

## MAINTENANCE AGREEMENT

### THREE B'S AND K ROAD (TOWNSHIP ROAD #35) FROM CHESHIRE ROAD (COUNTY ROAD #72) TO US36/SR37

THIS AGREEMENT is made by and among the City of Sunbury (the "City"), the Berlin Township Board of Trustees "Berlin", and the Berkshire Township Board of Trustees ("Berkshire"), herein individually referred to as a "Party" and collectively referred to as the "Parties" to the Agreement.

#### WITNESSETH

In consideration of the terms and conditions hereinafter stated, the parties agree as follows:

1. **PURPOSE.** Three B's and K Road, also known as Township Road #35 is located partially within Berkshire Township, Berlin Township and the City of Sunbury. This agreement shall set forth the responsibility for maintenance and improvement of Three B's and K Road between Cheshire Road (CR 72) and US36/SR37 by Berlin, Berkshire and Sunbury for the mutual benefit of all parties and the convenience and welfare of the public.
2. **AUTHORITY.**
  - 2.1 Pursuant to Section 723.01 of the Ohio Revised Code (ORC), except as provided in section 5501.49 of the Revised Code, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation.
  - 2.2 Pursuant to Section 5571.02 of the ORC, the board of township trustees shall have control of the township roads of its township and, except for those township roads the board places on non-maintained status pursuant to section 5571.20 of the Revised Code, shall keep them in good repair.
  - 2.3 Pursuant to Section 505.90 of the ORC, the board of township trustees of one or more townships and the legislative authority of one or more municipal corporations may enter into an agreement to jointly provide for the maintenance, repair, and improvement of township and municipal roads located within the townships and municipal corporations.
  - 2.4 Pursuant to Section 9.482 of the ORC, a political subdivision may enter into an agreement with another political subdivision whereby the contracting political subdivision undertakes, and is authorized by the contracting recipient subdivision, to exercise any power, perform any function, or render any service, on behalf of the contracting recipient subdivision or its legislative authority, that such subdivision or legislative authority may exercise, perform, or render.
3. **DEFINITIONS.**
  - 3.1 **Road or Roadway.** South 3B's & K Road (Township Road 35), including all portions of the road and land encompassing the public right of way.
  - 3.2 **Jurisdiction.** The area or segment of the road lying within the township boundary or corporation limit of a Party to this Agreement.
  - 3.3 **Vegetation Maintenance.** Mowing, trimming, spraying of herbicide, removal of trees and brush, live or dead.
  - 3.4 **Snow and Ice Control.** Plowing, salting, applying brine or other treatments, or otherwise removing snow and ice.

**3.5 Routine and Minor Maintenance.** Work associated with the ordinary and customary operation and upkeep of a public roadway, and/or any other work that does not result in a change in the use, capacity or function of the roadway, including, but not limited to the following, and any other work deemed by both parties to be routine or minor maintenance, except for Vegetation Maintenance and Snow and Ice Control:

- a. **Pavement.** Patching, paving, sealing, filling of holes, graveling and related operations.
- b. **Traffic Control.** Installing applying and maintaining pavement markings, raised pavement markers, road signs, reflectors and related operations. Including repair or replacement due to damage associated with impact from a vehicle, equipment or load.
- c. **Roadside and Safety.** Regrading of slopes, repairing or replacing guardrails or other barriers and related operations, including repair or replacement due to damage from impact from a vehicle, equipment or load.
- d. **Drainage.** Maintaining, repairing and/or replacing of culverts and non-county bridges, storm sewers, catch basins, manholes or other drainage conduit and structures, cleaning and keeping open ditches, except for the repair of any drainage conveyance or structure due to damage by flood.
- e. **Acquisition of Land.** Acquisition of public right of way, in fee simple or lesser estate, for the sole purpose of performing Routine and Minor Maintenance.

**3.6 Major Maintenance and Improvement.** Work that results in a change in the use, capacity or function of the roadway, including but not limited to the following:

- a. **Widening Improvement.** Widening of the existing pavement.
- b. **Roadside Improvement.** Widening or constructing shoulders or roadside recovery areas, whether paved or unpaved, involving relocating or setting back ditches.
- c. **Intersection Improvement.** Improving or altering existing intersections or constructing new intersections by installing new pavement intersecting the existing roadway or adding turn lanes, traffic signals, roundabouts, or otherwise reconfiguring intersections, except for changing the assignment of right of way at an existing intersection by installing stop or yield signs and stop lines.
- d. **Drainage Improvement.** Adding or replacing culverts, storm sewers, catch basins, manholes when performed in conjunction with a Widening, Roadside or Intersection Improvement.
- e. **Major Maintenance or Repair.** Repair or replacement of the road, or portions thereof, resulting from natural disaster, flood, explosion, fire, hazardous chemical spills, war, strike, riots or Force Majeure.
- f. **Acquisition of Land.** Acquisition of public right of way, in fee simple or lesser estate, for the sole purpose of performing Major Maintenance and Improvement.

**4. ROAD SEGMENTS.** Road segments shall be as depicted in “Exhibit A”.

## **5. RESPONSIBILITIES.**

**5.1 Vegetation Maintenance.** The Parties shall carry out Vegetation Maintenance by separate agreement with the understanding that each Party shall ensure that its statutory requirements are met with respect to areas within its jurisdiction.

**5.2 Snow and Ice Control.** The Parties shall carry out Snow and Ice control by separate agreement with the understanding that each Party shall ensure that its statutory requirements are met with respect to areas within its jurisdiction.

**5.3 Routine or Minor Maintenance.** The Parties shall carry out Routine and Minor Maintenance at the sole cost and expense of the Party associated with the segment shown in Exhibit A.

**5.4 Major Maintenance and Improvement By One Party.** For any Major Maintenance or Improvement located wholly within the bounds of a single Party’s jurisdiction, that Party may undertake such work in its sole discretion and at its own cost and expense. Where the limits of such work end at or near the limit of its jurisdiction and a portion of the work occurs outside of the boundary of that Party, the other Party or Parties shall cooperate in good faith to permit the work to be performed in such areas and shall not unreasonably withhold permission for such Party to perform work. By way of example, and not limitation, a Party may

not unreasonably withhold permission for the Party making the Improvement to connect drainage pavement, drainage, traffic control or other roadway features to the existing roadway or portions thereof, or to erect and maintain signs or barricades for the maintenance of traffic outside of the work zone.

**5.5 Major Maintenance and Improvement Involving Multiple Jurisdictions.** Major Maintenance and Improvement as defined in Section 3.6, involving more than one Party, shall require a separate project agreement by and between the affected Parties.

- 6. ACQUISITION OF ADDITIONAL RIGHT OF WAY.** As part of any action undertaken by a Party or multiple Parties in conjunction with Major Maintenance or Improvement, the respective Party shall be responsible for acquiring and paying for any additional rights of way located within the bounds of its township or corporation limit unless otherwise specified in that project agreement.
- 7. LICENSES AND PERMITS FOR WORK WITHIN THE ROAD.** Each Township and the City shall administer permits for work within their respective jurisdiction, including construction of utilities, driveways or any other work within Three B's and K Road.
- 8. NOTICE OF CLOSURE OR WORK AFFECTING OTHER JURISDICTION.** Should any Party require closing the road to traffic for performance of its duties under this Agreement, that Party shall notify the other Parties of the planned action at the earliest date practicable. The plans for the maintenance activity shall provide for the maintenance of traffic as set forth by Section 5543.17 of the Ohio Revised Code.
- 9. ANNUAL REVIEW.** The Parties agree, through their designated representative(s), to meet not less than once per year to discuss and determine if any changes to this agreement are warranted, unless each Party consents, in writing, that such meeting is not necessary.
- 10. AUTOMATIC RENEWAL.** This agreement shall become effective on the date last approved by the Parties to this Agreement and shall renew automatically on the first day of January of each year thereafter, in perpetuity, without any further action required by any of the parties of this agreement.
- 11. SUSPENSION OR TERMINATION.** For the mutual benefit of the Parties and the safety, convenience and welfare of the public, this Agreement shall not be suspended or terminated without cause, except upon filing proper written Notice with the other political subdivisions at least twelve (12) months in advance of the date of automatic renewal, stating the intention of the Township or City to suspend or terminate the agreement and upon such renewal date the Party's responsibilities under this Agreement shall be suspended or terminated as set forth in the Notice. Upon a Notice of termination or suspension, this Agreement shall continue to be in full force and effect as to the two remaining Parties if the two remaining Parties agree in writing to continue the Agreement at least six months prior to the automatic renewal date.
- 12. NOTICE.** Notices required under this Agreement shall be transmitted in writing to all mailing addresses listed below:
  - a. City of Sunbury:**  
City Manager  
9 East Granville Street  
Sunbury, Ohio 43074
  - b. Berkshire Township:**  
Township Administrator  
1454 Rome Corners Road  
Galena, Ohio 43021
  - c. Berlin Township:**  
Township Administrator  
3271 Cheshire Road  
Delaware, Ohio 43015

**13. MISCELLANEOUS TERMS AND CONDITIONS.** The following miscellaneous terms and conditions apply to this Agreement:

**13.1 Parties Responsible For Their Own Actions.** The Parties are governmental entities/political subdivisions and lack authority to indemnify. Therefore, the Parties agree to be and shall be individually and solely responsible for their own negligence, actions, inactions, and/or omissions and/or the negligence, actions, inactions, and/or omissions of their respective board members, officials, officers, employees, directors, agents, representatives, and/or volunteers, resulting from the performance of this Agreement.

**13.2 Insurance.** The Parties shall respectively carry and maintain current throughout the term of the Agreement, without lapse, the following policies of insurance with the following minimum coverages:

- A. Commercial General Liability Insurance with minimum coverage of at least one million dollars (\$1,000,000.00) per occurrence, with an annual aggregate of at least two million dollars (\$2,000,000.00).
- B. Worker's Compensation Insurance as required by Ohio law.

Upon request, each Party shall provide the other a certificate(s) of insurance evidencing the above required insurance.

Each Party shall name the other Parties as an additional insureds on the policy(ies) of insurance required by subparagraph 12.2(A) above. Such designation shall appear on any provided certificate(s) of insurance.

Each Party shall be responsible for any and all premiums for the respective policies of insurance they are required to carry and maintain.

All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance.

The insurer shall provide at least thirty (30) days written notice to the additionally insured Parties before any cancellation or non-renewal of insurance coverage. Failure to provide such written notice will obligate the insurer to provide coverage as if cancellation or non-renewal did not take place. Acknowledgment of such requirement shall be shown on any provided certificates of insurance.

In addition to the rights and protections provided by the insurance policies as required above, each Party shall retain any and all such other and further rights and remedies as are available to it at law or in equity.

**13.3 Compliance With Applicable Law.** The Parties shall comply with all applicable federal, state, and local laws, rules, and regulations in the performance of this Agreement.

**13.4 Governing Law, Venue, and Jurisdiction.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before an appropriate Delaware County, Ohio court or federal court having jurisdiction over Delaware County, Ohio and such courts shall be deemed to have jurisdiction and venue. The Parties hereby irrevocably consent to such applicable law, venue, and jurisdiction.

**13.5 Records Retention/Access.** Records related to this Agreement shall be retained and accessed as follows:

- A. Retention: For a minimum of three (3) years after expiration or termination of this Agreement or as otherwise required by any applicable law, regulation, rule, or records retention schedule, whichever requires the longest retention period ("Retention Period"), the Parties shall retain and maintain all books, records, documents, papers, subcontracts, invoices, receipts, reports, documents and all other information or data relating to all matters covered by this Agreement (collectively "Records"). If an audit, litigation, prosecution, or other action (collectively "Action") is initiated during the term of this Agreement or during the Retention Period, the Parties shall retain and maintain the Records until the

Action is concluded and all issues are resolved or the longest applicable Retention Period has expired, whichever is later.

- B. Access: At any time during regular business hours (generally M-F, 8:00AM-5:00PM prevailing Eastern Time in the United States) and with reasonable notice, the Parties shall make available to the other Parties or their authorized representatives, at no cost and within a reasonable period of time, any and/or all Records. Parties or their authorized representatives shall be permitted to inspect or audit and/or make excerpts, photocopies, and/or transcripts of the Records.

**13.6 Survival.** The following sections shall survive any termination of this Agreement:

- A. Sec. 13.1 (Parties Responsible For Their Own Actions)
- B. Sec. 13.2 (Insurance)
- C. Sec. 13.4 (Governing Law, Venue, and Jurisdiction)
- D. Sec. 13.5 (Records Retention/Access)
- E. Sec. 13.6 (Survival)
- F. Sec. 13.8 (Consideration)
- G. Sec. 13.14 (Signatures).

**13.7 Assignment.** This Agreement and/or any of the rights or responsibilities it contains may not be assigned or transferred to any other party without the express written consent of all Parties.

**13.8 Consideration.** The Parties agree that the mutual benefits and welfare derived from and received by all Parties and public as a result of this Agreement are good and valuable consideration in support of this Agreement. The Parties agree not to challenge this Agreement on the basis of a lack of consideration.

**13.9 Waiver.** If a Party or Parties waives performance or fails to perform an obligation(s) under this Agreement and such failure is waived by the other Parties, such waiver shall be limited to the particular obligation or failure so waived and shall not be deemed to waive other, future, or subsequent performance or failures. Waiver by a Party or the Parties shall be authorized in writing and signed by an authorized representative(s) of the waiving Party or Parties.

**13.10 Headings.** The subject headings of the paragraphs in this Contract are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**13.11 Drafting.** This Agreement shall be deemed to have been drafted by all Parties and no interpretation shall be made to the contrary.

**13.12 Severability.** The provisions of this Agreement are severable and independent, and if any provision shall be unenforceable in whole or in part, the remaining provisions and any partially enforceable provisions, to the extent enforceable, shall nevertheless be binding and enforceable.

**13.13 Counterparts.** This Agreement may be executed in counterparts. Any counterparts shall be a part of this Agreement and constitute one (1) and the same Agreement.

**13.14 Signatures.** Any person signing this Agreement in a representative capacity hereby warrants that they have authority to sign this Agreement or have been duly authorized by their principal to sign this Agreement on such principal's behalf and are authorized to bind such principal.

**13.15 Entire Agreement.** This Agreement shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements, whether written or oral, between the Parties relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement.

**BERLIN TOWNSHIP BOARD OF TRUSTEES:**

By resolution \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
Ron Bullard, Township Trustee

\_\_\_\_\_  
Don Sutton, Township Trustee

\_\_\_\_\_  
Meghan Raehll, Township Trustee

Approved as to form:

\_\_\_\_\_  
Melissa A. Schiffel, Prosecuting Attorney

**BERKSHIRE TOWNSHIP BOARD OF TRUSTEES:**

By resolution \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
Mike Datillo, Township Trustee

\_\_\_\_\_  
Paul Disantis, Township Trustee

\_\_\_\_\_  
Mary Howard, Township Trustee

Approved as to form:

\_\_\_\_\_  
Melissa A. Schiffel, Prosecuting Attorney

**CITY OF SUNBURY:**

By resolution \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
Daryl Hennessy, City Administrator

**SUNBURY CITY ENGINEER:**

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

\_\_\_\_\_  
Carla Odebralski, P.E., City Engineer

Approved as to form:

\_\_\_\_\_  
David J. Brehm, Director of Law

**EXHIBIT A**

Segment Map	Segment # and Length	From (South Limit)	To (North Limit)	Responsibility for Routine and Minor Maintenance
	<p>Segment 1 0.865 miles</p>	<p>Sherman Road (T.R. 104) Not Including Intersection</p>	<p>U.S. 36 / S.R. 37 (ODOT Jurisdiction)</p>	<p>City of Sunbury</p>
	<p>Segment 2 1.504 miles</p>	<p>Falling Meadows Drive (T.R. 1481) Including Intersection</p>	<p>Sherman Road (T.R. 104) Including Intersection</p>	<p>Berkshire Township</p>
	<p>Segment 3 1.577 miles</p>	<p>Plumb Road (T.R. 105) Including Intersection</p>	<p>Falling Meadows Drive (T.R. 1481) Not Including Intersection</p>	<p>Berlin Township</p>