sanitary sewers, storm sewers, property bars and survey monuments;

“utility appurtenance” includes maintenance holes and hole covers, water shut-off covers and boxes, valves, fittings, vaults, braces, pipes, pedestals, and any other structures or items that form part of or are an accessory part of any utility;

“weather hazard” means the weather hazards determined by Environment Canada as meeting the criteria for the issuance of an alert under its Public Weather Alerting Program.

**(3) Subsections 1 (2) and (3) of the Regulation are amended by striking out “annual” wherever it appears.**

**(4) Subsection 1 (4) of the Regulation is revoked and the following substituted:**

(4) For the purposes of this Regulation, unless otherwise indicated in a provision of this Regulation, a municipality is deemed to be aware of a fact if, in the absence of actual knowledge of the fact, circumstances are such that the municipality ought reasonably to be aware of the fact.

**(5) The Table to section 1 of the Regulation is revoked and the following substituted:**

TABLE  
CLASSIFICATION OF HIGHWAYS

Column 1 Average Daily Traffic (number of motor vehicles)	Column 2 91 - 100 km/h speed limit	Column 3 81 - 90 km/h speed limit	Column 4 71 - 80 km/h speed limit	Column 5 61 - 70 km/h speed limit	Column 6 51 - 60 km/h speed limit	Column 7 41 - 50 km/h speed limit	Column 8 1 - 40 km/h speed limit
53,000 or more	1	1	1	1	1	1	1
23,000 - 52,999	1	1	1	2	2	2	2
15,000 - 22,999	1	1	2	2	2	3	3
12,000 - 14,999	1	1	2	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	4	4
5,000 - 5,999	1	2	2	3	3	4	4
4,000 - 4,999	1	2	3	3	3	4	4
3,000 - 3,999	1	2	3	3	3	4	4
2,000 - 2,999	1	2	3	3	4	5	5
1,000 - 1,999	1	3	3	3	4	5	5
500 - 999	1	3	4	4	4	5	5
200 - 499	1	3	4	4	5	5	6
50 - 199	1	3	4	5	5	6	6
0 - 49	1	3	6	6	6	6	6

**2. The Regulation is amended by adding the following section:**

Purpose

**2.1** The purpose of this Regulation is to clarify the scope of the statutory defence available to a municipality under clause 44 (3) (c) of the Act by establishing maintenance standards which are non-prescriptive as to the methods or materials to be used in complying with the standards but instead describe a desired outcome.

**3. (1) The heading before section 3 of the Regulation is amended by striking out “MINIMUM” and substituting “MAINTENANCE”**

**(2) Subsections 3 (1) and (2) of the Regulation are amended by striking out “minimum” wherever it appears.**

**(3) Subsection 3 (4) of the Regulation is amended by striking out “section 16.1” and substituting “section 16.1, 16.2, 16.3 or 16.4”.**

**4. Subsections 3.1 (1) and (2) of the Regulation are amended by striking out “minimum” wherever it appears.**

**5. (1) Subsection 4 (1) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:**

Snow accumulation, roadways

(1) Subject to section 4.1, the standard for addressing snow accumulation on roadways is,

.....

**(2) Subsection 4 (3) of the Regulation is amended by adding “and, if applicable, lane width under clause (1) (b),” after “roadway” in the portion before paragraph 1.**

**(3) Subsection 4 (4) of the Regulation is amended by adding “and lane width” after “roadway” in the portion before clause (a).**

**(4) Subsections 4 (5) and (6) of the Regulation are revoked and the following substituted:**

(5) For the purposes of this section, addressing snow accumulation on a roadway includes,

(a) plowing the roadway;

(b) salting the roadway;

(c) applying abrasive materials to the roadway;

(d) applying other chemical or organic agents to the roadway;

(e) any combination of the methods described in clauses (a) to (d);

(6) This section does not apply to that portion of the roadway,

- (a) designated for parking;
- (b) consisting of a bicycle lane or other bicycle facility; or
- (d) used by a municipality for snow storage;

**(5) The heading of the Table to section 4 of the Regulation is revoked and the following substituted:**

**SNOW ACCUMULATION - ROADWAYS**

**7. The Regulation is amended by adding the following sections:**

Snow accumulation on roadways, significant weather event

**4.1** (1) If a municipality declares a significant weather event relating to snow accumulation, the standard for addressing snow accumulation on roadways until the declaration of the end of the significant weather event is,

- (a) to monitor the weather in accordance with section 3.1; and
  - (b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on roadways, starting from the time that the municipality deems appropriate to do so.
- (2) If the municipality complies with subsection (1), all roadways within the municipality are deemed to be in a state of repair with respect to snow accumulation until the applicable time in the Table to section 4 expires following the declaration of the end of the significant weather event by the municipality.
- (3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,
- (a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and
  - (b) address snow accumulation on roadways in accordance with section 4.

Snow accumulation, bicycle lanes

**4.2** (1) Subject to section 4.3, the standard for addressing snow accumulation on bicycle lanes is,

- (a) after becoming aware of the fact that the snow accumulation on a bicycle lane is greater than the depth set out in the Table to this section, to deploy resources as soon as practicable to address the snow accumulation; and
  - (b) after the snow accumulation has ended, to address the snow accumulation so as to reduce the snow to a depth less than or equal to the depth set out in the Table to this section to provide a minimum bicycle lane width of the lesser of 1 metre or the actual bicycle lane width.
- (2) If the depth of snow accumulation on a bicycle lane is less than or equal to the depth set out in the Table to this section, the bicycle lane is deemed to be in a state of repair in respect of snow accumulation.

(3) For the purposes of this section, the depth of snow accumulation on a bicycle lane and, if applicable, lane width under clause (1) (b), may be determined in the same manner as set out in subsection 4 (4) and by the persons mentioned in subsection 4 (3), with necessary modifications.

(4) For the purposes of this section, addressing snow accumulation on a bicycle lane includes,

- (a) plowing the bicycle lane;
- (b) salting the bicycle lane;
- (c) applying abrasive materials to the bicycle lane;
- (d) applying other chemical or organic agents to the bicycle lane;
- (e) sweeping the bicycle lane; or
- (f) any combination of the methods described in clauses (a) to (e).

#### TABLE

##### Snow Accumulation – Bicycle Lanes

Column 1	Column 2	Column 3
Class of Highway or Adjacent Highway	Depth	Time
1	2.5 cm	8 hours
2	5 cm	12 hours
3	8 cm	24 hours
4	8 cm	24 hours
5	10 cm	24 hours

Snow accumulation on bicycle lanes, significant weather event

**4.3** (1) If a municipality declares a significant weather event relating to snow accumulation, the standard for addressing snow accumulation on bicycle lanes until the declaration of the end of the significant weather event is,

- (a) to monitor the weather in accordance with section 3.1; and
- (b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on bicycle lanes, starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all bicycle lanes within the municipality are deemed to be in a state of repair with respect to snow accumulation until the applicable time in the Table to section 4.2 expires following the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) address snow accumulation on bicycle lanes in accordance with section 4.2.

**8. Section 5 of the Regulation is revoked and the following substituted:**

Ice formation on roadways and icy roadways

**5.** (1) The standard for the prevention of ice formation on roadways is doing the following in the 24-hour period preceding an alleged formation of ice on a roadway:

1. Monitor the weather in accordance with section 3.1.

2. Patrol in accordance with section 3.

3. If the municipality determines, as a result of its activities under paragraph 1 or 2, that there is a substantial probability of ice forming on a roadway, treat the roadway, if practicable, to prevent ice formation within the time set out in Table 1 to this section, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose.

(2) If the municipality meets the standard set out in subsection (1) and, despite such compliance, ice forms on a roadway, the roadway is deemed to be in a state of repair until the applicable time set out in Table 2 to this section expires after the municipality becomes aware of the fact that the roadway is icy.

(3) Subject to section 5.1, the standard for treating icy roadways is to treat the icy roadway within the time set out in Table 2 to this section, and an icy roadway is deemed to be in a state of repair until the applicable time set out in Table 2 to this section expires after the municipality becomes aware of the fact that a roadway is icy.

(4) For the purposes of this section, treating a roadway means applying material to the roadway, including but not limited to, salt, sand or any combination of salt and sand.

(5) For greater certainty, this section applies in respect of ice formation on bicycle lanes on a roadway, but does not apply to other types of bicycle facilities.

TABLE 1  
ice formation prevention

Class of Highway	Time
1	6 hours
2	8 hours
3	16 hours
4	24 hours
5	24 hours

TABLE 2  
Treatment of ICY ROADWAYS

Class of Highway	Time
1	3 hours
2	4 hours
3	8 hours
4	12 hours
5	16 hours

Icy roadways, significant weather event

**5.1 (1)** If a municipality declares a significant weather event relating to ice, the standard for treating icy roadways until the declaration of the end of the significant weather event is,

(a) to monitor the weather in accordance with section 3.1; and

(b) if deemed practicable by the municipality, to deploy resources to treat icy roadways, starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all roadways within the municipality are deemed to be in a state of repair with respect to any ice which forms or may be present until the applicable time in Table 2 to section 5 expires after the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) treat icy roadways in accordance with section 5.

**8. (1) Subsection 6 (1) of the Regulation is amended by striking out “minimum”.**

**(2) Section 6 of the Regulation is amended by adding the following subsections:**

(1.1) For the purposes of this section, the surface area and depth of a pothole may be determined in accordance with subsections (1.2) and (1.3), as applicable, by a municipal employee, agent or contractor whose duties or responsibilities include one or more of the following:

1. Patrolling highways.

2. Performing highway maintenance activities.

3. Supervising staff who perform activities described in paragraph 1 or 2.

(1.2) The depth and surface area of a pothole may be determined by,

(a) performing an actual measurement; or

(b) performing a visual estimate.

(1.3) For the purposes of this section, the surface area of a pothole does not include any area that is merely depressed and not yet broken fully through the surface of the roadway.

**9. (1) Subsections 7 (1) and (2) of the Regulation are revoked and the following substituted:**

Shoulder drop-offs

(1) If a shoulder drop-off is deeper than 8 cm, for a continuous distance of 20 metres or more, the standard is to repair the shoulder drop-off within the time set out in the Table to this section after becoming aware of the fact.

(2) A shoulder drop-off is deemed to be in a state of repair if its depth is less than 8 cm.

**(2) The Table to section 7 of the Regulation is revoked and the following substituted:**

TABLE  
SHOULDER DROP-OFFS

Class of Highway	Time
1	4 days
2	4 days
3	7 days
4	14 days
5	30 days

**10. (1) Subsections 8 (1) and (2) of the Regulation are revoked and the following substituted:**

Cracks

(1) If a crack on the paved surface of a roadway is greater than 5 cm wide and 5 cm deep for a continuous distance of three metres or more, the standard is to repair the crack within the time set out in the Table to this section after becoming aware of the fact.

(2) A crack is deemed to be in a state of repair if its width or depth is less than or equal to 5 cm.

**(2) The Table to section 8 of the Regulation is revoked and the following substituted:**

TABLE  
CRACKS

Column 1	Column 2
Class of Highway	Time
1	30 days
2	30 days
3	60 days

4	180 days
5	180 days

**11. Subsection 9 (1) of the Regulation is amended by striking out “minimum”.**

**12. Subsections 10 (0.1), (1), (2), (3), (4), (5) and (6) of the Regulation are revoked and the following substituted:**

Luminaires

(1) The standard for the frequency of inspecting all luminaires to check to see that they are functioning is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection.

(2) For conventional illumination, if three or more consecutive luminaires on the same side of a highway are not functioning, the standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact.

(3) For conventional illumination and high mast illumination, if 30 per cent or more of the luminaires on any kilometre of highway are not functioning, the standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact.

(4) Despite subsection (2), for high mast illumination, if all of the luminaires on consecutive poles on the same side of a highway are not functioning, the standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires.

(5) Despite subsections (1), (2) and (3), for conventional illumination and high mast illumination, if more than 50 per cent of the luminaires on any kilometre of a Class 1 highway with a speed limit of 90 kilometres per hour or more are not functioning, the standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires.

(6) Luminaires are deemed to be in a state of repair,

(a) for the purpose of subsection (2), if the number of non-functioning consecutive luminaires on the same side of a highway does not exceed two;

(b) for the purpose of subsection (3), if more than 70 per cent of luminaires on any kilometre of highway are functioning;

(c) for the purpose of subsection (4), if one or more of the luminaires on consecutive poles on the same side of a highway are functioning;

(d) for the purpose of subsection (5), if more than 50 per cent of luminaires on any kilometre of highway are functioning.

**13. The Regulation is amended by striking out “minimum” wherever it appears in the following provisions:**

**1. Sections 11 to 16.**

**2. Subsection 16.1 (1).****14. Subsections 16.1 (2), (2.1), (3) and (4) of the Regulation are revoked and the following substituted:**

(2) If a surface discontinuity on or within a sidewalk exceeds two centimetres, the standard is to treat the surface discontinuity within 14 days after acquiring actual knowledge of the fact.

(3) A surface discontinuity on or within a sidewalk is deemed to be in a state of repair if it is less than or equal to two centimetres.

(4) For the purpose of subsection (2), treating a surface discontinuity on or within a sidewalk means taking reasonable measures to protect users of the sidewalk from the discontinuity, including making permanent or temporary repairs, alerting users' attention to the discontinuity or preventing access to the area of discontinuity.

(5) In this section,

“surface discontinuity” means a vertical discontinuity creating a step formation at any joint or crack in the surface of the sidewalk or any vertical height difference between a utility appurtenance found on or within the sidewalk and the surface of the sidewalk.

**15. The Regulation is amended by adding the following sections.**

## Encroachments, area adjacent to sidewalk

**16.2** (1) The standard for the frequency of inspecting an area adjacent to a sidewalk to check for encroachments is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection.

(2) The area adjacent to a sidewalk that has been inspected in accordance with subsection (1) is deemed to be in a state of repair in respect of any encroachment present.

(3) For greater certainty, the area adjacent to a sidewalk begins at the outer edges of a sidewalk and ends at the lesser of the limit of the highway, the back edge of a curb if there is a curb and a maximum of 45 cm.

(4) The area adjacent to a sidewalk is deemed to be in a state of repair in respect of any encroachment present unless the encroachment is determined by a municipality to be highly unusual given its character and location or to constitute a significant hazard to pedestrians.

(5) If a municipality determines that an encroachment is highly unusual given its character and location or constitutes a significant hazard to pedestrians, the standard is to treat the encroachment within 28 days after making such a determination, and the encroachment is deemed in a state of repair for 28 days from the time of the determination by the municipality.

(6) For the purpose of subsection (4), treating an encroachment means taking reasonable measures to protect users, including making permanent or temporary repairs, alerting users' attention to the encroachment or preventing access to the area of the encroachment.

## Snow accumulation on sidewalks

**16.3** (1) Subject to section 16.4, the standard for addressing snow accumulation on a sidewalk after the snow accumulation has ended is,

a) to reduce the snow to a depth less than or equal to 8 centimetres within 48 hours; and

b) to provide a minimum sidewalk width of 1 metre.

(2) If the depth of snow accumulation on a sidewalk is less than or equal to 8 centimetres, the sidewalk is deemed to be in a state of repair in respect of snow accumulation.

(3) If the depth of snow accumulation on a sidewalk exceeds 8 centimetres while the snow continues to accumulate, the sidewalk is deemed to be in a state of repair with respect to snow accumulation, until 48 hours after the snow accumulation ends.

(4) For the purposes of this section, the depth of snow accumulation on a sidewalk may be determined in the same manner as set out in subsection 4 (4) and by the persons mentioned in subsection 4 (3) with necessary modifications.

(5) For the purposes of this section, addressing snow accumulation on a sidewalk includes,

(a) plowing the sidewalk;

(b) salting the sidewalk;

(c) applying abrasive materials to the sidewalk;

(d) applying other chemical or organic agents to the sidewalk; or

(e) any combination of the methods described in clauses (a) to (d).

Snow accumulation on sidewalks, significant weather event

**16.4** (1) If a municipality declares a significant weather event relating to snow accumulation, the standard for addressing snow accumulation on sidewalks until the declaration of the end of the significant weather event is,

(a) to monitor the weather in accordance with section 3.1; and

(b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on sidewalks starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all sidewalks within the municipality are deemed to be in a state of repair with respect to any snow present until 48 hours following the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) address snow accumulation on sidewalks in accordance with section 16.3.

### Ice formation on sidewalks and icy sidewalks

**16.5** (1) Subject to section 16.6, the standard for the prevention of ice formation on sidewalks is to,

(a) monitor the weather in accordance with section 3.1 in the 24-hour period preceding an alleged formation of ice on a sidewalk; and

(b) treat the sidewalk if practicable to prevent ice formation or improve traction within 48 hours if the municipality determines that there is a substantial probability of ice forming on a sidewalk, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose.

(2) If ice forms on a sidewalk even though the municipality meets the standard set out in subsection (1), the sidewalk is deemed to be in a state of repair in respect of ice until 48 hours after the municipality first becomes aware of the fact that the sidewalk is icy.

(3) The standard for treating icy sidewalks after the municipality becomes aware of the fact that a sidewalk is icy is to treat the icy sidewalk within 48 hours, and an icy sidewalk is deemed to be in a state of repair for 48 hours after it has been treated.

(4) For the purposes of this section, treating a sidewalk means applying materials including salt, sand or any combination of salt and sand to the sidewalk.

### Icy sidewalks, significant weather event

**16.6** (1) If a municipality declares a significant weather event relating to ice, the standard for addressing ice formation or ice on sidewalks until the declaration of the end of the significant weather event is,

(a) to monitor the weather in accordance with section 3.1; and

(b) if deemed practicable by the municipality, to deploy resources to treat the sidewalks to prevent ice formation or improve traction, or treat the icy sidewalks, starting from the time that the municipality deems appropriate to do so.

(2) If the municipality complies with subsection (1), all sidewalks within the municipality are deemed to be in a state of repair with respect to any ice which forms or is present until 48 hours after the declaration of the end of the significant weather event by the municipality.

(3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,

(a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and

(b) address the prevention of ice formation on sidewalks or treat icy sidewalks in accordance with section 16.5.

### Winter sidewalk patrol

**16.7** (1) If it is determined by the municipality that the weather monitoring referred to in section 3.1 indicates that there is a substantial probability of snow accumulation on sidewalks in excess of 8 cm, ice

formation on sidewalks or icy sidewalks, the standard for patrolling sidewalks is to patrol sidewalks that the municipality selects as representative of its sidewalks at intervals deemed necessary by the municipality.

(2) Patrolling a sidewalk consists of visually observing the sidewalk, either by driving by the sidewalk on the adjacent roadway or by driving or walking on the sidewalk or by electronically monitoring the sidewalk, and may be performed by persons responsible for patrolling roadways or sidewalks or by persons responsible for or performing roadway or sidewalk maintenance activities.

### **Closure of a highway**

**16.8** (1) When a municipality closes a highway or part of a highway pursuant to its powers under the Act, the highway is deemed to be in a state of repair in respect of all conditions described in this Regulation from the time of the closure until the highway is re-opened by the municipality.

(2) For the purposes of subsection (1), a highway or part of a highway is closed on the earlier of,

(a) when a municipality passes a by-law to close the highway or part of the highway; and

(b) when a municipality has taken such steps as it determines necessary to temporarily close the highway or part of a highway.

### **Declaration of significant weather event**

**16.9.** A municipality declaring the beginning of a significant weather event or declaring the end of a significant weather event under this Regulation shall do so in one or more of the following ways:

1. By posting a notice on the municipality's website.
2. By making an announcement on a social media platform, such as Facebook or Twitter.
3. By sending a press release or similar communication to internet, newspaper, radio or television media.
4. By notification through the municipality's police service.
5. By any other notification method required in a by-law of the municipality.

### **Commencement**

16. This Regulation comes into force on the day it is filed.

Made by:

Kathryn McGarry

Minister of Transportation

Date made: May 2, 2018

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