

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

OTTAWA COUNTY,

Plaintiff,

V

OPINION AND ORDER

Case No.: 25-8240-CK

CHESTER TOWNSHIP,

Hon. Jon Hulsing

Defendant.

This case addresses the power of a County Board of Commissioners (Board) to manage county property. The Legislature authorizes a Board to manage county business and property “if other provisions are not made.” The basic question before this Court is whether a Board’s provision in which it established a parks commission to manage county parks limits the Board’s authority to act unilaterally in park management. This Court determines that the Legislature meant what it said—if other provisions are made, then the Board’s power is limited.

Because the Ottawa County Board of Commissioners (OCBC) acted outside its authority and bypassed its Parks Commission when it contracted with defendant for park management and maintenance, the contract at issue is contrary to law and is *void ab initio*. A contract was not created, and summary disposition is granted in favor of plaintiff.¹

Factual Background

The relevant facts are not in dispute and are succinctly summarized. In 1987, the OCBC created the Ottawa County Parks and Recreation Commission (Parks Commission) pursuant to MCL 46.351 *et seq.* to manage county parks. The OCBC allocated to the Parks Commission over \$6.4 million in 2024.

Located within defendant Chester Township’s (Township) boundaries lies a body of water named Crockery Lake. Adjacent to Crockery Lake is Grose Park, a county park which includes a

¹ The Court will generally use the term “agreement” in lieu of “contract” for the balance of this Opinion for the simple reason that a contract deemed void is not a contract.



boat launch for which the county has riparian rights. Apparently, Crockery Lake needs restoration presumably due to pollutants and/or weeds.² To remediate those issues, the OCBC in December 2024, bypassed the Parks Commission and directly entered into an agreement with the Township for the restoration of Crockery Lake.³ Over \$500,000 was allocated from class-action settlement funds for this project. Essentially, the monies were to be front-loaded and paid directly to the Township. That is, upon execution of the agreement, the monies were to be forwarded to the Township with the Township responsible for execution of the project. The Township was to receive a 2% administrative fee for its services. This agreement was approved by legal counsel for both parties.⁴

Backtracking to November 2024, there was an election for all eleven seats of the OCBC. Several incumbent members of the OCBC were defeated. The agreement was executed approximately three weeks before the newly elected OCBC assumed power. Once installed, the newly elected OCBC questioned the legality of the agreement.⁵ Ultimately, the newly minted OCBC filed suit asking this Court to declare the agreement unenforceable. Defendant moves for summary disposition under MCR 2.116(C)(10), while plaintiff moves for the opposite relief under MCR 2.116(I)(2).

Basic Governing Law

Const 1963, art 7, §8 states that a Board has legislative and administrative authority as provided by law. The Constitution goes on to state:

The provisions of this constitution and law concerning counties . . . shall be liberally construed in their favor. Powers granted to counties and townships by this

² The exact nature of the restoration project is irrelevant to the Court's decision. Chester Township lies within Ottawa County.

³ See Appendix A.

⁴ Corporate counsel who represented the OCBC in December 2024 is no longer corporate counsel.

⁵ Despite the directive of the then constituted OCBC, the monies were never forwarded to the Township. Whether this inaction resulted from standard process issues or administrative "slow walking" is not at issue. What can be said is that when the newly constituted OCBC assumed power on January 1, 2025, no payments were made to the Township. Instead, this suit was filed.

constitution and law shall include those fairly implied and not prohibited by this constitution.⁶

By law, a Board has numerous powers. Relevant to this dispute, the Legislature delegates to a Board the following power related to county property:

Represent the county and have the care and management of the property and business of the county *if other provisions are not made*.⁷

Absent the limiting clause, “if other provisions are not made,” there could be an argument that the OCBC had the authority to execute the agreement. This Court must then determine the meaning of that phrase and whether it truly limits a Board’s power.

It is axiomatic when interpreting a statute, this Court must “give effect to the Legislature’s intent, focusing first on the statute’s plain language.”⁸ “In so doing, . . . [this Court must] examine the statute as a whole, reading individual words and phrases in the context of the entire legislative scheme.”⁹ “When a statute’s language is unambiguous, . . . the statute must be enforced as written. No further judicial construction is required or permitted.”¹⁰ This Court must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory.”¹¹

Standard of Review

Summary disposition under MCR 2.116(C)(10) and MCR 2.116(I)(2) is appropriate where, “except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” “In evaluating a motion for summary disposition brought under this subsection, a trial court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR

⁶ Const 1963, art, 7 §34.

⁷ MCL 46.11(I). Emphasis added.

⁸ *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014)

⁹ *Id.*

¹⁰ *Id.*

¹¹ *People v Miller*, 498 Mich 13, 25; 869 NW2d 204 (2015).

2.116(G)(5), in the light most favorable to the party opposing the motion.”¹² “Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.”¹³ A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.¹⁴

Analysis

General Board Authority over a Parks Commission

The Township primarily argues that although the OCBC created the Parks Commission, MCL 46.11(*l*) does not limit the OCBC’s authority because the OCBC retained “general “control of the Parks Commission which means that the OCBC retained the authority to execute the agreement. Specifically, defendant points to the following in PA 1965, No 261:

The county board of commissioners of a county . . . may create a county parks and recreation commission, which *shall be under the general control of the board of commissioners*.¹⁵

The question then becomes what “general control” means in this context. Before we can answer that question, we look at the authority of a parks commission. A parks commission has the authority, but no obligation, to perform the following:

- May study and ascertain the need for facilities and recreation;¹⁶
- May acquire land in its name by gift, purchase or lease;¹⁷
- May accept gifts or grants of personal property or monies;¹⁸
- May preserve, develop, maintain, construct and operate recreational places;¹⁹ and,

¹² *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

¹³ *Id.*

¹⁴ *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

¹⁵ MCL 46.351(1). Emphasis added.

¹⁶ MCL 46.356.

¹⁷ MCL 46.358.

¹⁸ MCL 46.360.

¹⁹ MCL 46.361.

- May adopt rules and regulations, subject to a Board's approval.²⁰

In contrast to the discretionary actions of a parks commission listed above, a parks commission:

[S]hall have the custody, control and management of all real and personal property acquired by the county . . . for public parks, preserves, parkways, playgrounds, recreation centers, wildlife areas, lands reserved for flood condition for impounding runoff water, and other county conservation or recreation purposes.²¹

At first blush it may appear that concurrent authority exists for both the Board and a parks commission to have management authority over park lands. However, as noted above, a parks commission shall have custody and management *over the parks/property*. In contrast, a Board has general control *over the parks commission*, not the property. This is borne out by specific authority granted to Boards over parks commissions:

- A Board may create a park commission;²²
- A Board appoints a majority of the members of the parks commission;²³
- A Board shall appropriate funds to the parks commission;²⁴ and,
- A Board may veto rule and regulation changes proposed by a parks commission.²⁵

The Legislature's grant of general control to a Board over a parks commission is limited and can be accurately described as general political control over the parks commission. However, that political control does not equate to management of the property. Property management, and decisions relating to park management, rests with the parks commission.

By forming the Parks Commission, the OCBC made other provisions for the care and management of park property as allowed by MCL 46.11(*l*). That the OCBC retains the right to control the composition, budget and rule-making authority of the Parks Commission does not equate with

²⁰ MCL 46.364. The discretionary authority listed is not a complete list of a parks commission's authority.

²¹ MCL 46.362.

²² MCL 46.351(1).

²³ MCL 46.351(2).

²⁴ MCL 46.355.

²⁵ MCL 46.364(1).

management and care of park lands. The agreement between the OCBC and the Township directly relates to property management and improperly invades the authority of the Parks Commission. The OCBC lacks authority to manage/preserve/maintain/improve the Grose Park and Crockery Lake. The Parks Commission is the only entity to manage/preserve/maintain/improve the park and Crockery Lake.

Defendant would have this Court ignore the language of MCL 46.11(*I*) which states that a Board has care and management of county property *if other provisions are not made*. Defendant's position would remove any meaning from an obvious limiting clause. This Court must give meaning to the Legislature's words. The Legislature set forth a comprehensive statutory scheme in which powers and duties of parks commissions are established. Defendant's position would render this entire statutory scheme as nugatory.

Similarly, defendant seems to be arguing the exact word fallacy or the exact definition fallacy. This fallacy occurs when a definition or statement is rejected not because its meaning is wrong, but because it doesn't use the exact phrasing for which the challenger is looking. Defendant essentially states that if the Legislature truly meant to limit a Board's authority, it would have used different words than were used. Of course, this approach is subjective and turns statutory analysis on its head.

Defendant's reliance on the "liberally construed" language of Const 1963, art 7, §34 is misplaced. Provisions of law *concerning counties* are to be liberally construed. The "county" does, in fact, have the vast authority to create, fund and manage parks. However, as shown above, the Legislature has expressly limited a Board's authority where that Board has established a parks commission, thereby making other provisions for park management. In other words, the issue is not about the authority of a county to act, rather it is about whether the OCBC acted outside of its authority within the county structure.

PA 1917, No 156, Recreation and Playgrounds Act, and PA 1913, No 90.

Defendant points to MCL 123.51 *et seq.* and MCL 123.61 *et seq.* as additional authority by which a Board may manage park property. The Court agrees with defendant that these statutes are *in pari materia* with MCL 41.351 *et seq.* When interpreting statutes *in pari materia*, the following framework is used:

Statutes that relate to the same subject or that share a common purpose are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates. The object of the *in pari materia* rule is to give effect to the legislative intent expressed in harmonious statutes. If statutes lend themselves to a construction that avoids conflict, that construction should control.

Furthermore,

[w]hen two statutes are *in pari materia* but conflict with one another on a particular issue, the more specific statute must control over the more general statute. The rules of statutory construction also provide that a more recently enacted law has precedence over the older statute. This rule is particularly persuasive when one statute is both the more specific and the more recent.²⁶

Contrary to defendant's position, these statutes enacted a century ago did not vest the OCBC with authority to execute the agreement. MCL 123.51 simply empowers local governments, including counties, to create and operate a public parks system. Like the authority given to Boards to create parks commissions discussed above, MCL 123.53 allows local governments to then delegate the operation of the park system to a recreation board to which appropriations are to be provided. Defendant ignores the express limitation in MCL 123.53 of a Boards authority. Specifically, that statute allows the Board to delegate operation of parks to a recreation board. In other words, MCL 123.51 did not provide statutory authority for the OCBC to execute any agreement where it created a Parks Commission (recreation board) to which the OCBC delegated operation of the park system. This older statute is consistent with, and mirrors, MCL 46.351 *et seq.*, discussed above. To the extent that there is any conflict between these statutes, MCL 46.351 *et seq.* would take precedence because it is a more recent pronouncement by the Legislature.

Similarly, defendant points to MCL 123.61, which allows a Board to purchase and acquire real estate for park purposes. Once again defendant ignores a statute within the same act which limits a Board's authority. MCL 123.66 states in relevant part:

Whenever the board of supervisors of any county shall have adopted a resolution to purchase, condemn or to accept certain lands for park purposes, and make an appropriation therefor. . . there shall be created a board of 3 members to be known and designated as "county park trustees." In counties operating under the county road system, the board of county road commissioners is hereby designated and shall then act as the county park trustees. . . . Said board of trustees shall have the

²⁶ *Belcher v Ford Motor Co*, 333 Mich App 717, 723; 963 NW2d 423 (2020). Cleaned up.

management, control and expenditure of such funds when collected and shall hold in trust for the county the title to any real estate so purchased, acquired by condemnation or accepted by way of gift or devise for park purposes, and shall supervise the improvement of any such property so purchased, acquired or accepted as authorized by the board of supervisors. . . . Such trustees shall also have the care and control of such park property and may make reasonable rules and regulations and enforce the same when made respecting the use by the public of such park property: . . . The trustees so appointed shall make a full report to the board of supervisors at each October session as to the condition of the property and the expenditure of funds.²⁷

With this statute it is not optional for a Board to create a parks commission. Rather, the commission is created by law when lands are acquired for parks; and, generally speaking, the board of *road commissioners* act as the parks commission. The parks commission holds in trust the title to the property and has the management and control over the parks. Essentially, the only role of the Board is to appropriate monies if warranted based upon reports from the parks commission, along with approving park rules and regulations. These acts did not grant the OCBC authority to enter into the agreement with the Township.

PA 1957, No 185 County Public Works Department

Defendant also argues that a Board has authority to make lake improvements because Ottawa County has a board of public works. It is true that, under MCL 123.737 a county establishing a public works department shall have the power to make lake improvements. Because of the “shall” language, the opposite is also true—a county that does not have a public works department does not have the authority to make lake improvements under this act. The following establishes the lines of authority for both a Board and any public works department:

[T]he county board of commissioners . . . may establish a department of public works for the administration of the powers conferred upon the county by this act. The department of public works shall be under the general control of the county board of commissioners and under the immediate control of a board of public works.²⁸

By statutory terms, the powers given by the act are conferred upon the board of public works which has immediate control of the department of public works. Similar to MCL 46.351(1),

²⁷ MCL 123.66.

²⁸ MCL 123.732(1).

the county Board retains general control over the department of public works. In the case at bar, it is stipulated that the Ottawa County Road Commissioners constitutes the board of public works. Consistent with statute, the Road Commission, acting as the board of public works, is responsible for administering lake improvements. Specifically:

A county establishing a department of public works shall have the following powers to be administered by the board of public works subject to any limitations thereon:

* * *

(d) To make lake improvements within 1 or more areas in the county and to improve, enlarge, extend, operate, and maintain the improvements.²⁹

Nowhere in this statute is any authority for administration of lake improvements given to a Board. Once again, it is within the authority of a county Board to appropriate funds to the board of public works to accomplish its tasks.³⁰

It is true that that a Board may initiate a lake improvement project under this act. However, the initiation of lake improvements and the establishment of project parameters, does not equate with immediate control of that improvement. MCL 123.740 states in relevant part:

The . . . making of county lake improvements or erosion control systems shall be approved by a majority of the members elect of the county board of commissioners. Prior to approval of lake improvements the county board of commissioners shall submit to the department of natural resources preliminary plans which provide for making the lake improvements for the department of natural resources' review and approval. . . . After the county board of commissioners' approval, the board of public works shall have power to acquire the system or make improvements and to improve, enlarge, extend, operate, and maintain the same, subject to any restrictions placed thereon by the county board of commissioners in the resolution establishing the same or by this act.³¹

While a majority of the OCBC approved the lake improvement project, defendant agreed that the OCBC did not present, prior to approval, preliminary plans for the lake improvement to the department of natural resources. Defendant also agreed during oral arguments that no funds

²⁹ MCL 123.737(1).

³⁰ MCL 123.735.

³¹ MCL 123.740.

were allocated to the board of public works, nor was the board of public works involved in any aspect of this project. The board of public works was simply bypassed.

Defendant's position simply would gut the Legislature's command that *only* counties that have public works departments may engage in a lake improvement under this act. That is, to allow a county Board to simply bypass the board of public works would reduce the board of public works to a sinecure. Furthermore, as just shown, it is the board of public works, not the OCBC, that is responsible for implementing the project. This act did not grant the OCBC authority to enter into the agreement with the Township.

Urban Cooperation Act

Defendant's final argument is that the contract is enforceable because governmental units are allowed to cooperate with one another. Defendant cites MCL 124.504, which states:

A public agency of this state may exercise jointly with any other public agency of this state, with a public agency of any other state of the United States, with a public agency of Canada, or with any public agency of the United States government any power, privilege, or authority that the agencies share in common *and that each might exercise separately.*³²

MCL 124.2 is in accord and states:

Nothing contained in this act shall be construed to grant the right to jointly own or operate a public utility for supplying transportation, gas, light, telephone service, or electric power except as may be provided by the statutes or constitution of the state of Michigan, nor to contract to furnish municipal services outside corporate limits except in accordance with the constitutional limitations on such sales. *Nothing contained in this act shall be construed as to grant to municipal corporations acting jointly any power or authority which they do not have acting singly.*³³

Once again, defendant cites a statute without recognizing the limitations contained within the very statute it cites. As shown above, the OCBC did not have the independent authority to enter into an agreement with defendant for Crockery Lake's improvement. Thus, while the OCBC

³² MCL 124.504. Emphasis added.

³³ MCL 124.4. Emphasis added.

may contract with other governmental entities, that contractual authority itself does not provide the authority to exercise power. Rather, the authority to exercise power must exist independent of any contract itself.³⁴ This act did not grant the OCBC authority to enter into the agreement with the Township.

Reimbursement of Attorney Fees and Costs

It is axiomatic that contracts founded on acts prohibited by law are void.³⁵ “Void” is defined as:

“[n]ull; ineffectual; nugatory; having no legal force or binding effect....” *Black's Law Dictionary* (6th ed.). “Void contract” is similarly defined as: “[a] contract that does not exist at law; a contract having no legal force or binding effect.... [S]uch contract creates no legal rights and either party thereto may ignore it at his pleasure, insofar as it is executory.” *Id.*³⁶

As shown above, the OCBC lacked the authority to contract with the Township to restore Crockery Lake. Therefore, the purported contract is *void ab initio*. Neither party may enforce it and neither side has any action, including an action for recovery of fees/costs, against the other because no contract existed. This also resolves count III of the complaint.³⁷

Plaintiff's Count II

While this Court's decision on count I of the complaint disposes of this entire case, the court will briefly address count II for completeness. In count II, plaintiff claims that if the agreement is valid, the contribution from the OCBC is capped at 25% of the project under Part 309 of the Natural Resources and Environmental Protection Act. For lake improvements, MCL 324.30901 *et seq.* mandates that the local unit of government establish a lake board. It is the lake board that institutes proceedings and establishes an assessment district. The lake board must then

³⁴ See *Holland-West Ottawa-Saugatuck Consortium v Holland Education Ass'n* 199 Mich App 245, 250; 501 NW2d 261 (1993).

³⁵ *Maids Inter, Inc, v Saunders, Inc*, 224 Mich App 508, 511; 569 NW2d 857 (1997), *People v Jackson*, 348 Mich App 280, 291; 18 NW3d 360 (2023).

³⁶ *Epps v 4 Quarters Restoration, LLC*, 498 Mich 518, 537-538; 872 NW2d 412 (2015).

³⁷ This count was pursued only if plaintiff did not prevail on count I. See complaint ¶ 42.

hold public hearings. If properly instituted, a county Board may provide up to 25% of the costs of the project.

In the case at bar, *none* of the substantive or procedural mechanisms of this act were followed. Therefore, this act does not provide a statutory basis for the project, or for any financial limitations on the project. This act is simply irrelevant to this discussion.

Defendant's Counterclaims

As shown above, the purported agreement is void. It has no legal effect. Hence, Count I, breach of contract, and count II, indemnification, of the counterclaim are dismissed. As to count III, quantum meruit/unjust enrichment, "The right to recover on the quantum meruit is restricted to cases in which the contract is void under the statute but has been fully executed by one party and the other has received the consideration and accepted the benefit."³⁸ Here, the agreement was not fully executed and the OCBC has not received any benefit. Further, as stated in the counterclaim, it was the Township that actually drafted the agreement!³⁹ In other words, the Township may not cast aspersions upon the OCBC when it was the Township that created the illegal document. Count III is dismissed.

Conclusion

The OCBC's authority over county parks is statutorily limited where it made other provisions for park management. Thirty-eight years ago, the OCBC created a Parks Commission. Once created, the Parks Commission—by statute—has the sole authority to manage and operate county parks. The OCBC's general control over the Parks Commission does not equate with operational control over park property. The Parks Commission has exclusive operational control over park property. The OCBC's control over the Parks Commission is limited to creating and funding the Parks Commission, determining its members, and vetoing rule/regulation changes. The OCBC could have appropriated funds to the Parks Commission with the Parks Commission contracting with the Township *iff* the Parks Commission believed that the project was appropriate in its discretion. Instead, the OCBC acted outside of its authority when it bypassed the Parks

³⁸ *Ordon v Johnson*, 346 Mich 38, 48; 77 NW2d 377 (1956).

³⁹ Counterclaim ¶45 and ¶46.

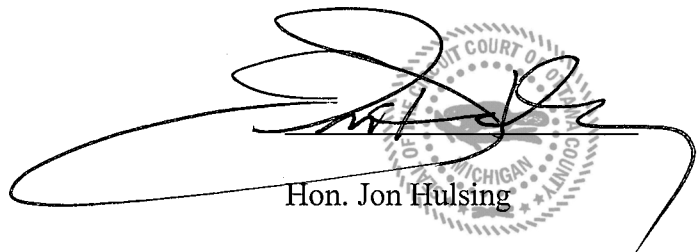
Commission and entered into an agreement with the Township for the restoration of Crockery Lake.

Similarly, the OCBC could have appropriated funds to the board of public works (Road Commission) with the board of public works implementing and administering the project *iff* the board of public works believed that the project was appropriate in its discretion. Instead, the OCBC acted outside of its authority when it bypassed the board of public works such that the department of public works was not involved with the restoration of Crockery Lake.

Plaintiff's motion for summary disposition is GRANTED. Defendant's counterclaims are DISMISSED. The purported agreement is *void ab initio*. It has no legal effect and neither party has any claim against the other.⁴⁰ Having prevailed in full, plaintiff may tax costs. MCR 2.625.

IT IS SO ORDERED,

September 22, 2025

A handwritten signature in black ink is written over a circular, faded court seal. The seal contains the text "COURT OF CLERK OF DISTRICT COURT OF INDIAN COUNTY MICHIGAN" around the perimeter. Below the signature, the name "Hon. Jon Hulsing" is printed in a standard font.

THIS IS A FINAL ORDER THAT CLOSES THE CASE.

⁴⁰ This decision does not address the merits of any lake restoration project, nor does it preclude future lawful projects and associated appropriations.

APPENDIX A

**AGREEMENT FOR THE CARE, MANAGEMENT, AND MAINTENANCE OF LAND
LOCATED AT CROCKERY LAKE**

The Agreement for the care, management, and maintenance of land located at Crockery Lake, Ottawa County, Michigan (the "Agreement") is made and entered into by and between the **COUNTY OF OTTAWA**, a municipal corporation, (hereinafter referred to as the "County"), and the **TOWNSHIP OF CHESTER**, a Michigan general law township (hereinafter referred to as the "Township"). Collectively, the signatories are referred to as the Parties, and individually, as a Party.

RECITALS:

WHEREAS, the County has received class action settlement funds that were accepted by the County on the condition that they be used for the purpose of restoring surface waters in the County (the "Settlement Funds");

WHEREAS, the County Board of Commissioners has decided to use the Settlement Funds, in combination with a portion of the County's own funds (collectively, the "Lake Restoration Funds"), for the purpose of caring, managing, and maintaining the property located at Crockery Lake that includes, but is not limited to, restoring the quality of waters of Crockery Lake, which is located within the County, in the Township of Chester, and upon which the County owns riparian property (Parcel #: 70-01-15-100-031) that is used for public park purposes, including a boat launch (the "Property") pursuant to MCL 46.11(l) and MCL 123.51 et. seq.;

WHEREAS, the Ottawa County Board of Commissioners authorizes the Township to conduct a Crockery Lake restoration project to be designed and implemented by the company known as Restorative Lake Sciences, under the direction of Dr. Jennifer L. Jermalowicz-Jones, CLP, CLM, Professional Limnologist (the "Project," see Exhibit A);

WHEREAS, the County and the Township desire to establish a cooperative and collaborative working relationship for the administration and use of the Lake Restoration Funds for the Project, and to enter into an Intergovernmental Agreement, as authorized under the provisions of Act 35 of the Public Acts of Michigan of 1951, as amended, and Act 7 of the Public Acts of 1967 (Ex. Sess.), as amended, whereby the Township, on behalf of the County, will hold and administer the Lake Restoration Funds, as a fiduciary, to ensure that they are expended in accordance with the Project and the terms stated herein; and,

WHEREAS, the Township is able and willing to serve in such capacity, with the County's consent, as authorized by Act 156 of the Public Acts of Michigan of 1917, upon terms that include, *inter alia*, the County's payment of an administration fee to the Township, to reimburse the Township for the costs it incurs to serve in this capacity.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, **IT IS HEREBY AGREED** as follows:

1. **County Performance.** The County agrees to, and shall, provide all Lake Restoration Funds to the Township promptly after the Effective Date, as defined in Section 10.a. Upon the County's transfer of the Lake Restoration Funds to the Township, said funds shall not

be used, expended or transferred for any purpose, other than to implement the Project in accordance with this Agreement.

2. **Township Performance.** Upon receipt from the County, the Township shall hold the Lake Restoration Funds in a restricted fund for the care, management, and maintenance of the Property including, but not limited to restore the quality of the waters of Crockery Lake in accordance with the Project, and on deposit in a secure financial institution that has been approved by the Township Board under its investment policies, until expended for the Project. The Township agrees to provide, in a reasonable manner and reasonable time frame, any information relating to the Project to the County upon the County's reasonable advance request, and the Township will endeavor to keep the County apprised of the Project's progress. The County agrees that the Township may rely on Dr. Jennifer L. Jermalowicz-Jones to provide the County with such informational updates. It shall be the sole responsibility of the Township to execute any agreements with third-parties that are required for the Project and carry out the terms of those agreements; provided, however, that the Township shall not, and will not, incur any contractual financial liabilities in the carrying out of the Project in an amount in excess of the total amount of the Lake Restoration Funds provided to the Township by the County. As such, the Township has no obligation – financial or otherwise – to ensure that the Project is completed if the Lake Restoration Funds have been completely depleted under the terms of this Agreement before the Project has been completed. The Township is not obligated to use any of its own funds, other than the Lake Restoration Funds, to carry out Project.

3. **Expenditure of Funds.** The Township shall expend the Lake Restoration Funds only in accordance with the terms of this Agreement, and for the purposes of implementing, the Project.

4. **Administrative Fee.** The Township shall be entitled to retain an administrative fee, to reimburse the Township for the costs it incurs to perform its obligations under the Agreement, in the amount of two percent (2%) of all Lake Restoration Funds the County provides to the Township. If the Parties subsequently determine that the amount of the administrative fee is either too high or too low for the purpose of completely reimbursing the Township for the costs it incurs to perform its obligations under the Agreement, the Parties agree to renegotiate the amount of the administrative fee, in good faith, and to thereafter amend this Agreement to reflect the renegotiated administrative fee.

5. **Drafting Costs.** The County agrees to and shall reimburse the Township for all of the Township's actual legal fees, costs and expenses the Township has incurred in connection with the preparation of this Agreement, including, but not limited to, attendance at any meetings held with County representative to discuss or negotiate the terms of this Agreement ("Drafting Fees"). After the Effective Date of this Agreement, the Township shall submit to the County invoices documenting the Drafting Fees, to the address listed herein at Paragraph 22, and the County shall pay the amount of the Drafting Fees to the Township within sixty (60) days after receipt of such invoices by the County.

6. **Funding Amount.** The County is not, as a result of entry into or performance by either Party under this Agreement, obligated to provide any certain amount of Lake Restoration Funds to the Township. The Township acknowledges that the County has not made any

representations, promises, or assurances to the Township about the amount of Lake Restoration Funds it will provide to the Township.

7. **Reports; Accounting.** The Township, upon reasonable advance request, shall provide the County timely and reasonable access to all data and information in the Township's possession or control related to the receipt and expenditure of Lake Restoration Funds for the Project. The Township shall adhere to the Generally Accepted Accounting Principles and its overall financial management system will ensure effective control over and accountability for all Lake Restoration Funds received. Accounting records shall be supported by balance sheets, general ledgers, and invoices. The expenditure of Lake Restoration Funds shall be reported by line item.

8. **Right of Audit.** The Township acknowledges and agrees that the County or its designee may audit the Township to verify compliance with this Agreement. The Township must retain and provide to the County or its designee upon request, all financial and accounting records related to this Agreement through the Term of this Agreement and for at least three (3) years thereafter (the "Financial Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, the Township must retain the records until all issues are resolved. This right of audit is limited to matters within the scope of this Agreement. The County shall be solely responsible for the costs of any and all such audits, including any costs incurred by the Township.

9. **Right of Inspection.** Within ten (10) calendar days of providing notice, the County and its authorized representatives or designees have the right to enter and inspect any location where Township records are kept related to the Project and/or Lake Restoration Funds, and examine, copy, and audit all records related to this Agreement. The Township must cooperate and provide reasonable assistance. If financial errors are revealed and verified, the Township shall correct the errors within forty-five (45) calendar days of receipt of written notice of the errors from the County, unless forty-five (45) days is not reasonable under the particular circumstances, in which case the Parties shall cooperatively agree to an alternate and appropriate corrective deadline. The County shall be solely responsible for the costs of any and all such inspections, including any costs incurred by the Township.

10. **Effective Date; Term and Termination.** This Agreement shall commence on its Effective Date and continue until it expires or is terminated as provided for herein.

a. **Effective Date.** This Agreement shall become effective on the date (the "Effective Date") that each of the following has occurred: (i) the approval of this Agreement by the County Board of Commissioners; and, (ii) the approval of this Agreement by the Chester Township Board; provided, however, that the Township shall not be required to perform its duties under this Agreement until it has received all or a portion of the Lake Restoration Funds from the County.

b. **Term and Expiration.** This Agreement shall expire with no further action on behalf of the Parties when the Project has been completed, five (5) years from the Effective Date, or when all Lake Restoration Funds have been expended, whichever comes sooner.

c. **Termination for Cause.** Either Party may immediately, upon written notice to the other Party, terminate this Agreement for cause if the other Party is in material breach of this Agreement.

d. **Return of Funds.** If expiration or termination of this Agreement occurs at a time when the Township still has possession of unobligated Lake Restoration Funds, the Township shall return the unobligated funds to the County within sixty (60) days, subject to the Township's retention of any administrative fee or Drafting Fees still owing. To the extent that use of some of the funds is dependent on a contingency that is not met, (including, but not limited to, the issuance of a permit), the Township shall remit the unused portion of the Lake Restoration Funds, which are dependent on an unmet contingency back to the County within sixty (60) days.

11. **Governing Law.** It is mutually acknowledged and agreed that this Agreement is made under and shall be governed by and construed in accordance with, the laws of the State of Michigan without giving effect to choice of law principles of such State. It is further acknowledged and agreed that any legal or equitable action or proceeding with respect to this agreement shall be brought only in the courts of Ottawa County, Michigan. The Parties submit to and accept generally and unconditionally the jurisdiction of those courts with respect to themselves and their property and irrevocably consent to the service of process in connection with any such action or proceeding by personal delivery or by the mailing thereof by registered or certified mail, postage prepaid to the address listed herein at Paragraph 22. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN.

12. **Indemnification and Hold Harmless.** The County shall, at its own expense, and to the extent permitted by law, protect, defend, indemnify and hold harmless the Township, and its elected and appointed officers, employees and agents from all claims, damages, costs, law suits and expenses, including, but not limited to, all costs from administrative proceedings, court costs and attorney fees that they may incur as a result of any acts, omissions or negligence of the County or any of its officers, employees, agents or subcontractors which may arise out of this Agreement. This includes any repayment of Lake Restoration Funds which may be required in the event that any portion of the Lake Restoration Funds, after having been spent on the Project, are required to be returned to the County or a third-party.

13. **Waivers; Remedies.** No delay on the part of any of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of the either Party of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of any other right, power or privilege hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which the parties hereto may otherwise have at law or in equity.

14. **Modifications, Amendments or Waiver of Provisions of the Agreement.** All modifications, amendments or waivers of any provision of this Agreement shall be made only by the written mutual consent of the Parties hereto, and upon approval of such modification,

amendment or waiver by the County's Board of Commissioners and the Township Board of Trustees.

15. **Assignment or Subcontracting.** The Township shall not assign, subcontract or otherwise transfer its duties and/or obligations under this Agreement.

16. **Purpose of Section Titles.** The titles of the sections set forth in this Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

17. **Complete Agreement.** This Agreement and any additional or supplementary documents incorporated herein by specific reference contains all the terms and conditions agreed upon by the Parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the Parties hereto.

18. **Survival Clause.** All rights, duties and responsibilities of any Party that either expressly or by their nature extend into the future, including warranties and indemnification, shall extend beyond and survive the end of the Agreement's term or the termination of this Agreement.

19. **Invalid/Unenforceable Provisions.** If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement. Where the deletion of the invalid or unenforceable clause or provision would result in the illegality and or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the clause or provision was rendered invalid or unenforceable.

20. **Force Majeure.** Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, epidemics, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, that prevent the claiming Party from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

21. **Non-Beneficiary Contract.** Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the Parties to this Agreement or their respective successors or permitted assignees any legal or equitable right, remedy or claim under or in respect of this Agreement, it being the intention of the Parties that this Agreement and the transactions contemplated hereby shall be for the sole and exclusive benefit of such Parties or such successors and permitted assignees. The Provider's suppliers or providers are not considered the Provider's assignees and are not third-party beneficiaries.

22. **Notice.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party by either electronic mail with confirmation of receipt or by first class mail. All such written notices shall be addressed as provided below. All correspondence shall be considered delivered to a Party as of the date that the electronic confirmation of receipt is received (if notice is provided by electronic mail) or when notice is deposited with sufficient postage with the United State Postal Service. A notice of termination shall be sent via electronic mail with confirmation of receipt or via certified mail to the address specified below. Notices shall be mailed to the following addresses:

If to County: County Administrator, Ottawa County
12220 Fillmore Street
West Olive, Michigan 49460

If to Township: Township Supervisor, Chester Township
P.O. Box 115
Conklin, MI 49403

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

24. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them, oral or otherwise, in any way related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

25. **Governmental Immunity:** Neither the County nor the Township waives its governmental immunity by entering into this Agreement, and fully retain all of their immunities and defenses provided by law with respect to any action based upon or occurring as a result of this Agreement.


26. **Certification of Authority to Sign Agreement.** The people signing on behalf of the Parties to this Agreement certify by their signatures that they are duly authorized to sign this Agreement on behalf of the Party they represent and that this Agreement has been authorized by the Party they represent.

THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO HAVE FULLY
EXECUTED THIS AGREEMENT ON THE DATES INDICATED BELOW

COUNTY OF OTTAWA

TOWNSHIP OF CHESTER

By: _____
Joe Moss, Chairman
Ottawa County Board
of Commissioners

By: _____
Troy Goodno, Supervisor

Date: _____

Date: DECEMBER 9, 2024

THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO HAVE FULLY
EXECUTED THIS AGREEMENT ON THE DATES INDICATED BELOW

COUNTY OF OTTAWA

TOWNSHIP OF CHESTER

By: 

Joe Moss, Chairman
Ottawa County Board
of Commissioners

By: _____

Troy Goodno, Supervisor

Date: _____

12/17/2024

Date: _____