

## RESOLUTION 039 -2022

*Authorizing and Supporting Application for Brownfield Remediation Program Grant*

Cuyahoga County, Ohio

Trustee Joel Moved for adoption of the Following:

**Be It Resolved** by the Township Trustees of Olmsted Township

**WHEREAS**, the Olmsted Township Board of Trustees ("Board") acquired the real property and improvements identified as Cuyahoga County Parcel No. 26227004 (the "Property") from the County of Cuyahoga, Ohio, successor in interest of the Cuyahoga County Board of Commissioners; and

**WHEREAS**, the Property was conveyed to the Board "as is;" and

**WHEREAS**, the Property has been identified as eligible for participation in the Voluntary Action Program for the purpose of pursuing a remediation project to address past use of the Property, which included disposal of unwanted materials associated with road and vehicle maintenance, and convert a portion of the Property for passive recreational (park) use (the "Project") for the benefit of the Olmsted Township Community; and

**WHEREAS**, the Property and Olmsted Township Community would significantly benefit from the planned remediation and repurposing of the Property by way of the Project through a Brownfield Remediation Program Grant.

**NOW THEREFORE**, it is RESOLVED by the Board of Trustees that:

1. The Application for Brownfield Remediation Program Grant ("Application") prepared in conjunction with HZW Environmental Consultants, LLC, is hereby endorsed and approved for submission.
2. Consistent with the terms of the completed Application, this will confirm that the Board supports all terms of the Application, including but not limited to, the requested grant amount of \$1,125,000.00, with a Project match by the Board as reflected of twenty-five percent (25%) of the total Project cost, or \$375,000.00.
3. An authentic copy of the Quit Claim Deed to the Property (Instrument No. 202103230681), currently held in the name of the Board, is attached hereto, marked as Exhibit "A." Inasmuch as title to the Property is held by the Board, and the Board currently possesses and occupies the Property, no further access agreement for performance of the Project as contemplated will be required. Full access for all purposes necessary for the Project is hereby acknowledged and granted by the Board.

Trustee Alton Seconded the Motion, and thereupon, the votes in favor of this Resolution were recorded and reflected by the signatures hereto.

*[Signatures are affixed to the following page]*

**BE IT FURTHER RESOLVED:** that it is hereby found and determined that all formal actions of this Board of Township Trustees concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and any of its committees that resulted in such formal action, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted the 11<sup>th</sup> day of May, 2022.

Jos. J. Jr.  
Jeannette M. Grew  
K. L. Jr.  
Township Trustees

Attest: Brian W. Gillette  
Township Fiscal Officer

#### Certificate of Resources

The undersigned hereby certifies that the amount required to meet the obligation of the foregoing contract, order or obligation has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances.

Brian W. Gillette  
Brian Gillette, Fiscal Officer

5/11/2022  
Date

"CLEAN HANDS" AFFIDAVIT  
(Must be completed by Administrative Applicant of Record)

STATE OF OHIO  
COUNTY OF CUYAHOGA

I, JEANEENE M. KRESS  
(Authorized representative of applicant)

being first duly sworn, depose, and state that I have personal knowledge of, and verify, the following:

1. Neither this applicant nor a preceding organization or entity of this applicant, if any, caused or contributed, either in whole or in part, to the release of hazardous substances or petroleum on the property that is the subject of this application. Neither this applicant nor a preceding organization or entity of this applicant, if any, had any hands-on involvement with or control over hazardous substances or petroleum that resulted in a release, or conducted any hands-on activities that contributed, in whole or in part, to a release on the property.
2. I understand that I may be found guilty of a misdemeanor or potential felony for knowingly signing and submitting a false affidavit.

Jeaneene M. Kress  
Signature

05.11.2022  
Date

TRUSTEE  
Name/Title

OLMSTED TOWNSHIP  
Applicant Name

Sworn to before me and signed in my presence this 11<sup>th</sup> day of  
May, 20 22.

Julie Boyer  
Notary Public



JULIE K. BOYER  
Notary Public, State of Ohio  
Recorded in Medina County  
My Commission Expires  
February 28, 2023





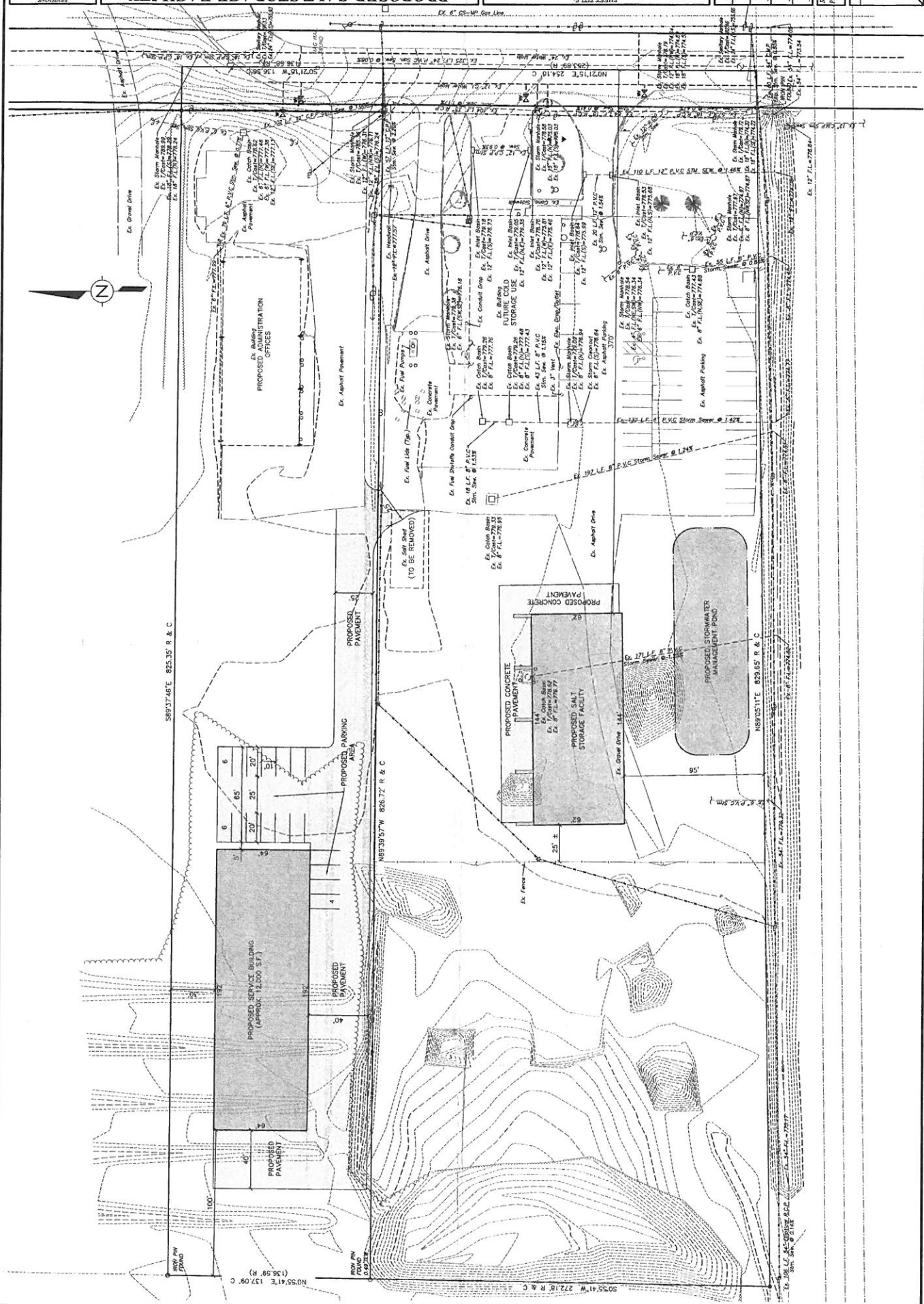
DATE	10/1/78
BY	W. J. HARRIS
CHECKED BY	
DATE	
PROJECT NO.	16178
ACROSSING	M. 10116 C/L
SCALE PLAN	1" = 100'
PROFILE	1" = 10'
SHEET NO.	1

**PROPOSED SALT STORAGE FACILITY**

LOCATED IN  
TOWNSHIP OF CLAYTON  
COUNTY OF CLAY, MISSOURI

**CUNNINGHAM & ASSOCIATES, INC.**

**CONCEPTUAL SITE PLAN**







## Brownfield Remediation Program Grant

### Application Information

<b>Application Name:</b>	DEV--2022 - 192284
<b>Project Type:</b>	Brownfield Remediation Grant Cleanup/Remediation
<b>Created On:</b>	4/28/2022 3:03 PM
<b>Created By:</b>	Matt Knecht
<b>Online Application Status:</b>	Application in Progress

### Applicant Organization

<b>Federal Tax ID:</b>	34-6002098
<b>OAKS ID:</b>	
<b>Applicant Name:</b>	Olmsted Township
<b>Applicant Address:</b>	26900 Cook Road, Olmsted Township, OH, 44138

### Project Contact Information

Position/Role	Primary Contact	First Name	Last Name	Phone Number	Email
Mayor/Village Administrator	<input type="checkbox"/>	Jeanene	Kress	(440) 235-3051	jkress@olmstedtownship.org
Application Preparer	<input checked="" type="checkbox"/>	Matthew	Knecht	(440) 477-1728	mknecht@hzwenv.com
Authorized Official	<input type="checkbox"/>	Joseph	Schaller	(440) 537-8945	jschaller@olmstedtownship.org
Certified Professional	<input type="checkbox"/>	Matthew	Knecht	(440) 477-1728	mknecht@hzwenv.com







## *Brownfield Remediation Program Grant*

### Application Information

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Mayor/Village Administrator	<input type="checkbox"/>	Jeanene	Kress	(440) 235-3051	jkress@olmstedtownship.org
Application Preparer	<input checked="" type="checkbox"/>	Matthew	Knecht	(440) 477-1728	mknecht@hzwenv.com
Authorized Official	<input type="checkbox"/>	Joseph	Schaller	(440) 537-8945	jschaller@olmstedtownship.org
Certified Professional	<input type="checkbox"/>	Matthew	Knecht	(440) 477-1728	mknecht@hzwenv.com

Project Development Partner					
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## Project Information

**Project Name:**

Fitch Road Yard (7924 Old Fitch Road)

**Former Project Name:**

Former Cuyahoga County Maintenance Facility

**If property owner is not applicant, name of property owner:**

Applicant is Property Owner

**Project Location (list city/village):**

Olmsted Township

**Select County(ies) served:**

Cuyahoga

**If more than one county, indicate primary county:****Does the applicant have access to the property?**

Yes

**Describe current ownership and access:**

Property is owned by Olmsted Township (the Applicant). The Applicant has complete and free access to the entire Property.

**Does the community where the project is located meet any of the economically disadvantaged criteria below? If so, check all that apply.**



## Project History

### Provide a brief history of the project property including previous ownership and uses

The Property was initially developed in 1942 by the Cuyahoga County Commissioners as a service garage for County vehicles and a County road maintenance storage yard. The Property was undeveloped prior to 1942. The past usage of the Property as a service garage and road maintenance yard involved vehicle servicing and materials storage, including dumping of unwanted materials such as asphalt grindings, materials cleared from ditches, railroad ties and other materials. Specific environmental concerns include the storage of fuel in underground storage tanks (USTs), floor drains connected to storm water drains, a Class V injection well and the aforementioned dumping of unwanted materials associated with road and ditch maintenance.

### Existing Structures:

#### a. Number of vacant structures: (if none, enter "0")

0

#### b. Number of occupied (fully or partially) structures: (if none, enter "0")

4

#### c. Describe current conditions of existing structures: (if none, enter "N/A")

The structures consist of the former vehicle service garage (which is currently nominally used by Olmsted Township as a service garage) constructed in 1942 and a more recent Quonset hut that is used for salt storage. The remaining two structures are small out buildings that, while not routinely occupied, are "occupiable" and used by the Township. The condition of the former vehicle service garage and outbuildings is "fair". The condition of the Quonset Hut used for salt storage is "good".

### If a property transfer is anticipated please identify the participating entities and status of those agreements (i.e. access and/or purchase agreement in place)

No transfer of the Property is anticipated.

### Describe any known or potential project impediments (i.e. regulatory environmental issues, road access issues, rail issues, wetlands, floodplain, permitting)

There are no known impediments to the project moving forward. There are no regulatory issues, access concerns, rail issues, wetlands or permitting concerns related to the project moving forward.



## Project Activities

**Are the property boundaries the same in the Phase I, Phase II, and the grant application? If not, describe all discrepancies.**

Yes, the boundaries of property are the same in the Phase I and Phase II reports and the grant application.

**Identify any areas of the property which are governed by a regulatory program other than VAP (i.e. TSCA, RCRA, Solid Waste or BUSTR). Upload maps and figures identifying the locations.**

No portion of the property is governed by another regulatory program. Historically, the site had USTs regulated by BUSTR, but these were removed in 1992 and 2020 and BUSTR issued NFA Letters in each instance.

## Projected Project Outcomes

**Describe the planned activities for the project including any acquisition, demolition, cleanup or infrastructure:**

**Include a description of the demolition and cleanup activities proposed for the project as well as any associated environmental benefits (i.e. soil removal will allow the end user to construct a new building, the new parking lot will also serve as an engineering control, an Urban Setting Designation will eliminate the need for any remedial actions relating to groundwater). Indicate if the program is VAP eligible (if applicable)**

The property is eligible to participate in the VAP. There are no regulatory or eligibility issues related to the VAP. The cleanup activities are intended to address and reverse the long-standing pattern of the dumping of unwanted materials associated with road and vehicle maintenance and convert the western portion of the site for passive recreational use (a park) for the residents of the Olmsted Township community. The unwanted materials dumped on the site contain polynuclear aromatic hydrocarbons ("PAHs", essentially coal tars used in asphalt and railroad ties) that exceed VAP applicable direct contact standards for passive recreational use (i.e., commercial land use with a high frequency for child receptors). The goal is to remove these materials through excavation, off-site disposal and backfilling to render the site usable by the community. The environmental benefits include enhanced human health (removal of the PAHs, aesthetics (removal of unsightly materials) and improved community access to what is now, essentially, a wasteland. In reclaiming the western portion of the property for a park (walking trails, butterfly gardens, open space), the Township does not wish to rely on engineering controls (or only to the minimum extent necessary) to make the site/park available to the widest possible cross-section of the community. There is no intention to erect ballfields, concessions or other features that would involve large investments in infrastructure or demolition; rather, the goal is to make the area accessible and usable by the residents of the community through a concerted clean-up effort of what is currently unusable land.

**Project Readiness to proceed: Describe what, if any, factors or activities which must take place prior to project commencement. Include project timeline and milestones.**

The Township is ready to proceed in that it owns the land and is developing the conceptual plan for the park area. Nothing need take place for the Township to proceed with the work. The approximate project timeline is: 9/1/22, receipt of grant funding; 10/31/22, complete project bidding and select contractor to perform remediation activities; 12/1/2022, begin clearing the site and initiation of removal of contaminated materials; 5/1/23, completion of removal of contaminated materials, confirmatory sampling and backfilling; 9/1/23, filing VAP No Further Action (NFA) Letter for the site.

**Project Start date:**

9/1/2022

**Project End date:**

9/1/2023

**Describe the redevelopment and activities planned for the property including any building construction and/or rehabilitation, infrastructure installation or improvements, new or improved access.**

A conceptual development plan for the park was uploaded with this application. No new buildings and no building rehabilitation or demolition is anticipated as part of re-development of area. Access to the area will be improved through the installation of walking trails and benches. Portions of the park will be re-vegetated with Ohio-native plant species that attract birds, butterflies and other pollinators (such as bees). Soil removal to address the PAHs and the placement of clean backfill will enable the Township to offer small demonstration/educational gardens (through the local Garden Club) of both edible and ornamental plants. Such demonstration/education gardens are unthinkable in the property's



current state as a historical dumping ground of unwanted materials for roadway maintenance projects. Removal of the PAH-contaminated soils is central to the Township's objective to make what is currently unusable land into something in which the community and residents can take pride and cherish as a resource for years to come.

**Number of jobs anticipated to be created as a result of the project (if none, enter "0"):**

1

**Number of jobs anticipated to be retained as a result of the project (if none, enter "0"):**

0

## Costs

### Brownfield Remediation Grant Cleanup/Remediation Project Budget

Source	Name/ organization	Assessments	Environmental Issuance	Clearance	Acquisition	Demolition	Infrastructure	Cleanup Remediation	Administrative
State	Ohio Department of Development							\$1,125,000.00	
	Olmsted Township	\$23,763.00			\$42,000.00		\$122,000.00	\$147,237.00	\$40,000.00

Total Requested Amount:	<b>\$1,125,000</b>
Total Project Match:	<b>\$375,000</b>
Total Project Cost:	<b>\$1,500,000</b>
Percentage of Match to the Total Project Cost:	<b>25%</b>



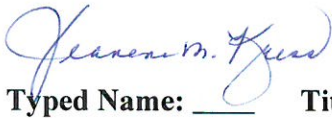
## Required Documents

Required Documents			
Document Name:	Description	Date Uploaded:	Uploaded by:
Environmental Assessment Reports (i.e. Phase I and Phase II Environmental Site Assessment, Asbestos Survey)	Phase I ESA Report	5/4/2022 1:15 PM	Matt Knecht
Environmental Assessment Reports (i.e. Phase I and Phase II Environmental Site Assessment, Asbestos Survey)	Phase II ESA Report	5/4/2022 1:16 PM	Matt Knecht
Remediation Plans	Administrative Costs to Closure; Also Loaded Under Project Match Since These are Soft Costs to be Paid by Applicant as Match	5/4/2022 1:18 PM	Matt Knecht
Remediation Plans	Remedial Costs to Closure; Also Loaded Under Project Match Since These are Soft Costs to be Paid by Applicant as Match	5/4/2022 1:19 PM	Matt Knecht
Project Match Documentation	Project Administrative Soft Costs to Be Paid as Match	5/4/2022 1:32 PM	Matt Knecht
Project Match Documentation	Project Remedial Soft Costs to Be Paid as Match	5/4/2022 1:33 PM	Matt Knecht
Project Match Documentation	Grant Vs Match Documentation Spreadsheet	5/4/2022 1:56 PM	Matt Knecht
Remediation Plans	Contractor's Remedial Cost Estimate	5/4/2022 2:00 PM	Matt Knecht

**Submit**

I understand that by signing this application, I grant the Ohio Department of Development or its authorized agents access to any records needed for verification and evaluation of the information provided in this application. I understand that filling out this application does not guarantee that I will receive assistance.

I certify that the information I have provided in this application is, to the best of my knowledge, a true, accurate and complete disclosure of the requested information. I understand that I may be held civilly and criminally liable under Federal and State law for knowingly making false or fraudulent statements.



**Typed Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

JEANE M. KRESS TRUSTEE 05.11.2022



May 4, 2022

Olmsted Township Trustees  
26900 Cook Road  
Olmsted Township, Ohio 44138

**Subject:** *Estimated Remedial Costs through Issuance of Voluntary Action Program (VAP) No Further Action (NFA) Letter and Covenant Not to Sue (CNS), Former Cuyahoga County Maintenance Garage, 7914 Old Fitch Road, Olmsted Township, Cuyahoga County, Ohio (the "Property")*

To the Trustees:

As you are aware, HZW Environmental Consultants, LLC (HZW) has been engaged in environmental assessment activities at the Property since earlier this year. Our work to this point has included completing a Phase II Property Assessment performed in accordance with Ohio's VAP and working with the Olmsted Township Trustees to identify remedial strategies at the site.

The purpose of this letter is to provide an outline of estimated **remedial** costs anticipated as the project advances through anticipated remedial steps in accordance with Ohio's VAP. These activities are considered to be "reasonably anticipated" **remedial** tasks based on HZW's understanding of a) current environmental conditions, b) proposed or conceptual remedial activities, and c) what is necessary to obtain a CNS through the VAP.

#### **ANTICIPATED REMEDIAL ELEMENTS**

##### **Task 1: Confirmatory Field Data Collection Activities**

HZW's VAP Certified Professional believes that HZW will have some time and expenses associated with remedy implementation at the Property. The listed cost for this task is an estimate or "placeholder" cost for these activities.

##### **Task 2: Preparing a Formal VAP Phase II Property Assessment to Incorporate all Prior Data and the Data Collected in Task 1 during Remedy Implementation**

This task will involve HZW converting the prior Phase II Property Assessment report prepared on the Trustees' behalf to conform with Ohio Administrative Code (OAC) Chapter 3745-300-07, and to incorporate additional data collected by HZW as part of Task 1 during remedy implementation. Revisions will include changes to the text, tables, figures and appendices.



### **Task 3: Updating the Prior Phase I Property Assessment Report for the Property**

The initial Phase I Property Assessment of the Property was prepared in 2013. The VAP Phase I rule (OAC 3745-300-06) requires that any VAP Phase I Property Assessment report relied upon by a VAP Certified Professional be less than 180 days old as of the date of the NFA Letter. An updated VAP Phase I Property Assessment will be prepared in accordance with OAC 3745-300-06 prior to submittal of the NFA Letter, and this task estimates the costs associated with that update.

### **Task 4: Assist in Preparing Draft Environmental Covenant (EC) for the Property**

The NFA Letter for the Property must be accompanied by a draft EC that restricts the property from a residential use. (There may be additional restrictions beyond those this one restriction, although that is the only use restriction envisioned at this time.) The draft EC is a legal document with some technical elements and is usually prepared by legal counsel with some technical input from the VAP Certified Professional. As part of this task, HZW will assist legal counsel in preparing the draft EC and the required attachments.

### **ESTIMATED REMEDIAL FEES**

The VAP remedial process is iterative; thus, it is not possible to identify fixed fees for all tasks since each task is dependent upon the findings/outcome of a previous task. All the fees listed below are estimates based upon HZW's previous experience with the VAP remedial process.

Task 1:	\$	40,000.00
Task 2:	\$	22,000.00
Task 3:	\$	8,000.00
Task 4:	\$	2,000.00
<b>Estimated Total:</b>	<b>\$</b>	<b>72,000.00</b>

Please contact us should you have any questions regarding these remedial estimates.

Sincerely,

**HZW ENVIRONMENTAL CONSULTANTS, LLC**



Matthew D. Knecht  
President  
Ohio EPA Certified Professional No. 0105





**HZW**  
Environmental  
Consultants

May 4, 2022

Olmsted Township Trustees  
26900 Cook Road  
Olmsted Township, Ohio 44138

**Subject:** *Estimated Administrative Costs for Professional Services through Issuance of Voluntary Action Program (VAP) No Further Action (NFA) Letter and Covenant Not to Sue (CNS), Former Cuyahoga County Maintenance Garage, 7914 Old Fitch Road, Olmsted Township, Cuyahoga County, Ohio (the "Property")*

To the Trustess:

As you are aware, HZW Environmental Consultants, LLC (HZW) has been engaged in environmental assessment activities at the Property since earlier this year. Our work to this point has included completing a Phase II Property Assessment performed in accordance with Ohio's VAP, and working with the Olmsted Township Trustees to identify remedial strategies at the site.

The purpose of this letter is to provide an outline of estimated administrative costs anticipated as the project advances through anticipated remedial steps and Ohio's VAP. These activities are considered to be "reasonably anticipated" administrative tasks based on HZW's understanding of a) current environmental conditions, b) proposed or conceptual remedial activities, and c) what is necessary to obtain a CNS through the VAP.

#### **ANTICIPATED ADMINISTRATIVE ELEMENTS**

##### **Task 1: Preparation and Submittal of the VAP NFA Letter**

The form and content of a VAP NFA Letter is prescribed under Ohio Administrative Code (OAC) Chapter 3745-300-13. The NFA Letter is not a "letter"; it is a series of documents, figures, tables and appendices that are required by OAC 3745-300-13 for the agency to consider the NFA Letter "complete", and acceptable for review.

##### **Task 2: Payment of the VAP NFA Letter Review Fee**

VAP fees are outlined in OAC 3745-300-03. OAC 3745-300-03(B)(6) prescribes the fee to be paid to Ohio EPA for a VAP NFA Letter that includes an environmental covenant (EC), and for which a Covenant Not to Sue is sought from Ohio EPA. Currently, the amount due at the time of NFA submittal to Ohio EPA is \$18,200.00.

### **Task 3: Responding to Ohio EPA Comments on the NFA Letter and Agency Coordination**

After their review of a VAP NFA Letter, Ohio EPA will typically issue a document which they refer to as a Review of Original Submittal (or, "ROS"). As part of this task, HZW will coordinate with the agency (typically via a conference call) and prepare a response to the ROS in the form of an Addendum to the NFA Letter. Occasionally, Ohio EPA will have additional comments and will issue a document referred to as a Review of Amended Submittal (or "RAS"). In the event a RAS is issued, HZW will coordinate further with the agency, and prepare a response to the RAS in the form of a Second Addendum to the NFA Letter.

### **Task 4: Submittal of All Documents Relied Upon after Issuance of the CNS**

Following Ohio EPA's issuance of the CNS, OAC 3745-300-13 indicates that the Certified Professional must submit to the agency copies of all documents relied upon in concluding that the property met applicable standards under the VAP. As part of this task, HZW would assemble these documents, index them, and submit them to the agency as prescribed in OAC 3745-300-13.

### **ESTIMATED ADMINISTRATIVE FEES**

The VAP process is iterative; thus, it is not possible to identify fixed fees for all tasks since each task is dependent upon the findings/outcome of a previous task. The only known fixed fee is for the NFA Letter review fee payable to Ohio EPA (currently, \$18,200.00). All the remaining fees listed below are estimates based upon HZW's previous experience with the VAP and VAP process.

Task 1:	\$	9,800.00
Task 2:	\$	18,200.00
Task 3:	\$	7,000.00
Task 4:	\$	5,000.00
<b>Estimated Total:</b>	<b>\$</b>	<b>40,000.00</b>

Please contact us should you have any questions regarding these administrative estimates.

Sincerely,

**HZW ENVIRONMENTAL CONSULTANTS, LLC**



Matthew D. Knecht  
President  
Ohio EPA Certified Professional No. 0105

CUYAHOGA COUNTY FISCAL OFFICER  
262-27-004 *Mark Chamberlain* 3/18/2021 4

OLMSTED TOWNSHIP, BD OF T Tax Dist. 1020  
Quit Claim Deed LUC: 6200 EX:  
Sale Amt: \$ 0.00 LAND: 260,000  
Conv. Fee: \$ 0.00 BLDG: 381,200  
Law Dept TOTAL: 641,200

1016565

CUYAHOGA COUNTY  
OFFICE OF FISCAL OFFICERS - 26  
DEQC 3/23/2021 3:34:26 PM  
**202103230681**

Exhibit "A"

**QUIT-CLAIM DEED**

This Quit-Claim Deed ("Deed") is made as of November 10, 2020 by the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the date hereof, successor in interest of Cuyahoga County Board of Commissioners ("Grantor"), having its principal place of business at 2079 East 9<sup>th</sup> Street, Cleveland Ohio 44115, in favor of Olmsted Township Board of Trustees, on behalf of Olmsted Township, Ohio, a political subdivision of the State of Ohio, having its principal place of business and tax mailing address at 7900 Fitch Road, Olmsted Township, Ohio 44138 ("Grantee").

**RECITALS:**

Grantor, for valuable consideration, the receipt and sufficiency whereof being hereby acknowledged, does hereby remise, release and forever quit-claim unto Grantee, and Grantee's heirs, successors and assigns, forever, all of Grantor's right, title and interest in and to (a) the real property described in Exhibit A, attached hereto and made a part hereof (collectively, the "Land"), and (b) all buildings and improvements located thereon, and all appurtenances thereto (collectively, the "Buildings and Appurtenances"). The Land and the Buildings and Appurtenances are herein collectively referred to as the "Property".

This conveyance is made, notwithstanding the fact that valuable consideration has been paid, upon the express condition subsequent that Grantee shall perform its obligations under the Cooperative Agreement attached hereto as Exhibit B.

If the Cooperative Agreement terminates pursuant to Article III thereof, then the Grantor shall have the right at its option and without further action of or reimbursement to Grantor, to occupy that portion of the Property the Grantor & Grantee deem reasonably necessary to the Grantee's maintenance and repair of the County Facilities, as defined in the Cooperative Agreement; such space may include garage and other indoor or covered storage for equipment and chemicals for the removal of snow and ice.

Grantee and Grantor agree that obligations of Grantee set forth herein shall also constitute covenants running with the land of the Property both as to burdens and benefits. Grantor's failure to express the right of re-entry reserved herein shall not be construed to waive any rights Grantor may have to enforce the Grantee's obligations through any and all rights and remedies which Grantor or its successors and assigns may have at law or in equity for the enforcement of covenants. No waiver by Grantor at any time thereafter of the same or any other obligation or of the strict and prompt performance thereof shall be valid against Grantor unless reduced to writing and signed by an officer of Grantor duly empowered to execute same.

The Property is conveyed to Grantee "as is".



Grantor specifically reserves, and this conveyance is made expressly subject to, any easements of record in favor of Grantor and, in addition thereto, such easements as are necessary for public utilities (including without limitation, sanitary and storm sewers, electric, telephone and other transmission lines, cables, gas and water lines) presently located on the Property.

Prior Instrument Reference: Volume 5060, Page 69  
Parcel Number(s): 262-27-004  
Property Address: 7924 Fitch Road, Olmsted Township, Ohio 44138

TO HAVE AND TO HOLD the Property unto Grantee, his heirs, successors and assigns, forever.

[signatures on the following pages]

COPY



IN WITNESS WHEREOF, Grantor has caused these presents to be duly executed as of the date first above written.

**GRANTOR:**

**COUNTY OF CUYAHOGA, OHIO**

The legal form and correctness of  
this instrument is hereby approved:

**Cuyahoga County Law Department**  
Gregory G. Huth, Law Director

By: [Signature] 3/10/21  
On behalf of Armond Budish,  
County Executive, by Matt Carroll  
(pursuant to Executive Order No. EO2018-0001  
dated February 26, 2018)

By: [Signature]  
Date: 3/17/2021

STATE OF OHIO

COUNTY OF CUYAHOGA

SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio, by Matt Carroll, for and on behalf of, and as authorized designee of, Armond Budish, its Executive, pursuant to Executive Order No. EO2018-0001 dated February 26, 2018, personally known to me, who did acknowledge that he did sign the foregoing instrument in such capacity on behalf of the County of Cuyahoga, Ohio and is duly authorized to do so, and that the same is the free act and deed of the County of Cuyahoga, Ohio, and his free act and deed individually and in the aforescribed capacity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio,  
this 10 day of March, 2021.

**DAWN M. RAMSEY**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Cuyahoga County  
My commission expires Oct. 23, 2023

Notary Public/ My Commission Expires:



**GRANTEE:**

**OLMSTED TOWNSHIP, OHIO, BOARD OF TRUSTEES**

The legal form and correctness of this instrument is hereby approved:

By: *Laurence E. Abbott*  
Laurence E. Abbott, Trustee

By: *Janet Macdonald*

Date: 2-3-2021

By: *Jeanene Kress*  
Jeanene Kress, Trustee

By: *Lisa Zver*  
Lisa Zver, Trustee

STATE OF OHIO

COUNTY OF CUYAHOGA

ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Olmsted Township Board of Trustees, a body corporate and politic and a political subdivision of the State of Ohio, by Laurence E. Abbott, Trustee, personally known to me, who did acknowledge that he did sign the foregoing instrument in such capacity on behalf of Olmsted Township Board of Trustees, and is duly authorized to do so, and that the same is the free act and deed of the County of Cuyahoga, Ohio, and his free act and deed individually and in the aforescribed capacity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 3<sup>rd</sup> day of February, 2021

*Julie K. Boyer*  
Notary Public/ My Commission Expires:



**JULIE K. BOYER**  
Notary Public, State of Ohio  
Recorded in Medina County  
My Commission Expires  
February 28, 2023

)  
STATE OF OHIO

)  
COUNTY OF CUYAHOGA

ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Olmsted Township Board of Trustees, a body corporate and politic and a political subdivision of the State of Ohio, by Jeanene Kress, Trustee, personally known to me, who did acknowledge that she did sign the foregoing instrument in such capacity on behalf of Olmsted Township Board of Trustees, and is duly authorized to do so, and that the same is the free act and deed of the County of Cuyahoga, Ohio, and his free act and deed individually and in the aforescribed capacity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 3<sup>rd</sup> day of February, 2021.

  
Notary Public/ My Commission Expires:



JULIE K. BOYER  
Notary Public, State of Ohio  
Recorded in Medina County  
My Commission Expires  
February 28, 2023

)  
STATE OF OHIO

)  
COUNTY OF CUYAHOGA

ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Olmsted Township Board of Trustees, a body corporate and politic and a political subdivision of the State of Ohio, by Lisa Zver, Trustee, personally known to me, who did acknowledge that she did sign the foregoing instrument in such capacity on behalf of Olmsted Township Board of Trustees, and is duly authorized to do so, and that the same is the free act and deed of the County of Cuyahoga, Ohio, and his free act and deed individually and in the aforescribed capacity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 3<sup>rd</sup> day of February, 2021.

  
Notary Public/ My Commission Expires:



JULIE K. BOYER  
Notary Public, State of Ohio  
Recorded in Medina County  
My Commission Expires  
February 28, 2023

This instrument prepared by:

Anka M. Davis  
Assistant Law Director  
Cuyahoga County  
2079 East 9<sup>th</sup> Street  
Cleveland, Ohio 44115  
216-443-7147



EXHIBIT A  
LEGAL DESCRIPTION

SITUATED IN THE TOWNSHIP OF OLMSTED, COUNTY OF CUYAHOGA AND STATE OF OHIO, AND KNOWN AS BEING PART OF ORIGINAL LOT NUMBER 2, TRACT NUMBER 2 IN THE TOWNSHIP OF OLMSTED BOUNDED AS FOLLOWS:

BEGINNING AT A STONE MONUMENT AT THE INTERSECTION OF THE CENTER LINE OF FITCH ROAD WITH THE NORTHERLY LINE OF PREMISES CONVEYED TO THE LAKE SHORE AND MICHIGAN SOUTHERN RAILROAD COMPANY, BY DEED RECORDED IN VOLUME 1236, PAGE 301 OF CUYAHOGA COUNTY RECORDS; FROM SAID BEGINNING POINT AN IRON PIN BEARS SOUTH 89 DEGREES, 5 MINUTES, 30 SECONDS WEST, 25 FEET;

THENCE NORTH 0 DEGREES, 21 MINUTES, 15 SECONDS EAST ALONG THE CENTER LINE OF FITCH ROAD, 253-89/100 FEET TO A POINT FROM WHICH AN IRON PIN BEARS NORTH 89 DEGREES, 38 MINUTES, 45 SECONDS WEST, 25 FEET;

THENCE NORTH 89 DEGREES, 38 MINUTES, 45 SECONDS WEST, 826-72/100 FEET TO AN IRON PIN IN THE EASTERLY LINE OF PREMISES CONVEYED TO JON KUGAVER, BY DEED RECORDED IN VOLUME 734, PAGE 478 OF CUYAHOGA COUNTY RECORDS;

THENCE SOUTH 0 DEGREES, 55 MINUTES, 40 SECONDS WEST ALONG THE EASTERLY LINE OF PREMISES SO CONVEYED TO JON KUGAVER, 272-18/100 FEET TO A STONE MONUMENT IN THE NORTHERLY LINE OF PREMISES CONVEYED TO THE LAKE SHORE AND MICHIGAN SOUTHERN RAILROAD COMPANY, BY DEED RECORDED IN VOLUME 1236, PAGE 301 OF CUYAHOGA COUNTY RECORDS;

THENCE NORTH 89 DEGREES, 5 MINUTES, 30 SECONDS EAST ALONG THE NORTHERLY LINE OF PREMISES SO CONVEYED TO THE LAKE SHORE AND MICHIGAN SOUTHERN RAILROAD COMPANY, 829-65/100 FEET TO THE BEGINNING, AND CONTAINING 5 ACRES OF LAND, ACCORDING TO THE SURVEY OF CHARLES W. ROOT, CIVIL ENGINEER.

PP# 262-27-004

This Legal Description Complies with  
The Cuyahoga County Transfer and  
Conveyance Standards and is approved  
for transfer.

MAR 17 2021

  
Agent

**EXHIBIT B**  
**COOPERATIVE AGREEMENT**

CORP

09/19/2013

**COOPERATIVE AGREEMENT**  
**BETWEEN**  
**THE COUNTY OF CUYAHOGA, OHIO**  
**AND**  
**OLMSTED TOWNSHIP, OHIO**

This COOPERATIVE AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2013 (the "Effective Date"), by and between THE COUNTY OF CUYAHOGA, OHIO, a county and political subdivision of the State of Ohio ("County"), pursuant to Resolution No. \_\_\_\_\_, approved by the Cuyahoga County Council on \_\_\_\_\_, 2013, and OLMSTED TOWNSHIP, a township and political subdivision of the state of Ohio and located within the County ("Township"), pursuant to Resolution No. 78-247, approved by Olmsted Township Board of Trustee on September, 2013.

**RECITALS**

WHEREAS, the County, in accordance with Revised Code ("R.C.") Section 5535.08 (the "Statute"), maintains the approximately 22 miles of County roadways within the Township identified on Exhibit A (the "County Roads") and the bridges and culverts identified on Exhibit A-1 (the "County Structures", and together with the County Roads, the "County Facilities"); and

WHEREAS, the Township, in accordance with the Statute, maintains the approximately 22 miles of Township roadways, culverts, and bridges within the Township (the "Township Facilities"); and

WHEREAS, pursuant to the Statute, the County and Township may enter into an agreement to contribute to the maintenance and repair of roads under control of the other; and

WHEREAS, maintenance of the County Facilities within the Township by the Township will result in more efficient use of equipment used by both the County and the Township in such maintenance.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:



Article I

MAINTENANCE OF COUNTY FACILITIES

**1.01 Annual Payments by County.** In consideration of the Township maintaining and repairing the County Roads Facilities in accordance with this Agreement, the County agrees to pay the Township the Compensation (as defined below) in accordance with Section 2.02 hereof for each year of the Term, as defined in Section 2.01.

**1.02 Maintenance by Township.**

(a) In consideration of the annual Compensation as set forth in Section 2.02, the Township agrees to maintain and repair the County Facilities. For purposes of this Agreement, "maintain and repair" or "maintenance and repairs" means, as necessary, and without limitation, except as otherwise provided in paragraph (b), below, in relation to the County Facilities and associated right-of-way ("ROW"):

1. **Wearing Surface Repairs:** appropriate wearing surface repairs, including pot hole repair, crack sealing and spot repair "mill and fill," all in accordance with the County Pavement Preventive Maintenance Program Guidelines, dated May 1, 2001, attached hereto as Exhibit B.
2. **Structure Repairs:** routine maintenance of the County Structures as described on the County Structures Maintenance Plan attached hereto as Exhibit C, and such other preventive maintenance work as required by the County's Bridge Inspection & Maintenance Division, within the limits as described on Exhibit C.
3. **Obstructions:** removal of any object, including carcasses of dead animals, interfering with traffic safety.
4. **Guardrails:** guardrails shall be repaired or replaced as needed, subject to paragraph (b) of this Section 1.02.
5. **Vegetation Removal:** remove vegetation, including mowing, weed control, tree trimming, and tree removal, including around retention and detention basins.
6. **Snow and Ice:** remove snow and ice from County Facilities, including the repair or replacement of any mailbox damaged as a result of such removal, and treat road surfaces as necessary with appropriate de-icing compounds or chemicals.
7. **Ditch Maintenance:** drainage ditches shall be cleaned and maintained in accordance with the County Ditch Maintenance Standards attached hereto as Exhibit D.
8. **Signage:** supply and place proper signage for high water areas as necessary following a storm event, or such other emergency signage as required; County

will continue to provide route marking signage and will assist Township with signage in emergency events as reasonably requested;

9. Such other maintenance and repair as deemed reasonably necessary by the County. However, such repairs must be agreed upon by the Township and such agreement shall not be unreasonable withheld.
- (b) The parties agree that County shall continue to be responsible for Major Maintenance (as defined below) and maintenance and repairs that exceed the "force account" limits under Ohio R.C. §5543.19, including any guardrail repairs. For purposes of this Agreement, "Major Maintenance" means maintenance and repairs that are not routine maintenance or preventive maintenance.
- (c) Township shall maintain a log (which shall include routes and sections), and other records as agreed to by the parties, of all maintenance and repairs of County Facilities for inspection by County at such times as reasonably requested by County.
- (c) Except as otherwise provided for herein, Township may subcontract any of the maintenance and repair work to be performed under this Agreement. Township shall notify County of its intent to subcontract such work not less than 30 days prior to entering into any such subcontract. County may object to such subcontract during such 30-day period. In the event County fails to object to such subcontract within such 30-day period, County waives any right to otherwise object to such subcontract. Except that Township in its sole discretion may subcontract for emergency repairs and maintenances, including snow and ice removal.
- (d) The parties acknowledge, understand and agree that issues related to the repair and maintenance of both the County Facilities and the Township Facilities may arise during the Term that are not within the scope of this Agreement. The parties agree to work cooperatively during the term to resolve such issues on an as-needed basis.
- (e) The parties agree that Township will purchase not less than 3,200 tons of road salt from the County for the 2013 ~ 2014 season at a cost of not less than \$128,000.00.

**1.03 Insurance Requirements.** The Township shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Agreement:

- (a) **Mandatory Insurance.** The Township shall procure, maintain, and pay premiums for the following forms of insurance:

1. **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).
  2. **Commercial General Liability Insurance** with limits of liability not less than:  
 \$1,000,000 each occurrence bodily injury & property damage;  
 \$1,000,000 personal & advertising injury;  
 \$2,000,000 general aggregate;  
 \$2,000,000 products/completed operations aggregate.  
 Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.
  3. **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;  
 Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.
- (b) **Subcontractor Insurance.** Where the Township elects to subcontract any of the maintenance and repair work to be performed under this agreement, as per Provision 1.02(e), above, the Township is responsible for ensuring that its subcontractors procure and maintain the same mandatory insurance and abide by the same mandatory requirements set forth herein.
- (c) **Self-Insurance.** The County hereby agrees that the Township shall have the right, at its sole discretion, to provide any liability insurance required hereunder by participating in the insurance program of the Township, including without limitation, any self-insurance or deductible arrangements as may be incorporated in such program, in which case, confirmation of self-insurance is required.
- (d) **Mandatory Requirements for All Insurance Coverage.** The insurance policies of the Township required above, with the exception of workers compensation, shall each name the "County of Cuyahoga, Ohio and its employees" as Additional Insureds and shall contain the following provisions:
1. **Thirty (30) days prior notice of cancellation or material change;**
  2. **A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.**

- (e) The insurance required above shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- (f) These insurance provisions shall not affect or limit the liability of the Township stated elsewhere in this Agreement or as provided by law.
- (g) The Township shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.
- (h) The Township shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing that the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

**1.04 Indemnification.**

- (a) **Indemnification by Township and County.** The parties acknowledge that, as Ohio political subdivisions, the Township and the County may not indemnify any person or entity, and agree that no provision of this Agreement may be interpreted to obligate either party to indemnify and defend the other party.
- (b) **Contractor/Subcontractor Indemnification.** Where the Township elects to subcontract any of the maintenance and repair work to subcontractors, as per Provision 1.02(c), above, the Township shall require its subcontractors working on behalf of this Agreement to defend, indemnify and hold harmless the County, its officers, agents, employees, successors and assigns, from any and all claims, demands, losses, costs, damages, expenses and liabilities, including attorneys' fees, for or from loss of life or damage or injury to any person or property of any person, including without limitation, the agents, employees, invitees, licensees, subtenants and vendors, of either of the parties to this Agreement, arising out of, connected with or incidental to, either directly or indirectly, acts or omissions arising out of performance of work under the Agreement, with the exception of damage resulting solely from the negligent act of the County or its employees.
- (c) **Survival of Requirement.** The provisions of this Section 1.04 shall survive the expiration or earlier termination of this Agreement.

**1.05 Performance Bond Requirements.** Where the Township elects to subcontract any of the maintenance and repair work to be performed under this Agreement, as per Provision 1.02(c), above, the following performance bond requirements must be met:



- (a) A performance bond in the amount of 100% of the Contract shall be provided by the contractors. Such bond shall:
1. be conditional on the faithful performance of the work in accordance with the specifications,
  2. remain in the possession of Cuyahoga County for the term of the contract and material warranties, whichever is concluded last
  3. list the County as an additional obligee with a direct right of action under the bond or include a rider that extends the surety's obligation under the bond to the County.
- (b) For a multi-year contract a bond in force for the first year of said contract will be acceptable, provided that sixty (60) days prior to the expiration of the bond the Township notifies the County that the bond, meeting the requirements of this Section 1.05, has been renewed for an additional one-year term. Proof of renewal shall be in the form of a renewal certificate or document submitted by the surety evidencing continuation of the bond.
1. If a bond is not renewed, the surety company and the Township are to notify the County sixty (60) days prior to expiration and/or cancellation of the bond. The Township shall be responsible for ensuring that its subcontractor obtains a new bond to be issued to cover the period in accordance with this section.
  2. Such bond shall be provided to the County not less than forty-five (45) days prior to expiration and/or cancellation of the original bonds. A bond shall be in effect for each year thereafter for the remainder of the term of this Agreement.
- (c) Performance bonds must be issued by a surety company, authorized to do business in the State of Ohio with an A.M. Best's rating of A or higher, in the exact legal business name of the subcontractor. The County shall reject all bonds issued in any other business names under which the Township's subcontractor(s) are doing business. The bond shall be accompanied by the following:
1. A certified power of attorney for the agent to sign the bond;
  2. A certificate of compliance for the bonding company for the State of Ohio, Department of Insurance
- (d) Failure by the Township through its subcontractors to supply adequate bonding coverage to cover the full term of the contract as herein above specified shall be considered a breach of contract and shall constitute grounds for termination of the Agreement, in the County's sole discretion.

(End of Article I)

**Article II**  
**TERM and COMPENSATION**

**2.01 Term.** The term of this Agreement (the "Term") shall commence on the Effective Date, and shall expire on December 31, 2023 (the "Expiration Date"), unless sooner terminated pursuant to the terms of this Agreement.

**2.02 Compensation.** In consideration of the Township maintaining and repairing the County Roads in accordance with this Agreement, and solely for the purpose of assisting the Township with the costs thereof, the County agrees to pay the Township \$500,000.00 per calendar year, as follows ("Compensation"):

- (a) the first such payment within 30 days of the Effective Date; and, thereafter,
- (b) no later than October 1 of each year of the Term.

**2.03 Reporting and Audit.**

- (a) No later than April 15 of each year of the Term, Township shall provide County with a detailed report (each, a "Report"), on a cost-per-mile basis, and including the Route No. (as shown on Exhibit A) and work type, of the Township's actual costs to maintain and repair the County Facilities in accordance with Section 1.02 ("Actual Costs"), and the Township Facilities during the previous calendar year.
- (b) When requested by the Township, but not more frequently than twice in any calendar year of the Term, County shall report to the Township on any funds collected from any source for maintenance of Township facilities, including but not limited to license fees and gasoline taxes received from the State of Ohio; such report shall include all funds set aside and dedicated, if any, to capital improvements of Township facilities.
- (c) Upon five days written notice from the County, Township shall make available to County for review such reports as the County deems reasonably necessary to verify use of the Compensation for maintenance and repair of the County Roads in accordance with this Agreement; such review to be conducted during normal business hours and at such times as to not cause unreasonable interference with Township operations. In addition, Township agrees to cooperate with the County in any audit by any state or federal agency regarding use of the Compensation.

**2.04 Five-Year Reconciliation.**

- (a) The parties agree to meet not less than 60 days after the fifth anniversary of the Effective Date to: (i) review the Reports submitted by the Township, the Compensation paid by the

County, and the Actual Costs; and (ii) determine whether the Compensation is appropriate in relation to the Actual Costs.

- (b) Where the parties reasonably determine that the Compensation should be adjusted for the remainder of the Term, the parties agree to take any action as each party deems reasonably necessary, including seeking any necessary legislative approval, to amend this Agreement accordingly.

**2.04 Termination For Convenience.** The parties agree that this Agreement may be terminated by either party upon 180-days written notice to the other party; the effective date of such termination, the "Termination Date." In the event the Township terminates this agreement in accordance with this Section 2.04, the Township agrees to refund to the County the difference between the Compensation paid as of the October 1 immediately preceding the Termination Date and the Actual Costs as of the Termination Date.

(End of Article II)

**Article III**  
**DEFAULT**

**3.01 Township Default.**

- (a) Township shall be in default hereunder if Township shall neglect or fail to perform or observe any of the terms, covenants or conditions contained in this Agreement (a "Township Default"), which neglect or failure continues for:
1. in the case of any maintenance and repair provision identified in Section 1.02 that affects the public safety, 24 hours following notice thereof by the County to the Township (a "Safety Notice") or
  2. in all other cases, 30 days following Township's receipt of written notice thereof from County (a "Township Default Notice"; such period following a Safety Notice or a Default Notice a "Township Cure Period).

Provided, however, that if such neglect or failure is susceptible to cure but is not reasonably capable of being cured within the applicable Cure Period, there shall exist no Default provided that Township promptly advises County of its intention to undertake all steps necessary to cure such Default and Township promptly commences cure of such Default and diligently pursues such cure to completion. For purposes of illustration only, and not by way of limitation, the Township shall be in default hereunder if the Township uses the Compensation paid by the County for purposes other than maintaining and repairing the County Roads in accordance with this Agreement.

(b) Upon the occurrence of a Township Default, or at any time thereafter while a Township Default continues, County, at its sole discretion, in addition to all remedies available at law, may pursue any one or more of the following, concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

1. terminate this Agreement in its entirety upon a specified date not less than: (i) 24 hours after the expiration of a Township Cure Period in the case of a Safety Notice; or (ii) 10 days after the expiration of a Township Cure Period in the case of a Township Default Notice, and this Agreement shall then automatically expire on the date so specified;
2. engage a contractor to perform the duties of Township as described in Section 1.02 hereof and charge the costs of same to the Township; this provision 3.02(b) shall survive termination of this Agreement; and
3. withhold the Compensation provided for in Section 2.02.

**3.02 County Default.**

(a) County shall be in default hereunder if County shall neglect or fail to perform or observe any of the terms, covenants or conditions contained in this Agreement (a "County Default"), which neglect or failure continues for 30 days following County's receipt of written notice thereof from Township (a "County Default Notice"; such period following a County Default Notice a "County Cure Period")

(b) Upon the occurrence of a County Default, or at any time thereafter while a County Default continues, Township, at its sole discretion, in addition to all remedies available at law, may pursue any one or more of the following, concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

1. terminate this Agreement in its entirety upon a specified date not less than 10 days after the expiration of the County Cure Period, and this Agreement shall then automatically expire on the date so specified; and
2. demand and receive all funds not timely received from the County or required to be expended by the Township duties of the Township as described in Section 1.02 hereof.

(End of Article III)



Article IV

MISCELLANEOUS

**4.01 Jurisdiction and Venue.** Each party hereto: (i) irrevocably consents to the exclusive jurisdiction of any state or federal court of competent jurisdiction located within Cuyahoga County, Ohio, in connection with any matter based upon or arising out of this Agreement, (ii) agrees that process may be served upon them in any manner authorized by the laws of the State of Ohio, and (iii) waives and covenants not to assert or plead any objection which they might otherwise have under such jurisdiction or such process.

**4.02 Governing Law.** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction. This Agreement is subject to all applicable County ordinances, including, but not limited to: (i) the Cuyahoga County Ethics Ordinance, (ii) the Cuyahoga County Inspector General Ordinance, and (iii) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County Ordinances"). Township shall comply with all applicable County Ordinances as an integral part of this Agreement. Copies of all County Ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

**4.03 Amendment.** No alteration, amendment or modification of this Agreement shall be valid unless set forth in an instrument in writing executed by the parties hereto.

**4.04 Consent In Writing.** Unless otherwise specifically provided herein, no consent or approval by a party permitted or required under the terms of this Agreement shall be valid or be of any validity whatsoever unless the same shall be in writing, signed by the party by or on whose behalf such consent is given.

**4.05 Waiver.** The waiver by County or Township of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant, or condition of this Agreement. No term, covenant, or condition of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing by such party.

**4.06 Agreement Binding on the Parties.** The terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable solely by the parties and their permitted successors and assigns, and nothing in this Agreement or by virtue of the transactions contemplated hereby, whether express or implied, shall be construed to constitute, create or confer rights, remedies or claims in or upon any person or entity (as third-party beneficiary or otherwise) not a party hereto, or to create obligations or responsibilities of the parties to such persons or entities, or to permit any person other than the parties hereto and their respective successors and assigns to rely upon

or enforce the covenants, conditions and agreements contained herein, except as otherwise specifically provided herein. This Section 3.07 is not a limitation on Section 3.08 hereof.

**4.07 No Personal Liability.** No covenant, obligation or agreement under this Agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or officer, or employee of either party in other than their official capacities, and neither the members of the County Council or Township Board of Trustees nor any County or Township official executing this Agreement shall be liable personally for or by reason of the covenants, obligations or agreements of County or Township contained in this Agreement.

**4.08 Authority.** Each signatory hereto certifies that he or she is duly authorized and empowered to sign and deliver this Agreement on behalf of the party named below on whose behalf he or she has so acted.

**4.09 Relationship of the Parties.** The relationship of the parties under this Agreement is that of independent parties, each acting in its own best interests. Notwithstanding anything in this Agreement to the contrary, no relationship of principal and agent is established or intended hereby between or among the parties.

**4.10 Gender and Number.** The use of any one gender shall include all others. The plural number shall include the singular, and the singular number shall include the plural wherever the context so requires.

**4.11 Incorporation by Reference.** All exhibits, schedules, or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein.

**4.12 Notices.** Any notice or communication between the parties required or permitted to be given under this Agreement shall be deemed sufficiently given if delivered personally or mailed by U.S. registered or certified mail, return receipt requested, which shall be deemed delivered when either the return receipt is signed or refused, and addressed as follows:

To County:

Cuyahoga County Department of Public Works  
2100 Superior Viaduct  
Cleveland, Ohio 44113  
Attn: Director

with copies to:

Cuyahoga County Executive  
1219 Ontario Street, 4th Floor  
Cleveland, OH 44113  
Attn: Law Director

09/19/2013

To Township:

with copies to:

Cuyahoga County Prosecutor's Office  
1200 Ontario Street  
Justice Center, 8th Floor  
Cleveland, Ohio 44113  
Attn: Civil Division Chief

**4.13 Severability.** If any section, provision in this Agreement or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other section, provision or portion thereof. To the extent an interpretation of a section, provision or a portion thereof can be made which will make it valid or enforceable, the parties agree that the interpretation making it valid or enforceable should be chosen.

**4.14 Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**4.15 Further Assurances.** The parties shall each execute, acknowledge and deliver, after the date hereof, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as the parties shall reasonably request of the other in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

**4.16 Counterparts.** This Agreement may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

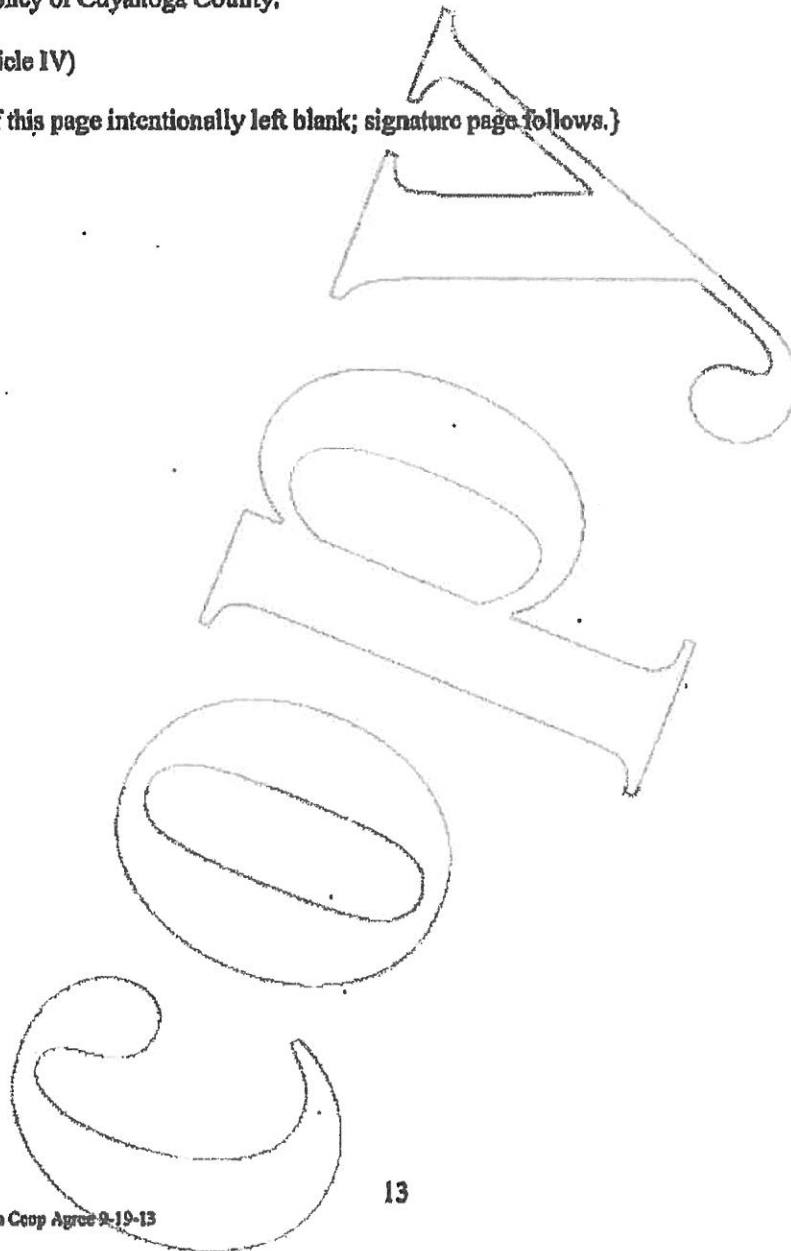
**4.17 Language.** The words "herein," "hereof," "hereunder," "hereby," "this Agreement" and other similar references shall be construed to mean and include this Agreement and all amendments hereto and supplements hereto unless the context clearly indicates or requires otherwise. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement.

**4.18 Time of the Essence.** Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

**4.19 Electronic Signature.** The parties agree to conduct this transaction by electronic means and agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Agreement. The parties also agree, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

(End of Article IV)

{Balance of this page intentionally left blank; signature page follows.}





09/19/2013

IN WITNESS WHEREOF, the parties have each caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

**OLMSTED TOWNSHIP BOARD OF TRUSTEES**

By: [Signature]  
Name: Scott Ross, Trustee, Chair

By: [Signature]  
Name: Sherri Lippus, Trustee

By: [Signature]  
Name: Jeanene Kress, Trustee

The legal form for the within instruments is hereby approved

Name: [Signature]  
Title: Asst. Prosecutor

Date: 9/27/13

**THE COUNTY OF CUYAHOGA, OHIO**

Edward FitzGerald, County Executive

By: [Signature]  
Name: Edward FitzGerald, County Executive

The legal form for the within instruments is hereby approved

Name: [Signature]  
Title: 2014-03-18 16:17:31

Date: \_\_\_\_\_

Attachments

- Exhibit A - County Roads
- Exhibit A-1 - County Structures
- Exhibit B - Pavement Preventive Maintenance Program Guidelines
- Exhibit C - County Structures Maintenance Plan
- Exhibit D - Ditch Maintenance Standards

Exhibit A**COUNTY ROADS IN OLMSTED TOWNSHIP**

<u>County Road/Route No.</u>	<u>Terminal or Limits</u>
Bagley Road No. 27	West County Line to Approximately 485' East of Fitch Road.
Barrett Road No. 178	Lewis Road to East Corp. Line
Barton Road No. 166	Cook Road to North Corp. Line
Cook Road No. 59	West County Line to Mapleway Drive
Fitch Road No. 17	Bagley Road to North Corp. Line
Jennings Road No. 234	Schady Road to Bagley Road
John Road No. 223	Fitch Road to Columbia Road
Lewis Road No. 174	South Corp. Line to North Corp. Line
Mackenzie No. 86	Cook Road to North Corp. Line
Nobottom Road No. 211	Rocky River to East Corp. Line
Schady Road No. 143	West County Line to Usher Road
Sharp Road. No. 236	Sprague Road to Schady Road
Spafford Road No. 316	Southeast Corp. Line to East Corp. Line Near Aerospace Parkway
Sprague Road No. 67	West County Line to East of Usher Road
Stearns Road No. 76	Schady Road to North Corp. Line
Usher Road No. 172	South County Line to North Corp. Line

09/19/2013

Exhibit A-1**COUNTY STRUCTURES IN OLMSTED TOWNSHIP**

ROADNAME	SFN	LOCATION	OVER
ADELE LANE C-0004	1834568	218' EAST OF CRESTWOOD	FITCH LATERAL
BAGLEY ROAD C-0044	1832441	750' WEST OF JENNINGS ROAD	SHADY DITCH
CRESTWOOD DRIVE C-0024	1834592	1183' NORTH OF STREET SIGN AT GREENBROOKE	FITCH LATERAL
EASTWOOD LANE C-0008	1834460	455' EAST OF CRESTWOOD	FITCH LATERAL
ELIZABETH LANE 0006	1834436	712' EAST OF CORP LINE	FITCH LATERAL
FITCH ROAD 0018	1834355	0.2 MILES NORTH OF BAGLEY ROAD	OVER N&S RAILROAD
LEWIS ROAD 0291	1834231	716' SOUTH OF CEDAR POINT ROAD	WEST BRANCH OF ROCKY RIVER
SCHADY ROAD C-0200	1830503	3609' EAST OF STEARNS ROAD	BUSBY DITCH
SPAFFORD ROAD 0045	1832549	400' EAST OF VALLEY PARKWAY	EAST BRANCH OF ROCKY RIVER
STEARNS ROAD C-0033	1833235	1783' NORTH OF SCHADY ROAD	OVER STREAM
STEARNS ROAD C-0125	1832867	3300' NORTH OF BAGLEY ROAD	FITCH LATERAL
USHER ROAD 0062	1833200	601' SOUTH OF SCHADY ROAD	PLUM CREEK
WESTWOOD LANE C-0008	1834525	406' EAST OF CRESTWOOD	FITCH LATERAL

A1-1

09/19/2013

**EXHIBIT B**

**PAVEMENT PREVENTIVE MAINTENANCE PROGRAM GUIDELINES**

COPY



**Exhibit C**

**County Structures Maintenance Plan**

Routine maintenance shall include, without limitation: clearing debris from the deck, walks and rails, sweeping, snow and ice removal, minor wearing surface patching, cleaning bridge drainage systems (scuppers, basins, etc.), pavement marking on decks and approaches for traffic control, minor and/or emergency repairs to rails, parapets and guardrails within the limits defined, emergency patching of the deck and approach slabs, and maintenance of traffic signal and lighting systems including the supply of electrical power, and such other work as required under R.C. 5501.49.

Routine and preventive maintenance shall be performed within the limits defined as follows:

- A. For any culverts, or those structures listed with the prefix "C", maintenance and repairs shall be considered as incidental to the typical maintenance duties for the pavement which includes wearing surface, embankment or fill, drainage structures, walks, curbs, fencing, rails/parapets, and all roadway level appurtenances associated with the culvert. The embankment or fill material between the structure and the roadway shall be a defined break point for routine versus structural maintenance items, which shall be the responsibility of the County.
- B. For all bridge-type structures, maintenance and repair shall be performed from the START approach slab to the FINISH approach slab or, if no approach slabs exist, are present, or are undefined (covered), the limits shall be twenty-five feet (25') prior to the START expansion joint to twenty-five feet (25') beyond the FINISH expansion joint.

**Exhibit D**

**COUNTY DITCH MAINTENANCE STANDARDS:**

- Check all ditches, including "tail-ditches" and "turn-outs", after major storm events, in accordance with the post-storm plan for checking for damage and determining maintenance needs attached as Schedule I to Exhibit C.
- Clean out ditches when clogged with sediments or debris to prevent ponding, bank overflows, and road washouts.
- Re-grade ditches as needed, line ditches with vegetation or stone as necessary.
  - Re-grading of ditches should be limited to late spring or summer, after spring rains have diminished and drier weather has set in, and when vegetation can re-establish itself. Other times may be suitable depending on weather patterns, work to be performed, and exigency of work to be done.
  - Limit disturbance to the ditches during times of high erosion potential

**DRAFT**