



OHIO DEPARTMENT OF TRANSPORTATION

Mike DeWine, Governor

Jack Marchbanks, Ph.D., Director

District 1

1885 North McCullough St., Lima, OH 45801

419-222-9055

transportation.ohio.gov

September 22, 2020

Honorable Jennifer Rathburn
Mayor, Village of Carey
127 N. Vance St.
Carey, OH 43316
RE: M&R 689 Consent Form and Maintenance Agreement

Dear Mayor Rathburn,

The Ohio Department of Transportation is currently working to update village ordinance MR 689 across the State. Pursuant to Ohio Revised Code section 5521.01, ODOT may maintain, repair and apply standard longitudinal pavement marking lines and erect regulatory and warning signs on state highways within municipal corporations, but must first obtain the consent of the village or city. The MR 689 consent legislation document is included with this letter for your consideration and implementation. This will put the permission in place so ODOT has it when we need it.

This consent legislation, as you can see, also allows your municipal corporation the possibility of entering into a future agreement(s) with ODOT for us to perform additional work that is not part of our statutory duties. These future agreements would only cover some roadway maintenance and snow and ice removal. If there would be a large construction or reconstruction project within your municipal corporation, a separate consent legislation and agreement would be required. Your Village's prior consent form has been included with this letter. Although this consent and agreement is already in place, we have been informed by our legal division as well as the Attorney General's office that these documents cannot go on for years without being revisited and renegotiated.

If you have no questions and do adopt this legislation, please send the fully executed M&R 689 consent form to me at the above address. In addition, if you choose to allow ODOT to continue snow and ice removal operations, you must also complete the Village Snow and Ice Agreement which is included with this letter. Upon receipt, we will obtain the Department signatures and return copies to you. If you do have any questions regarding this or any other transportation related topics, feel free to contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read 'D. Schierloh'.

Derrick T. Schierloh, P.E.
Traffic Operations Engineer
Phone: (419) 999-6857

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ODOT AGREEMENT NO. 35492
Village Consent Ordinance/Resolution No. _____

**AGREEMENT
BETWEEN THE STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION
AND THE VILLAGE OF CAREY, OHIO
FOR THE REMOVAL AND CONTROL OF SNOW AND ICE**

This Agreement is made by and between the State of Ohio, Department of Transportation, 1980 West Broad Street, Columbus, Ohio 43223, acting by and through its Director, hereinafter referred to as the "ODOT" and the Village of Carey, 127 N. Vance St., Carey, Ohio 43316, hereinafter referred to as the "VILLAGE" and shall be referred to singularly as "party" and collectively as "parties".

WHEREAS, pursuant to Ohio Revised Code 5501.41, the Director of the Department of Transportation may remove snow and ice from state highways within villages, but before doing so, the Director must obtain the consent of the legislative authority of such village; and

WHEREAS, the legislative authority of the VILLAGE has granted its consent to the Director to remove snow and ice and to use snow and ice control material on the state highways within the its corporate limit; and

WHEREAS, it is in the interest and safety of the traveling public and it serves to manage public resources of ODOT and VILLAGE in an efficient manner that ODOT perform snow and ice removal and control on US-23, SR-103, SR-199, and SR-568 within the VILLAGE.

NOW THEREFORE, it is agreed by the parties as follows:

1. OBLIGATIONS OF ODOT

- 1.1 ODOT will remove snow and ice and apply snow and ice control material on US-23, SR-103, SR-199, and SR-568 within the VILLAGE's corporate limits during the normal course of removing snow and ice and applying snow and ice control material on roads within ODOT's responsibility. ODOT shall not perform this work more frequently nor alter the schedule of when this work is to be performed and such work shall not include the removal of snow and ice from and the use of snow and ice control material on driveways, parking areas, and intersecting village roads and streets.

2. OBLIGATIONS OF THE VILLAGE

- 2.1 The VILLAGE grants ODOT the right to use and occupy the right-of-way in and abutting the section of US-23, SR-103, SR-199, and SR-568 herein described for the purposes of performing snow and ice removal and control operations.

- 2.2 The VILLAGE is responsible to fix, at its own expense, any damage to the road surface, such as potholes, caused by ODOT's removal of snow and ice and/or application of any snow and ice control material.

3. INSPECTIONS

- 3.1 Periodic inspections may be performed jointly by representatives of the parties to determine the level of service being provided on the state highway system during a snow and ice event.

4. TERM OF AGREEMENT

- 4.1 This Agreement shall commence on the date of the last signature below and shall be for a term of five (5) years unless terminated sooner pursuant to paragraph 5.2 of this Agreement and shall automatically renew for successive five (5) year terms.
- 4.2 This Agreement may be terminated by either party giving sixty (60) days written notice to the other party.

5. GENERAL PROVISIONS

- 5.1 This Agreement shall be to the benefit of and be binding upon the respective parties herein, their successors and assigns. Nothing in this Agreement shall inure to the benefit of any third parties. Nothing stated in this Agreement shall act as a waiver of any immunities or defenses available to either party, either by statute or common law.
- 5.2 Either party may, at any time during the term of the agreement, request amendments or modifications which includes assignment. Requests for amendments or modifications shall be in writing and shall specify the requested changes and the justifications for such changes. Should the parties consent to modifications of the contract, then an amendment shall be drawn, approved and executed in the same manner as the original agreement.
- 5.3 This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Ohio. To the extent that the ODOT is a party to any litigation arising out of or relating in any way to this agreement or the performance there under, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 5.4 The State of Ohio and ODOT are self-insured.
- 5.5 ODOT is hereby released from any and all liability for damage or injury received by the VILLAGE, its employees, agents or subcontractors while performing tasks, duties, work or responsibilities as set forth in this Agreement.
- 5.7 If the VILLAGE breaches or defaults any of the terms or conditions of this Agreement, and if that breach is not remedied within thirty (30) days after written notification by ODOT of that breach or default, ODOT may terminate this Agreement.

- 5.8 ODOT and VILLAGE agree to make a good faith effort to resolve any disputes which may arise between them concerning interpretation of, or performance pursuant to, this agreement. In the event a dispute arises regarding this Agreement, notification of the dispute shall be sent to the other party within ninety (90) days of discovery of such dispute. Within the notification, the disputing party shall present such evidence as may support their position. Within a reasonable time, the ODOT District Deputy Director and a designated representative from the VILLAGE shall review the facts and circumstances surrounding the dispute for the purpose of determination. Said dispute shall be resolved within a reasonable period of time. The parties agree that any dispute that cannot be resolved shall be resolved solely and finally by the Director of ODOT.
- 5.9 Ohio Ethics Law: The VILLAGE and ODOT, by signing this document, each certify: (1) it has reviewed and understands the Ohio Ethics law and conflict of interest laws as provided by Chapters 102 and 2921 of the Ohio Revised Code, and (2) will take no action inconsistent with those laws.
- 5.10 In carrying out this Agreement the parties shall comply with all applicable federal, state and local laws in the conduct of all work including, but not limited to non-discrimination, equal employment opportunity and drug free workplace.
- 5.11 In no case shall the VILLAGE or any of its personnel be considered agents, servants or employees of ODOT or the State of Ohio. Each party shall be responsible for the full payment of all taxes including without limitation, unemployment compensation premiums, income tax deductions, payroll deductions.

6. NOTICE

- 6.1 Notices under this agreement shall be directed as follows:

VILLAGE of CAREY
127 N. Vance St.
Carey, OH 43316

Ohio Department of Transportation
District 1
1885 N. McCullough St.
Lima, OH 45801

7. SIGNATURES

- 7.1 Any person executing this agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this agreement on such principal's behalf.
- 7.2 Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or email. Each party hereto shall be entitled to rely upon a facsimile or electronic signature of any other party delivered in such a manner as if such signature were an original.

The Parties hereunto have caused this agreement to be executed by officials thereunto duly authorized as of the day and year last written below.

VILLAGE OF CAREY

By: _____

Printed Name: _____

Title: _____

Date: _____

STATE OF OHIO
Department of Transportation

By: _____
Jack Marchbanks, Director

Date: _____

APPROVAL AND GRANTING CONSENT TO THE DIRECTOR OF THE OHIO DEPARTMENT OF TRANSPORTATION AUTHORITY TO, APPLY, MAINTAIN AND REPAIR STANDARD LONGITUDINAL PAVEMENT MARKINGS AND ERECT REGULATORY AND WARNING SIGNS ON STATE HIGHWAYS INSIDE VILLAGE CORPORATE LIMITS, AND

GIVING CONSENT OF THE VILLAGE FOR THE OHIO DEPARTMENT OF TRANSPORTATION TO REMOVE SNOW AND ICE AND USE SNOW AND ICE CONTROL MATERIAL ON STATE HIGHWAYS INSIDE THE VILLAGE CORPORATE LIMITS, AND

GIVING CONSENT OF THE VILLAGE FOR THE OHIO DEPARTMENT OF TRANSPORTATION TO PERFORM MAINTENANCE AND/OR REPAIR ON STATE HIGHWAYS INSIDE THE VILLAGE CORPORATION.

WHEREAS, the Director of Transportation, under Section 5521.01 of the Revised Code of Ohio, is authorized upon request and approval of the legislative authority of the Village to maintain, repair and apply standard longitudinal pavement marking lines and to erect regulatory and warning signs, as defined in the manual adopted under section 4511.09 of the Revised code on any section of a State Highways within the corporate limits of a village; and

WHEREAS, the Director of Transportation, under Section 5501.41, Revised Code of Ohio, may, upon consent of the legislative authority of the Village, remove snow and ice and use snow and ice control material on State Highways within the corporate limits of a Village pursuant to a written agreement to be entered into between the Village and the Department of Transportation of the State of Ohio; and,

WHEREAS, the Director of Transportation, under Section 5511.01 of the Revised Code of Ohio, may, upon the consent of the legislative authority of the Village, perform maintenance and/or repair on the State Highways within the corporate limits of the Village pursuant to a written agreement to be entered into between the Village and the Department of Transportation of the State of Ohio; and

WHEREAS, State Highway Nos. US-23, SR-103, SR-199, and SR-568 lie within the Village of Carey, Wyandot County; and

WHEREAS, the work proposed to be authorized under this ordinance shall be restricted to the application, maintenance and repair of standard longitudinal pavement markings and the erecting of regulatory and warning signs, and may include if an Agreement is entered into, the removal of snow and ice and the use of snow and ice control material on State Highways within the corporate limits of Village but shall not include the removal of snow and ice and the use of snow and ice control material on driveways, parking areas, and intersecting roads and streets, and, may include if an Agreement is entered into, the maintenance and/or repair of the State Highways within the corporate limits of the Village; and

WHEREAS, this ordinance shall not relieve or discharge the Village from responsibility for emergency repair of signs installed by the Department of Transportation; and

WHEREAS, this ordinance shall not relieve or discharge the Village from any claim or claims of any nature arising from, or growing out of, the work by the Department of Transportation of the State of Ohio on said highways in the Village, and the Village shall save the State of Ohio harmless from any and all such claims; and

WHEREAS, this ordinance is not intended to and shall not supersede any section of the Ohio Revised Code pertaining to the responsibilities of the Village and the Department of Transportation regarding any other maintenance and repair.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Carey, State of Ohio as follows:

SECTION I: It is hereby declared to be in the public interest that the consent of said Village be, and such consent is hereby given to the Department of Transportation of the State of Ohio for said Department to apply standard longitudinal pavement markings, and to erect regulatory and warning signs on said State Highways in accordance with the standard practices of the Ohio Department of Transportation.

SECTION II: It is hereby declared to be in the public interest that the consent of said Village be, and such consent is hereby given to the Department of Transportation of the State of Ohio, if an agreement is entered into, for said Department to remove snow and ice and use snow and ice control material on any State Highways listed in the agreement in accordance with the standard practices of the Ohio Department of Transportation.

SECTION III: It is hereby declared to be in the public interest that the consent of said Village be, and such consent is hereby given to the Department of Transportation of the State of Ohio, if an agreement is entered into, for said Department to perform certain maintenance and/or repair on any State Highways listed in the agreement in accordance with the standard practices of the Ohio Department of Transportation.

SECTION IV: That the Village (list position) _____ is authorized to enter into any agreement with ODOT for the removal of snow and ice and the use of snow and ice control material on said State Highways within the corporate limits of the Village and any agreement with ODOT for certain maintenance and/or repair of the State Highways within the corporate limits of the Village.

SECTION V: That the Clerk is hereby directed to furnish the Director of Transportation and the Board of County Commissioners of Wyandot, Ohio, with a certified copy of this Ordinance immediately upon execution.

SECTION VI: That this Ordinance shall take effect and be in force at the earliest time allowed by law.

Passed: _____, 20____

Attest: _____ Clerk _____ Mayor

CERTIFICATE OF COPY

Village of _____ Carey _____

County of _____ Wyandot _____ Ohio SS:

I, _____, as Clerk of the Village of _____ Carey _____, Ohio, do hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the council of said Village on the _____ day of _____, 20____; that the publication of such Ordinance has been made and certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and the certificate of publication thereof are of record in Ordinance Record No. _____, Page _____.

I have hereunto subscribed my name and affixed my official seal this _____ day of _____, 20____.

(SEAL)

Clerk
Village of _____ Carey _____, Ohio

ACCEPTED AND APPROVED by the Ohio Department of Transportation

_____, Director of Transportation

Date: