

**TOWN OF ACTON
INTERDEPARTMENTAL COMMUNICATION**

Date: October 13, 2016

To: Steven L. Ledoux, Town Manager

From: Corey York, Town Engineer/Director of Public Works

Re: Private Way Plowing – 2016-17 Winter Season - Fee Recommendation

In preparation for the upcoming winter season, we reviewed the fee for the Private Way Plowing Program. We utilized the Town budget information to project the overall cost to maintain the roads during the upcoming winter months.

I've attached a copy of the typical private way plowing agreement. In the recent past, the Town has only entered into agreements with Heron View Road and Wyndcliff Drive.

We are recommending approving the same rate from last year (\$2.76 per linear foot) for the 2016-17 private way plowing program. This rate should be sufficient to cover the Town's costs for plowing/treating the private ways for the upcoming winter. One of the conditions of the agreement is that "there may be additional charges reasonably assessed by the Town if conditions warrant."

Private Way Plowing Agreement

The undersigned being all the owners and abutters served by the private way known as _____ (the "Private Way") and the Town of Acton (the "Town") enter into this agreement effective for the 2016-17 winter season.

WHEREAS, the Town's registered voters at an annual Town election held on April 7, 1986, voted to accept the provisions of M.G.L. Chapter 40, Section 6C, regarding the appropriation of money for the removal of snow and ice from private ways within its limits and open to the public use.

WHEREAS the Town plowed the Private Way under the provisions of M.G.L. Chapter 40, Section 6C, during the 2003 – 2004 winter season.

WHEREAS the Annual Town Meeting since April 2004 has not appropriated funds under M.G.L. Chapter 40, Section 6C, as had been done for several consecutive years in the past;

WHEREAS, M.G.L. Chapter 44, Section 53A, authorizes the Board of Selectmen to accept grants and gifts for particular purposes.

WHEREAS the undersigned owners and abutters of the Private Way request that the Board of Selectmen accept the funds described in this Agreement for the purpose of plowing the Private Way during the 2016-17 winter season as set forth herein.

WHEREAS, the Acton Board of Selectmen has voted to accept such contributions and to continue plowing the Private Way during the 2016-17 winter season;

NOW THEREFORE; for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The undersigned owners and abutters of the Private Way hereby agree (a) to deposit \$ _____ with the Town treasurer to be held as a separate account and expended by the Treasurer to plow, salt and sand the Private Way during the 2016-17 winter season, and (b) to allow interest on these funds to be retained by the Town.
2. The Board of Selectmen agrees to accept said funds pursuant to M.G.L. Chapter 44, Section 53A, and to use said funds and any interest thereon to plow, salt and sand the Private Way during the 2016-17 winter season.
3. The undersigned owners and abutters of the Private Way hereby agree to this fee for the 2016-17 winter season with the understanding that there may be additional charges reasonably assessed by the Town if conditions warrant. There will be no refunds. In the event funds remain in the separate account on May 22, 2017, the undersigned owners and abutters of the Private Way hereby agree that these funds shall be transferred to and become part of the Town's general revenues.

4. The undersigned owners and abutters of the Private Way further agree as follows:
 - a. They do on behalf of themselves and their respective heirs, executors, administrators, successors and assigns, release and they shall jointly and severally defend, indemnify and hold harmless the Town, its employees, agents and contractors, from any claim for damage to the Private Way, or any claim for bodily injuries, property damages, or other losses to themselves or to any third party arising out of or relating to the Town's plowing, sanding and salting work under this Agreement, including without limitation any defect in the Private Way caused by the Town, its employees or contractors;
 - b. They shall assume all responsibility for maintenance and repair of the Private Way, whether or not the damage was caused by the Town plows, and all liability for injuries and losses to third parties resulting from defects in the Private Way.
 - c. The plowing of the Private Way by the Town shall not create or impose on the Town any obligation or responsibility for plowing or maintenance of the Private Way in future years.
 - d. For the purposes of M.G.L. c. 84, section 25, the removal of snow or ice from the Private Way shall not constitute a repair of the way.
 - e. The Private Way shall not become a public way by virtue of said plowing, whether by the doctrine of prescription or otherwise. Rather, the Private Way can only become a town way by following the statutory procedure contained in M.G.L. Chapter 82, Section 21 – 24.

5. The Town agrees to plow the Private Way and apply a salt/de-icing agent mixture for ice control on said way during the 2016-17 winter season in the same general manner as on public ways of similar size and location. The Town shall determine in its sole discretion when, how and whether it is necessary and appropriate to plow, salt and sand the Private Way, and the undersigned owners and abutters of the Private Way agree that this determination involves a high degree of discretion and judgment in weighing alternatives and making choices and they do accordingly on behalf of themselves and their respective heirs, executors, administrators, successors and assigns, release and forever discharge the Town, its employees, agents and contractors, from any claim for damage or injury arising out of or relating to any action or omission with respect to plowing or failing to plow the Private Way.

Executed as a Sealed Instrument on the dates indicated below:

(Printed Names)

(Signatures) Dated: _____, 2016

(Printed Names)

(Signatures) Dated: _____, 2016

(Printed Names)

(Signatures) Dated: _____, 2016

(Printed Names)

(Signatures) Dated _____, 2016

(Printed Names)

(Signatures) Dated _____, 2016

The Town of Acton
Acting by and through its Town Manager:

Steven L. Ledoux
Dated: _____, 2016

NOTE: This agreement must be signed by all owners and residents on the Private Way with the exception of condominiums where the duly authorized Village Manager, Board of Directors, President of the Association, etc. can sign on behalf of all the unit owners provided that the condominium bylaws or vote of the unit owners has granted that individual such authority. Evidence to this effect should be included with this agreement. The private way must meet the criteria outlined below and plans and/or sketches may be included with the agreement to assist the Selectmen in determining compliance:

1. The Private Way must be at least twelve (12) feet wide.
2. The Private Way must have an adequate turnaround so that plow trucks do not have to back out. (The Highway Superintendent will determine the adequacy of the turnaround).
3. The Private Way must be paved and free of ruts and pot holes.
4. The Private Way must be open to the public with no gate or signs controlling access. (The general public must have free and unrestricted access).
5. The Private Way must serve a minimum of three (3) residences.
6. The maximum grade of the Private Way is not to exceed 10% (10 feet of rise in 100 feet of length).
7. The Private Way is not to have sharp curves or obstructions that restrict truck movements in the opinion of the Highway Superintendent.
8. The way must be plowable with standard snow removal equipment used by the Town, and sufficient space must be available along the way for snow storage.
9. Construction of the way must be completed to Town standards in effect at the time the plan of the way was approved and there can be no restrictions or conditions of record that preclude Town plowing, salting or sanding. Partially completed subdivision roads will not be considered.
10. There can be no restriction by the Conservation Commission on the use of salt as a deicing agent.
11. Evidence must be furnished that the existing storm drainage system has been properly maintained and is in good working condition. This includes cleaning sand from catchbasins, sumps and detention/retention basins and insuring pipe lines and outfalls are unobstructed. The catchbasins should have a sump that is about 2.5 feet below the bottom of the outlet pipe. The water level in the catchbasin is maintained by the outlet pipe. The sediment in the catchbasin

should not exceed a depth of twelve (12) inches as determined by probing the catchbasin with a stick. If the stick hits the sediment within eighteen (18) inches of the water level, more than twelve (12) inches of sediment has accumulated and the sump needs to be cleaned. Evidence of storm drainage maintenance may consist of, but not be limited to, items such as invoices from contractors for the work or a signed letter from the property manager certifying that the work has been completed.

- 12. The road surface must have been swept to remove the sand from the previous winter.

FEE CALCULATION

Private Way	Length	Fee/Foot	Total Fee
_____	_____ ft	<u>\$2.76 per foot</u>	_____