

**EXHIBIT A**

**SITE REMEDIATION AGREEMENT**

**13-429**

**THIS SITE REMEDIATION AGREEMENT** ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between The Goodyear Tire & Rubber Company ("Goodyear") and County of Summit, Ohio, an Ohio charter county (the "County") (collectively, the "Parties").

**WHEREAS**, on or about June 5, 1978 the County purchased certain real property located on or about 1100 Loamshire Road, Akron, Ohio, and identified by Parcel No. 5110731 (the "Property"), for the construction of the Upper Tuscarawas Wastewater Treatment Plant ("WWTP") which the County currently owns and operates on the Property;

**WHEREAS**, the Property is part of a larger tract of real property formerly known as the Rubber City Sand & Gravel Company property;

**WHEREAS**, Goodyear formerly leased an undefined portion of the Rubber City Sand & Gravel Company property (the "Site");

**WHEREAS**, Goodyear, without admitting fault, liability or responsibility entered into Director's Final Findings and Orders with Ohio EPA on December 5, 1994 ("1994 DFFOs") to undertake a Remedial Investigation ("RI") and Feasibility Study ("FS") (collectively, referred to as the "RI/FS") at the Site to investigate existing contamination at the Site (the "Contamination") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act;

**WHEREAS**, Goodyear is required to submit a Revised FS for the Site to Ohio EPA, and then Ohio EPA is anticipated to issue a preliminary preferred remedy (the "Preferred Plan") for notice and comment and then a final document summarizing the remedy for the Site (the "Decision Document").

**WHEREAS**, it is anticipated that the County and Goodyear will negotiate Director's Final Findings and Orders with Ohio EPA to implement the Decision Document ("RD/RA DFFOs");

**WHEREAS**, the County plans on modifying the WWTP (the "Project") unrelated to the implementation of the remedy at the Property, which Project is more particularly described in Exhibit A;

**WHEREAS**, the County has requested Goodyear's financial assistance related to contaminated soil at certain locations on the Property during the County's performance of the Project; and

**WHEREAS**, Goodyear desires to support the County's Project by providing a one-time contribution to address contaminated soil disposal costs pursuant to this Agreement, and the County desires to support and cooperate with Goodyear's efforts to implement the anticipated Decision Document for the Site;

**NOW, THEREFORE**, in consideration of the foregoing promises, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS. For purposes of this Agreement the following terms have the meanings ascribed below.

(a) "Clean Soil Fill" means soil containing no Hazardous Substances above the applicable Ohio Voluntary Action Program's generic numerical standards for residential use.

(b) "Contamination" means all existing contaminated media subject to the 1994 DFFOs, including, but not limited, to soil and groundwater contamination, but excluding New Contamination.

(c) "Environmental Laws" mean any federal, state, and local laws, ordinances, regulations, requirements, orders, directives, guidelines, or permit conditions in existence as of the date of this Agreement, or as later enacted, promulgated, issued or adopted, regulating or relating to Hazardous Substances, including, without limitation, those relating to industrial hygiene, health, environmental protection or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, investigation or remediation of Hazardous Substances.

(d) "Hazardous Substances" means any chemical, substance, material, object, condition, waste, or combination thereof that is or may be hazardous to human health or safety or to the environment due to its harmful or potentially harmful properties or effects, including those listed, defined or regulated under any Environmental Laws.

(e) "Impacted Soil" means soil on the Property containing Hazardous Substances above the Applicable or Relevant and Appropriate Requirements (ARARs) as defined in the Draft FS submitted to Ohio EPA March 1, 2010.

(f) "New Contamination" means any releases of Hazardous Substances that occurred after the date upon which the County acquired ownership of the Property, excluding the Contamination and any new releases of Hazardous Substances attributable to the Contamination.

(g) "Project" shall mean the County's proposed project to expand/modify the WWTP on the Property in 2013-2014, as more particularly described in Exhibit A;

(h) "Remediation Work" shall include all work necessary for Goodyear to implement the Decision Document for the Site, including all long-term operation, maintenance, and monitoring specified in the Decision Document. For purposes of this Agreement, the Remediation Work shall not include any work required to address New Contamination regardless of whether such releases are addressed in the RD/RA DFFOs;

2. PURPOSE. The purposes of this Agreement are to provide for (i) Goodyear's commitment to financially support a portion of the County's Impacted Soil disposal costs in connection with the Project; and (ii) the County's commitment to assist Goodyear in finalizing the FS, and negotiating and implementing the Decision Document pursuant to the RD/RA DFFOs to be signed by the County and Goodyear as set forth herein.

3. ACCESS. The County hereby grants to Goodyear and Goodyear's designated employees, representatives, agents, contractors (including any subcontractors and material suppliers) and consultants (the "Goodyear Parties"), a right of access to enter upon the Property, for the purposes of Goodyear completing the Remediation Work. Goodyear shall provide prior notification to the County as provided hereunder, (except when responding to emergencies relating to the Remediation Work, or with the prior written consent of the County) and such access shall be limited solely to the purposes set forth herein. In the event the County denies Goodyear or the Goodyear Parties access to the Property for any reason, Goodyear shall not be considered in default of its obligations or in breach of this Agreement for failure to perform while access to the Property is denied, unless such denial is a result of some material failure by or default of Goodyear. Nothing contained in this Section, nor any other provision contained in this Agreement, nor any acts of the Parties shall be deemed to create any relationship other than the relationship of licensor to licensee between the County and Goodyear.

4. PROJECT IMPACTED SOIL DISPOSAL.

(a) *Representation by the County.* The County shall design and conduct the Project in a manner that minimizes the generation (i.e. excavation) of Impacted Soil.

(b) *Soil Disposal Estimate.* Prior to excavating Impacted Soil from the Property in the performance of the Project, the County shall submit to Goodyear a final design for the Project summarizing the amount of Impacted Soil the County will excavate and provide an estimated cost for disposal of the excavated Impacted Soil as set forth in the awarded third-party bid for such work accepted by the County (the "Soil Disposal Estimate"). The Soil Disposal Estimate shall be subject to Goodyear's review and written approval prior to the County's disposal of the Impacted Soil, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, it shall not be unreasonable for Goodyear to refuse to approve the Soil Disposal Estimate if the Soil Disposal Estimate fails to consider alternative locations on the Property to avoid Impacted Soil (where possible) or otherwise minimize the amount of excavated Impacted Soil.

(c) *Impacted Soil Disposal Costs.* Subject to Goodyear's approval of the Soil Disposal Estimate, Goodyear shall pay the County fifty percent (50%) of the total approved Soil Disposal Estimate. Goodyear's payment shall be payable to the County within thirty (30) days of the County's receipt of Goodyear's written approval of the Soil Disposal Estimate. The County agrees that it shall be solely responsible for the remainder of the Soil Disposal Estimate, as well as actual Impacted Soil disposal costs incurred by the County exceeding the Soil Disposal Estimate and waives any right to recover such additional costs from Goodyear.

(d) *Capping of Impacted Areas.* Following the County's excavation of Impacted Soils pursuant to this Agreement, the County shall be solely responsible for applying two (2) feet of Clean Soil Fill on areas excavated by the County and for all associated costs. Prior to the placement of such Clean Soil Fill, the County shall provide Goodyear with documentation demonstrating that all soil fill to be applied under this provision qualifies as Clean Soil Fill under this Agreement. In all other areas excavated by the County during the Project that do not involve the removal of Impacted Soils, the County shall be solely responsible for backfilling such areas with at least two (2) feet of soil and all associated costs.

(e) *Generator for Excavated Impacted Soil.* During the County's performance of the Project, the County shall be deemed the generator of and responsible for properly managing all Impacted Soil generated, handled, stored, transported or disposed of solely in connection with the Project, and shall ensure Impacted Soil removed from the Property is transported and disposed of in accordance with all Environmental Laws. The County shall be identified as the generator of all Impacted Soil generated in connection with the Project on any waste profiles, shipping tickets, bills of lading or manifests. Upon request, the County agrees to provide Goodyear with copies of any shipping tickets, bills of lading, manifests or related documentation confirming compliance with the County's obligations hereunder.

#### 5. ADDITIONAL OBLIGATIONS OF THE COUNTY.

(a) *Cooperation and Support of Remediation Work.* The County shall cooperate in good faith and support Goodyear in the negotiation and implementation of the Remediation Work at the Property. Such cooperation shall include, but shall not be limited to: (1) providing access to Goodyear and the Goodyear Parties to conduct the Remediation Work pursuant to Section 3 of this Agreement; (2) working with Goodyear to resolve the County's outstanding comments to the Draft FS, and supporting Goodyear's revised FS with Ohio EPA; (3) supporting Goodyear's efforts to address comments or other requirements arising from the Preferred Plan and Decision Document for the Site; (4) participating in negotiations with Ohio EPA and Goodyear to jointly negotiate and sign the RD/RA DFFOs; and (5) providing accurate and complete information about the Property without the requirement for Goodyear to conduct further inquiry. The County agrees that it will not provide further comments (oral or written) to Ohio EPA on the Revised FS, Preferred Plan or the Decision Document for the Site, unless coordinated with and approved by Goodyear, or unless Ohio EPA contacts the County directly, in which event, the County will first notify Goodyear of such a request and provide Goodyear with an opportunity to participate in the response. Prior to submitting the Revised FS to Ohio EPA, Goodyear shall provide a copy to the County for the County's final review and comments to be submitted to Goodyear.

(b) *Permits.* Upon the request of Goodyear or any Goodyear Party, the County or its authorized representatives shall promptly execute any permit applications and documents solely in its capacity as owner of the Property when execution is needed to conduct the Remediation Work; provided, however, Goodyear agrees that it will be solely responsible for all costs or fees associated and will bear responsibility for preparing and obtaining such permits or other documents relating to the Remediation Work and for complying with any such permit or other documents that are issued in connection with the Remediation Work.



(c) *Environmental Covenant.* The County agrees that, upon request by Goodyear, the County will have an authorized representative execute an Environmental Covenant as required to implement the Remediation Work substantially in the form attached as Exhibit B hereto and incorporated herein as may be modified in response to Ohio EPA comments. The County will also work in good faith with Goodyear to record the Environmental Covenant with the land records for the Property with the Summit County Recorder's Office in Akron, Ohio, all costs and expenses to be borne solely by Goodyear; provided, however, that the County shall have the right but not the obligation to review any such Environmental Covenant and related documents in draft form and provide comments to Goodyear or Goodyear Parties, which comments shall be included in any final documents, to the extent such comments are reasonable. At the request of Goodyear, the County shall also do any of the following, all costs and expenses (excluding the County's internal costs such as attorney's fees, costs relating to County personnel and consultant's fees) of which shall be borne solely by Goodyear:

(i) Provide reasonable assistance and cooperation to Goodyear, for Goodyear to obtain the necessary subordinations from lien holders for the Property in connection with the placement of the Environmental Covenant on the Property or a waiver from Ohio EPA for any such subordinations, if applicable, and ensure that no additional liens are placed on the Property after the Effective Date prior to the date the Environmental Covenant is recorded unless the County ensures that such liens are expressly subordinate to the proposed Environmental Covenant;

(ii) Provide reasonable assistance and cooperation to Goodyear for Goodyear to obtain Ohio EPA's approval of the Environmental Covenant; and

(iii) Comply at all times with the restrictions set forth in the Environmental Covenant, RD/RA DFFOs and as provided herein.

(d) *Non-Disturbance of Remedy.* The County agrees that it will not take any actions to impact the compliance status of the Site as set forth in the Decision Document, RD/RA DFFOs and Environmental Covenant, unless such actions are in accordance with all requirements in the RD/RA DFFOs, Environmental Covenant and this Agreement. Such prohibited actions, include, but are not limited to, any actions by the County disturbing the integrity of any portion of a cap installed on the Property pursuant to RD/RA DFFOs and related documents. Notwithstanding anything to the contrary contained herein, in the event the County, or any person under the County's direction, control, or supervision, takes any action that impacts the Site's compliance with the Decision Document, RD/RA DFFOs and related documents, the County shall be solely responsible for all associated costs, fines, penalties, fees, repairs, oversight costs and expenses (including attorney's fees) incurred as a result of such non-compliance and to return the Site to compliance with the Decision Document, RD/RA DFFOs and Environmental Covenant.

(e) *Reporting Obligation.* In the event the County discovers any incident or condition on the Property negatively impacting or compromising the Site's

compliance with the Decision Document, the RD/RA DFFOs and Environmental Covenant, regardless of cause, the County shall immediately notify Goodyear of such incident or condition.

(f) *Maintenance Obligations.* Following Goodyear's implementation of the Remediation Work, the County agrees to maintain the lawn (including watering) and landscaping on all capped areas of the Property (as possible) in accordance with the RD/RA DFFOs, and the County shall be responsible for all associated costs. Subject to Section 5(d) of this Agreement, Goodyear shall be responsible for all other Operation and Maintenance responsibilities associated with the anticipated Decision Document to be codified in the RD/RA DFFOs, including normal wear and tear repairs, unless otherwise agreed to in writing between the parties.

(g) *Future Development.* Subject to Section 5(d) of this Agreement, in the the event the County performs additional development or construction projects on the Property or WWTP beyond the Project, the County shall be solely responsible for all associated costs, fees and expenses, including, but not limited to, cap repair, all sampling, excavation, treatment and disposal costs of any contaminated media encountered by the County during such projects. The County waives, releases and forever extinguishes its right and ability to recover any such costs, fees or expenses from Goodyear.

(h) *Notice to Tenants/Purchasers.* In the event the Property is sold or leased, the County shall provide adequate notice to any buyer and/or tenant of the Property of the Environmental Covenant and the County's obligations under this Agreement and RD/RA DFFOs, and shall ensure that such buyer or tenant subordinates its fee or leasehold interest to such Environmental Covenant, and is otherwise bound by the County's obligations under this Agreement and the RD/RA DFFOs.

(i) *Copies of Correspondence.* Within ten (10) days of any written correspondence or submittals to Ohio EPA, the County shall provide Goodyear with copies of any such correspondence or submittals to or from Ohio EPA, relating to the Project, Contamination, or remedy for the Site.

## 6. GOODYEAR'S OBLIGATIONS.

(a) *Management of Remediation Work.* Except as otherwise provided in this Agreement or in the RD/RA DFFOs, Goodyear shall implement, manage and control all Remediation Work at the Property, and shall be responsible for all costs and expenses associated with the implementation and management of the Remediation Work.

(b) *Compliance.* Goodyear shall be solely responsible for ensuring that Goodyear and the Goodyear Parties comply with the terms and conditions of this Agreement and all applicable laws and regulations in the performance of the Remediation Work. Goodyear and the Goodyear Parties shall conduct the Remediation Work at the Property in a safe and workmanlike manner so as not to unreasonably interfere with the WWTP's use and operation of the Property. Subject to Section 5(b) of this Agreement, Goodyear shall obtain all licenses, permits and approvals required for the Remediation Work at

Goodyear's sole cost and expense and such Remediation Work shall be performed in full compliance therewith.

(c) *Equipment.* Goodyear shall provide its own tools, machinery, equipment, material, or supplies necessary for the Remediation Work. The County, however, shall maintain its customary security of the Property and take reasonable measures to prevent any of its employees, agents, representatives or contractors from interfering with, using, or damaging any tools, machinery, equipment, material or supplies utilized in connection with the Remediation Work.

(d) *Generator Status.* As between Goodyear and the County, Goodyear shall be deemed the generator of and responsible for properly managing all wastes and Hazardous Substances generated, handled, stored, transported or disposed of solely in connection with the Remediation Work, and shall ensure such wastes and Hazardous Substances are transported and disposed of in accordance with all Environmental Laws. For any non-hazardous wastes generated and transported off-site in connection with the Remediation Work, Goodyear shall be identified as the generator of all such wastes on any shipping tickets, bills of lading or manifests.

(e) *Restoration.* Upon conclusion of the Remediation Work, Goodyear shall, to the extent reasonably possible, restore the Property to the conditions existing immediately prior to the conduct of the Remediation Work, or restore the area to a modified condition pursuant to RD/RA DFFOs, and in accordance with all applicable requirements normal wear and tear excepted. Goodyear shall repair any material damage to the Property that occurs as a result of Goodyear's access to the Property. The County shall permit Goodyear and the Goodyear Parties to temporarily store materials on designated portions of the Property approved by the County provided that Goodyear and the Goodyear Parties comply with all applicable laws with respect to such storage and such storage does not unreasonably interfere with the County's use of the Property. Upon completion of any phase of the Remediation Work, Goodyear and the Goodyear Parties shall remove all tools, equipment, and materials used by Goodyear and the Goodyear Parties, excluding any subsurface installations, and shall leave the Property free and clear of all obstructions, rubbish, debris and hindrances.

(f) *Reports.* Goodyear shall provide the County copies of all written reports, correspondence or other documentation addressed to Ohio EPA ten (10) days prior to Goodyear's submittal, and within ten (10) days of receipt, any correspondence from Ohio EPA, relating to the Remediation Work.

(g) *Notification.* Prior to entering the Property to conduct Remediation Work, Goodyear shall provide two (2) days advanced notice (oral, written or e-mail is acceptable) to the County by contacting Robert Hollis, Deputy Director of Operations, County of Summit, Ohio, Department of Environmental Services, 1100 Loamshire Road, Akron, Ohio 44319, (330) 645-0003, [rhollis@does.summitoh.net](mailto:rhollis@does.summitoh.net), and shall include a schedule for each access period.

7. OHIO EPA'S OVERSIGHT COSTS. Subject to Section 5(d) of this Agreement, Goodyear agrees to reimburse Ohio EPA for any past costs associated with the Site



as of the date of the approved final FS. The Parties each agree to equally pay (50/50) Ohio EPA's invoiced oversight costs relating to the negotiation and implementation of the RD/RA DFFOs, including oversight costs associated with the Preferred Plan and Decision Document, provided that such costs are not contested by the Parties.

8. COMPLIANCE WITH LAWS

(a) Goodyear shall comply promptly and fully with all applicable laws and regulations in connection with the Remediation Work and its obligations under this Agreement; and

(b) The County shall comply promptly and fully with all applicable laws and regulations in connection with the Project and its obligations under this Agreement.

9. RECORDING. Either Party to this Agreement may record this Agreement, or a notice of this Agreement, in the Land Records for the Property in the City of Akron, Ohio.

10. INSURANCE. Goodyear shall require its contractors to obtain and maintain general liability insurance in a minimum amount of \$2,000,000 per person and occurrence and in the aggregate. At the request of the County, prior to entering the Property, Goodyear's contractors shall provide the County with an endorsement evidencing the County as an additional insured on such policy of insurance. Goodyear's contractors shall also obtain and maintain professional liability insurance in a minimum amount of \$1,000,000 and Worker's Compensation, as required by law.

11. MUTUAL RELEASE

(a) Subject to Goodyear's compliance with its obligations pursuant to this Agreement, the County for itself and on behalf of its representatives, subsidiaries, affiliates, successors and assigns, does hereby release, waive and forever discharge Goodyear and its successors, assigns, and any of its respective past and present officers, directors, principals, members, shareholders, employees, subsidiaries, parent companies, affiliates, insurers, representatives and agents, from any and all actual, potential and contingent claims, actions, causes of action, rights, judgments, debts, contracts, promises, allegations, demands, obligations, duties, suits, expenses (including without limitation legal fees), assessments, penalties, charges, injuries, losses, costs, damages and liabilities and any other compensation whatever kind and nature, whether known or unknown, foreseen or unforeseen, whether in contract, equity and/or tort (hereinafter all referred to collectively as "Claims") directly or indirectly resulting from or in any way arising out of (i) the Contamination, including, but not limited to, Claims for cost recovery or contribution pursuant to Environmental Laws, for damage or diminution in value of the Property, and for loss of business or profits; (ii) the County's performance of the Project and any future development or expansion projects on the Property; and (iii) New Contamination or damage to the Property created or caused by the County or its employees, agents, representatives or contractors. The County hereby waives any and all rights and benefits with respect to such Claims that it now has, or in the future may have conferred upon it, by virtue of any statute or common law principle that provides that a

general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release.

(b) Subject to the County's compliance with its obligations pursuant to this Agreement, Goodyear for itself and on behalf of its representatives, subsidiaries, affiliates, successors and assigns, does hereby release, waive and forever discharge the County and its successors, assigns, and any of its respective past and present officers, directors, principals, members, shareholders, employees, subsidiaries, parent companies, affiliates, insurers, representatives and agents, from any and all actual, potential and contingent claims, actions, causes of action, rights, judgments, debts, contracts, promises, allegations, demands, obligations, duties, suits, expenses (including without limitation legal fees), assessments, penalties, charges, injuries, losses, costs, damages and liabilities and any other compensation whatever kind and nature, whether known or unknown, foreseen or unforeseen, whether in contract, equity and/or tort (hereinafter all referred to collectively as "Claims") directly or indirectly resulting from or in any way arising out of the Contamination, including, but not limited to, (i) Claims for cost recovery or contribution pursuant to Environmental Laws; (ii) Claims arising out of Goodyear's performance of the Remediation Work; and (iii) Claims arising out of Goodyear's obligations under the RD/RA DFFOs. Goodyear hereby waives any and all rights and benefits with respect to such claims that it now has, or in the future may have conferred upon it, by virtue of any statute or common law principle that provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release. Nothing contained in this Section shall be construed as a release of Claims relating to New Contamination or relating to any interference or damage the County causes to the Remedial Work implemented at the Site, which are expressly excluded.

(c) The releases set forth in this Section 11 of this Agreement shall not affect the rights of either party to enforce the terms of this Agreement as set forth in Section 12.

## 12. DEFAULT.

(a) *Event of Default.* Goodyear's or the County's failure to perform its obligations or restrict its actions in accordance with the terms of this Agreement shall be an Event of Default hereunder. If either Goodyear or the County reasonably and in good faith determines that the other party has failed to comply with such obligations under this Agreement (the "Defaulting Party"), that party that is subject to the default shall provide written notice to the Defaulting Party of such default. The notice shall describe the nature of the default. If the Defaulting Party reasonably believes the default can and should be cured, the Defaulting Party shall take such actions to cure the default within twenty (20) days from receipt of the notice.

(b) *Remedies Cumulative.* Nothing in this Agreement shall limit any remedy otherwise available to a Party to remedy any default or breach by, or to enforce any obligation of, the other Party under this Agreement. Without intending to limit the foregoing, in addition to any and all remedies available pursuant to the terms of this Agreement, the Parties shall have full recourse to any remedies available at law, including but not limited to



damages, and any remedies available in equity, including but not limited to injunctive relief and specific performance.

13. WAIVER. No waiver of any breach or default of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provisions of this Agreement.

14. TERMINATION. This Agreement shall terminate upon the completion of the Remediation Work (including O&M). Notwithstanding the foregoing, **Sections 5, 8, 11, 12, 15, 17 and 19** shall survive the termination of this Agreement.

15. NO ADMISSION. The performance of the obligations set forth herein are not to be construed as an admission of liability on the part of either Party. Each Party denies any liability to the other Party and to any other person, including the United States and the State of Ohio, and this Agreement is solely for the purpose of facilitating the County's completion of the Project, and to establish the parties' respective roles and obligations to implement and maintain the anticipated remedy to be negotiated in the RD/RA DFFOs. Neither this Agreement, nor the obligations set forth herein, shall be offered as evidence by any person or received into evidence in any forum for any purpose other than the enforcement and/or implementation of the terms of this Agreement.

16. NOTICES. All notices required or permitted under this Agreement shall be in writing either by facsimile transmission, email, personal delivery, or by mailing the same by registered, certified, or express mail, postage prepaid, return receipt requested. All notices shall be deemed dated, delivered, received and effective on the day of delivery to the party to whom the notice is directed. All communications will be sent as follows (or to such other address or facsimile number as may be designated by a Party giving written notice to the other Parties hereto):

If to Goodyear:

Jeffery Sussman, Manager Global Remediation  
The Goodyear Tire & Rubber Company  
200 Innovation Way  
Akron, Ohio 44316  
Tel. (330) 796-0578

with copies to:

Corporate Secretary  
The Goodyear Tire & Rubber Company  
200 Innovation Way  
Akron, Ohio 44136  
Tel. (330) 796-2121

and

Heidi Goldstein  
Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
tel. (216) 566-5559, fax (216) 566-5800

If to the County:

Robert Hollis, P.E., Deputy Director of Operations  
County of Summit, Ohio  
Department of Environmental Services  
1100 Loamshire Road, Akron, Ohio 44319  
Tel. (330) 645-0003, fax (330) 645-1883

17. SUCCESSORS AND ASSIGNS. This Agreement shall run with the land in perpetuity and be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including any entity that is the successor to substantially all of the assets and businesses of a Party, including all subsequent owners of the Property. No party may otherwise assign, delegate or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the other Party hereto.

18. SEVERABILITY. If any provision of this Agreement is found to be invalid or unenforceable, then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement, which will have no effect on the enforceability of the surviving provisions of this Agreement.

19. THREATS TO HUMAN HEALTH AND THE ENVIRONMENT. If at any time during the Remediation Work, Goodyear or its agents discover any incident or condition that creates an emergency or immediate danger to human health or safety of persons on or adjacent to the Property, Goodyear shall promptly notify the County of such incident or condition. The County shall notify Goodyear if the County discovers any such condition. In the event that any activities by Goodyear or the County, respectively, causes a reportable release into the environment, the Party responsible for such release shall immediately make the required notifications and also notify the non-releasing Party and provide documentation to the non-releasing Party relating to such release, and the releasing Party shall be responsible at its sole cost and expense to comply with all of the requirements to address the release, including without limitation any obligations that the releasing party may have to address, abate and or remediate the cause of the release, as required under applicable law.

20. AMENDMENT. This Agreement may not be modified or amended except by a written agreement duly executed by the Parties hereto or by their respective successors or assigns, as the case may be.

21. GOVERNING LAW. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by, construed and enforced in accordance with, the laws of the State of Ohio.

22. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

23. ENTIRE AGREEMENT AND CONFLICTS. This Agreement, including the appendices hereto, fully sets forth all agreements and understandings of the Parties to this Site Remediation Agreement with respect to the subject matter hereof. The terms of this Agreement shall control over any conflicting terms in any prior agreement among the Parties, including, but not limited to, the Parties Site Access Agreement dated October 25, 1994.

[Signature Page Follows]

**IN WITNESS WHEREOF**, this Site Remediation Agreement has been executed by the Parties as of the date first written above.

Signed, sealed and delivered  
In the presence of:

\_\_\_\_\_  
  
\_\_\_\_\_

**COUNTY OF SUMMIT, OHIO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Deborah S. Matz  
Director, Department of Law, Insurance and  
Risk Management

**THE GOODYEAR TIRE & RUBBER  
COMPANY**

\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## EXHIBIT A

The Project, also known as the Q-949 Springfield Wastewater Treatment Plant Improvements Project, consists of the following work elements on the Property:

1. Installation of a new fine screen for preliminary treatment. It will be located in a new building between the influent pump station and the grit building.
2. Construct a new effluent channel for each primary clarifier.
3. Demolish and replace the existing rapid sand tertiary filters with new compressed media filters.
4. Install Variable Frequency Drives and a new motor control center for the digester blowers.
5. Sandblast and re-coat the collector mechanisms in both primary clarifiers.
6. Repair or replace various roofs.
7. Repair and repave the roadways and parking areas.

Detailed plans and specifications for the Project are on file at the offices of the County's Department of Environmental Services, 2525 State Road, Cuyahoga Falls, OH 44223, and are available upon request.



## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the County of Summit, Ohio (the "County" or "Owner"), The Goodyear Tire & Rubber Company ("Goodyear" or "Holder") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property described in section 2 herein ("the Property"), to the activity and use limitations set forth herein.

This Environmental Covenant concerns a portion of an area known as The Rubber City Sand and Gravel Site located on or about \_\_\_\_\_ (the "Site") which is more particularly described in Exhibit A. In a Decision Document dated [Month, Day, Year] (the "Decision Document"), the Director of Ohio EPA selected a remedial action for the Site requiring deed restrictions on the Site. The County, Goodyear and Ohio EPA have agreed to this environmental covenant in the Director's Final Findings and Orders of \_\_\_\_\_ dated \_\_\_\_\_ (DFFOs). The County and Goodyear have agreed in the DFFOS to a Site Remedial Design and Remedial Action (RD/RA) implementing the remedy set forth in the Decision Document. Contamination, the remedy, pathways of exposure, limits of exposure, and the location and extent of the contamination are provided in the Decision Document and are referenced, herein.

Now therefore, the County, Goodyear and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns a \_\_\_\_\_ acre tract of real property located within the Site; as shown on Exhibit B (the "Property"). The Site is located on or about \_\_\_\_\_ and more particularly described in Exhibit A attached hereto and hereby incorporated by reference.
3. Owner. The Property is owned by the County who is located at 175 S. Main St., Akron, Ohio 44308.
4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant ("Holder") is the Owner listed above, and Goodyear which is located at 200 Innovation Way, Akron, OH 44306.

5. Activity and Use Limitations. As part of the remedial action described in the Decision Document, Owner hereby imposes and agrees to comply with the following activity and use limitations:

***A. Land Use Restrictions***

The Property shall not be used for residential, recreational, or agricultural uses or any combination of those uses, excluding existing utility agreements and rights of way.

***B. Ground Water Restrictions:***

Groundwater underlying portions of the Property shown on Exhibit C shall not be extracted or used for potable purposes. Groundwater use in the area shown on Exhibit C shall be limited to non-potable uses, unless otherwise agreed to in writing by the Owner, Ohio EPA and Goodyear. [This provision and any subject area will need to be refined based on actual groundwater data].

***C. Construction Restrictions***

Any activity on portions of the Property shown on Exhibit C that could compromise the integrity of the remedy described in the Decision Document and DFFOs, including, but not limited to any soil cover placed on the Property as a part of the remedy, will be conducted in accordance with an excavation management plan and worker protection program to ensure that the excavated area is returned to its condition at the completion of the final remedy. Development of the Property, if any, shall not interfere with or adversely affect the implementation, integrity, or protectiveness of any aspect of the remedy as set forth in the Decision Document.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA and Goodyear within \_\_\_\_\_ (\_\_) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of such notice, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner, during the time that the Owner owns the Property or any portion thereof, and upon all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's

right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA's authorized representatives the right of access to the Property for implementation or enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.
9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.
10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON \_\_\_\_\_, 20\_\_, IN [DOCUMENT \_\_\_\_\_, or BOOK\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Owner or Transferee, if applicable, shall notify Ohio EPA within thirty (30) days after each conveyance of an interest in the Property or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:
  - A. that the Owner is the sole owner of the Property;
  - B. that the Owner holds fee simple title to the Property and that the Owner conducted a current title search that shows that the Property [choose one: is subject to [or] is not subject to any] interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant
  - C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
  - D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement,

document or instrument to which Owner is a party or by which Owner may be bound or affected;

- E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner, Holder or a Transferee, if applicable; and the Director of the Ohio EPA, pursuant to ORC § 5308.82 and 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner, Holder or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA and other "Holders" or their assignees, if any.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
15. Recordation. Within sixty (60) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the County Recorder's Office.
16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the County Recorder.
17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, any other signatories to the Environmental Covenant; and the City of Akron, Ohio.
18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:



As to Ohio EPA:

Division of Environmental Response and Revitalization  
Ohio EPA – Central Office  
50 West Town Street  
Columbus, Ohio 43216  
Attn: DERR Records Management Officer

Or, send electronically to: [records@epa.state.oh.us](mailto:records@epa.state.oh.us)

And

Ohio EPA – [applicable district office]  
[District office address]  
Attn: DERR Site Coordinator for [site name]

As to Owner:

[Owner]  
[Address]  
[Address]

As to Holder:

[CONTACT]  
The Goodyear Tire & Rubber Company  
200 Innovation Parkway  
Akron, OH 44306



The undersigned represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

County of Summit Ohio

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

STATE OF OHIO        )  
                                  )  
COUNTY OF SUMMIT    )

SS:

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, the \_\_\_\_\_, who acknowledged to me that he did execute the foregoing instrument on behalf of the County of Summit, Ohio.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

The Goodyear Tire & Rubber Company

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

STATE OF OHIO            )

SS:

COUNTY OF SUMMIT      )

On this, the \_\_\_ day of \_\_\_\_\_, 2013, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged himself/herself to be the \_\_\_\_\_ of The Goodyear Tire & Rubber Company, a corporation, and that as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself/herself as \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

Ohio Environmental Protection Agency

\_\_\_\_\_  
Scott J. Nally, Director

\_\_\_\_\_  
Date

STATE OF OHIO            )  
                                  )        SS:  
COUNTY OF FRANKLIN    )

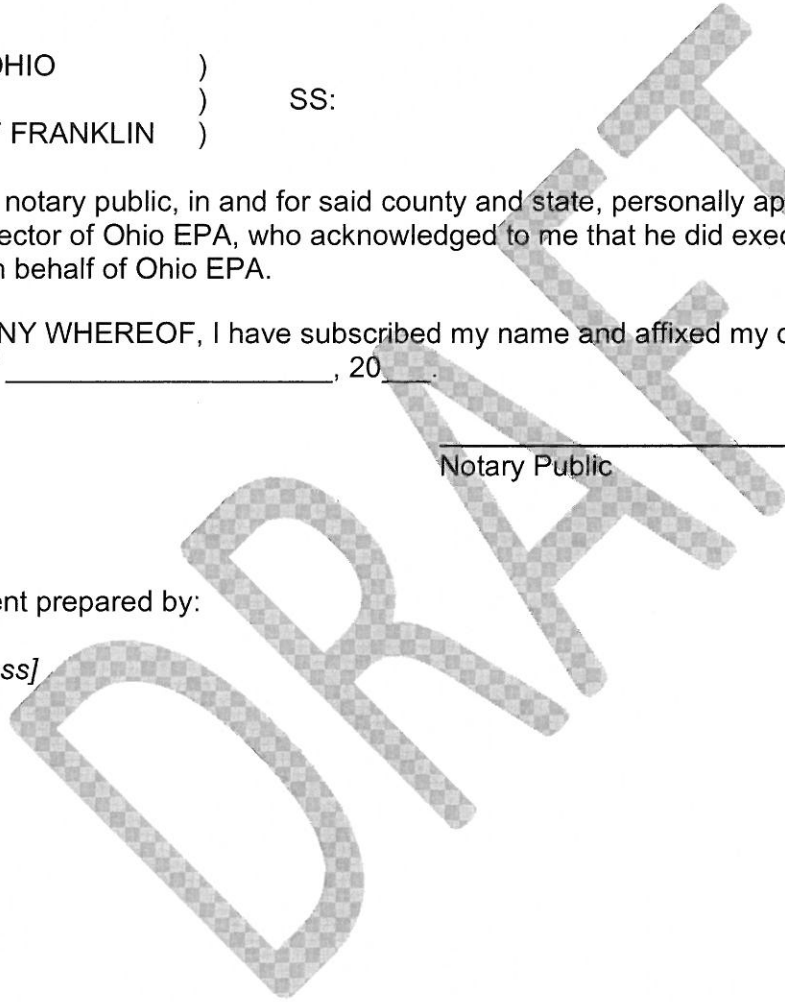
Before me, a notary public, in and for said county and state, personally appeared Scott J. Nally, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared by:

*[name, address]*



SUMMIT COUNTY



Legislative Summary Sheet  
Council Office  
175 South Main Street  
Akron, OH 44308  
330.643.2725 phone  
330.643.2531 fax

PW  
13-429

Subject: A Resolution authorizing the County Executive to execute a Site Remediation Agreement with The Goodyear Tire & Rubber Company, which will apportion the costs and responsibilities for the environmental remediation of the County's property at 1100 Loamshire Road, the former site of a landfill, in the Township of Springfield, Ohio, Council District 8, for the Executive's Department of Environmental Services, and declaring an emergency.

Elected Official/Agency: Russell M. Pry / County Executive

Department/Department Contact: Department of Environmental Services / Michael Weant

Council District(s): 8

**History/Background:** The County operates the Upper Tuscarawas Wastewater Treatment Plant #36 (WWTP) on a 94-acre parcel in the northwest corner of the former Rubber City Sand & Gravel Site ("Site"). The Site, which is located in Springfield Township, was operated as a sand and gravel surface mining operation from 1919 to 1955. In 1943, Rubber City Sand & Gravel leased a portion of the Site to the Goodyear Tire and Rubber Company (Goodyear) for the disposal of waste material from Goodyear's Akron Aerospace Corporation manufacturing facility. Disposal of manufacturing wastes continued at the Site until 1966. In 1978, the 94-acre parcel of the Site was sold to Summit County. Construction of the WWTP was completed in 1980. In 1981, Goodyear filed a notice under Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act indicating that unknown quantities of industrial wastes including had been disposed of at unknown locations on the Site. Since that time, the resulting contamination at the Site has been studied extensively by its prior owners, the Ohio Environmental Protection Agency, and Goodyear. Goodyear, entered into Director's Final Findings and Orders with Ohio EPA on December 5, 1994 ("1994 DFFOs") to undertake a Remedial Investigation and Feasibility Study at the Site to investigate existing contamination at the Site. Goodyear is now required to submit a Revised Feasibility Study for the Site to Ohio EPA, and then Ohio EPA is anticipated to issue a preliminary preferred remedy for notice and comment and then a final document summarizing the remedy for the Site. The County plans on making certain repairs and upgrades to the WWTP in the Q949 Upper Tuscarawas Wastewater Treatment Plant Improvements Project, and has requested that Goodyear contribute to the additional costs incurred due to the presence of contamination at the Site. The County and Goodyear desire to enter into an agreement defining the responsibilities of the parties in the forthcoming Decision Document for the Site, in which Goodyear shall pay for the remediation and long term monitoring, and provide a one-time contribution from Goodyear to address contaminated soil disposal costs incurred in the Project. The County on its part would execute an environmental covenant restricting future use of the property, and share in certain oversight fees charged by the Ohio EPA.

**Financial Information:** None.

**Prior Approvals/Recommendations:** Res. No. 2013-303 awarding the construction contract for the Q-949 Upper Tuscarawas Wastewater Treatment Plant Improvements Project

**Evaluation:** None

**Other:** No comment