

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement ("*Agreement*") is made on October 8, 2015 (the "*Effective Date*"), by and between CHARTER TOWNSHIP OF OAKLAND ("*Oakland Township*"), a Michigan municipal corporation, whose address is 4393 Collins Road, Rochester, Michigan 48306, and CLINTON RIVER WATERSHED COUNCIL ("*CRWC*"), a Michigan non-profit corporation, whose address is 1115 W. Avon Road, Rochester Hills, Michigan 48309 (each a "*Party*" and collectively the "*Parties*").

### RECITALS

This Mutual Release and Agreement is entered into based upon the following underlying facts and circumstances:

A. At the time of the Project at issue (as defined below), Oakland Township owned the Paint Creek Dam ("*Dam*"). The Dam was originally designed to divert water from the Paint Creek in to a mill race to power a previously functioning grist mill. The grist mill ceased to operate in the early 1900's. Long before commencement of the Project, the mill race was disconnected from the mill and the mill race has existed since then separate and apart from any mill. Oakland Township owns a portion of the property through which the mill race passes, and Township Residents own the other portions of the mill race property.

B. The EPA and Michigan Department of Natural Resources ("*MDNR*") determined the Dam was an impediment to fish passage and aquatic organism transport. The 2008 Clinton River Area of Concern Remedial Action Plan included removal of the Dam.

C. In 2010, at MDNR's suggestion, CRWC agreed to act as fiduciary on a Great Lakes Restoration Initiative grant available from the EPA to fund removal of the Dam.

D. With Oakland Township's consent, CRWC signed a grant agreement with the EPA for the Paint Creek Habitat Restoration Dam Removal Project (the "*Project*").

E. Oakland Township and CRWC, respectively, on September 30, 2011 and October 3, 2011, signed an agreement in which Oakland Township granted CRWC temporary permission, access and consent to undertake the Project (the "*2011 Agreement*"). The 2011 Agreement provided, in part, as follows:

- "The dam shall be removed in a manner that will preserve the Historical Significance and marker for the Mill Race including maintaining flows that are necessary for this"; and,
- CRWC "will at their expense apply for two (2) grants for the cleanout and restoration of the Mill Race within one (1) year or upon completion of their grant. The CRWC shall not be fiduciary on the grant applications and will not be responsible for the local match funding, if

any. Further, this shall not be construed as a guarantee of grant funds. The CRWC shall endeavor to obtain funds putting forth a reasonable and good faith effort into the applications, supporting the project, and seeking support through their local partners.”

F. CRWC performed and completed the Project.

G. Following completion of the Project, Oakland Township complained there was insufficient flow of water from the Paint Creek into the mill race, and CRWC had not applied for grants to clean out and restore the mill race. CRWC denied any wrong doing. Thereafter, Oakland Township instituted a civil action against CRWC regarding these disputes in the Oakland County Circuit Court, entitled *Charter Township of Oakland v. The Clinton River Watershed Council*, being designated civil action number 14-143552-CK (the “Action”). In an Amended Complaint, Oakland Township alleged CRWC breached the 2011 Agreement. The allegations are more fully set forth in the First Amended Complaint and Jury Demand on file with the Court.

H. CRWC filed an Answer, denying the factual and legal bases alleged in the Amended Complaint, and asserted numerous affirmative defenses. The denials and affirmative defenses are more fully set forth in the Answer to First Amended Complaint on file with the Court.

I. The Parties participated in a court-ordered facilitative mediation. While the Parties did not reach a formal settlement at the mediation, they agreed in principle to amicably resolve the dispute framed by the pleadings and their mediation summaries. The Parties subsequently have agreed to settle their disputes and all related claims without further litigation.

**NOW THEREFORE**, in consideration of the mutual promises in this Agreement, and for good and valuable consideration and intending to be legally bound, the Parties agree as follows:

1. **Consideration.**

- a. During the facilitation and at the Parties request, Hubbell, Roth & Clark, Inc. (“HRC”) undertook a review of some of the structures that were installed as part of the Project. HRC determined that certain of the structures that are part of the Project might be modified to increase the flow of water from the Paint Creek through the mill race, and possibly meet Oakland Township’s expectations of flows following completion of the Project. What precisely are the expected flows, and whether modifications could yield those flows and be acceptable to the Michigan Department of Environmental Quality (“MDEQ”) and/or the MDNR, is presently uncertain and/or undefined.



- b. Upon entry of the Stipulated Order dismissing the Action without prejudice, as set forth below in Paragraph 2, CRWC (through HRC) will undertake a further design/construction review. This review shall be documented in the form of a memorandum (the "Memorandum"), articulating the flows Oakland Township desires to achieve through the mill race, and identifying modifications that may achieve those flows and may be acceptable to the MDEQ/MDNR. Such review shall take into consideration and include, but not be limited to, possible modification of the depth of the intake pipe into the mill race, the height of the riffles downstream of the intake pipe in Paint Creek, the addition of other items in the Paint Creek as permitted by the MDEQ/MDNR, and the alignment angles of piping, including piping within manholes. Unless extended by the Township, the Memorandum will be completed within 60 days.
- c. Any Memorandum prepared by the consultant in accordance with Paragraph 1(b) shall be reviewed by (i) CRWC, to determine consistency with CRWC's mission and objectives regarding the Paint Creek and Clinton River Watershed, and (ii) Oakland Township, to determine consistency with Oakland Township's objective to increase the flows of water in to the mill race in amounts and rates acceptable to MDEQ/MDNR. The Parties shall work in a cooperative manner to achieve these objectives, and shall exercise reasonable judgment on the acceptability of any proposed options. If the Parties mutually approve an option identified in the Memorandum, and Oakland Township decides to move forward to further construct and implement one of the identified options, this shall be termed the "Modifications".
- d. If the Parties agree upon and approve the Modifications, CRWC shall facilitate a meeting with MDEQ and any other necessary governmental agencies to review the Modifications, if needed. Oakland Township shall be solely responsible for seeking agency approval of the Modifications.
- e. Within the next twelve (12) months, CRWC will seek to identify two (2) grants for the clean-out and restoration of the mill race by Oakland Township, if available and eligible. Oakland Township shall provide reasonable assistance and any information in its possession that CRWC may reasonably request to assist in this endeavor. CRWC shall provide Oakland Township with quarterly reports of the efforts made to identify these grants; the first report to be due within 3 months of executing this agreement. Otherwise, any obligation by CRWC to Oakland Township to prepare and/or apply for grants under the 2011 Agreement is expressly waived and released.

2. **Dismissal of Action without Prejudice.** Pursuant to the terms of the Stipulated Order which is attached hereto as **Exhibit A**, upon executing this Agreement, the Parties consent to the entry of an order which dismisses the Action, and all parties to the Action, without prejudice, in its entirety, each Party to be responsible for its own attorneys' fees and costs.

3. **Filing of Order.** Following the execution of this Agreement, counsel for CRWC shall file with the court the Stipulated Order, a copy of which is attached hereto as **Exhibit A**.

4. **Dismissal of Action with Prejudice.** Upon the earliest of the following to occur:

- a. Upon agreement of a Modification that does not require MDEQ/MDNR approval;
- b. after the Parties have worked in a cooperative manner and each have exercised reasonable judgment on the acceptability of any proposed options, the Parties cannot agree upon and approve the Modifications;
- c. the MDEQ or other governmental agencies either approve or issue a final rejection of the Modifications, if such approval is required; or,
- d. 365 calendar days from the Effective Date;

pursuant to the terms of the Stipulated Order attached hereto as **Exhibit B**, the Parties consent to the entry of an order which dismisses the Action with prejudice, each Party to be responsible for its own attorneys' fees and costs. The Parties' counsel shall execute **Exhibit B** concurrently with execution of this Agreement, and counsel for CRWC shall retain the fully executed Stipulated Order in escrow. Upon the occurrence of one or more of the events set forth in subparagraphs 4(a)-(c) above, counsel for CRWC shall provide notice to Oakland Township's counsel of its intent to file the Stipulated Order, in the form attached as **Exhibit B**, with the Court. Upon either consent of Oakland Township's counsel, or no response within seven (7) calendar days of the notice, whichever is earliest, CRWC's counsel shall file the Stipulated Order at **Exhibit B** with the Court for entry.

5. **Responsibility for Costs.** CRWC shall be solely responsible for any and all costs and expenses, of any kind, nature or type whatsoever, associated with the consultant(s) review referenced in Paragraph 1(b) above, including but not limited to any cost for the retention of, or any analysis or review to be provided by said consultant or any other consultant, person, party or entity retained, consulted or utilized by CRWC. Oakland Township shall be responsible for all costs and/or fees associated with MDEQ and/or other governmental agency review of proposed Modifications; any plans necessary for implementation of the Modifications; any design or analysis over and above that provided in the Memorandum as referenced in Paragraph 1(b) above; permitting, and any other or additional pre-construction, construction or post-construction costs incurred, or to be incurred, should Oakland Township move forward to undertake to perform any Modifications; and any additional or further costs or attorneys' fees which may be incurred by Oakland Township.

6. **Mutual Release.** Oakland Township, on the one hand, and CRWC, on the other hand, together with each other's agents, employees, servants, devisees, shareholders, members, principals, trustees, successors, representatives and assigns, mutually release, acquit and forever discharge each other, and all other persons, employees, assigns, consultants, agents, directors,



officers, representatives, attorneys, servants, members, managers of and from all claims, demands, damages, actions, causes of action, lawsuits, appeals, costs, expenses, compensation, consequential damages or attorneys' fees or any other thing whatsoever which each Party may have against the other, or on account of, or in any way arising out of, or in any manner relating to the Action or the transactions or occurrences which have or could have established a damage claim by either Party against the other, including, without limitation, any and all claims asserted, and any and all claims which could have been asserted against each other in the Action arising from or related to the Project or the 2011 Agreement. This release encompasses any claims relating to any fact, circumstance, event, condition or occurrence, whether known or with exercising reasonable diligence could be known, existing on, or relating to, the matters described in the Action referenced in the recitals between CRWC and Oakland Township or related to the Project, at or prior to the effective date of this Agreement.

7. **Defend and Hold Harmless.** Oakland Township shall defend and hold CRWC harmless if any civil action or administrative complaint is filed against CRWC concerning any action or inaction CRWC may have taken or failed to take that allegedly affects the mill race or the property along the mill race with regard to the Modifications or any work arising out of this Agreement.

8. **Representative Capacity.** The Parties represent and warrant to the other that each has the full legal right and authority to execute this Agreement and that no Party has made an assignment or transfer of any claim or any right arising out the transactions and/or occurrences which have established the Parties' disputes described in the recitals.

9. **Voluntary Execution.** Each Party acknowledges that each has carefully read this Agreement, knows the contents thereof, and understands the same, and signs this Agreement as its voluntary act and deed. Each Party acknowledges that it has not been induced to enter into this Agreement and has not executed this Agreement in reliance upon any promises, representations, warranties or statements not set forth herein or incorporated by reference. Each Party represents that it has entered into this Agreement free of any duress, intimidation or inducement. The Parties further warrant and represent each to the other that:

- a. They have been fully informed and have full knowledge of the terms, conditions and effects of this Agreement and Mutual Release;
- b. They recognize they may be mistaken as to the law and/or the facts upon which they may be relying in executing this Agreement and that such law and/or facts may be other than their present beliefs. The Parties agree they have either personally or through counsel, fully investigated to their satisfaction, all facts and law involved in the dispute;
- c. The Agreement is executed without promises or representation by or for the Parties except as contained in this Agreement; and,
- d. Each Party fully understands and is satisfied with the terms and effect of this Agreement.

10. **Entire Agreement.** This Agreement sets forth the entire understanding between the Parties regarding the settlement of claims the Parties may have against the other as described in this Agreement, and the terms are contractual, not a mere recital. This Agreement is a complete integration of all agreements and understandings between the Parties, and supersedes any and all prior or contemporaneous oral and written negotiations, agreements, promises, warranties, representations, and understandings in connection therewith. No change, modification, alteration, termination or discharge of this Agreement shall be deemed effective unless in writing and signed by each of the Parties.

11. **Binding Effect.** All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective agents, trustees, employees, representatives, attorneys, officers, directors, members, affiliates, servants, successors and assigns, as the case may be.

12. **Severability.** If any provision, or part, of this Agreement shall be deemed void, unenforceable or contrary to public policy, law, statute and/or ordinance, the remainder of the Agreement shall not be affected and shall remain valid and enforceable to the fullest extent of the law.

13. **Compromise of Claims.** The Parties recognize this Agreement is a compromise of disputed claims and defenses. By entering into this Agreement, no Party admits any fault or liability under any statutory or common law, and waives no rights, claims, or defenses regarding the other Party except as otherwise provided in this Agreement. By entering into this Agreement, no Party admits the validity or factual basis of the positions or defenses asserted by the other Party, and the Parties agree that the sums and covenants given in consideration of this Agreement, and the execution of this Agreement, shall not be construed as an admission of liability or wrongdoing by the Parties regarding the disputed matters set forth above, each of whom expressly denies any wrongdoing or liability. This Agreement and the compromises contained in it shall have no res judicata or collateral estoppel effect and shall not be admissible as evidence in any other proceeding, except in a proceeding between the Parties seeking to enforce this Agreement.

14. **Parties to Bear Own Costs and Attorneys' Fees.** Each Party shall bear its own costs, expenses, and claims to interest and attorneys' fees, whether taxable or otherwise, incurred in or arising out of, or connected with the matters referenced in this Agreement.

15. **No tax advice.** No tax advice has been offered or given by either Party in these negotiations, and each Party is relying upon the advice of its own tax consultant regarding any tax consequences that may arise because of the execution of this Agreement.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed a duplicate original, but all of which, together, shall constitute one and the same instrument.

17. **Governing Law.** This Agreement shall be construed by and be enforced under the laws of Michigan.



18. **Representations and Warranties.** The Parties warrant to one another that they have taken all appropriate action necessary to authorize the execution of this Agreement and the Stipulated Orders of Dismissal attached as **Exhibit A** and **Exhibit B**, and this Agreement and any documents executed in connection with this Agreement constitute the legal, valid, and binding obligations of each of the Parties, enforceable against each of such Parties under this Agreement. The representations and warranties in this Paragraph shall survive execution and performance under this Agreement.

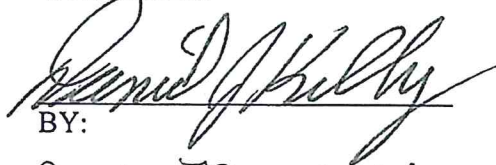
19. **Further Assurances.** Each Party agrees to take all action necessary to carry out the intentions of the Parties as expressed in this Agreement. The Parties agree that, upon request, they will promptly execute any additional documents necessary to effectuate the intent of the Parties as set forth in this Agreement, including but not limited to the Dismissal without Prejudice referenced in Paragraph 2, and the Dismissal with Prejudice referenced in Paragraph 4.

20. **Construction.** The Parties acknowledge this Agreement has been jointly prepared and drafted by their respective legal counsel, or they have had the opportunity to do so, and if a court deems any language to be ambiguous, such language shall not be presumptively construed against any of the Parties, but shall be construed to give effect to the true intentions of the Parties. Further, each Party understands and acknowledges the Party is represented by independent counsel regarding each Party's consideration of this Agreement. Further, each Party acknowledges that such Party has read this Agreement and understands all of its terms and this Agreement is executed voluntarily, without duress, and knowing its legal significance.

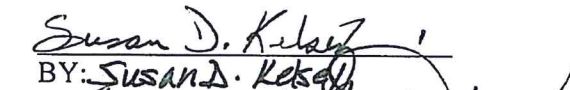
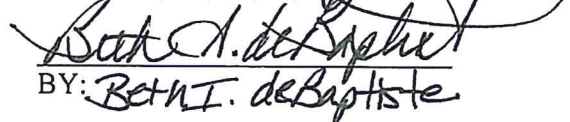
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IN WITNESS WHEREOF, the Parties have executed this Mutual Release and Settlement Agreement on the day and year first above-written.

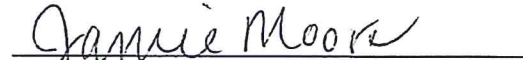
WITNESSES:

  
BY:


Cari Neubick  
BY: CARI NEUBICK

  
BY: SUSAN D. KELSEY  
  
BY: BETH A. deBAPTISTE

CHARTER TOWNSHIP OF OAKLAND

  
BY:  
ITS: Interim Manager  
Dated: 10-8-15

CLINTON RIVER WATERSHED COUNCIL

  
BY: Anne Vaara  
ITS: Executive Director  
Dated: 10-8-2015



# **EXHIBIT A**

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

CHARTER TOWNSHIP OF OAKLAND,  
a Michigan municipal corporation,

Plaintiff,

Case No. 14-142552-CK  
Hon. Wendy Potts

v.

THE CLINTON RIVER WATERSHED COUNCIL,  
a non-profit organization,

Defendant.

GIARMARCO, MULLINS & HORTON, PC  
DANIEL J. KELLY (P41315)  
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[deBaptiste@butzel.com](mailto:deBaptiste@butzel.com)

**STIPULATED ORDER OF DISMISSAL WITHOUT PREJUDICE**

At a session of said Court held in the  
City of Pontiac, County of Oakland, State of Michigan  
on \_\_\_\_\_

PRESENT: **THE HONORABLE WENDY POTTS**  
CIRCUIT COURT JUDGE

Pursuant to stipulation by and between the respective parties through their respective counsel, and the Court being duly advised in the premises;

**IT IS HEREBY ORDERED** that the Complaint of Plaintiff CHARTER TOWNSHIP OF



OAKLAND be and hereby is dismissed without prejudice and without costs.

**THIS ORDER RESOLVES ALL PENDING CLAIMS**

**AND CLOSES THIS CASE.**

**APPROVED AS TO FORM,  
CONTENT AND FOR ENTRY:**

\_\_\_\_\_  
CIRCUIT COURT JUDGE

\_\_\_\_\_  
DANIEL J. KELLY (P41315)  
GIARMARCO, MULLINS & HORTON, PC  
Attorneys for Plaintiff

\_\_\_\_\_  
ERIC J. FLESSLAND (P35668)  
BETH I. deBAPTISTE (P53401)  
BUTZEL LONG  
Attorneys for Defendant

BUTZEL LONG, A PROFESSIONAL CORPORATION, ATTORNEYS AND COUNSELORS

# EXHIBIT B



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CHARTER TOWNSHIP OF OAKLAND,  
a Michigan municipal corporation,

Plaintiff,

Case No. 14-142552-CK  
Hon. Wendy Potts

v.

THE CLINTON RIVER WATERSHED COUNCIL,  
a non-profit organization,

Defendant.

GIARMARCO, MULLINS & HORTON, PC  
DANIEL J. KELLY (P41315)  
Attorneys for Plaintiff  
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**STIPULATED ORDER OF DISMISSAL WITH PREJUDICE**

At a session of said Court held in the  
City of Pontiac, County of Oakland, State of Michigan  
on \_\_\_\_\_

PRESENT: **THE HONORABLE WENDY POTTS**  
CIRCUIT COURT JUDGE

Pursuant to stipulation by and between the respective parties through their respective  
counsel, and the Court being duly advised in the premises;

**IT IS HEREBY ORDERED** that the Complaint of Plaintiff CHARTER TOWNSHIP OF

OAKLAND be and hereby is dismissed with prejudice and without costs, and Defendant THE CLINTON RIVER WATERSHED COUNCIL o/k/a CLINTON RIVER WATERSHED COUNCIL be and hereby is dismissed as a party to the Complaint with prejudice and without costs.

**THIS ORDER RESOLVES ALL PENDING CLAIMS  
AND CLOSES THIS CASE.**

**APPROVED AS TO FORM,  
CONTENT AND FOR ENTRY:**

\_\_\_\_\_  
CIRCUIT COURT JUDGE

\_\_\_\_\_  
DANIEL J. KELLY (P41315)  
GIARMARCO, MULLINS & HORTON, PC  
Attorneys for Plaintiff

\_\_\_\_\_  
ERIC J. FLESSLAND (P35668)  
BETH I. deBAPTISTE (P53401)  
BUTZEL LONG  
Attorneys for Defendant

BUTZEL LONG, A PROFESSIONAL CORPORATION, ATTORNEYS AND COUNSELORS