

**OSHTEMO CHARTER TOWNSHIP BOARD
7275 West Main Street
Kalamazoo, MI 49009**

January 18th, 2022

Refer to www.oshtemo.org home page for Virtual Meeting Information

**SPECIAL MEETING
6:00 P.M.
AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Regular Session Items

WORK SESSION ITEMS

4. Discussion on Climate Change Proclamation Request
5. Review & Discussion of Road Commission Nonmotorized Umbrella Agreement
6. Other Updates & Business

BREAK (Time Permitting) – 7:05 P.M.

REGULAR SESSION ITEMS – 7:15 P.M.

7. Consent Agenda
 - a. Approve Minutes – December 14th, 2021
 - b. Receipts & Disbursements Report
 - c. 2022 Township Board Meeting Schedule (Changes to November Re. Election)
 - d. Hazmat Mutual Aid Agreement (Renewal)
8. Road Commission 2022 PAR Funds Commitment
9. 2022 Budget Amendments
10. Request to Enter Into Closed Session to Discuss Opinion of Counsel
11. Update on Big Rock Drive Area Water Main Distribution Extension Project
12. Public Comment
13. Board Member Comments
14. Adjournment

**Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8:00 am- 5:00 pm, and on Friday 8:00 am-1:00 pm. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
Clare Buszka	216-5260	cbuszka@oshtemo.org
<u>Trustees</u>		
Cheri L. Bell	372-2275	cbell@oshtemo.org
Kristin Cole	375-4260	kcole@oshtemo.org
Zak Ford	271-5513	zford@oshtemo.org
Kizzy Bradford	375-4260	kbradford@oshtemo.org

Township Department Information		
<u>Assessor:</u>		
Kristine Biddle	216-5225	assessor@oshtemo.org
<u>Fire Chief:</u>		
Mark Barnes	375-0487	mbarnes@oshtemo.org
<u>Ordinance Enf:</u>		
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org
<u>Parks Director:</u>		
Karen High	216-5233	khigh@oshtemo.org
Rental Info	216-5224	oshtemo@oshtemo.org
<u>Planning Director:</u>		
Iris Lubbert	216-5223	ilubbert@oshtemo.org
<u>Public Works:</u>		
Marc Elliott	216-5236	melliott@oshtemo.org

Zoom Instructions for Participants

Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to “**Join via computer**” as well as phone numbers for a conference call option. It will also include the 11-digit Meeting ID.

To join the videoconference:

1. At the start time of the meeting, click on this link to [join via computer](#). You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio works, click on “Join audio by computer.”

You may also join a meeting without the link by going to [join.zoom.us](#) on any browser and entering this **Meeting ID: 849 7106 5539**

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet, or smartphone then you can join via conference call by following instructions below.

To join the conference by phone:

1. On your phone, dial the teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **849 7106 5539#**

Participant controls in the lower-left corner of the Zoom screen:



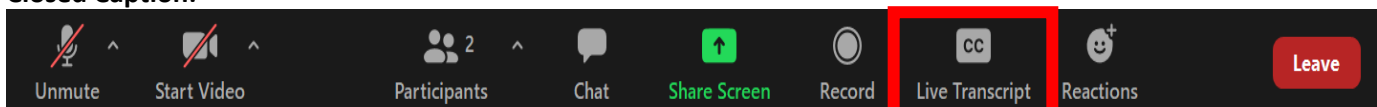
Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- Participants – opens a pop-out screen that includes a “Raise Hand” icon that you may use to raise a virtual hand. **This will be used to indicate that you want to make a public comment.**
- Chat – opens pop-up screen that allows participants to post comments during the meeting.

If you are attending the meeting by phone, to use the “Raise Hand” feature **press *9 on your touchtone keypad.**

Public comments will be handled by the “Raise Hand” method as instructed above within Participant Controls.

Closed Caption:



Turn on Closed Caption:

Using the icons at the bottom of the Zoom screen:

1. Click on the “Live Transcription” button.
2. Then select “Show Subtitle”.

Memorandum



Date: 12 January 2022
To: Township Board
From: Anna Horner, P.E., Public Works Director
Subject: Non-Motorized Facility “Umbrella” Agreement with RCKC

Objective

Discussion on current practices and opportunities for alignment with Oshtemo Township priorities. Township Board to support recommendations be submitted on behalf of the Township Board by Supervisor to the Road Commission of Kalamazoo County (RCKC) Board for consideration of revisions to agreement and to authorize expenditure up to \$10,000 for forensic CPA analysis of overhead rate calculation and application, and to amend 2022 budget accordingly.

Background

From multiple planning processes and significant public input over time, Oshtemo residents have expressed interest and the desire for non-motorized facilities throughout the Township and especially within the urban boundary. Thus, the Township Board prioritized these initiatives and staff is always looking for opportunities to implement projects with best management practices (BMPs) of efficiency, cost effectiveness, and in a proactive manner. As we have previously discussed, **achieving these is fully recognized when all infrastructure assets are coordinated into comprehensive projects across agencies and jurisdictions.**

The Township has limited options for funding mechanisms to support the investment for non-motorized because no direct revenue for this use is collected by the Township. The revenue collected from fuel sales and vehicle registrations by Public Act 51 of 1951 (commonly referred to as just “Act 51”) is one of the few revenue sources and is eligible to be spent on constructing non-motorized facilities as individual projects or as part of road projects.

Act 51 funds must be distributed directly to an authorized Act 51 agency. The RCKC has partnered at Township request, accepting and administering available funds in their role as the Act 51 Agency for Transportation Alternative (TA or TAP) Grants and Safety Grant projects. They are much more than just an administrator of the funds and should be recognized for their expertise and knowledge in the process of compliance with federal regulations and MDOT construction requirements.

To provide efficiency in coordination and authorization, the RCKC and Township agreed to utilize an “Umbrella” agreement for all non-motorized projects starting in 2018. Said agreement states “Both parties agree that changes may be requested to this agreement at any time.” Given multiple upcoming non-motorized projects, some very large in scale, and a few years of practical application, this review is timely. The purpose of any of the agreements between the Township and Road Commission should be executed with recognition and respect of the authority of the concurrent jurisdiction each agency brings and are intended to seek and provide best solution for the residents and users. An agreement is intended to define and clarify procedures to enhance these concurrent jurisdictions authority in way which best serve the entire public and optimizes any public capital expenditures. Specific authority is delegated to a Road Commission as an agency, while legislative authority resides with the local government.

Staff would like to highlight some specific items for review and consideration:

- Section 2 shall be solely related to the ownership and respective maintenance of facilities, ending the section after second sentence. (Remaining items in this section, are proposed to be new sections and are addressed separately as outlined below.)
- Section 3 outlines financial commitments and responsibilities of each party. Staff is recommending use of a CPA to perform a forensic audit into current application of overhead rate applied to Township invoices for non-motorized projects and evaluate appropriateness for indirect costs incurred to accurately revise this section (and potentially combine with Section 7).

(Proposed sections)

- Any planning effort by either party should include contacting the other party at the earliest possible time to discuss potential coordination of asset needs for comprehensive projects.
- Oshtemo will use the adopted non-motorized Master plan (GO! Green Plan) and commits to completing feasibility & concept planning (at a minimum within the urban boundary) so they can timely provide scope to RCKC.
- Responsibility for replacement:
 - Given the requirements by RCKC to get any work or proposed facilities in ROW reviewed and permitted, it is respectively their responsibility to have enough road network planning and analysis done to know if their own future projects (within of 10 year time frame) would jeopardize the location of new nonmotorized facilities they are issuing permits for. If a non-motorized facility is installed by Oshtemo and the RCKC proposes a project in that timeframe that conflicts with those facilities, they are responsible for relocation and replacement.
- Complete Streets accommodations for Urbanized Area and use of MTF/STP funds:
 - Any major RCKC construction/reconstruction project on a primary road within the urban boundary shall seek to incorporate and leverage eligible state/federal funding for Township planned non-motorized facilities.
 - The Complete Street Policy and GO! Green Plan adopted by Oshtemo Township Board are the controlling policies for this jurisdiction as the local legislative authority. The proposed facilities and commitments of these documents shall be *accommodated for* within the scope of any RCKC reconstruction/construction project in the urban boundary.
 - If the reconstruction/construction project in the urban boundary is being considered through KATS/STP, the parties will work together to submit one project application and non-motorized elements shall be included in the eligible scope and costs programmed.
- Concurrent Jurisdiction: Acknowledgement that both parties have concurrent jurisdiction of ROW. (See attached Position Paper)

Information Provided

Oshtemo Township Non-Motorized Facility “Umbrella” Agreement
Position Paper “The Public Right-of-Way Exists for the Public’s Benefit for any Public Purpose”
Budget Amendment (Refer Regular Agenda Item 8e)

Recent RCKC invoices:

Stadium Dr - Quail Run Dr to Stadium Dr (2020 TAP Grant)

Current Contract Amt	\$ 563,546.46
Labor	\$ 332.10
Fringe	\$ 182.13
RCKC OH 2021	\$ 44,361.62

Drake Rd - W Main to Green Meadow Dr (2019 TAP Grant)

Construction Cost	\$ 847,199.69
Labor	\$ 20,235.52
Fringe	\$ 12,702.12
Equipment	\$ 259.24
OH 2019	\$ 19,332.80

Drake Rd - Green Meadow Dr to KL Ave (2020 Safety Grant)

Construction Cost	\$ 582,384.98
RCKC Labor	\$ 4,605.63
RCKC Fringe	\$ 2,808.95
RCKC Equipment	\$ 75.95
RCKC OH 2021	\$ 46,411.52

Estimate KL Ave – Drake Rd to the Paddock Apts (2023/4 TAP Grants)

Construction Estimate	\$ 2,000,000.00
RCKC OH 8%	\$ 160,000.00 plus labor, fringe

Estimate Parkview Ave – 11th St to 12th St Sanitary Sewer & HMA Path

Construction Estimate	\$ 325,000.00
RCKC OH 8%	\$ 26,000.00 plus labor, fringe

Oshtemo Township Non-Motorized Facility "Umbrella" Agreement

COPY

WHEREAS, the Township of Oshtemo (hereinafter referred to as "Oshtemo") is a municipal corporation organized under the laws of the State of Michigan, and is located in the County of Kalamazoo, State of Michigan, and:

WHEREAS, the Board of County Road Commissioners of the County of Kalamazoo (hereinafter referred to as "RCKC") is a public body corporate, located within the County of Kalamazoo, State of Michigan, and;

WHEREAS, Oshtemo desires to build non-motorized paths in accordance with plans and designs prepared by its consultant/engineer within the county road right-of-way;

WHEREAS, because the intended location of the non-motorized path is within the county road right-of-way, it is necessary for Oshtemo to obtain the consent of the RCKC prior to commencing construction of the non-motorized paths, and;

WHEREAS, it is the desire and objective of the parties hereto, to set forth their mutual understanding with respect to the conditions under which the RCKC will grant its consent to Oshtemo to construct the non-motorized paths within the county road right-of-way;

NOW, THEREFORE, in consideration of the aforementioned premises and in furtherance thereof, it is hereby mutually agreed as follows:

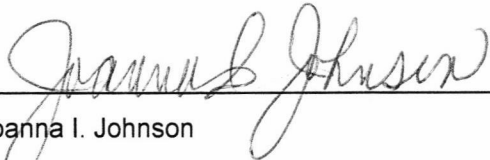
1. Oshtemo will make application and apply for a permit and/or non-motorized facility project approval from the RCKC and agrees to abide by all terms and conditions imposed upon permit and non-motorized facility project applications. Oshtemo will construct the non-motorized path in accordance with the plans and designs prepared by its consultant or engineer and approved by Oshtemo, and the RCKC. Any deviation from the plans and designs must receive the prior written approval of Oshtemo and the RCKC. Oshtemo shall develop a non-motorized path project design package and submit the design package including a copy of the storm water drainage plan and calculations to the RCKC for review. The RCKC shall make final design decisions regarding non-motorized facility location with regard to driveways, intersection, signage, and drainage features in the county road right-of-way.
2. As owner of the facility, Oshtemo agrees to assume or assign to third parties as applicable, total and exclusive responsibility for maintenance, winter maintenance (including, but not limited to snow removal), signage, repair, and restoration of the non-motorized path for so long as the non-motorized path may exist. If, however, the non-motorized facility is a paved shoulder, RCKC will do maintenance, winter maintenance, repair, and restoration. RCKC reserves the right to require the removal of the non-motorized facility when necessary to accommodate a roadway improvement of the RCKC. In such an instance, Oshtemo shall be responsible for all costs associated with the removal and relocation of the non-motorized facility and for restoration of the county road right-of-way where the non-motorized path is located, to a condition reasonably similar to that in effect prior to the construction of the non-motorized path.
3. Oshtemo shall be responsible for all costs not covered by other funding. Oshtemo shall be responsible for RCKC staff time and administrative expenses related to this project. Prior to project advertisement by the Michigan Department of Transportation (MDOT), Oshtemo will deposit a check for ninety (90) percent of the estimated local cost of the construction project plus the RCKC overhead factor. All other invoices will be based on actual costs incurred. After construction is complete, the RCKC will conduct a final accounting to determine if any further payment is due or if a refund is due to Oshtemo. If bids come in ten (10) percent or less over the consultant's/engineer's estimate then the project will proceed to award. Oshtemo shall be responsible for all costs over the amount covered by Federal Transportation Alternatives funds. If

bids come in more than 10 percent over the consultant's/engineer's estimate, then Oshtemo will have an opportunity to request to reject all bids, or to proceed to award. If bids come in under the consultant's/engineer's estimate then the project will proceed to award. Any extras or increases which exceed the original programmed amount will be paid by Oshtemo.

4. For increased or extra items that may not be eligible for other funding, Oshtemo shall generate a Work Order for RCKC review prior to the work being done by the Contractor. The RCKC will invoice Oshtemo the amount of the Work Order as soon as it is determined. The amount of the Work Order is due within thirty (30) days of the invoice.
5. Oshtemo shall provide construction engineering services as stated in the MDOT Program Application for this project and in the MDOT Construction Manual. Construction engineering includes all of the file documentation and review Oshtemo shall prepare a final as built set of plans for the project and provide it to the RCKC. The as built plans shall be submitted on Mylar with the original signature page, and in electronic format (AutoCAD and PDF) on CD. Oshtemo will also provide a copy of the project construction file to the RCKC for its records.
6. Oshtemo will agree to have its Consultant attend a project update meeting every two weeks or as needed to review the status of the project with the Contractor and to process construction status and payment request reports. Construction Engineering includes construction staking, right-of-way staking, materials sampling and testing, and acting as a storm water operator. Every two weeks, Oshtemo shall prepare a written report including inspector daily reports, Davis Bacon Wage Documentation review, status of materials certifications, materials testing reports, the MDOT contractor pay estimate, and any other submittal requirements.
7. Oshtemo shall reimburse the RCKC's cost in reviewing and administering the contract.
8. Oshtemo shall be responsible for any required land acquisition (including temporary grading permits). Oshtemo will submit the proposed right-of-way acquisitions for approval prior to acquiring the necessary additional right-of-way and shall have a qualified right-of-way specialist certify the right-of-way file prior to submitting it to the RCKC.
9. Oshtemo shall complete the RCKC tree notification form for any tree removals within the existing county road right-of-way. Compensation required by the property owner, in accordance with RCKC written policy, will be paid by Oshtemo. All county road right-of-way encroachments shall adhere to RCKC policy, any adjustments will be paid by Oshtemo.
10. Oshtemo agrees to be responsible for all utility reconfiguration costs associated with project. Prior to advertisement of the project, Oshtemo shall submit a letter to the RCKC stating that they have reviewed utility conflicts, and have addressed any necessary utility relocation.
11. Upon completion of the installation of the non-motorized path, and final approval having been granted by the RCKC to Oshtemo, Oshtemo agrees to save harmless, indemnify and defend the RCKC from any and all claims for bodily injury or property damage or any other claims relating to or arising out of the construction, operation, use or continuing existence of the non-motorized path within the county road right-of-way.
12. This agreement shall be in effect as between the parties hereto upon the affixation of the signatures of the duly authorized officers of the RCKC and Oshtemo.
13. Both parties agree that changes may be requested to this agreement at any time. Any changes to this agreement shall not be in effect until the affixation of the signatures, and dated, by the duly authorized officers of the RCKC and Oshtemo. Both parties agree to review the agreement as necessary, but no later than January 1, 2022.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and their seals affixed hereto the day and year written below.

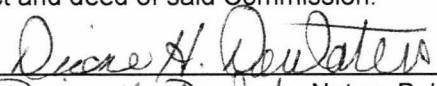
BOARD OF COUNTY ROAD COMMISSIONERS OF THE COUNTY OF KALAMAZOO

By: 
Joanna I. Johnson
Its: Managing Director


STATE OF MICHIGAN

COUNTY OF KALAMAZOO

On this 17th day of April, 2018, before me, a Notary Public, in and for said County and State, personally appeared Joanna Johnson, to me personally known, who, being by me duly sworn, did say that she is the Managing Director of the Board of County Road Commissioners of Kalamazoo County, Michigan, named in and which executed the within instrument and that said instrument was signed on behalf of said Road Commission, and said Managing Director acknowledged said instrument to be the free act and deed of said Commission.


Diane H. Dewater Notary Public
Kalamazoo County, Michigan
My Commission Expires: 6/30/2018

CHARTER TOWNSHIP OF OSHTEMO

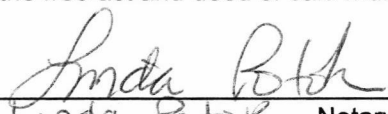
By: 
Elizabeth Heiny-Cogswell
Its: Supervisor

STATE OF MICHIGAN

COUNTY OF KALAMAZOO

On this 15th day of MARCH, 2018, before me, a Notary Public, in and for said County and State, personally appeared Elizabeth Heiny-Cogswell, to me personally known, who, being by me duly sworn, did say that she is the Supervisor of the Charter Township of Oshtemo, Michigan, the municipal corporation named in and which executed the within instrument and that said instrument was signed on behalf of said Charter Township of Oshtemo, and said Elizabeth Heiny-Cogswell acknowledged said instrument to be the free act and deed of said municipal corporation.




Linda Potok, Notary Public
Van Buren County, Michigan
My Commission Expires: June 5 2018

THE
PUBLIC RIGHT-OF-WAY
EXISTS FOR
THE PUBLIC'S BENEFIT
FOR
ANY PUBLIC PURPOSE

By:

James W. Porter

Oshtemo Charter Township Attorney

March 18, 2016

INTRODUCTION

The public right-of-way is often referred to as the road right-of-way which, in turn, is often referred to as the county road commission's right-of-way. Is this an accurate description of our public rights-of-way? I would say that it is not.

The purpose of this position paper is to use mostly black-letter law consisting of citations from *Michigan Civil Jurisprudence*, the State Constitution and State law to explain Oshtemo Charter Township's position that the public right-of-way is to be used for any and all public purposes. That is why the Township believes it has the authority to post public informational signs within the public right-of-way.

I. The public right-of-way belongs to the public and should be used for any public purpose.

◆ **"The streets of a municipality are for the use of the people."**

12 Mich Civ Juris, Highways and Streets, § 429.

Red Star Motor Drivers Assoc v City of Detroit, 234 Mich 398 (1921).

◆ **"Whatever the nature of the title of a municipality in streets . . . the public control is only in trust to secure to the public those rights of a public nature which exist in public ways of that kind, and to enable public authorities to devote them to public purposes."**

12 Mich Civ Juris, Highways and Streets, § 424.

Gunn v Delhi Township, Ingham County, 8 Mich App 278 (1967).

Bator v Ford Motor Co, 269 Mich 648 (1934).

Edison Illuminating Co v Misch, 200 Mich 114 (1918).

◆ **"The use of highways and streets may be limited, controlled, and regulated by public authorities in the exercise of the police power whenever and to the extent necessary to provide for and promote the safety, peace, and general welfare of the people and is subject to such reasonable and impartial regulations as are calculated to secure the general public, the largest practical benefit from the enjoyment of the easement."**

12 Mich Civ Juris, Highways and Streets, § 436.

People v Eaton, 100 Mich 208 (1894).

- ◆ **“When a highway is not restricted in its dedication to some particular mode of use, it is open to all suitable methods for lands to be taken or granted for public highways are so taken or granted for all purposes for which they may be used for the benefit of the public. Thus, the scope of an easement of a public highway dedicated by user includes not only the right to surface transportation but access to the subsurface for those uses adopted by public agencies for the benefit of the public. . . .”**

- ◆ **“Public highways and streets may be used for any purpose which is a necessary public one.”**

12 Mich Civ Juris, Highways and Streets, § 459.

Cleveland v City of Detroit, 324 Mich 527 (1949).

Detroit City Railway v Mills, 85 Mich 634 (1891).

Hyde Brothers Development Company v Eaton County Drain Commission, 427 Mich 271 (1986).

People v Eaton, 100 Mich 208 (1894).

- ◆ **“ . . . The dedication of property for purposes of a highway not only carries the right to public travel but also the use for all present and future agencies commonly adopted by public authority for the benefit of the people such as sewer, water, telephone, telegraph, gas and lighting systems.”**

12 Mich Civ Juris, Highways and Streets, § 463.

Village of Grosse Point Shores v Ayers, 254 Mich 58 (1931).

An often-cited quote from Justice Cooley with regard to the public policy recognizing the importance of using highway easements for other than travel is quoted as follows:

“In 1874, Justice Cooley stated that sewers are among the contemplated uses for public easements in dedicated streets in *Warren v. Grand Haven*, 30 Mich. 24 (1874):

“The dedication of land to the purposes of a village or city street must be understood as made and accepted with the expectation that it may be required for other public purposes than those of passage and travel merely, and that under the direction and control of the public authorities it is subject to be appropriated to all the uses to which the village and city streets are usually devoted, as the wants or convenience of the people may render necessary or important.”

The Michigan Supreme Court in 1892 held:

“Public highways are under legislative control. They are for the use of the public in general, for passage and traffic, without distinction. The restrictions upon the use are only such as are calculated to secure to the general public the largest practicable benefit from the enjoyment of the easement. When the highway is not restricted in its dedication to some particular mode of use, it is open to all suitable methods. Cooley, Const. Lim. P. 588. It has been settled in this state that lands to be taken or granted for public highways are so take or granted for all the purposes for which they may be used for the benefit of the public. . .” *People v Eaton*, 24 LRA 721 (1892)

The Michigan Supreme Court in 1918 held:

“The dedication must be understood as made and accepted with the expectation that the street or alley may be required for other purposes than those of passage and travel merely, and that under the direction and control of the public authorities it is subject to be appropriated to all the uses to which city streets or alleys are usually devoted, as the wants or conveniences of the public may render necessary or important. *Warren v. Grand Haven*, 30 Mich. 24-28; *Griswold v. Bay City*, 35 Mich. 455; *Face v. City of Ionia*, 90 Mich. 104, 51 N.W. 184.” *Edison Illuminating Co v Misch*, 200 Mich 114 (1918)

A more recent decision in *Cleveland v City of Detroit*, 324 Mich 527 (1940), the Court, citing from a previous decision, again held that:

“Whatever may have been the ancient adjudications limiting the rights of the public in the streets to passage and re passage, and whatever may now be the rule with regard to highways in the country, with the growth of population in our cities have come increased needs for heating, lighting, draining, sewerage, water, etc., and with these has come also a corresponding extension of the public rights in the streets. Immense sewer and water mains may be dug, and the soil removed, culverts and drains constructed, without compensating the abutting owners. It may now be considered the well-settled rule that the streets of a city may be used for any purpose which is a necessary public one, and the abutting owner will not be entitled to a new compensation, in the absence of a statute giving it.”

Clearly, the right-of-way, (even if we refer to it as the road right-of-way) was established for the benefit of the public for any public use. With that premise in mind, we must then look at how the development of road law in Michigan impacted the public right-of-way.

II. How did the development of road law impact the public right-of-way?

A. Townships originally controlled the roads and rights-of-way.

- ◆ **“Under the restraints of the Constitution of 1850 as originally enacted, control and construction and maintenance of public thoroughfares was regulated chiefly to the several townships through which they ran or in which they were located, each acting independently under township laws. . .”**

12 Mich Civ Juris, Highways and Streets, § 14.

Township of Elba v Gratiot County, 287 Mich 372 (1939).

Sharp v Township of Evergreen, 67 Mich 443 (1887).

- ◆ **“In 1893, a constitutional amendment was adopted, permitting the Legislature to authorize the establishment of county road systems.”**

- ◆ **“The first county road law was enacted in the same year.”**

12 Mich Civ Juris, Highways and Streets, § 16.

Board of Road Commissioners of Wayne v Lingeran, 273 Mich 229 (1940).

MCL 224.1 - 224.32.

- ◆ **“The legislature passed the General Highway Law of which County Road Law is part, in 1909.”**

- ◆ **“This law was an expression of the Legislature’s will and establishes a system under which the state could more effectively carry on an intensive program for the building of roads and providing a comprehensive scheme of highway improvement by counties. . .”**

12 Mich Civ Juris, Highways and Streets, § 21.

Cooper Wells and Co v City of St. Joseph, 232 Mich 225 (1925).

MCL 220.1–239.6.

Board of Road Commissioners of Wayne County v Lareman, 293 Mich 229 (1940).

B. The State Legislature transferred authority over roads from townships to county road commissions, but reserved all other authority over the right-of-way to townships.

- ◆ **“The transition from a township highway system to a county road system was chartered by the McNitt Holbeck Smith Act of 1931 (MCL 247.1 – 247.13, repealed by 1951 PA 51) which provided for complete termination of township control over highways by a fixed plan extending over a period of years . . . County roads are still township roads for purposes of constitutional provisions. . .”**

12 Mich Civ Juris, Highways and Streets, § 22.

Const 1963, art 7, § 29.

The authority over the public road and road improvements for purposes of the traveling public was clarified by the Constitution. Currently, the provision for a county road commission is provided by Const 1963, art 7, § 16. However, at the same time, the people in adopting the State Constitution reserved to the local municipality the right and control over its highways, streets, alleys and other public places in Const 1963, art 7, § 29, which read as follows:

COUNTY	TOWNSHIP
<p>“§ 16. Highways, bridges, culverts, airports; road tax limitation.</p> <p>Sec. 16. The legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges, culverts and airports by the state and by the counties and townships thereof; and may authorize counties to take charge and control of any highway within their limits for such purposes. The legislature may provide the powers and duties of counties in relation to highways, bridges, culverts and airports; may provide for county road commissioners to be appointed or elected, with powers and duties provided by law. The ad valorem property tax imposed for road purposes by any county shall not exceed in any year one-half of one percent of the assessed valuation for the preceding year.”</p>	<p>“§ 29. Highways, streets, alleys, public places; control, use by public utilities.</p> <p>Sec. 29. No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, township, cities and village to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.”</p>

The county road commission only has the authority granted to it by law, whereas the local municipality (in this case the township) has all other rights reserved to it to exercise reasonable control over its streets and highways.

C. There is a duality of power over the public right-of-way.

It is this duality of authority, otherwise referred to as concurrent jurisdiction, that causes some confusion, and dare I say, some degree of dispute over which party may exercise what jurisdiction over the public right-of-way.

- ◆ **“The dedication of property for purposes of highways not only carries the right to public travel, but also the use for all present and future agencies commonly adopted by public authority for the benefit of the people such as sewer, water, telephone, telegraph, gas and lighting systems.”**

12 Mich Civ Juris, Highways and Streets, § 463.

Village of Grosse Point Shores v Ayres, 254 Mich 58 (1931).

- ◆ **“Both townships and county road commissions have constitutional authority to exercise reasonable control of highways; thus, neither has exclusive control.”**

12 Mich Civ Juris, Highways and Streets, § 39.

Const 1963, art 7, § 16.

Const. 1963, art 7, § 29.

Oshemo Charter Township v Kalamazoo County Road Commission, 302 Mich App 574 (2013).

III. The county road commission’s authority is primarily limited to the roads.

- ◆ **“The board of county road commissioners acts as an administrative board only and its function is limited to the formulation of policy and the performance of official duties imposed by law and delegated by the county board of commissioners. 12 Mich Civil Jurisprudence, MCL 224.9(2)”**
- ◆ **“The board of county road commissioners may grade, drain, construct, gravel, shale, macadamize a road under its control, make an improvement in the road or make, extend or enlarge an improvement.”**
- ◆ **“The board may construct bridges and culverts on the line of the road, repair and maintain roads, bridges and culverts, may borrow money, enter into contracts, pledge its credit in a manner within the limitations provided by law.”**
- ◆ **“In addition, the board is authorized and empowered to lay out, alter, and vacate discontinued roads, lay out sidewalks along the highways, approve or disapprove plats, to require interested parties to participate in the cost of the improvements, sell and convey land, purchase road machinery, finance within certain limitations, construct, repair and maintain of its roads, construct and maintain roads, and as the county park trustee, provide for the lighting of county roads, contract for snow removal, designate county local roads as natural beauty roads.”**

12 Mich Civ Juris, Highways and Streets, § 49.

In addition to the broad authority over roads, the county road commission also has the following permitting authority:

A. The road commission must consent before work in the right-of-way commences.

“MCL 247.183 Construction and maintenance of lines, poles, sewers, or similar structures by public utilities; . . .

Sec. 13. (1) Except as otherwise provided under subsection (2), telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place including, longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.”

“MCL 247.184 State and county roads and bridges, structure; consent to construction

Sec. 14. In case it is proposed to construct a telegraph, telephone, power line or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced; . . .”

The Township recognizes the County’s right to oversee construction within the right-of-way and has sought, but was denied, the right to erect public informational signs within the public right-of-way. While the County Road Commission has the right to oversee and grant consent for construction of public infrastructure within the road right-of-way, we do not believe it may arbitrarily withhold permission from a township to erect public informational signs.

B. The road commission must permit any traffic control devices within the right-of-way.

“MCL 257.609. Traffic-control devices; placement and maintenance; restrictions; county road commission, permission, costs

(b) No local authority shall place or maintain any traffic-control device upon any trunk line highway under the jurisdiction of the state highway commissioner except by the latter’s permission or upon any county road without the permission of the county road commission having jurisdiction thereof. . . .”

“MCL 257.610. Traffic control-devices; placement and maintenance, compliance with state manual, withholding of tax refunds or noncompliance, sales and purchases

(a) Local authorities and county road commissions in their respective jurisdictions shall place and maintain such traffic control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn or guide traffic. All such traffic control devices hereafter erected shall conform to the state manual and specifications.”

Even though the road commission has authority to permit local municipalities to place or maintain traffic control devices upon county roads, the county road commission may not arbitrarily withhold permission from a local municipality to place such traffic control devices. *City of Trenton v County Road Commissioners of Wayne County*, 116 Mich App 212 (1982). However, public informational signs are not traffic control devices. In the same manner that county road commissions are prohibited from arbitrarily withholding permission to post traffic control devices of local municipalities, we believe the Road Commission may not arbitrarily withhold permission to post public informational signs.

IV. Township Authority extends over the public right-of-way for everything but roads.

Townships, as I stated before, have concurrent jurisdiction with the county road commission in certain areas.

- ◆ **“The Constitution reserves to the townships the right to reasonable control of their highways, streets, alleys and public places except as otherwise provided for in the Constitution.”**
- ◆ **“Although the McNitt Act transferred to the road commission the responsibility for laying out, constructing, improving and the maintenance of township roads, control remains with the townships in other respects including weight limits, designation of truck routes, related traffic control matters.”**
- ◆ **“Although the role of township and the control, construction, maintenance and repair of its highways is not what it once was, the township supervisor has jurisdiction over applications for private roads, temporary highways over which logging railroads may operate, logging roads, passageways, plats of subdivisions. Furthermore, under the Constitution and statutes, the consent of the township, as well as the county, is required when a public utility seeks to construct a pipeline within a county road running through the township.”**

- ◆ **“The township also has statutory authority over the lighting of the roads, highways and bridges that are located out of the limits of any incorporated village, and the township may purchase and operate street maintenance equipment.”**

12 Mich Civ Juris, Highways and Streets, § 57.

- ◆ **“The township board of any township and the board of road commissioners has the authority to enter into contracts to provide for acquisition, construction, establishment and opening, altering, improving and maintaining any highways within the township.”**

12 Mich Civ Juris, Highways and Streets, § 58.

- ◆ **“Except insofar as limited by state law and the provisions of statute, the township board has the power to establish and vacate and use and to control and regulate the use of the streets, alleys, bridges and public places in the township, and the space above and beneath them, such regulations of its streets, alleys, bridges and public places being deemed a matter of local concern.”**

12 Mich Civ Juris, Highways and Streets, § 60.

The above section specifically referenced MCL 42.16 of the Charter Township Act, which reads as follows:

“42.16. Regulation of use of streets, alleys, bridges, and public places; record of ordinances.

Sec. 16. Except insofar as limited by state law and the provisions of this act, the township board shall have power to establish and vacate and use, and to control and regulate the use of the streets, alleys, bridges, and public places of the township and the space above and beneath them, such regulation of its streets, alleys, bridges, and public places shall be deemed a matter of local concern. Nothing in this act shall be construed to repeal or nullify the provisions of Act No. 221 of the Public Acts of 1937. Any ordinance concerning the operation of motor vehicles on any road, street or highway shall not become effective until 30 days after approved by the commission of the Michigan state police. A record of all ordinances so approved by the commissioner shall be kept on file in his office. Such power shall include, but not be limited to, the proper policing and supervision thereof; to the licensing and regulation, or the prohibition of the placing of signs, awnings, awning posts, and other things which are of such nature as to impede or make dangerous the use of sidewalks or streets, upon or over the sidewalks of streets of the township; and the licensing and regulation of the construction and use of openings in the sidewalks or streets, and of all vaults, structures, and excavations under the same.” (emphasis added)

- ◆ **“The Michigan Constitution broadened and expanded the rights of municipalities over their streets and alleys by reserving to cities, villages and townships the right of reasonable control over their streets, and alleys and public places.”**
- ◆ **“The control of streets conferred upon a municipality by constitution and statute is to be used by the authorities for the public good as the need arises and cannot be bartered away.”**
- ◆ **“The propriety of a specific grant or denial by commission of this request depends on whether the imposition of the device constitutes an exercise by the local authority of its constitutionally reserved power of reasonable control over highways, streets, alleys and public places.”**

12 Mich Civ Juris, Highways and Streets, § 61.

Village of Grosse Point v Ayers, 254 Mich 58 (1951)

Because there is concurrent jurisdiction depending upon the authority delegated to either the township or the road commission, we would argue that there is multi-jurisdictional authority over the public right-of-way. Therefore, the Township has the authority to regulate signs within the public right-of-way and grant permits for public informational signs.

V. Public informational signs serve a valid public purpose and should be permitted in the public right-of-way.

Oshtemo Charter Township enacted Ordinance No. 566 on October 27, 2015 to permit public informational signs within the right-of-way. A public informational sign is defined as “A sign advising a driver, bicyclist or pedestrian of information which may be of interest such as political boundaries, landmarks, historical markers or public facilities.” These signs include signs for public facilities, parks, trails, watersheds, drug-free zones, neighborhood watch, adopt-a-road programs, emergency services, public transportation, school/universities, historic markers and other signs deemed as public informational signs by the Township. All such signs are regulated to meet State requirements and not interfere with the motoring traffic or traffic control devices. These are not traffic control devices as defined under the Motor Vehicle Code.

To date, the Road Commission has refused to issue a permit for the Township to work within the road right-of-way to erect such signs as the Township has requested pursuant to MCL 257.184.

Oshtemo Charter Township is only asking to do what the State of Michigan already believes is appropriate when it adopted the Tourist-Oriented Directional Signs statute located at MCL 247.401 through MCL 247.405. The statute allows for the erection of tourist informational signs within the public road right-of-way including rural roads as defined by the Michigan

Vehicle Code, MCL 257.20. Why is the Road Commission prohibiting a local municipality from doing what the State can already do?

CONCLUSION

The State Constitution grants to the Township the right to reasonable control over its streets and highways. State law grants charter townships the right to control and regulate the use of its streets and public places, and such power includes policing, supervision, licensing and regulation of signs within its public streets.

We are asking the Kalamazoo County Road Commission to amend its policies to allow the Township's request to exercise its designated authority over public informational signs.

2022 Oshtemo Township Board Meeting Dates

All meetings are Tuesdays and begin at 6:00 p.m. except where noted otherwise.

January 11
January 25

February 8
February 22

March 8
March 22

April 12
April 19 Joint Boards Meeting* 6 p.m.
April 26

May 10
May 24

June 6 – Budget Meeting, All Day Monday 8:15 am
June 14
June 28

July 12
July 26

August 9
August 22 – Budget Meeting, Monday 1 pm
August 23

September 13
September 27

October 11
October 18 Joint Boards Meeting* 6 p.m.
October 25

November 15
November 29

December 13

*Joint Boards TB / PC / ZBA / SoDA / DDA / FOP



Memo



To: Libby Heiny-Cogswell, Supervisor and Township Board
From: M. Barnes, Fire Chief
Date: January 5, 2022
Re: Renewal of Countywide Hazardous Materials Response Agreement.

In 2010, municipalities in Kalamazoo County signed an “Intergovernmental Fire Protection, Hazardous Materials Incident Response Agreement” which gave official birth to the current countywide Hazardous Materials (Haz-Mat) team. This team is made up of members from various fire agencies in Kalamazoo County with the assistance of some local private sector companies.

The team’s primary mission is to respond emergently to incidents involving the release of hazardous materials where they will identify the product and then initiate coordinated efforts to stop its spread or contain the hazard. In some cases, the product is an unknown substance which makes identifying it the most important task.

They are not responsible for cleanup but will supervise that it is accomplished in a safe and complete manner. They also act on our behalf to coordinate efforts of various agencies such as Michigan’s Department of Natural Resources (DNR) and Department of Environment, Great Lakes, & Energy (EGLE). In the case of a transportation related event (spill on a roadway, rail or other), they will also provide Haz-Mat guidance to involved agencies such as the Department of Transportation (M-DOT).

Finally, they assist with invoice coordination as the local unit of government bills the costs back to the identified spiller. This agreement allows contiguous municipalities to Kalamazoo County to also participate and thus receive this service. Note: With the exception of the most central metro communities, all other governmental agencies are impacted by events in neighboring jurisdictions which includes Oshtemo.

As in the previous agreement, the annual membership fee remains at \$1,400 per agency. This helps to pay for maintenance of the equipment and vehicle. Each participating agency covers the cost of having their members on the team such as time for monthly training and periodic responses.

This is an astounding example of a highly beneficial intergovernmental cooperative effort. Although any participating unit of government may withdraw with a 30-day notice, the agreement is designed to remain in effect for three years (1/1/2022 – 12/31/2024).

Recommendation: That Oshtemo Township continues its membership with the Kalamazoo County Hazardous Materials Response Team (KCHMRT).



INTERGOVERNMENTAL FIRE PROTECTION HAZARDOUS MATERIALS INCIDENT RESPONSE AGREEMENT

This Intergovernmental Fire Protection Hazardous Materials Incident Response Agreement, dated the 31 day of December, 2021, between the undersigned municipalities, is as follows:

WHEREAS, the specialized services of a hazardous materials response team are above and beyond the normal response services provided on a reciprocal basis under the provisions of the Mutual Aid Fire Agreement entered into by the parties; and

WHEREAS, there is a need to facilitate and coordinate the recovery of the cost of response activity to hazardous materials incidents as permitted by Section 20126a (M.C.L. 324.20126a) of the Michigan Natural Resources and Environmental Protection Act, (NREPA) Public Act 451 of 1994; and,

WHEREAS, each party desires to enhance and improve responses to hazardous materials incidents occurring within Kalamazoo County, and,

WHEREAS, 1951 P.A. 35, as amended, being MCL 124.1 *et seq.*, provides that municipalities may enter into cooperative agreements to provide services to and for each other; and,

WHEREAS, this Hazardous Materials Incident Response Agreement is intended to assist the undersigned municipalities in providing timely and efficient responses to hazardous materials incidents within Kalamazoo County.

NOW, THEREFORE, in consideration of the mutual undertakings of the parties hereto, IT IS AGREED:

1. Definitions

- A. **Financial Custodian** means the custodian of response activity costs and annual dues as provided in paragraph 4 of this agreement.
- B. **Fire Chief** includes the fire chief, the fire chief's designated representative or such member of the fire department as is in charge of the fire department emergency and technical response personnel, or the chief of a public safety department or that official's designated representative.
- C. **Incident Management System:** The National Incident Management System (NIMS) required for managing a hazardous materials incident by state and federal regulation.
- D. **Member in Good Standing** means a municipality that has entered into this agreement and is current in the payment of dues and compliant with the obligations specified in this agreement.
- E. **KCHMT member** means an employee of a participating municipality who becomes a member of the Kalamazoo County Hazardous Materials Response Team, (KCHMT) as established pursuant to this agreement.
- F. **Participating Municipality** means a municipality that has entered into this agreement and is a member in good standing.

- G. **Recovery Costs** mean the costs associated with recovery of response activity costs as defined by this Agreement, including, but not limited to attorney fees, court filing fees, witness fees and other costs of litigation and collection.
- H. **Requesting Department:** The fire department serving a participating municipality in which the hazardous materials incident exists and that requests aid under this Agreement.
- I. **Responding Department:** Any and all fire departments serving a participating municipality that provide personnel (including personnel who respond as a member of the Kalamazoo County Hazardous Materials Response Team) or equipment under this Agreement. The Kalamazoo County Office of Emergency Management and responding EMS providers are included in this definition.
- J. **Response Activity** means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources consistent with the rules relating to the selection and implementation of response activity promulgated under the Michigan Natural Resources and Environmental Protection Act.
- K. **Response Activity Costs or Costs of Response Activity** means all costs incurred by the requesting department and all responding departments, including the KCHMT, in taking or conducting a response activity, including all costs, that a municipality may recover pursuant to Section 20126a of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20126a. These costs may include, but not be limited to, administrative fees assessed by the financial custodian to services provided relative to the collection of response activity costs, wages and/or salaries except for those employees who are already on duty and being paid; costs of vehicles responding at either the MEMAC reimbursement rate or another verified manner of calculating operating costs; costs of replacing equipment and supplies that are expended and not reusable; costs of decontaminating or cleaning equipment or other costs necessary to put that equipment back in service; costs of personnel support including, but not necessarily limited to, food, lodging, portable rest room facilities, or transportation; costs to rent, purchase or otherwise obtain equipment, supplies, or other material necessary to mitigate the incident; costs to contract with specialized response personnel or organizations.
- L. **MEMAC Reimbursement Rate** means the reimbursement rates for apparatus and other equipment used to mitigate incidents contained in the Michigan Emergency Management Assistance Compact.

2. Kalamazoo County Hazardous Materials Response Team

- A. Participating municipalities agree to form and jointly operate the Kalamazoo County Hazardous Materials Response Team, (KCHMT) the purpose of which is to assist local fire departments by providing a trained, equipped team of on-scene support to the incident commander of the requesting department for the provision of response activity to a hazardous materials incident.

- B. The KCHMT shall be managed by an executive board as provided for in the by-laws.
- C. The executive board shall set all operating standards, policies and procedures and shall establish criteria for individual membership on the team.
- D. The executive board shall elect one member to serve as chair of the board and other such officers as may be required. Elected officers will serve a one-year term of office, corresponding to the fiscal year, and may serve consecutive terms.
- E. The KCHMT shall maintain By-laws, an Operations Manual and a listing of equipment owned by the team. An updated copy of each, along with a report of annual KCHMT activity shall be provided to any requesting municipality annually, by March 1.
- F. Response Procedures
 - 1. A Requesting Department may request the services of the KCHMT following dispatch and response procedures as outlined in the KCHMT Operations Manual.
 - 2. The KCHMT, when responding to an incident, shall operate within the Incident Management System put in place by the Requesting Department. Command of the incident shall remain with the Requesting Department.
 - 3. If a Responding Department's personnel arrive prior to the Requesting Department's units or personnel, the assisting personnel will establish "Incident Command" as prescribed in NIMS and proceed with emergency operations. Upon arrival of a command officer from the Requesting Department, "Incident Command" will be passed to the Requesting Department.
 - 4. Assisting personnel and units will be released and returned to their jurisdiction as soon as practical.

3. Membership Dues

Each municipal fire department serving a participating municipality or municipalities will be required to pay annual dues in the amount of \$1,400.00 per fiscal year.

- A. The municipal fire departments will be invoiced not later than December 31 for dues for the following calendar year. The department will be in arrears if dues are not received by March 1.

4. Custodian of Dues and Recovered Costs

- A. The City of Kalamazoo will be the custodian of all dues and costs recovered pursuant to paragraph 9 of this agreement. The dues and recovered costs shall be placed in separate accounts and maintained in accordance with standard municipal accounting procedures.

5. Geographical Area of Coverage

The KCHMT shall provide assistance to any Requesting Department within Kalamazoo County. The KCHMT may also provide assistance to counties adjoining Kalamazoo County in which there is a mutual aid agreement. All requests for KCHMT assistance outside of Kalamazoo County must be made by a requesting department that is on scene of the incident, the Berrien or Battle Creek Hazmat Team.

6. Personnel and Equipment Standards

KCHMT members and equipment shall meet the following minimal levels of training or recognized industry standards:

- A. All KCHMT members shall be certified to the Hazardous Materials Technician level by a representative of the municipality employing the member. However, the executive board of the KCHMT may approve team membership for individuals certified to the Hazardous Materials Operations level if such membership has been determined to provide a benefit to the team.
- B. Equipment used shall comply with all applicable rules and regulations including, but not limited to, CFR 1910.120, MIOSHA Part 432, and standards adopted by the executive board.

7. Training and Medical Examinations

- A. KCHMT members shall meet all statutory and training requirements applicable to the team position being filled.
 - 1. The KCHMT will conduct regular training as approved by the Executive Board to allow KCHMT members to remain competent in necessary skills. KCHMT members are expected to comply with training requirements.
 - 2. KCHMT members who fail to maintain training requirements or required certifications, as established by the executive board of the KCHMT, may be removed from KCHMT membership by action of the executive board. Such action is not subject to appeal by the participating municipalities.
 - 3. Employees of the participating municipalities who are KCHMT members shall attend monthly training sessions of the team as part of their employment by the participating municipality that employs them.
- B. It is the responsibility of the participating member that is an employer of a KCHMT member to provide periodic physical examinations that meet the requirements of 29 CFR 1910.120. The frequency of these examinations may range from twelve to twenty-four months based on the recommendation of the physician. Prior to joining the KCHMT, KCHMT member applicants shall undergo a physical examination to identify any pre-existing medical conditions and to record baseline measurements that may change over time.

8. Liability and Mutual Release

- A. Each participating municipality providing KCHMT members to KCHMT shall be solely responsible for all costs and expenses associated with its employees who are KCHMT members and equipment utilized by its employees who are KCHMT members in responding to emergencies or participating in training under this Agreement, including without limitations, wages and fringe benefits, workers' compensation, disability or pension contributions, and the purchase, repair or maintenance of equipment and fire apparatus.
- B. Each participating municipality shall only be responsible for claims, demands, costs (including attorney fees) and damages, for death, bodily injury, or property damage arising directly from the acts or omissions of its individual personnel.
- C. Each participating municipality shall defend, indemnify and hold all other participating municipalities including the elected officials, agents and employees (hereinafter collectively as "Indemnitee") of the other participating municipalities harmless from all claims, demands, costs (including attorney's fees) and damages for death, bodily injury, or property damage arising directly from the acts or omissions of its individual personnel, employees or agents. Provided, however, that if such death, injury or damage is caused by personnel, employees or agents of multiple participating municipalities, each participating municipality shall then be responsible for its percentage of responsibility, and shall indemnify the other participating municipalities so that each pays in proportion to its responsibility.
- D. In providing the indemnification set forth above, the Indemnitor is not waiving any defense as is otherwise available to it by law, provided such defenses are also available and asserted by the Indemnitor for the benefit of the Indemnitee. The Indemnitor shall not be responsible for the indemnification obligation set forth above with respect to the Indemnitee to the extent that the Indemnitee has waived a defense that was otherwise available to it by law. The Indemnitor shall have the option to settle any claim, demand or liability on such terms as it shall determine.
- E. No fire fighter or emergency medical personnel from any Department shall be considered a drafted person of another Department when performing services in furtherance of this Agreement under MCL 123.401 through MCL 123.403.

9. Recovery or Reimbursement of Response Activity Costs

- A. As soon as practicable after providing response activity to a particular hazardous materials incident:
 - 1. The KCHMT executive board will submit an itemized statement of all response activity costs (excluding labor costs) incurred by the KCHMT in response to the particular incident to the Requesting Department, and provide a copy of such statement to each Responding Department and the City of Kalamazoo.
 - 2. Each Responding Department will submit an itemized statement of all response activity costs (including labor costs) incurred by the Responding Department in response to the particular incident to the Requesting Department, and provide a copy to all other Responding Departments, the KCHMT, and the City of Kalamazoo.

3. The Requesting Department will submit an itemized statement of all recovery costs incurred by the Requesting Department pursuant to paragraph 9(C) below to all Responding Departments and the KCHMT prior to distribution of recovered costs pursuant to paragraph 9 (D) below.
- B. The Requesting Department will pay the response activity costs of the KCHMT with respect to materials owned and used by the KCHMT in connection with providing response activity to a particular hazardous materials incident within 30 days of receipt of the itemized statement from KCHMT or on a payment schedule agreed to by the Executive Board. The Requesting Department will be responsible for the payment of these costs irrespective of any recovery of response activity costs as provided in paragraph 9(C) below. The KCHMT will provide an accounting of all response activity costs paid to it by the Requesting Department pursuant to this paragraph to all Responding Departments and the City of Kalamazoo prior to distribution of recovered costs pursuant to paragraph 9 (D) below.
- C. Recovery of all response activity costs incurred by the Requesting Department, the KCHMT, and any Responding Department as provided by the Michigan Natural Resources and Environmental Protection Act (NREPA) will be the responsibility of the Requesting Department. The Requesting Department will be responsible for all recovery costs associated with recovery of the response activity costs. The obligation of the Requesting Department to recover response activity costs may be waived by a vote of at least two thirds of the executive board of the KCHMT upon a determination that the expense of cost recovery would not be cost effective. In that event, each participating municipality may elect to recover its own costs.
- D. All costs recovered by the Requesting Department as provided in paragraph C, will be deposited with the City of Kalamazoo as the custodian of such funds. Response activity costs will then be paid first to the KCHMT in accordance with its itemized statement, to the extent response activity costs of KCHMT have not been fully reimbursed by the Requesting Department as shown on the accounting for payment of same pursuant to paragraph 9 (B), above. The response activity costs of the Requesting Department and each Responding Department will then be paid from the remaining funds recovered. If the remaining funds recovered will not fully reimburse the Requesting Department and each Responding Department, then the remaining funds will be distributed to the Requesting Department and each Responding Department proportionate to the itemized statement prepared by each Department and each Department will be solely responsible for its un-reimbursed costs.

10. Multiple Demands For Service

If any participating municipality is confronted with a simultaneous demand to assist a fire department of another governmental unit or respond to a fire/rescue call within that municipality's jurisdictional boundaries, the command officer in charge of that municipality's responding fire/rescue equipment and personnel shall have the discretion to deploy that equipment and personnel for their best utilization in the interest of public health, safety and welfare and with the recognition of that municipality's primary obligation to respond within its own jurisdiction.

11. Effect Upon Other Agreements

The participating municipalities have also entered into a Mutual Fire Protection Contract, dated March 6, 1987. That contract shall remain in effect and shall not be changed by this agreement.

12. Effective Date, Term, Dissolution, and Termination of Membership

This Agreement is effective as of December 31 2021, and shall continue in force until January 1, 2024, or dissolved by a majority vote of the governing bodies of the participating members. A participating member may terminate its membership with or without cause, upon thirty (30) days written notice to the other participating members. Such termination of membership shall not effectuate the dissolution of this agreement or the KCHMT.

IN WITNESS THEREOF, those parties hereto have executed this Agreement on the date indicated above.

CITY OF PORTAGE

By _____

Its _____

CITY OF KALAMAZOO

By _____

Its _____

CHARTER TOWNSHIP OF KALAMAZOO

By _____

Its _____

CHARTER TOWNSHIP OF OSHTEMO

By _____

Its _____

CHARTER TOWNSHIP OF COMSTOCK

By _____

Its _____

CHARTER TOWNSHIP OF TEXAS

By _____

Its _____

SOUTH KALAMAZOO COUNTY FIRE AUTHORITY

By _____

Its _____

RICHLAND TOWNSHIP

By _____

Its _____

ALAMO TOWNSHIP

By _____

Its _____

CHARTER TOWNSHIP OF COOPER

By _____

Its _____

GALESBURG-CHARLESTON FIRE AUTHORITY

By _____

Its _____

KALAMAZOO COUNTY SHERIFF'S DEPARTMENT

By _____

Its _____

PAVILION TOWNSHIP

By _____

Its _____

ROSS/AUGUSTA FIRE DEPARTMENT

By _____

Its _____

CLIMAX TOWNSHIP

By _____

Its _____

CITY OF PARCHMENT

By _____

Its _____

VILLAGE OF CLIMAX

By _____

Its _____

VILLAGE OF RICHLAND

By _____

Its _____

Memorandum

Date: 06 January 2022
To: Township Board
From: Anna Horner, P.E., Public Works Director
Subject: Road Commission 2022 PAR Funds Commitment



Objective

To notify the Road Commission Kalamazoo County (RCKC), that it is the intent of Oshtemo Township to fully utilize the RCKC's allocated 2022 PAR Funds and committed to participating in any re-distribution towards maintenance and other improvements to Oshtemo Township local roads.

Background

The Township is responsible for the continuous maintenance and capital improvements of the local road network. During 2021, Public Works and RCKC staff discussed the inventory and data collection (PASER) of road conditions, asset management process, and life cycle cost analysis for all Oshtemo's local roads. Various options for road revenue sources were considered by the Capital Improvements Committee and Board. The Board approved a road millage for 1.08 mils, to be used in conjunction with PAR funds, to adequately fund the projected annual costs of preventive maintenance and anticipated reconstruction needs.

On December 17, 2021, RCKC issued the 2022 Local Road Participation (PAR) Fund Program Information Booklet and announced that it would make available up to \$313,479,334 in PAR funds for local road maintenance in Oshtemo, provided the Township contribute an equal match. Historically, Oshtemo has utilized the PAR funds to their fullest extent and even over-matched to invest in local roads.

Once the RCKC has the Township's intended PAR fund amount and budgeted local match, they will use asset management to prepare project list for 2022 based on PASER scores and appropriate treatment type to maximize funding (see attached excerpt from booklet).

Information Provided

Road Jurisdiction Map
RCKC PAR Fund Allocation Table & Schedule
RCKC PAR Fund Average Costs

Core Values Recognized

Public Service (Fair Treatment), Professionalism (Continuous Improvement) & Integrity (Transparency)

Road Commission of Kalamazoo County 2022 Local Road Participation (PAR) FUND ALLOCATION

Township	2010 Census	% of Population	35%	** Local Mileage	% of Mileage	65%	Local Urban Mileage	% of Urban	Urban Distribution	2022 PAR Funds	2021 Carryover PAR Funds	2022 Total PAR Funds Available
Alamo	3,762	3.16%	20,205	37.88	4.59%	54,504	0.33	0.09%	318	75,027	0.00	75,027.00
Brady	3,613	3.03%	19,374	46.51	5.64%	66,972	9.50	2.56%	9,041	95,387	1,566.95	96,953.95
Charleston	1,942	1.63%	10,422	23.95	2.90%	34,436	2.44	0.66%	2,331	47,189	0.00	47,189.00
Climax	1,696	1.42%	9,079	47.40	5.75%	68,278	0.00	0.00%	0	77,357	0.00	77,357.00
Comstock ***	14,854	12.47%	79,732	74.63	9.05%	107,464	67.32	18.13%	64,028	251,224	17,923.77	269,147.77
Cooper	10,111	8.49%	54,285	62.83	7.62%	90,483	32.49	8.75%	30,902	175,670	0.00	175,670.00
Kalamazoo ***	21,918	18.40%	117,648	74.89	9.08%	107,820	74.89	20.16%	71,197	296,665	53,419.12	350,084.12
Oshtemo	21,705	18.22%	116,498	77.74	9.43%	111,976	49.21	13.25%	46,794	275,268	38,211.34	313,479.34
Pavilion	6,222	5.22%	33,376	48.32	5.86%	69,584	19.94	5.37%	18,965	121,925	0.00	121,925.00
Prairie Ronde	2,250	1.89%	12,085	52.11	6.32%	75,047	0.00	0.00%	0	87,132	6,107.37	93,239.37
Richland	6,829	5.73%	36,637	49.16	5.96%	70,772	22.22	5.98%	21,119	128,528	0.00	128,528.00
Ross	3,812	3.20%	20,461	53.44	6.48%	76,947	2.11	0.57%	2,013	99,421	24,100.03	123,521.03
Schoolcraft	4,418	3.71%	23,722	34.23	4.15%	49,279	20.39	5.49%	19,388	92,389	0.00	92,389.00
Texas	14,697	12.34%	78,901	93.97	11.40%	135,369	70.57	18.99%	67,064	281,334	0.00	281,334.00
Wakeshma	1,301	1.09%	6,969	47.52	5.77%	68,515	0.00	0.00%	0	75,484	0.00	75,484.00
	119,130	100.00%	639,394	824.58	100.00%	1,187,446	371.41	100.00%	353,160	2,180,000	141,328.58	2,321,328.58

January 20th

“*Townships must provide notice to the Board of one of the following by email:

1. Unable to use any of the allocated PAR Funds;
2. The specific portion of allocated PAR Funds able to use;
3. Able to utilize ALL of the allocated PAR Funds, but not committed to PAR Funds re-distribution; OR
4. Able to utilize ALL of the allocated PAR Funds and COMMITTED to participating in the PAR Funds re-distribution.”

January 31st

The Road Commission will complete the one time re-distribution based on the January 20th response, and notify townships.

February 15

Townships must provide notice to the Board for the first hot mix asphalt (HMA) projects by this date to be included in the first HMA bid letting.

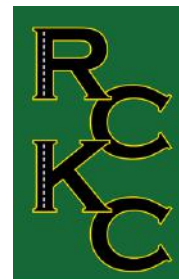
March 15

Local Road Contracts must be received by this date; any local road participation funds allocated, but not obligated by March 15th are reallocated to RCKC primary road fund.

* Please see RCKC policies for further information.

** Total Local Mileage is based on year-to-date accepted roadways.

*** 2021 Carryover PAR is estimated based on engineering estimates for project close out



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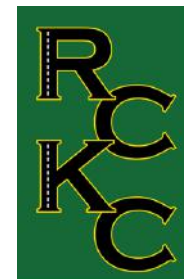
Road Commission of Kalamazoo County Local Road Projects 2021 PROJECTS AVERAGE COSTS*

Treatment Type	Treatment Definition	Anticipated Service Life***	Average Cost per Sq/Yd	Average Cost per Ton	Range	Average Cost per Mile (20' width)	PASER**
Crack Fill	Material Applied to Prevent Water Infiltration Through Cracks	1 - 3 Years	N/A	N/A	\$1,638- \$8,359/Mile	\$4,850.00	8,7,6,5,4
22A Gravel	Processed Aggregate Used to Improve Surface Condition	Varies	\$2.22	\$13.52	\$13.13 - \$15.29/Ton	\$21,330.00	ALL
23A Gravel	Processed Aggregate used to Improve Surface Condition	Varies	\$2.25	\$13.71	\$13.39 - \$15.84/Ton	\$22,150.00	ALL
Chip Seal	Emulsion Applied to Pavement Covered with Aggregate	5 - 7 Years	\$1.87	N/A	\$1.47 - \$2.20/SYD	\$21,941.33	7,6,5,4
Chip Seal (Plat)	Emulsion Applied to Pavement Covered with Aggregate includes Fog Seal	5 - 7 Years	\$2.10	N/A	\$1.47 - \$3.65/SYD	\$24,640.00	7,6,5,4
Fog Seal	Diluted Emulsion Application to Reduce Dust and Lock Aggregate	1 - 3 Years	\$0.50	N/A	\$0.38 - \$1.38/SYD	\$5,866.67	7,6,5,4
Cape Seal (Plat)	Combination of Micro and Chip Seal Surface Treatments	6 - 8 Years	no projects in 2017	N/A	N/A	(2011 Average Cost) \$46,815.00	7,6,5,4
Micro Seal	Emulsion, Aggregate and Portland Cement Thin Surface Treatment	6 - 8 Years	no projects in 2021	N/A	N/A	(2011 Average Cost) \$27,104.00	7,6,5,4
Gravel/ Pulverize/ Double Chip Seal	2 Chip Seal Applications Over an Improved or Recycled Gravel Surface	8 - 10 Years	\$11.50	N/A	N/A	\$134,910.00	3,2,1
HMA Ultra-Thin Overlay	A Thin Overlay of Hot Mix Asphalt (HMA)	5 - 7 Years	no projects in 2021	(2014 Average Cost) \$80.11	(2014 Prices) \$2.80 - \$5.00/SYD	(2014 Average Cost) \$42,123.00	7,6,5
HMA Wedging	Full Lane, Intermittant HMA Repairs	Varies	\$1.08	\$69.50	\$59.50 - \$150.00/Ton	\$14,000.00	5,4,3
36A MOD. HMA Overlay 1 1/2 inches	HMA Rehabilitation of Existing Pavement	15 - 20 Years	\$7.99	\$72.67	\$59.50 - \$96.95/Ton	\$93,746.67	5,4
13A MOD. HMA Overlay HMA Overlay 2 inches	HMA Rehabilitation of Existing Pavement	15 - 20 Years	\$8.48	\$77.13	\$58.50 - \$78.53/Ton	\$99,495.84	5,4,3
Gravel/Pulverize/HMA Paving	HMA Paving Over a Recycled Gravel Surface	20 - 30 Years	\$27.28	\$124.35	\$89.83-\$154.00/Ton	\$320,085.33	3,2,1
Gravel/Pulverize	Constructing an Improved Gravel Surface with Recycled HMA and Gravel	Varies	\$3.86	N/A	N/A	(Estimated Cost) \$45,290.67	3,2,1

*Figures provided above, are average costs for local road projects in 2021. Project estimates for the 2022 construction season will be determined based on bid/projected material, equipment, labor, and overhead/fringe cost.

**Pavement Surface Evaluation and Rating

***Anticipated Service Life may vary based on preventive maintenance investments.



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Budget Amendment Requests Q1 2022 to TB 1.18.2022

Date	Dept. Head	Fund Name	Additional Funds Requested			Funds Requested From			Explanation of Request	Previously Discussed	New Money
			GL Number	Description	Amount	GL Number	Description	Amount			
12/6/2021	James Porter	General Fund/Legal	101-250-70200	Legal Salaries	\$ 5,000.00	101-223-82600	Outside Legal Services	\$ 5,800.00	Requesting additional funds to cover staff compensation.	No	No
			101-250-71500	Legal FICA	\$ 400.00						
			101-250-72200	Legal Pension	\$ 400.00						
			Total		\$ 5,800.00	Total	\$ 5,800.00				

Date	Dept. Head	Fund Name	Additional Funds Requested			Funds Requested From			Explanation of Request	Previously Discussed	New Money
			GL Number	Description	Amount	GL Number	Description	Amount			
1/12/2022	Iris Lubbert	DDA	900-728-97500	Stadium N Sidewalk	\$ 231,111.00	900-001-40100	Carryover	\$ 231,111.00	Previously budgeted & approved 2021 nonmotorized project, to be completed in 2022. Not a new project, and amount reflects unspent 2021 project funds. Subject to DDA approval on 1/20/22.	Yes	Yes
			Total		\$ 231,111.00	Total	\$ 231,111.00				

Date	Dept. Head	Fund Name	Additional Funds Requested			Funds Requested From			Explanation of Request	Previously Discussed	New Money
			GL Number	Description	Amount	GL Number	Description	Amount			
1/12/2022	Iris Lubbert	DDA	900-728-97500	Car Charging Station	\$ 20,000.00	900-001-40100	Carryover	\$ 20,000.00	Previously budgeted & approved 2021 project, to be completed in 2022. Not a new project, and amount reflects unspent 2021 project funds. Subject to DDA approval on 1/20/22.	Yes	Yes
			Total		\$ 20,000.00	Total	\$ 20,000.00				

Date	Dept. Head	Fund Name	Additional Funds Requested			Funds Requested From			Explanation of Request	Previously Discussed	New Money
			GL Number	Description	Amount	GL Number	Description	Amount			
1/12/2022	Iris Lubbert	DDA	900-728-80800	Zoning Consultant	\$ 11,908.00	900-001-40100	Carryover	\$ 11,908.00	Previously budgeted & approved 2021 VTDP Zoning Amendment Consultant, to be completed in 2022. Not a new project, and amount reflects unspent 2021 project funds. Subject to DDA approval on 1/20/22.	Yes	Yes
			Total		\$ 11,908.00	Total	\$ 11,908.00				

Date	Dept. Head	Fund Name	Additional Funds Requested			Funds Requested From			Explanation of Request	Previously Discussed	New Money
			GL Number	Description	Amount	GL Number	Description	Amount			
1/12/2022	Iris Lubbert	General Fund/Planning	101-805-80800	5G - Consultants	\$ 16,600.00	101-001-40100	Carryover	\$ 16,600.00	Previously budgeted & approved 2021 project for a consultant, McKenna, to write a 5G ordinance; to be completed in 2022. Not a new project, and amount reflects unspent 2021 project funds.	Yes	Yes
			Total		\$ 16,600.00	Total	\$ 16,600.00				

Date	Dept. Head	Fund Name	Additional Funds Requested			Funds Requested From			Explanation of Request	Previously Discussed	New Money
			GL Number	Description	Amount	GL Number	Description	Amount			
1/12/2022	Karen High	Parks	107-756-97400	Twp Pk courts repair	\$5,000	107-756-97400	Cap. outlay/improvements	\$5,000	2022 budget is \$15,000 for two tennis and two basketball courts repair & repaint, based on 2018 quote. 2022 quote higher by \$5k. A crack in the tennis court is expanding, and needs repair.	No	No
			Total		\$ 5,000.00	Total	\$ 5,000.00				

Date	Dept. Head	Fund Name	Additional Funds Requested			Funds Requested From			Explanation of Request	Previously Discussed	New Money
			GL Number	Description	Amount	GL Number	Description	Amount			
	Anna Horner	General Fund/Public Works	101-223-82500	Accounting/Audit Fees	\$ 10,000.00	101-001-40100	Carryover	\$ 10,000.00	Forensic auditing expertise needed for RCKC overhead charges on nonmotorized facility projects, as Board due diligence to spending Ohtemo public funds.	No	No
			Total		\$ 10,000.00	Total	\$ 10,000.00				

Grand Total	\$ 300,419.00
Total New Money (Projects not completed/not spent in 2021)	\$ 279,619.00
Total Not Previously Discussed with TB	\$ 20,800.00

REVIEW DATE 1/14/2022

SIGNATURE 