

**AGREEMENT BY AND BETWEEN THE LAKE COUNTY BOARD OF
COMMISSIONERS AND THE CITIES OF EASTLAKE, MENTOR, PAINESVILLE,
WICKLIFFE, WILLOUGHBY, AND WILLOWICK FOR THE STATE ROUTE 2
GENERAL MAINTENANCE AND LIGHTING REPLACEMENT PROJECT**

This Agreement is entered into by and between the Board of Commissioners of Lake County, Ohio (“Lake County”), 105 Main Street, Painesville, Ohio 44077, and the cities of Eastlake, Mentor, Painesville, Wickliffe, Willoughby, and Willowick (“Municipal Corporation(s)”), individually referred to as “party” and collectively as “parties.”

In consideration of the mutual covenants and promises contained in this Agreement, the parties agree as follows:

ARTICLE I – GENERAL MAINTENANCE

SECTION I. PURPOSE OF AGREEMENT

The parties hereto acknowledge that state law places the burden of maintaining municipal portions of State Route 2 upon each Municipal Corporation through which State Route 2 passes. However, in the interest of public need and economic efficiency, the parties agree that the authority and responsibility of maintenance of State Route 2 is best placed within the office of the Lake County Engineer, with the costs of maintenance being proportionally attributed to each Municipal Corporation. In accordance with R.C. 307.15, this Agreement is entered into for the purpose of Lake County instituting a general maintenance program to provide consistency across boundaries on behalf of the Municipal Corporations.

By entering into this Agreement, the parties agree that this contract shall serve as a continuing application for use of the municipal funds pursuant to R.C. 4504.04, and that use of those funds is approved by Lake County for the purposes set forth herein. Further, the parties specifically approve and authorize the Lake County Engineer to provide for the maintenance of State Route 2 within the listed municipalities as described in this Agreement.

SECTION II. GENERAL MAINTENANCE PROGRAM SERVICES

- A. Lake County, by and through the Lake County Engineer’s Office, will provide for only the following stated services as part of the general maintenance program on the portions of State Route 2 that traverse through each Municipal Corporation’s jurisdictional limits (“Services”):
1. Snow and ice control
 2. Normal pavement repair, including crack sealing and pothole patching
 3. Shoulder repair
 4. Pavement striping
 5. Installation of necessary traffic control signs and sign repair (ground mounted) which are within the Municipal Corporations’ responsibility
 6. Guardrail maintenance
 7. Mowing where accessible

8. Roadway drainage
 9. Litter pickup within limits of where mowing is performed
 10. Herbicidal spraying
 11. Pavement and bridge sweeping in coordination with Lake County Stormwater Management Department
 12. Damaged median barrier repair
 13. Removal and disposal of nuisance items
- B. The general maintenance program shall only include the items of normal maintenance as identified above as Services. The implementation and execution of Services shall be at the discretion and control of the Lake County Engineer, subject to review by all affected municipalities as set forth in Article I, Section VII.A., and final approval by the Lake County Board of Commissioners.
- C. The Committee (described below in Article I, Section VII) may convene to evaluate whether maintenance services for LED lights on State Route 2 are needed. Upon such evaluation, the Committee may, by majority recommendation, propose engaging a third-party vendor to perform lighting maintenance. Any such recommendation shall be submitted to the County and shall be subject to the approval of the County. If a third-party vendor is engaged to perform such services, the cost of such services shall be included in the Costs of the program as further described in Article I, Section III.

SECTION III. PROGRAM COST

- A. The total cost of Services shall be determined by the cost of labor, equipment, supplies, fuel, and materials necessary to provide the Services to the applicable portions of State Route 2 (“Costs”).
1. Labor shall include the following flat hours of time per bi-weekly pay period:
 - a. Superintendent: 25 hours
 - b. Finance Officer: 8 hours
 - c. Chief Deputy: 25 hours
 2. Road Crew cost will be calculated at the total cost of labor (at the employee’s current rate of pay, plus benefits) per actual recorded time spent on S.R. 2.
- B. When the Lake County Engineer determines that it is necessary to purchase equipment, including vehicles, (“Equipment”) for the purpose of providing Services, Lake County will procure such Equipment at Lake County’s expense. Although Lake County will purchase and own such items, the Municipal Corporations agree that they will pay an equipment-use fee, which will be itemized on each invoice. The fee for Equipment purchased shall be amortized over a 5-year period. Equipment-use fees are intended to cover the costs of the purchase of the Equipment. The parties acknowledge that any Equipment purchased or acquired by Lake County for the purpose of performing the Services will be primarily dedicated to such Services. However, Lake County may, when reasonably necessary, utilize the Equipment for other County operations, including but not limited to situations where substitute equipment is required due to repairs, breakdowns, emergencies, or when such use would improve operational efficiency. Any incidental use of the Equipment

outside the scope of this Agreement shall not affect the Municipal Corporations' responsibility to reimburse Lake County for the costs associated with the Equipment for the performance of the Services.

1. Advance notice to the Municipal Corporations will be provided before any Equipment in excess of the then-current competitive bidding threshold to be used in the provision of Services is acquired.
2. Should this Agreement terminate, Lake County shall be entitled to use any Equipment purchased in accordance with this provision for any legal purpose.
3. If Lake County determines that the Equipment is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, Lake County shall provide the Municipal Corporations with the right of first refusal to the Equipment before its disposal.

- C. For the support of the general maintenance program to pay for the cost of Services, Lake County will contribute quarterly 22.5%, for a total of 90% annually, of the immediately preceding year's funds collected from Lake County's annual license tax levied in accordance with R.C. 4504.02 for the benefit of the municipalities. Each Municipal Corporation agrees to pay to Lake County, c/o the Lake County Engineer, as their share of the cost of the general maintenance program, the following: a percentage of the remainder of the total cost of the program (beyond Lake County's contribution) for Costs of the Services, which shall be divided proportionally among the participating Municipal Corporations based on each Municipal Corporation's lane mileage as detailed below.
- D. The proportionate share of the costs attributable to each Municipal Corporation shall be based on each respective Municipal Corporation's lane mileage along State Route 2 as follows:

<u>Municipal Corporation</u>	<u>Mileage Along State Route 2</u>
Eastlake	12.524
Mentor	47.075
Painesville	14.549 (including 4.08 miles on SR44)
Wickliffe	13.122
Willoughby	17.259
Willowick	3.527

- E. The Lake County Engineer shall bill each Municipal Corporation for its proportionate share on a quarterly basis. Within thirty (30) days of receipt of any invoice, the Municipal Corporation shall make payment in full to Lake County, c/o Lake County Engineer.
- F. Quarterly invoices shall include task, time, and materials costs for the reported quarter.

SECTION IV. RECORDS AND REPORTS

- A. Records relating to the operation of the general maintenance program shall be created, obtained, and maintained by the Lake County Engineer.

- B. Financial records relating to costs of the general maintenance program shall be maintained by the Lake County Engineer.
- C. The Lake County Engineer shall prepare a summary of the costs of and work performed for the general maintenance program for the preceding calendar year, and shall provide a copy of the report to the Lake County Board of Commissioners and each participating Municipal Corporation annually.
- D. All records relating to the general maintenance program shall be retained by the Lake County Engineer in accordance with the Lake County Engineer's records retention schedule.

SECTION V. OTHER REPAIRS OF STATE ROUTE 2

- A. The parties acknowledge that there may be items of major or extraordinary repair or rebuilding, or other items of general maintenance required along State Route 2 which are not included within the general maintenance program Services pursuant to this Agreement, as set forth in Article I, Section II.A. The parties agree that such items are the sole responsibility of the Municipal Corporation when said repair/rebuilding/other general maintenance is required along that Municipal Corporation's portion of State Route 2.
- B. Lake County and the Lake County Engineer agree that in the event labor, equipment, and/or materials are available for any such major or extraordinary repair/rebuilding/general maintenance not otherwise included in this Agreement, it will make reasonable efforts to aid the Municipal Corporation required to perform such repair/rebuilding/other general maintenance. However, the parties agree that there is no obligation for Lake County and/or Lake County Engineer to provide such assistance and a separate agreement may be entered into between Lake County and the applicable Municipal Corporation to do so.
- C. In the event damage is caused by a third party to any portion of State Route 2 which is repaired or maintained by Lake County as set forth within the Services provided herein, the cost for any required repair/replacement to fix the damage will be included in the overall costs of the general maintenance program. The Municipal Corporation where the damage was incurred shall be responsible for pursuing recovery of those costs from the third party or an appropriate insurance carrier. Neither Lake County nor the Lake County Engineer will be responsible for pursuing any legal action or claim to seek reimbursement or insurance coverage from a third party for such damage, but the Lake County Engineer will cooperate with insurance companies, law enforcement, and any other necessary party to provide required information to enable the Municipal Corporation to do so. In the event the Municipal Corporation recovers any or all of the costs of the repair/replacement, the Municipal Corporation shall promptly provide such funds to the Lake County Engineer to offset the costs of the repair/replacement to the general maintenance program.

SECTION VI. TERM AND TERMINATION

- A. Article I of this Agreement shall be effective as of [date] (the “Effective Date”), and shall continue in effect for a period of three (3) years (“Term”). Article I of this Agreement will automatically renew for successive three-year terms (“Successive Term”) unless otherwise terminated as provided for in this section.
- B. Any Municipal Corporation may terminate its participation in Article I of this Agreement for any reason by providing at least six (6) months advance written notice to all other parties prior to the end of the Term or any Successive Term. Such Municipal Corporation giving notice of termination will cease its participation and obligations under this Agreement at the end of the then-current term. In such case, Lake County may terminate Article I of this Agreement by giving ninety (90) days’ notice to the parties, in which case, Article I of this Agreement will terminate for all parties at the end of the then-current Term. In the event Lake County does not give notice of termination, Article I of this Agreement shall continue in effect for the remaining parties that did not give notice of termination for a Successive Term.
- C. Article I of this Agreement may be terminated for any reason by Lake County, after consultation with the Lake County Engineer, upon at least six (6) months advance written notice to all other parties prior to the end of the Term or any Successive Term. Article I of this Agreement shall continue in effect until the end of the then-current term following notice of termination, at which time Article I of this Agreement shall be terminated in its entirety (with the exception of the provisions that survive termination).
- D. This Article I may be terminated by all parties upon their mutual agreement and understanding at any time.
- E. Lake County shall be responsible for providing services pursuant to Article I up to the termination date. Each Municipal Corporation shall be responsible for its proportionate share of the costs outlined herein up to the date of termination.
- F. In the event a Municipal Corporation gives notice of termination as set forth in Article I, Section VI.B. in order to maintain its portion of State Route 2 directly, or to have such maintenance performed by a third-party contractor, the following shall apply:
 - 1. After the end of the then-current Term or Successive Term after the Municipal Corporation’s participation in this Agreement has terminated, and provided that the Agreement is still in effect for any remaining parties, Lake County shall continue to award to that withdrawing Municipal Corporation its proportional share of the annual license tax funds levied in accordance with R.C. 4504.02, as described in Article I, Section III.C. The proportional share shall be calculated on the basis of that Municipal Corporation’s lane mileage along State Route 2 as set forth in Article I, Section III.D.
 - 2. Such funds shall be awarded solely on the express condition that they are used exclusively for the maintenance of that Municipal Corporation’s portion of State

Route 2, whether such maintenance is performed by the Municipal Corporation itself or through a third-party contractor.

3. As a continuing condition of receiving such funds, the withdrawing Municipal Corporation shall provide to Lake County, on at least an annual basis or upon reasonable request, sufficient documentation to demonstrate that all funds distributed under this provision have been used exclusively for the stated maintenance purpose.
 4. While this provision will survive the Municipal Corporation's withdrawal from this Agreement, this provision shall only remain in effect for the same period during which the Agreement is in effect for the remaining parties.
- G. Upon termination of this Agreement, the following provisions of shall survive termination: Article I, Section III.B.; Article I, Section IV.D.; Article I, Section VI.F. (only as to a withdrawing Municipal Corporation, provided that the Agreement remains in effect for the remaining parties); Article I, Section IX; and Article I, Section XI.

SECTION VII. STATE ROUTE 2 MAINTENANCE COMMITTEE

- A. The parties agree to establish a State Route 2 Maintenance Committee ("Committee") for the purpose of planning for the operation of the general maintenance program and services to be performed along State Route 2. The committee shall be comprised of the following: 1) Lake County Engineer (or designee); 2) the chief executive of each Municipal Corporation (or designee); and 3) a designee of the Lake County Board of Commissioners.
- B. The Committee shall meet semi-annually prior to and after the snow season. Meetings of the Committee may also be convened upon request by the Lake County Engineer or a Municipal Corporation.
- C. The Committee shall review this Agreement two years into the Term and any Successive Term and make any recommended amendments to this Agreement to the parties hereto.
- D. All committee meetings shall be open to the public and shall follow the requirements of the Ohio Open Meetings Act.

SECTION VIII. EMPLOYMENT AND INSURANCE

All Lake County staff performing services pursuant to this Agreement shall at all times be considered an employee of Lake County and subject to the direction and control of Lake County. Lake County is responsible for providing insurance coverage for its staff performing Services per this Agreement, including automobile and health insurance, workers' compensation, unemployment compensation, and/or OPERS benefits, and Municipal Corporations shall have no responsibility in this regard.

SECTION IX. OWNERSHIP OF EQUIPMENT AND MATERIALS

Any Equipment and/or materials purchased by Lake County and/or Lake County Engineer pursuant to this Agreement shall be and remain the property of Lake County and/or Lake County Engineer without any claim of interest by any Municipal Corporation.

ARTICLE II – HIGHWAY LIGHTING REPLACEMENT

SECTION I. PURPOSE

In accordance with R.C. 307.15, the purpose of this Article II of this Agreement is to establish the terms under which Lake County will undertake and administer the highway lighting replacement project along State Route 2 within the jurisdictional boundaries of the Municipal Corporations on behalf of those Municipal Corporations (“Project”), and to define the funding, repayment, and cooperative obligations of the parties. It is understood and agreed to by the parties that the City of Painesville is not included in the definition of “Municipal Corporation” for purposes of Article II of this Agreement and shall have no rights or obligations pertaining thereto.

SECTION II. APPLICATION FOR MUNICIPAL FUNDS UNDER R.C. 4504.04

- A. Each Municipal Corporation hereby acknowledges and agrees that its execution of this Agreement constitutes its formal application for the use of municipal funds under R.C. 4504.04 (“Municipal Funds”).
- B. By and through this Agreement, the Municipal Corporations hereby collectively request an allocation of Municipal Funds to pay for the total cost of the Project, not to exceed \$2,000,000, and Lake County hereby awards such amount for this Project.

SECTION III. COUNTY OBLIGATIONS

The parties agree that, instead of the Municipal Funds awarded herein being directly provided to each Municipal Corporation, Lake County, by and through the Lake County Engineer, shall undertake and manage the Project, including procurement, engineering, contracting, construction oversight, and coordination, and shall use such awarded Municipal Funds to fund this Project on behalf of the Municipal Corporations.

SECTION IV. COOPERATION

The Municipal Corporations shall fully cooperate with Lake County in all matters necessary for the timely completion of the Project, including access, permitting, coordination, and municipal support as reasonably required.

SECTION V. TERM AND TERMINATION

Article II of this Agreement is effective as of [date] (“Effective Date”) and shall remain in effect until all Project-related activities are complete. Thereafter, this Article II shall terminate and all obligations and responsibilities related thereto shall cease.

ARTICLE III – MISCELLANEOUS TERMS

SECTION I. NO PARTNERSHIP

No partnership, employment relationship, joint venture, association, or other relationship between Lake County and Municipal Corporations shall be considered to be created by virtue of this Agreement or any Services rendered in accordance with this Agreement.

SECTION II. LIABILITY

Each party agrees to be solely liable for any negligent acts or omissions by or through itself, its agents, and employees arising out of this Agreement, and nothing in this Agreement shall impute or transfer any such responsibility from one party to the other party.

SECTION III. PRIOR AGREEMENTS AND AMENDMENTS

This Agreement constitutes the entire agreement between the parties, and terminates all prior agreements, written or oral, between the parties concerning the same services as of its Effective Date. Any amendment to this Agreement shall be in writing and signed by all parties.

SECTION IV. HEADINGS

The section headings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

SECTION V. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

SECTION VI. COMPLIANCE WITH LAW

Lake County agrees to comply with all applicable laws, codes, regulations, ordinances, and ODOT requirements in the provision of the services agreed to herein.

SECTION VII. DISPUTE RESOLUTION

In the event of any dispute between Lake County and one or more Municipal Corporations regarding the general maintenance program, the parties shall make diligent efforts to resolve such dispute. Any dispute raised by a Municipal Corporation shall first be presented to the State Route

2 Maintenance Committee for discussion and to recommend a resolution. In the event the parties are unable to satisfactorily resolve any dispute cooperatively, in the event of nonpayment of an invoice by a Municipal Corporation, or if a party is otherwise in default or breach of this Agreement, any legal action taken by a party shall be filed in a court of competent jurisdiction in Lake County, Ohio.

SECTION VIII. NOTICES

A party giving notice as provided for by this Agreement shall send such notice by United States Postal Service, certified mail, return receipt requested, to the attention and address of the other party which is set forth below, or to such other address as the party designates in writing. Notice is considered to be given upon return of the requested receipt, or three days after such notice is sent by the United States Postal Service in the event the receipt is not returned.

As to Lake County:

Jason Boyd
County Administrator
105 Main Street
Painesville, OH 44077
jboyd@lakecountyohio.gov

As to Eastlake:

Name
Title
Address
City, State Zip Code
Email

As to Mentor:

Name
Title
Address
City, State Zip Code
Email

As to Painesville:

Name
Title
Address
City, State Zip Code
Email

As to Wickliffe:

Name

Title

Address

City, State Zip Code

Email

As to Willoughby:

Name

Title

Address

City, State Zip Code

Email

As to Willowick:

Name

Title

Address

City, State Zip Code

Email

[The remainder of this page intentionally left blank.]

THIS AGREEMENT for the **STATE ROUTE 2 GENERAL MAINTENANCE PROGRAM AND LIGHTING REPLACEMENT PROJECT** is executed by the parties signing below, who each warrant that they have the authority to enter into this Agreement in accordance with and pursuant to legislation duly adopted by their respective legislative bodies, evidenced by the number of such legislative act and the date adopted as indicated:

LAKE COUNTY BOARD OF COMMISSIONERS

Approved as to form:

Jason Boyd
Lake County Administrator

Lake County Prosecutor

Date: _____

Resolution No. _____, adopted

Consented and agreed to by:

Lake County Engineer

CITY OF EASTLAKE

Approved as to form:

Name:
Title:

Legal Counsel

Date: _____

Resolution No. _____, adopted

CITY OF MENTOR

Approved as to form:

Name:
Title:

Legal Counsel

Date: _____

Resolution No. _____, adopted

CITY OF PAINESVILLE

Approved as to form:

Name:

Title:

Date: _____

Legal Counsel

Resolution No. _____, adopted

CITY OF WICKLIFFE

Approved as to form:

Name:

Title:

Date: _____

Legal Counsel

Resolution No. _____, adopted

CITY OF WILLOUGBY

Approved as to form:

Name:

Title:

Date: _____

Legal Counsel

Resolution No. _____, adopted

CITY OF WILLOWICK

Approved as to form:

Name:

Title:

Date: _____

Legal Counsel

Resolution No. _____, adopted
