THE CORPORATION OF THE UNITED TOWNSHIPS
OF DYSART, DUDLEY, HARCOURT, GUILFORD,
HARBURN, BRUTON, HAVLOCK, EYRE AND CLYDE

BY-LAW NO. 2018-73

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF A WINTER
MAINTENANCE SERVICES AGREEMENT WITH FOWLER CONSTRUCTION
COMPANY LIMITED (HIGHWAY 118 CONNECTING LINK – MAPLE AVENUE)

WHEREAS Section 8 of the Municipal Act, R.S.O. 2001, as amended, provides
that a municipality has the capacity, rights powers and privileges of a natural person for
the purpose of exercising its authority under this or any other Act;

WHEREAS the Ministry of Transportation continues to travel over the Dysart
Connecting Link Road in order to maintain Provincial Highway 118, which is under the
jurisdiction of the Ministry of Transportation;

AND WHEREAS the Ministry of Transportation has entered into an Area
Maintenance Contract with Fowler Construction Company Limited to provide routine
winter maintenance services on Provincial Highway 118.

AND WHEREAS Municipality of Dysart et al has requested that Fowler
Construction Company Limited to provide winter maintenance services on the Dysart Connecting Link Road from 100m south of
Mountain Street to 0.2 km west of Maple Avenue for a distance of 1.15 km;

AND WHEREAS the Municipality deems it expedient to enter into a Winter
Maintenance Services Agreement with Fowler Construction Company Limited
commencing October 15, 2018 and ending May 15, 2019.

NOW THEREFORE, the Council of the Corporation of the United Townships of
Dysart et al hereby enacts as follows:

1. That the Corporation of the United Townships of Dysart et al enter into a Winter
   Maintenance Services Agreement with Fowler Construction Company Limited,
   substantially in the form of Schedule “A” attached hereto and forming part of this
   by-law.

2. That the Mayor and the Clerk are hereby authorized to execute the said
   agreement.

READ a first, second and third time, passed, signed and the Corporate Seal attached
hereto this 27th day of November, 2018.

__________________________
MAYOR: Murray Fearrey

__________________________
CLERK: Cheryl Coulson
WINTER MAINTENANCE SERVICES AGREEMENT
MUNICIPALITY OF DYSART ET AL
1.3 km of HIGHWAY 118 (MAPLE AVENUE)

THIS AGREEMENT is made as of the 27th day of November, 2018.

BETWEEN:

THE MUNICIPALITY OF DYSART ET AL, a municipality incorporated under the laws of Ontario, located at 135 Maple Avenue, P.O. Box 389, Haliburton, ON K0M 1S0, (hereinafter referred to as the "Municipality")

and

FOWLER CONSTRUCTION COMPANY LIMITED, a corporation under the laws of Ontario, located at 1206 Rosewarne Drive, P.O. Box 630, Bracebridge, ON P1L 1T9 (hereinafter referred to as "Fowler")

(each, a "Party" and collectively, the "Parties")

WHEREAS:

A. Fowler has entered into Contractor Directed Maintenance Contract # 2017-05 dated September 1, 2018 (the "CDMC") with the Ontario Ministry of Transportation ("MTO") which CDMC includes providing routine winter maintenance services on Provincial Highway 118.

B. The Municipality wishes to have Fowler perform certain plowing and sanding/salting winter maintenance services on the Dysart Connecting Link to Highway 118 (Maple Avenue) in the Town of Haliburton, Ontario on the terms and conditions set forth herein.

IN CONSIDERATION for the performance of the obligations set forth herein and such other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Services. Fowler shall perform the winter plowing and sanding/salting maintenance services as set out in Schedule "A" attached hereto (the "Services"). The Municipality agrees and acknowledges that the Services performed by Fowler will be undertaken as an agent of the Municipality.

2. Term. Fowler shall perform the Services commencing October 15, 2018 and ending May 15, 2019 (the "Term"). The Term of this agreement may be extended upon the mutual agreement of the Parties.
3. **Termination.** Fowler may terminate this Agreement effective immediately at any time if the Municipality fails to observe or perform any of its covenants or obligations hereunder. Fowler may also terminate this Agreement upon sixty (60) days prior written notice. In any event, this Agreement shall terminate automatically on the termination of the CDMC.

4. **Indemnification.**

   a) The Municipality shall indemnify and hold harmless and defend Fowler and its directors, officers, agents and employees from and against all Losses suffered or incurred by Fowler arising with respect to or which relates to a Claim.

   b) The Municipality agrees and acknowledges that the indemnification in Section 3(a) shall include Losses suffered or incurred by Fowler arising in respect of Claims of negligence arising from the Services performed by Fowler for which the Municipality and/or the MTO would be liable pursuant to Section 33 of the Public Transportation and Highway Improvement Act, Ontario, as amended, if the Municipality or the MTO was performing the Services.

   c) "Claim" means all actions, causes of action, suits, proceedings, debts, dues, accounts, bonds, covenants, contracts, rights, costs, expenses, claims, liabilities, damages, grievances, executions, judgments, right and demands of any kind whatsoever, both in law and in equity, whether implied or express which has arisen as a result of, in connection with or which relates to,

      (i) any failure by the Municipality to observe and perform its obligations and covenants under this Agreement; or

      (ii) any injuries to individuals or damage to property which results from or relates to the performance of the Services by Fowler.

   d) "Loss" means any and all loss, liability, damage, cost, expense, charge, fine, penalty or assessment (including loss of profit but excluding any of the foregoing which are indirect, incidental, exemplary or consequential) resulting from, relating to, or arising out of or in connection with any Claim, including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise relating thereto and all interest, punitive damages, fines and penalties and reasonable legal fees and expenses incurred in connection therewith.

   e) The Parties agree that Fowler shall have no liability for any Losses which may be incurred or suffered by the Municipality, its agents, employees, representatives, Municipality of Dysart et al known as the "Municipality" personnel or other persons and/or entities having business with the Municipality while performing the Services, or for any damage to any vehicles or equipment or for any personal injury or death caused by Fowler in the performance of the Services.
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f) The indemnification set out in this Section 4 shall survive the expiration or termination of this Agreement.

5. **Insurance.** The Municipality shall maintain and obtain during the Term of this Agreement commercial general liability insurance (in form satisfactory to Fowler) naming Fowler and the MTO as additional insureds in respect of the Services performed by Fowler. Such insurance shall provide coverage of not less than Five Million Dollars ($5,000,000) inclusive per occurrence for bodily injury, personal injury, death and damage to property including loss of use thereof with property damage deductible of not more than Five Thousand ($5,000) and including non owned automobile coverage with blanket contractual liability endorsement. In addition, the policy of liability insurance must contain a cross-liability clause endorsement.

6. **Payment.** The Municipality shall pay Fowler the following sums for the performance of the Services: (a) $3,975 plus HST on December 15, 2018, (b) $3,975 plus HST on May 15, 2019. Fee is $7,950.00 plus HST for the season.

7. **General.**

   a) This Agreement shall be governed by the laws of Ontario and the federal laws of Canada applicable therein.

   b) No Amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

   c) This Agreement constitutes the entire agreement between the Parties. There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, expressed or implied, statutory or otherwise) except as explicitly set out in this Agreement.

   d) This Agreement shall ensure to the benefit of the parties hereto and their respective successors and permitted assigns. Fowler may assign or transfer this Agreement without the prior consent of the Municipality.

   e) This Agreement may be executed in counterparts, including by PDF or facsimile.

8. **Notices.** Any notice, demand or other communication required to be given or made hereunder shall be in writing and shall be given or made if:

   a) delivered in person during normal business hours of the recipient on a Business Day at the applicable address set forth below; or
b) sent by any electronic means of sending messages, including facsimile transmission, which produces a paper record during normal business hours on a normal Business Day charges prepaid and confirmed by prepaid first class mail. "Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the Town of Haliburton, Ontario.

Notices shall be provided as follows:

If to Fowler: Fowler Construction Company Limited
PO Box 630
1260 Rosewarne Drive, Bracebridge, ON P1L 1T9

Attention: John McBride, Director of Operations
Email: jmcbride@fowler.ca
Telephone: 705-645-2214
Fax: 705-646-5750

If to Municipality: Municipality of Dysart et al
PO Box 389
135 Maple Avenue
Haliburton, ON K0M 1S0

Attention: Rob Camelon, Director of Public Works
Email: rcamelon@dysartetal.ca
Telephone: 705-457-1740 x 633
Fax: 705-457-1964

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

THE MUNICIPALITY OF DYSART ET AL

________________________
Murray Fearrey, Mayor

________________________
Cheryl Coulson, Clerk

FOWLER CONSTRUCTION COMPANY LIMITED

________________________
John McBride, Director of Operations
A. Fowler shall provide the following services (the “Services”):

- Salting or sanding to be provided in conjunction with plowing operations, if required. Salting applications will be in accordance with Provincial Highway Standards.

- Plowing and salting/sanding will be performed as part of Fowler’s plowing and spreading routes as set out in Schedule B attached hereto, and not as an independent plowing and spreading operation. Plowing and spreading operations independent of similar operations carried out by Fowler on plow and spreading Route 24 will not be carried out as part of this Agreement.

- **Route/Location** - The Services will be performed on the Dysart Connecting Link Road from 100m south of Mountain Street to 0.2 km west of Maple Avenue for a distance of 1.3 km, which road connects to King’s Highway 118 (as set out in Schedule B attached hereto). The Services will be provided on the Dysart Connecting Link on Lane 1 (north and south bound lanes adjacent to the crown of the highway) and material placed on the crown of the ~ NO lane highway. Curb lane(s) will only be plowed if more than one trip is required to be undertaken on Fowler’s Plow/Spreader Route, and provided lanes are clear and no vehicles interfere with plowing and/or spreading operations.

Unless expressly set out in Section A above, Fowler shall not be responsible for any other services. For greater certainty, Fowler shall not be responsible for:

- clean up winter maintenance services within Highway 118 (Maple Avenue). The Municipality will be responsible for any clean up operations including snow removal;

- clearing / cleaning of drainage facilities (storm sewers, curbs, spill ways, etc.);

- snow clearing and/or haulage from/within Highway 118 (Maple Avenue):

- responses to accidents and/or clean-ups within Highway 118 (Maple Avenue);

- spring clean ups including but not limited to sweeping, catch basin cleaning; and

- high winging operations required to lower snow banks and/or intersections within Highway 118 (Maple Avenue).